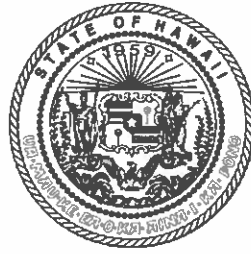


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OFFICE OF DISPUTE RESOLUTION
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAI'I

In the Matter of STUDENT, by and through
the Parent¹,

Petitioners,

vs.

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

Respondents.

DOE-SY2324-022

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
January 24-26, 2024
February 15, 21, 28, 29, 2024

Hearings Officer: Charlene S.P.T. Murata

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

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, et seq.; the federal regulations implementing IDEA, 34 C.F.R. Part 300; and the Hawaii Administrative Rules §§ 8-

¹ Personal identifiable information is provided in the Legend.

60-1, et seq. Additionally, Petitioners reference Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended in 1974, codified at 29 U.S.C. §§ 794, et seq.; and the Hawaii Administrative Rules §§ 8-61-1, et seq. in their claims and requests for relief.

II. INTRODUCTION

On November 30, 2023, the Department of Education, State of Hawaii and Keith T. Hayashi, Superintendent of the Hawaii Public Schools (“Respondents” or “DOE”) received a Complaint and Resolution Proposal from Student, by and through Student’s Parent (collectively “Petitioners”).

On December 8, 2023, Respondents filed Department of Education’s Response to Petitioners’ Complaint and Resolution Proposal.

On December 26, 2023, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for January 3, 2024.

On January 3, 2024, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners, and Deputies Attorney General Bradford K. Chun (“Mr. Chun”) and Darien N. Chow (“Mr. Chow”) appearing on behalf of Respondents. During the prehearing conference, the parties agreed to have the due process hearing on January 24-26, 2024.

On January 4, 2024, a Prehearing Order was issued to the parties, setting forth the issues and procedures for the due process hearing, and deadlines for submission of substantive motions, witness and exhibit lists, and exhibits. No substantive motions were filed, and the parties timely submitted their witness and exhibit lists and exhibits on January 17, 2024.

The due process hearing took place on January 24-26, 2024, using Zoom, a videoconferencing platform. The due process hearing was not able to be completed during the

three (3) days of hearing and February 15, 21, 28 and 29 were added². All participants in the due process hearing appeared remotely via video and audio³. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Mr. Chun. Parent-1 was present during all days of the hearing and Parent-2 was present during the first day of the hearing. Representative-1, Representative-2⁴, and Mr. Chow were present on behalf of Respondents.

Petitioners called Advocate and Parent-1 as their witnesses during the due process hearing. Respondents called the following witnesses during the due process hearing: SSC, Care Coordinator, DES, and SLP. Petitioners recalled Parent-1 as a rebuttal witness.

The following Petitioners' exhibits were admitted into evidence during the hearing: Exhibits 1 (001-031), 2 (032-073), 3 (074-139, 140-145 and 152-160)⁵, 4 (179-180, 209-210,

² The parties had agreed to also add February 2, 2024 as a hearing date; however, on February 1, 2024, Mr. Peck informed the undersigned Hearings Officer and Mr. Chun that he was ill and unable to participate on February 2, 2024. DOE did not object to canceling the February 2, 2024 hearing date and February 2, 2024 was subsequently canceled. See Order Adding Due Process Hearing Dates, issued on January 29, 2024, and Order Striking Due Process Hearing Date, issued on February 1, 2024.

³ Except on January 4, 2024 when Mr. Chow participated with his video and microphone off. Petitioners did not object to Mr. Chow's participation in this manner.

⁴ Representative-1 was present on January 24-26, 2024, and Representative-2 was present on February 15, 21, 28, and 29, 2024.

⁵ The admissibility of Petitioners' Exhibit 3, entitled "Information on [REDACTED] Center]," pages 140-178, was the subject of discussion during the hearing. The parties agreed that pages 161-178 should be excluded. Respondents did not object to pages 140-145 and 152-160 but did object to pages 146-151. Pages 140-145 and 152-160 were not formally admitted into evidence but was used by counsel in Respondents' closing brief, wherein Respondents relied on Petitioners' Exhibit 3, page 155. See DOE's Closing Brief, p. 7. As such, Petitioners' Exhibit 3, pages 140-145 and 152-160 are admitted into evidence. As for pages 146-151, Respondents objected to these pages and Petitioners did not renew their request for these pages to be admitted into evidence, and as such pages 146-151 are excluded. Tr. Vol. III, 278:23-280:23, 294:25-296:17, 393:20-394:4.

211, 214, 231-234, 236-241, 244-263, 264-271), and 5 (272-291). Tr. Vol. III, 278:4-282:16; Tr. Vol. IV, 5:24-7:1; Tr. Vol. V, 4:16-5:13.

The following Respondents' exhibits were admitted into evidence during the hearing: Exhibits 1, 4, 6, 10, 19, 20, 22, 23, 25⁶, 26-35, 40-43, 46, 47, 59, 60, 65, 66, 69-71, 73-77, 79-86, 91-95, 121-123, 130-132, 134, 136, 137, 140-145, 147-150, 151⁷, 152, 153, 157-162, 164, and 165. Tr. Vol. III, 282:17-285:24; Tr. Vol. IV, 7:2-8:4; Tr. Vol. V, 5:22-7:6; Tr. Vol. VI, 5:4-23; Tr. Vol. VII, 26:10-27:3.

The initial deadline by which a decision must be issued was February 13, 2024. The decision deadline was extended from February 13, 2024 to March 29, 2024, and then from March 29, 2024 to May 13, 2024. The deadline by which a decision in this matter must be issued is May 13, 2024. See Order Granting Respondent's Request to Extend the 45-Day Timeline; Declaration of Bradford K. Chun, dated January 29, 2024, issued on January 30, 2024; and Order Granting Respondents' Second Request to Extend the 45-Day Time; Declaration of Bradford K. Chun, dated February 26, 2024, issued on March 1, 2024.

On April 12, 2024, the parties timely submitted their closing briefs.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision. Although all the evidence was considered, only evidence relevant to the resolution of the issues are stated in the findings.

⁶ Although the transcript states "Exhibit 15, page 60," the correct exhibit number is Exhibit 25. Tr. Vol. III, 283:10.

⁷ Although the transcript states "Exhibit 551, pages 570 through 574" the correct exhibit number is Exhibit 151. Tr. Vol. III, 284:15-16.

III. ISSUES PRESENTED

In their November 30, 2023 Complaint, Petitioners allege procedural and substantive violations of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973. Specifically, Petitioners allege that the Respondents denied Student a free appropriate public education (“FAPE”). Petitioners raise the following issues:

Issue 1 – Whether the 5/23/2023 IEP was a denial of FAPE because the DOE failed to appropriately discuss and determine Student’s Least Restrictive Environment (also known as placement) (item #23).

Issue 2 – Whether the DOE provided an appropriate placement to implement Student’s 11/14/2023 IEP in a timely manner.

Issue 3⁸ – Whether the 11/14/2023 IEP provides Student a program that sufficiently addresses Student’s unique social skills deficits.

Issue 4 – Whether the 11/14/2023 IEP provides Student a program that addresses Student’s unique [REDACTED] deficits.

Issue 5 – Whether the 11/14/2023 IEP provides Student a program that sufficiently addresses Student’s unique attention deficits.

Issue 6 – Whether the 11/14/2023 IEP provides Student a program that sufficiently addresses Student’s unique fine motor deficits.

Issue 7 – Whether the 11/14/2023 IEP provides Student a program that sufficiently addresses Student’s unique speech/language deficits.

Issue 8 – Whether the 11/14/2023 IEP provides Student a program that addresses Student’s unique [REDACTED] deficits. [REDACTED]

Petitioners request the following remedies:

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

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

⁸ Issues 3-8 were withdrawn by Petitioners. See Pet. Closing Brief, p. 26.

Remedy 3 – Order the DOE to directly fund any private services (including private related services, such as transportation and necessary expenses related to the provision of private services);

Remedy 4 – Order compensatory education if Parent was unable to provide all of the services Student required to ameliorate Student’s losses; and/or

Remedy 5 – Order such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

IV. FINDINGS OF FACT

Student

1. Student is currently [REDACTED] years old. Pet. Ex. 1 at 001.
2. Student was diagnosed with Disability in May of [REDACTED]. DOE Ex. 10 at 024.
3. From April [REDACTED] to July [REDACTED], Student received services through the Department of Health (“DOH”) [REDACTED]. Student also started receiving applied behavior analysis (“ABA”) services in April of [REDACTED] and currently receives ABA services from Private Center for twenty (20) hours per week. Pet. Ex. 1 at 007.
4. Student is eligible for special education and related services pursuant to the IDEA and H.A.R. Chapter 60 under the category of Disability. Pet. Ex. 2 at 058.

Facts of Case

5. SSC is Home School’s student services coordinator.
6. On or about December 2, 2022, Parent-1 contacted SSC about Home School’s [REDACTED] program and concerns Parent-1 had about Student. DOE Ex. 40 at 115-139.
7. On December 6, 2022, SSC informed other members of Home School that Parent-1 was requesting an evaluation for Student and that Parent-1 was interested in having Student attend Home School’s [REDACTED] program. SSC informed them that Student was

- diagnosed with Disability and was receiving ABA services at Private Center five (5) days a week. DOE Ex. 47 at 198-199.
8. Also on December 6, 2022, SSC informed Parent-1 that Parent-1 would need to register Student at Home School in order for Home School to hold a meeting. While SSC provided Parent-1 with information on how to register online and a list of required documents that needed to be submitted to complete enrollment, SSC did not explain to Parent-1 that registration or enrollment at Home School was a requirement to being transferred to another school. DOE Ex. 41 at 140-141.
 9. Also on December 6, 2022, Parent-1 emailed to SSC the following documents: an Individualized Family Support Plan, dated January 14, 2022, and DOH [REDACTED] [REDACTED] Multidisciplinary Evaluation (MDE) Report Addendum and Partial Multidisciplinary Evaluation (MDE) Report, dated 2021. Pet. Ex. 4 at 179-180; DOE Ex. 42 at 142-167. SSC in turn forwarded the documents to SLP, Care Coordinator, Principal, and others, informing them that the DOH information was outdated, and SSC was still waiting for information from Private Center. DOE Ex. 43 at 168-193.
 10. On December 8, 2022, Parent-1 informed SSC that Parent-1 would not be moving forward with Student's registration at Home School. DOE Ex. 46 at 196-197.
 11. On or about February 21, 2023, Parent-1 informed SSC of Parent-1's renewed interest in starting the evaluation process for Student in preparation for the 2023-2024 school year. DOE Ex. 47 at 198.
 12. On March 2, 2023, a student focus team ("SFT") meeting was held. DOE determined that there was a suspicion of a disability as Student was previously eligible for DOH services and was currently receiving ABA services. The DOE proposed conducting an

initial evaluation for special education and related services. DOE's proposed/refused actions were based on information from the following sources: Private Center Reassessment Report (1/4/23); Private Center Client "at-a-glance" (1/24/23); DOH [REDACTED] Multidisciplinary Evaluation Report (5/13/21); Individualized Family Support Plan (1/14/22); and input from Parent-1 and team. In addition to reviewing existing information, DOE also requested that an observation in Student's current setting be conducted. DOE considered requesting assessments, such as cognitive, adaptive, behavioral, academic, and speech/language, but determined that information provided by Private Center and Parent-1 was up-to-date and sufficient to determine eligibility and assist in programming. Pet. Ex. 1 at 006, 024; Pet. Ex. 2 at 071; DOE Ex. 6 at 019; DOE Ex. 47 at 198.

13. On March 6, 2023, Parent-1 signed a "Consent for Assessment as part of an Initial Evaluation" form. DOE Ex. 35 at 108.
14. Private BA is a behavior analyst at Private Center and provides Student with ABA services at home through insurance. Pet. Ex. 4 at 268; DOE Ex. 60 at 246.
15. SLP is a speech/language pathologist for DOE.
16. On March 19, 2023, SSC asked Private BA to help DOE set up observations for Student at Private Center, and that DOE only needed 30-45 minutes to conduct the observations. Private BA established virtual observations on March 24, 2023 for SSC and April 5, 2023 for SLP. DOE Ex. 59 at 240-245.
17. On March 24, 2023, SSC conducted a virtual observation of Student, who was at Private Center, as part of the initial evaluation. The observation lasted for approximately [REDACTED] minutes. Pet. Ex. 1 at 008.

18. On March 28, 2023, SSC asked Private BA for clarification about what SSC saw at the virtual observation. SSC asked Private BA if the individual sitting in the corner with the laptop was Student's registered behavior technician ("RBT") as Student was frequently turning around. SSC also asked whether someone typically sat behind Student and prompted Student to participate or was Student independent during circle time. DOE Ex. 59 at 240. Private BA responded to SSC that the person with the laptop was Private BA, and that Private BA was supervising Student's RBT. Private BA informed SSC that Student required prompting to stay seated, had difficulty sitting on the floor, and methods Private Center used to address Student's maladaptive behaviors. DOE Ex. 60 at 246.
19. On April 5, 2023, SLP conducted a virtual speech and language observation of Student, who was at Private Center, as part of the initial evaluation. A report entitled "Speech and Language Observation Report" ("April SLO Report") was issued following the virtual speech and language observation. Pet. Ex. 2 at 071-073; DOE Ex. 32 at 091-093.
20. On or about April 25, 2023, SSC issued an "Observation" report for the virtual observation SSC conducted on March 24, 2023 ("4/25/2023 Observation Report"). Pet. Ex. 2 at 068-070; DOE Ex. 33 at 094-096.
21. On April 27, 2023, SSC sent Parent-1 a copy of a draft Evaluation Summary Report for the initial evaluation; the April SLO Report; and the 4/25/2023 Observation Report. SSC informed Parent-1 that the reports and the draft Evaluation Summary Report would be reviewed at the eligibility meeting on May 2, 2023. DOE Ex. 65 at 283-291.

22. On May 2, 2023, a virtual eligibility meeting took place. DOE determined that Student qualified for special education and related services under the category of Disability. DOE Ex. 66 at 297-298.
23. On May 5, 2023, SSC emailed to Parent-1 a copy of a “Consent for Initial Provision of Special Education and Related Services” form for Parent-1 to sign; a finalized Evaluation Summary Report (“5/05/2023 ESR”); and a Prior Written Notice dated May 5, 2023 (“5/05/2023 PWN”). DOE Ex. 66 at 292-298.
24. The 5/05/2023 ESR summarizes the initial evaluation. The 5/05/2023 ESR notes, among other things, that Student was diagnosed with Disability in May of [REDACTED]; received services through the DOH [REDACTED] from April [REDACTED]-July [REDACTED]; and is receiving ABA services from Private Center twenty (20) hours per week. The 5/05/2023 ESR also notes that the “team conducted a review of existing data, informal observations, and parent input. The following is a summary of all relevant functional, developmental, and academic information related to the areas of concern.” The 5/05/2023 ESR contains a summary of SLP’s virtual speech/language observation and SSC’s virtual observation. The 5/05/2023 ESR does not summarize any other sources of information. DOE Ex. 10 at 024-026
25. The 5/05/2023 PWN documents what occurred during the eligibility meeting on May 2, 2023, and that Student qualifies for special education and related services under the category of Disability. The 5/05/2023 PWN also lists the sources from which DOE obtained their information. The listed sources on the 5/05/2023 PWN are the same sources used during the 3/02/2023 SFT meeting when DOE proposed conducting an

- initial evaluation, but it also lists the 5/05/2023 ESR, April SLO Report, 4/25/2023 Observation Report, and an eligibility criteria worksheet. DOE Ex. 66 at 297-298.
26. On May 23, 2023, an IEP meeting was held, resulting in an IEP with the same date (“5/23/2023 IEP”). Present at the 5/23/2023 IEP were Parent-1, SLP, Care Coordinator, a counselor, and a general education teacher. Pet. Ex. 1 at 015, 023; DOE Ex. 22 at 047-055.
27. The 5/23/2023 IEP contains a section entitled “Impact Statement,” which reads: “[Student] needs specialized instruction to address [Student’s] verbal and nonverbal communication and social interaction skills. [Student’s] focus and attention impact [Student’s] ability to consistently use [Student’s] language skills. [Student’s] delays in social interaction impact [Student’s] ability to develop relationships and interact appropriately with same-age peers. [Student] will benefit from a small group, language-rich environment in the special education classroom where [Student’s] identified needs can be practiced on a daily basis.” Pet. Ex. 1 at 017; DOE Ex. 22 at 049.
28. The 5/23/2023 IEP contains two (2) goals with objectives. The first goal addresses Student’s Social and Emotional Development, focusing on interactions with peers, adaptive social behavior, and self-efficacy. The second goal addresses English Language Arts and Literacy, focusing on identifying key ideas and details, phonological awareness, and phonics and word recognition. Pet. Ex. 1 at 019-020.
29. The 5/23/2023 IEP will provide Student with special education services for 1800 minutes per week from August 8, 2023 to May 23, 2024 in a special education setting. Pet. Ex. 1 at 021.

30. The 5/23/2023 IEP will also provide Student with the following Supplementary Aids and Services, Program Modifications and Supports for School Personnel (“Supplementary Aids and Services”): visual aids; provide modeling before giving a new task; provide extended response time; and speech teacher consultation. Pet. Ex. 1 at 021.
31. According to the 5/23/2023 IEP, the extent to which Student will participate with nondisabled peers in a general education class, extracurricular activities, and other non-academic activities (a.k.a. the least restrictive environment or “LRE”), is explained in “Box 23” of the 5/23/2023 IEP, which states: “[Student] will participate with non-disabled students during lunch in the cafeteria, school-wide activities, assemblies, and scheduled field trips. [Student] will not participate with non-disabled students in an [REDACTED] special education setting on a public school campus.” Pet. Ex. 1 at 022.
32. A Prior Written Notice, dated May 26, 2023 (“5/26/2023 PWN”), was issued to document what was discussed during the 5/23/2023 IEP meeting. According to the 5/26/2023 PWN, “the Department of Education developed an Individualized Education Program and discussed educational placement. [Student] will receive Special Education services for 1800 minutes per week...[and] Services will be provided on a public school campus in a special education classroom setting.” DOE’s proposals were based on information from the same sources used to determine Student’s eligibility on May 2, 2023. Under a section called “Other relevant factors,” it notes that “[Parent-1] expressed concerns regarding special education placement. [Parent-1] was informed that [Student] will participate with non-disabled students during lunch in the cafeteria, school-wide

- activities, assemblies, and scheduled field trips.” Pet. Ex. 1 at 025-026; DOE Ex. 23 at 056-057.
33. On July 26, 2023, Parent-1 requested a functional behavioral assessment and a speech evaluation for Student. Parent-1 acknowledged receiving a copy of Student’s 5/05/2023 ESR but wanted a copy of the “full Evaluation Report, including a full report of any assessments or observations administered to [Student] or shared with you from [Private Center] that helped in creating [Student’s] IEP.” DOE Ex. 70 at 321.
 34. On August 1, 2023, SSC emailed to Parent-1 a copy of the April SLO Report and 4/25/2023 Observation Report. Parent-1 responded to SSC that Parent-1 thought there were more documents that were used in creating Student’s 5/23/2023 IEP. DOE Ex. 74 at 335-336.
 35. On August 2, 2023, SSC clarified with Parent-1 that the information used to develop Student’s 5/23/2023 IEP was listed in the 5/26/2023 PWN and that SSC had only resent the individual assessment reports conducted by DOE. SSC offered to provide Parent-1 with copies of the documents Parent-1 had given to Home School. DOE Ex. 76 at 339-342.
 36. On August 4, 2023, Home School sent an email to Parent-1 informing Parent-1 that certain documents were missing to enroll Student at Home School. The email message also states: “**As school is beginning on August 8th, we require students to provide us a copy of their TB Clearance form. If that is not turned in by the 8th, they will not be able to attend school until the form is turned in.**” Pet. Ex. 4 at 250-253 (bold, underlined in original).
 37. DES is a district educational specialist for the DOE.

38. On August 7, 2023, Principal sent an email to DES stating that Home School had “another [REDACTED] parent wanting general education [REDACTED] written in the IEP. They want to go to [REDACTED], but [REDACTED] will not take them unless general education [REDACTED] is written into the IEP’s. Child’s name is [Student].” DOE Ex. 77 at 343.
39. [REDACTED] and Executive Office on [REDACTED] Learning (“EOEL”) are both public [REDACTED] [REDACTED] programs that deliver similar services but have different eligibility requirements. Parent-1, Tr. Vol. III, 332:6-20; DES, Tr. Vol. IV, 184:1-186:20.
40. Also on August 7, 2023, Parent-1 reached out to DES to express Parent-1’s concern that Home School only has a special education [REDACTED] classroom and that Student’s placement was based on what Home School has and not based on Student’s needs or LRE. Parent-1 explained to DES that Parent-1 believed that Student can be successful in a general education setting with special education supports, and that Student can receive this through [REDACTED] at another school but only if Student’s IEP states general education or inclusion as Student’s placement. Parent-1 informed DES that SSC, Care Coordinator, and Principal have told Parent-1 that they could not state in Student’s IEP that Student can be in a general education setting because they did not offer it at Home School. Parent-1 also raised concerns that the two (2) observations conducted by SSC and SLP were not sufficient to determine Student’s needs and strengths. Parent-1 provided the contact information of an individual from [REDACTED] who told Parent-1 that Student’s IEP must state that Student is in general education or inclusion to qualify for [REDACTED] Pet. Ex. 4 at 209-210.

41. On August 8, 2023, Parent-1 emailed to DES a “link and a screenshot where EOEL states my [son/daughter’s] IEP needs to state general education.” DES replied to Parent-1 that DES was “still reaching out to the providers to get further clarification.” DOE Ex. 141 at 535-536.
42. Also on August 8, 2023, Parent-1 sent Principal the following email: “I wanted to express how disappointing it was talking to you about my [son/daughter’s] education yesterday. You seemed like you made up your mind from the beginning that this is how things are done at [Home School] and you’re not going to consider my input of what’s best for my child. My takeaway from our conversation is: 1) [Home School] IEP team, and that includes you, create IEP’s based on what you offer at your school, not based on my [son/daughter’s] needs and strengths and right to be in a LRE. My [son/daughter] is capable of attending and thriving in a general education class with pull-out services or an inclusion classroom, but you refuse to state that in [his/her] IEP because your school doesn’t offer it. Your refusal prevents my [son/daughter] from qualifying for [REDACTED] and [REDACTED] because [his/her] IEP needs to state general education and/or inclusion...4) You may not be aware that even the content of my [son/daughter’s] IEP does not accurately reflect [his/her] needs and strengths. [His/Her] IEP refers to only the two zoom observations that took place at the [Private Center] and only two sentences are from me and even that is out of date and no longer applies to [Student]. I was told by your IEP team that assessments would not be necessary because [Private Center] shared so much data [sic] with you guys but none of that data is even referred to [in] [m]y [son/daughter’s] IEP.” DOE Ex. 79 at 345.
43. On August 11, 2023, Parent-1 requested a revision IEP meeting. DOE Ex. 80 at 346.

44. On August 24, 2023, Care Coordinator emailed to Parent-1 an “IEP Meeting Agenda,” which included a “Review [of] current IEP and revise as needed” and “Discuss placement.” Pet. Ex. 4 at 211, 214; DOE Ex. 84 at 352-353. Parent-1 requested that a discussion about speech and language services be added to the agenda, which Care Coordinator agreed to add. Pet. Ex. 4 at 214; DOE Ex. 85 at 354-355.
45. On August 25, 2023, the IEP team held two (2) meetings: a revision IEP meeting and an SFT meeting. Present at the meetings were Parent-1, Advocate, Care Coordinator, Principal, SLP, and a general education teacher. The 8/25/2023 IEP revision meeting resulted in an IEP with the same date (“8/25/2023 IEP”). The 8/25/2023 IEP is the same as the 5/23/2023 IEP. DOE Ex. 25 at 060; DOE Ex. 26 at 061-069. Advocate was a [REDACTED] with the DOE until Advocate retired in 2018. After retiring from the DOE, Advocate worked for the [REDACTED], where Advocate was assigned to help Parent-1. Advocate, Tr. Vol. I, 19:3-20:19, 34:6-14, 37:17-20.
46. On August 30, 2023, Care Coordinator emailed to Parent-1 a “Consent for Assessment as part of a Reevaluation” form for Parent-1 to sign so that a speech/language assessment could be done, and two (2) PWNs--both dated August 30, 2023—one for the revision meeting (“Revision PWN”) and the other for the SFT meeting (“SFT PWN”). DOE Ex. 86 at 356-360; Pet. Ex. 1 at 27-29.
47. According to the Revision PWN, an “IEP revision meeting was held on August 25, 2023. The team discussed [Student’s] current proposed program/placement and speech and language services. [Parent-1] request that [Student] be placed in a general education classroom. [Parent-1] also requested an increase of speech language services. The

Department determined that current placement and programming remain unchanged....”

According to the Revision PWN, the IEP team considered “changing [Student’s] placement from the Special Education Setting to the General Education Setting” and “Increasing [Student’s] speech language services” but rejected these options because “From the data collected between March 2023 and May 2023, [Student] requires specialized instruction to address [his/her] needs in the following areas: behavior, social skills, and communication development” but a “reevaluation was requested to discuss additional speech and language assessments.” Pet. Ex. 1 at 028-029; DOE Ex. 27 at 070-071; DOE Ex. 86 at 358-359.

48. According to the SFT PWN, DOE proposed that a reevaluation be done, which would include reviewing existing information, and conducting a speech/language assessment. Pet. Ex. 1 at 027; DOE Ex. 86 at 360.
49. On September 6, 2023, Parent-1 emailed to Care Coordinator a signed “Consent for Assessment as Part of a Reevaluation” form, giving DOE consent to administer a speech/language assessment to Student. DOE Ex. 91 at 367-369.
50. On September 7, 2023, Care Coordinator emailed to Parent-1 four (4) consent forms to sign and return. The consent forms would allow Home School to release and receive information to/from Private Center and █████ Center. DOE Ex. 91 at 367-369; DOE Ex. 92 at 370-375.
51. On September 11, 2023, Parent-1 signed the four (4) consent forms and sent them back to Care Coordinator. DOE Ex. 93 at 376-382.
52. On September 12, 2023, Parent-1 submitted a “Special Education (IDEA) Written Complaint Form” (“State Complaint”) to the DOE. Parent-1’s State Complaint alleged

that Student’s placement was in a special education classroom and that Parent-1 had “requested [that] the IEP team consider placement in a general education setting because [Student] has the right to be in the Least Restrictive Environment where [Student] will have age-appropriate models for language and behavior. At the last IEP meeting on August 25, 2023 Principal [] refused to consider placement in the general education setting with supplementary aids and services.” Parent-1 proposed as a resolution that Student be given a “Placement in a general education [REDACTED] with appropriate supplemental aids and services.” DOE Ex. 157 at 582-583.

53. On September 14, 15 and 22, 2023, a speech/language assessment was conducted by SLP for the reevaluation. The assessment was conducted at Home School on September 14 and 15, 2023, and an observation at [REDACTED] Center was done on September 22, 2023. Testing was spread out over two days--September 14 and 15--because Student showed signs of fatigue, was putting Student’s head down, turning around, and needing a lot of redirection to focus on the test items. Pet. Ex. 2 at 058-067; DOE Ex. 34 at 097-107; DOE Ex. 158 at 584.
54. On October 26, 2023, the IEP team agreed to meet on November 1, 2023 for an eligibility meeting where they would only discuss the results of the speech/language assessment, and an IEP meeting would be scheduled for a later date. Parent-1 was provided with a copy of the speech/language assessment report. DOE Ex. 122 at 443-444; DOE Ex. 123 at 445-457; DOE Ex. 136 at 501-502.
55. On November 1, 2023, an eligibility meeting was held due to the reevaluation. The IEP team discussed the results from the speech and language assessment. It was made clear at the beginning of the meeting that the IEP team would not talk about programming or

placement. SLP went through SLP's speech/language assessment report. Parent-1 stated that Parent-1 wanted to add that Student goes to [REDACTED]. The IEP team members were respectful towards each other, and Parent-1 participated fully by asking questions and providing information about Student. SLP was knowledgeable and informative in SLP's explanation. All participants appeared engaged and sincere in wanting to help Student. Parent-1 informed the other members of the IEP team that Parent-2 and an advocate may attend the upcoming IEP meeting. DOE Ex. 165.

56. On November 1, 2023, Parent-1 was provided a copy of an Evaluation Summary Report for the reevaluation ("11/01/2023 ESR") and an updated speech/language assessment report that reflected information shared by Parent-1 during the eligibility meeting ("September SLA Report"). DOE Ex. 19 at 039-042; DOE Ex. 130 at 477-488.

57. According to the September SLA Report, "A reevaluation was proposed on behalf of [Student] to collect additional information regarding [Student's] speech/language and social communication abilities...Speech and Language assessments were requested as [Student's] parent had concerns with [Student's] communication and social skills." As a part of the speech/language assessment, SCERTS (Social Communication, Emotional Regulation, and Transactional Support) questionnaires were completed by one of Student's parents, a board-certified behavior analyst, and an instructor from [REDACTED] Center. The September SLA Report notes that "[Student] regularly goes to the following places: [REDACTED] (added at 11/01/2023 meeting), home, [REDACTED] Center], [Private Center], [REDACTED]." Pet. Ex. 2 at 058-067; DOE Ex. 34 at 097-107; DOE Ex. 158 at 584.

58. On November 8, 2023, the IEP team agreed to have an IEP meeting on November 14, 2023. DOE Ex. 131 at 489; DOE Ex. 132 at 490; DOE Ex. 134 at 493-496.
59. A Prior Written Notice, dated November 8, 2023 (“11/08/2023 PWN”), was issued to document that on November 1, 2023, DOE determined that Student continued to be eligible for special education and related services under the same category. The 11/08/2023 PWN reads: “[Student’s] focus and attention impact [Student’s] ability to consistently use [Student’s] language skills. [Student] does not yet consistently listen and respond attentively to conversations. When being tested [Student] did not answer questions about a story or retell a short story that [Student] heard. [Student] will answer questions that are asked, but [Student] does not retell experiences with details. [Student] has characteristics often associated with [Disability], such as resistance to change and unusual responses to [redacted] experiences.” The 11/08/2023 PWN also states that the “Department did not review new categories because this meeting was to go over additional speech assessments to determine if speech services are warranted on the current IEP.” DOE Ex. 20 at 043-044; DOE Ex. 134 at 495-496.
60. On [redacted], the DOE found that Home School had violated the IDEA and Haw. Admin. Rules Chapter 60, and issued a decision for the State Complaint (“State Complaint Decision”). In deciding that “[Home School] violated the requirements of making an appropriate placement determination at the May 23, 2023 and August 25, 2023 IEP meetings as required by 34 C.F.R. § 300.116 and HAR § 8-60-17[.]” the State Complaint Decision states in relevant part:

The school responsible for providing a free appropriate public education (FAPE) to a [redacted] child with a disability must ensure that FAPE is provided in the LRE where the child’s unique needs (as described in the child’s IEP) can be met, regardless, of whether the Department operates

public [REDACTED] programs for children without disabilities. The Department may provide special education and related services to a [REDACTED] child with a disability in various setting, including a regular [REDACTED] class, public or private [REDACTED] program, community-based child care facility, or in the child's home.

DOE Ex. 159 at 587-591; DOE Ex. 160 at 592.

61. On November 14, 2023, before the start of the revision IEP meeting, Care Coordinator emailed Parent-1, DES, Principal, SLP, and others an "IEP Meeting Agenda," which listed, among other things, a review of "Placement in the Least Restrictive Environment (General Education, Special Education, Combination GenEd/SpEd)." DOE Ex. 137 at 511-513.
62. On November 14, 2023, an IEP meeting was held, resulting in a revised IEP with the same date ("11/14/2023 IEP"). Present at the 11/14/2023 IEP meeting was Parent-1, Parent-2, Principal, SLP, Care Coordinator, DES, a general education teacher, and an advocate. Pet. Ex. 1 at 001-014; DOE Ex. 29 at 074; DOE Ex. 30 at 075-088.
63. While the 11/14/2023 IEP meeting was initially scheduled to revise Student's IEP to reflect the 11/01/2023 eligibility meeting and September SLA Report, the IEP team also discussed Student's placement during the 11/14/2023 IEP meeting because the State Complaint Decision was issued in the interim. Parent-1, Tr. Vol. II, 138:17-141:1.
64. The 11/14/2023 IEP contains an Impact Statement that is the same as the 5/23/2023 IEP and 8/25/2023 IEP. Pet. Ex. 1 at 008; DOE Ex. 30 at 082.
65. The 11/14/2023 IEP contains the same two (2) goals as the 5/23/2023 IEP and 8/25/2023 IEP with updated short-term objectives. Pet. Ex. 1 at 010-011.
66. According to the 11/14/2023 IEP, Student will be provided 1800 minutes per week of special education services in a special education setting from August 8, 2023 to

- November 29, 2023; and then 600 minutes of special education services per week in a general education setting from November 20, 2023 to May 23, 2024. Pet. Ex. 1 at 012.
67. The 11/14/2023 IEP will continue to provide the same Supplementary Aids and Services as the 5/23/2023 IEP and 8/25/2023 IEP but added the following: preferential seating – closer to the person delivering instruction; check for understanding; limit competing background noise; gain attention prior to giving instruction; and have Student repeat/rephrase instruction. “Speech teacher consultation” was changed to “speech/language consultation.” Pet. Ex. 1 at 012.
68. In the 11/14/2023 IEP, Student’s LRE statement reads: “[Student] will participate with typically developing/non-disabled peers in a regular [REDACTED] program. Services will be provided in the General education classroom.” Pet. Ex. 1 at 013; DOE Ex. 30 at 087.
69. The 11/14/2023 IEP was acceptable to Parent-1 and Parent-1 wanted the 11/14/2023 IEP implemented. Advocate, Tr. Vol. I, 33:5-23; Parent-1, Tr. Vol. I, 69:1-22.
70. On November 16, 2023, Parent-1 sent an email to DES asking for clarification on the procedures to get Student into another school when Home School does not have a general education [REDACTED]. Parent-1 explained that Parent-1 had been trying to get Student into a general education [REDACTED] through [REDACTED] and EOEL and that a principal from another school told Parent-1 that in order for Student to get into a [REDACTED] program at a particular school, Student would need to be a student at that particular school. Parent-1 stated, “So I am trying to go through whatever process is quickest enrolling my child in a school with a general education/inclusion [REDACTED] class as soon as possible. Hopefully [Student] can at least start by the beginning of the

second semester that starts in January.” DES replied to Parent-1: “Thank you for your email and I apologize for not getting back sooner...I will follow up with the process to get into a [REDACTED] Program. I was not aware that the [REDACTED] Program was for students enrolled at the school. I will make phone calls tomorrow and get back to you.” Parent-1 replied to DES: “I would appreciate it if you could also follow up with what [Home School] can do to help my [son/daughter] get enrolled in a school within our [] district that has a general education/inclusion class since they do not offer a [REDACTED] class with that setting. It’s my understanding that it is their responsibility to help find a school that offers what [Student] needs if they do not offer it.” DOE Ex. 141 at 534-535.

71. On November 17, 2023, DES replied to Parent-1’s email: “I’m sorry again for a late response...I have not heard back from the EOEL coordinator. In the meantime, I would like to offer to reimburse you for the [REDACTED] Center]. If you don’t mind providing me with receipts, my office can start the process to reimburse.” DOE Ex. 141 at 534-535.
72. A Prior Written Notice, dated November 17, 2023 (“11/17/2023 PWN”), was issued to document, among other things, that “[o]n November 14, 2023, the Department met to develop and revise an Individualized Education Program (IEP) and determine educational placement. The Department proposed that [Student] be provided...600 minutes per week of specialized instruction [and] Services will be provided in a regular [REDACTED] program.” The 11/17/2023 PWN explained that “Services will be provided in a general education setting as [Student] is currently receiving peer modeling and [he/she] is starting to engage with typically developing/non-disabled peers. [Student’s] social and communication skills are emerging and engaging with typically

developing/non-disabled peers is appropriate.” According to the 11/17/2023 PWN, DOE’s proposed and refused actions were based on information from “ [REDACTED] Language Scales-5, SCERTS framework, observations, Arizona Articulation and Phonology Scale, Fourth Revision, Parent input, Special Education Teacher Input, Advocate Input, District Educational Specialist Input, Administrator Input.” The 11/17/2023 PWN also notes that “Services will be available once [Student] enrolls in an [REDACTED] program.” Pet. Ex. 1 at 030-031; DOE Ex. 31 at 089-090.

73. On November 20, 2023, Parent-1 responded to DES’s 11/17/2023 email asking what documentation Home School would need to reimburse Parent-1 for [REDACTED] Center. DOE Ex. 143 at 539.
74. On November 21, 2023, DES sent an email to Parent-1 with a list of documents needed to reimburse Parent-1 for [REDACTED] Center. DES also wrote in the email: “A representative from EOEL will be calling me back to share if there are openings. In the meantime, will you continue to have [Student] attend [REDACTED] Center? I want to coordinate with [Home School] so that services can be delivered at [REDACTED] Center]. Who is your point of contact at [REDACTED] Center]?” DOE Ex. 143 at 539. Parent-1 replied to DES’s email on the same day with further questions about documentation to get reimbursement for [REDACTED] Center, and wrote: “When exactly are you expecting EOEL to give you a call back? Today? Tomorrow? Next week? I am still bringing [Student] to [REDACTED] Center]. [Student’s] RBT holds their ABA sessions with [Student] on Monday, Wednesday, and Friday from 10:30 AM to 1:30 PM. The instructional time at [REDACTED] Center] is from 10:45/11AM to 12:30 PM. I’m concerned about how [his/her] special education services will be rendered here at [REDACTED] Center]. I don’t know how it will fit in here. It is one of the

reasons why I'm eager to have [him/her] start in an actual school." Pet. Ex. 4 at 246; DOE Ex. 144 at 543. DES replied to Parent-1: "I am expecting to hear back either today or tomorrow...I am thinking that the [Home School] teacher will go to [REDACTED] Center] to deliver the services. If you can provide me with a point of contact, coordination will need to be made." DOE Ex. 144 at 543. Parent-1 replied to DES: "I'll keep an eye out for an email about what EOEL said. [Student] and I are also at [REDACTED] Center] on Tuesdays and Thursdays without ABA services. I'm sorry, I forgot to include the point of contact at [REDACTED] Center]. It is [REDACTED] Center Owner]...[Student's] tutoring with [him/her] is Thursdays at 8:30 AM." Pet. Ex. 4 at 245.

75. Also on November 21, 2023, DES sent an email to Principal to provide an update on efforts to locate a school for Student. DES shared that DES had spoken to the [REDACTED] coordinator who informed DES that there were no schools with space available and that DES had also spoken to a representative from EOEL and was waiting for the representative to get back to DES about space availability. DOE Ex. 142 at 537-538.
76. On November 22, 2023, Parent-1 emailed DES a redacted credit card statement and asked DES if the redactions were satisfactory and wanted confirmation before proceeding with redacting numerous other credit card statements. Pet. Ex. 4 at 245; DOE Ex. 145 at 548.
77. On November 28, 2023, SLP asked [REDACTED] Center Owner if it was possible for Home School to provide services to Student at [REDACTED] Center. SLP explained that a special education teacher would be at [REDACTED] Center two (2) hours a day, Monday through Friday, and SLP would provide consultation to [REDACTED] Center Owner and/or the special education teacher. [REDACTED] Center Owner responded to SLP's request in the following manner: "I'm

open to [Student] receiving services at [redacted] Center] however have some concerns. I know [Student is] already receiving services with [Private Center] 3x a week. I'm worried that having sessions with you (2 hrs/day) and [Private Center] on the same days will be overwhelming for [Student]. Maybe that's something you can address with [Parent-1] to see if [Parent-1] thinks [Student] can handle it...I really feel [Student] would benefit from a regular-ed inclusion class where [Student] can integrate with other like children around [him/her]." DOE Ex. 148 at 561-562. The next day, Care Coordinator emailed Parent-1: "[SLP] and I want to schedule services to work with [Student] at [redacted] Center] for the time being. [redacted] Center Owner] has brought up some concerns of having all the services including [Private Center] all at once. [redacted] Center Owner] feels it may be too much for [Student] in one day. Please let us know if you feel that [Student] would be overwhelmed with so much at one time. [SLP] and I are still available to provide the services if you feel [Student] would be able to handle [Private Center] and myself in one day." DOE Ex. 150 at 569.

78. Also on November 28, 2023, Parent-1 emailed DES, asking if the redactions in the credit card statement Parent-1 had sent on November 22, 2023 were satisfactory. Parent-1 also wrote in the email: "Also, did you hear back from EOEL last week? Is there any updates? I believe you were expecting a call from them last Tuesday or Wednesday." DES replied to Parent-1 later that day, informing Parent-1 that DES would let Parent-1 know if the redactions were satisfactory once DES's clerk returned to work. DES did not respond to Parent-1's inquiry about whether DES heard back from EOEL. Parent-1 replied to DES: "Please let me know what your clerk says when he/she returns. How about EOEL? Have they gotten back to you?" DOE Ex. 149 at 563-568.

79. On November 29, 2023, DES sent an email to Parent-1, confirming that Parent-1's redactions were satisfactory but did not respond to Parent-1's request for an update about EOEL. Parent-1 replied to DES on the same day: "I noticed you didn't respond twice now to my request for an update from EOEL getting back to you. From your message from last week, you were expecting them to get back to you last Tuesday, October 22nd or Wednesday, October 23rd. Although I'm grateful for your communication regarding my reimbursement, my priority is to get my [son/daughter] enrolled in school ASAP...Please get back to me ASAP for [sic] an update on [his/her] schooling." A couple of hours later DES replied that the EOEL representative did not call DES back and that DES was in communication with another school, but that school did not offer inclusion. DES also wrote: "I apologize that this is taking awhile [sic]. [Home School] also informed me that [Student] is currently not enrolled, [Student] will need to be enrolled." DOE Ex. 149 at 563-568. Parent-1 replied to DES: "If you have not already, please reach out again to the EOEL educational specialist to follow-up. If you are not able to help me get [Student] into a school within our district, I think the next best option is [Public School]. I just called [Public School] for an update on my application. EOEL office told them that because my EOEL application has an IEP, the [Public School] office needs to send documents to [Home School] for permission for [Student] to attend [Public School]. [Public School] will be able to send those documents with their courier this Thursday. I did not complete [Student's] enrollment with [Home School] because [Home School] only has a special education classroom for [REDACTED] and that placement is inappropriate for [Student]. Do I need to complete

- the enrollment for [Home School] for [Student] to attend a different school? If so, I will gladly do that.” DOE Ex. 151 at 570-574.
80. On November 30, 2023 at 3:45 p.m., the instant due process complaint was received by the Office of Dispute Resolution. DOE Ex. 1 at 001-008.
81. On November 30, 2023 at 4:43 p.m., DES replied to Parent-1: “Just letting you know that I did complete the forms for [Public School’s] EOEL classroom. [Home School] is your home school and enrollment should be there first. Then considering options for other placements can proceed.” DOE Ex. 151 at 570-574. No one informed Parent-1 that Student had to be enrolled at Home School first before Home School could look for another school to implement Student’s 11/14/2023 IEP until DES told Parent-1 on November 30, 2023. Parent-1, Tr. Vol. III, 306:3-307:13.
82. DES testified that up until November 29, 2023, DES did not know that Student needed to enroll at Home School first before Student could be placed in another school program. However, Student not being enrolled at Home School did not stop DES from searching for a location that could implement Student’s 11/14/2023 IEP. DES, Tr. Vol. V, 8:5-9:13.
83. On December 4, 2023, Parent-1 applied Student to Private School, paying a \$50 application fee to Private School. Pet. Ex. 5 at 272; Parent-1, Tr. Vol. III, 344:25-345:7.
84. Also on December 4, 2023, Parent-1 submitted documents to Home School to enroll Student at Home School. Pet. Ex. 4 at 250-253, 254-261.
85. On December 5, 2023, Care Coordinator emailed Parent-1: “I just wanted to check in and see if we are able to start services. I emailed previously not sure if you received it. When I do start services, will [Student] be at [redacted] Center] or will [Student] begin

attending the [Private School]?” DOE Ex. 152 at 575. Parent-1 replied to Care Coordinator with the following message: “Because [█ Center] is not an academic institution, I do not feel it is appropriate for my [son/daughter] to receive services there. It may be best to start receiving services when [Student] begins school, which would be at [Private School].” DOE Ex. 153 at 576.

86. In the morning of December 15, 2023, the admissions director at Private School sent the following email to Parent-1: “Subject: Your online enrollment Contract has been approved.” The email also states: “It gives me great pleasure to accept [Student] into the 2023-2024 school year at [Private School]. To confirm the enrollment, please submit the █ new enrollment non-refundable registration fee if you have not already done so...Please also register for our tuition management service...” Pet. Ex. 4 at 264-265.
87. In the afternoon of December 15, 2023, a resolution meeting took place for the instant complaint. Present were Parent-1, Principal, DES, Mr. Chun, Mr. Chow, Representative-1, and Mr. Peck. Mr. Peck asked DOE to pay for Private School-2, reimbursement for █ Center, and reimbursement for transportation to █ Center. Mr. Chun offered placement at Public School-2’s █ program with general education inclusion capability. DOE Ex. 4 at 015-016.
88. On January 5, 2024, Parent-1 paid a registration fee to Private School in the amount of █ so that Student could start school on January 8, 2024. Pet. Ex. 4 at 266-267; Parent-1, Tr. Vol. II, 167:1-168:9, 183:15-184:2; Parent-1, Tr. Vol. III, 308:16-24. Upon paying the registration fee, Student was officially enrolled at Private School. Parent-1, Tr. Vol. III, 336:10-33:3.

89. On January 8, 2024, Student started attending Private School. Pet. Ex. 2 at 074; Parent-1, Tr. Vol. II, 164:19-165:20. Parent-1 did not inform DOE on January 8, 2024 that Student was enrolled at Private School. Parent-1, Tr. Vol. II, 266:9-18.
90. On January 16, 2024, Parent-1 signed a payment plan for Private School. Parent-1, Tr. Vol. II, 167:1-168:9; Parent-1, Tr. Vol. III, 308:20-24.

Center

91. Center Owner is the owner of Center. Pet. Ex. 3 at 156; Parent-1, Tr. Vol. I, 83:17-84:1.
92. Center is a center located in a and provides children with various toys and activities to do. Center operates from 10:00 a.m. to 9:00 p.m. Pet. Ex. 3 at 142-145.
93. Center is not a school or an educational setting. Children can be dropped off at any time. The number of children at Center varies day to day, but averages between fifteen (15) to thirty (30) children per day. The age range of the children who go to Center is approximately eighteen (18) months to six (6) or (7) years old. Children without disabilities go to Center. Parent-1, Tr. Vol. I, 83:11-85:4; Parent-1, Tr. Vol. III, 331:21-332:5.
94. Between August 10, 2023 and December 27, 2023, Parent-1 paid one thousand two hundred seventy-five dollars (\$1,275.00) to Center for forty-one (41) days of attendance. Pet. Ex. 5 at 272-291.

Private School

95. Private School is a private school in the State of Hawaii that has grades to grade. Parent-1, Tr. Vol. III, 334:10-13.

96. Private School has mostly general education students. Parent-1, Tr. Vol. II, 174:21-175:7.
97. Tuition for [REDACTED] and [REDACTED] (full day) at Private School for the 2023-2024 school year is \$9,960.00. Pet. Ex. 3 at 128.
98. The tuition for January 2024 to May 2024 is approximately \$4,600.00, which Parent-1 is currently on a monthly payment plan. Parent-1, Tr. Vol. III, 339:2-17.
99. Since January 8, 2024, RBTs from Private Center has been providing ABA services to Student at Private School. RBT services are paid for by insurance. Pet. Ex. 3 at 074; Parent-1, Tr. Vol. II, 164:19-165:20.
100. Private School can provide Student with the supplementary aids and services listed on Student's 11/14/2023 IEP except for consultation for speech/language services. Parent-1, Tr. Vol. II, 172:9-173:13; Pet. Ex. 3 at 135.
101. Student's current curriculum at Private School entails reading [REDACTED] stories; learning how to trace and copy letters; learning about coins; attending dance classes and [REDACTED]; taking [REDACTED]; and being paired with an older student who provides help to Student. Parent-1, Tr. Vol. III, 334:14-335:21.
102. On or about January 10, 2024, Private BA observed Student at Private School and spoke to a Private School staff member. Private BA noted that Student was doing well following the teacher's directions, was engaged in play with a peer, and they did classroom activities together, which Student seemed to enjoy. Private BA opined that overall Student's transition to Private School was going very well and looked like Private School was a good fit for Student. Pet. Ex. 4 at 268.

103. Student is doing well at Private School and enjoys school. Student is able to keep up with the other students and follows instructions in class; however, Student struggles with Student’s homework when Student is at home. Parent-1, Tr. Vol. I, 104:12-25; Parent-1, Tr. Vol. II, 173:14-174:20; Parent-1, Tr. Vol. III, 335:8-25, 342:16-343:9.

V. CONCLUSIONS OF LAW

A. BURDEN OF PROOF

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

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

B. IDEA REQUIREMENTS

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

includes both special education and related services. H.A.R. § 8-60-1; H.A.R. § 8-60-3; 20 U.S.C. § 1401(9); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 34 C.F.R. § 300.101.

Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 20 USC § 1401(26) and (29). To provide FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.” Dept. of Educ. of Hawaii v. Leo W., 226 F.Supp.3d 1081, 1093 (D. Haw.2016).

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

Procedural violations do not necessarily constitute a denial of FAPE. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001). If procedural violations are found, a further inquiry must be made to determine whether the violations: (1) resulted in a loss of educational opportunity for Student; (2) significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or (3) caused Student a deprivation of educational benefits. Amanda J., 267 F.3d 877, 892 (9th Cir.2001).

The school is not required to “maximize the potential” of each student; rather, the school is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” Rowley, 458 U.S. at 200. However, the United States Supreme Court in Endrew F. v. Douglas County Sch. Dist. held that the educational benefit must be more than *de minimus*. The Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas County Sch. Dist., 137 S. Ct. 988, 1001 (2017). See also, Blake C. v. Hawaii Dept. of Educ., 593 F.Supp.2d 1199, 1206 (D. Haw.2009).

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

Retrospective evidence that materially alters the IEP is not permissible. R.E. v. New York City Dept. of Educ., 694 F.3d 167 (2nd Cir.2012).

C. ISSUES FOR DETERMINATION

1. Whether the 5/23/2023 IEP was a denial of FAPE because the DOE failed to appropriately discuss and determine Student’s Least Restrictive Environment (also known as placement) (item #23).

In this allegation, Petitioners are alleging that the DOE denied Student a FAPE because during the IEP meeting on May 23, 2023, the IEP team did not discuss the least restrictive environment to implement Student’s IEP, which resulted in an inappropriate placement. Based on the evidence, Petitioners met their burden of proof in showing that DOE committed procedural and substantive violations when determining Student’s LRE for the 5/23/2023 IEP.

Before Petitioners filed the instant due process complaint on November 30, 2023, Parent-1 had filed a State Complaint on September 12, 2023 against Home School. (FOF 52). On [REDACTED], DOE found that Home School had violated the IDEA in determining Student’s placement during the 5/23/2023 and 8/25/2023 IEP meetings. (FOF 60). In making its decision, DOE determined that Home School “violated the requirements of making an appropriate placement determination,” and violated the IDEA and HAR Chapter 60. (FOF 60).

During the due process hearing, Respondents conceded that Home School committed a procedural violation during the 5/23/2023 IEP meeting but maintained that the procedural violation did not amount to a substantive violation. Tr. Vol. III, 293:22-294:2. Respondents argue that no substantive violation occurred because a “special education classroom was the appropriate transition from [Student’s] current setting.” DOE Closing Brief, p. 19. Based on the evidence and Respondents’ admission, Petitioners met their burden in establishing that DOE

committed a procedural error during the 5/23/2023 IEP meeting. The next question then becomes whether the procedural error violated Student's and/or Parent-1's substantive rights.

When determining a child's placement, each public agency must ensure that –

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.114(a)(2). See also H.A.R. § 8-60-15. To ensure that a disabled child is educated, to the maximum extent appropriate, with children who are nondisabled, the Ninth Circuit Court of Appeals established the following four-factor balancing test to determine whether a school district has complied with the IDEA's LRE requirement:

- (1) The educational benefits of placement full-time in a regular class;
- (2) The non-academic benefits of such placement;
- (3) The effect the disabled child had on the teacher and children in the regular class; and
- (4) The costs of mainstreaming the disabled child.

Sacramento City Unified Sch. Dist. v. Rachel H., 14 F.3d 1398, 1404 (9th Cir.1994).

Home School's failure to discuss the full range of placement options resulted in the IEP team not discussing the educational benefits of placement full-time in a regular class, and the non-academic benefits of such a placement to Student. By not discussing placement in a general education setting, Parent-1's opportunity to participate in the decision-making process was significantly infringed. The evidence is clear that Parent-1 wanted to be a part of the IEP formulation process. Even if at the end of the discussion the school members of the IEP team continued to believe that a special education setting was best for Student, Parent-1 should have

been given the opportunity to convince the school members of the IEP team that a general education setting would have been better. Even though “the [5/23/2023] IEP clearly provided Student with daily opportunities to socially interact with non-disabled peers,”⁹ this does not cure the defect of denying Parent-1 the opportunity to convince the rest of the IEP team that a general education setting may be better for Student.

In addition to significantly infringing Parent-1’s opportunity to participate, a failure to have an appropriate discussion about placement also resulted in a loss of educational opportunity for Student. A loss of educational opportunity occurred because a placement in the general education setting could have been more thoroughly considered during the 5/23/2023 IEP meeting and the IEP team could have considered sending Student to another school that could provide Student with an LRE.

Based on the foregoing, Petitioners met their burden in showing that Home School’s procedural error during the 5/23/2023 IEP meeting resulted in a substantive violation of the IDEA as Parent-1’s opportunity to participate was significantly infringed and Student suffered a loss of educational opportunity.

1(SS). Whether Student’s 5/23/2023 IEP Should Have Identified a Fully-Self Contained Placement for Student had an Appropriate Observation been Made and the Team Engaged in a Proper Rachel H. Discussion.

In Petitioners’ closing brief, Petitioners argue that “[t]he Tribunal has permitted the Respondent to present evidence on the appropriateness of a fully-self contained [sic] placement for the Student, even though this was not raised by Petitioners as a violation. Presumably, the ALJ might consider this assertion a defense to Petitioners [sic] procedural allegation; it is not. Petitioners treat the inclusion of this evidence as a new issue raised *sua sponte* by the Tribunal.”

⁹ DOE Closing Brief, p. 18.

Pet. Closing Brief, p. 2, FN1. Petitioners further allege that “[a]llowing the Respondent to defend the appropriateness of an FSC placement, despite a procedural violation that amounts to a denial of FAPE is improper.” Pet. Closing Brief, p. 11, FN4. Although Petitioners believe that the undersigned has *sua sponte* raised this issue by allowing Respondents to elicit testimony on the substantive effects of a procedural violation, the undersigned did not raise this new issue, or any other issues. For the undersigned to decide this new issue created by Petitioners would be prejudicial and unfair for Respondents who have not had an opportunity to address it. An impartial due process hearing is limited to issues that are raised in a due process hearing complaint:

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

20 U.S.C. § 1415(f)(3)(B). See Dept. of Educ., Hawaii v. C.B., Civil No. 11-00576 SOM/RLP, 2012 WL 1537454, *8 (D.Haw. May 1, 2012).

Now turning to Petitioners’ argument that Respondents should not have been allowed to elicit evidence that Student’s placement in a special education setting, or fully self-contained setting, was appropriate to show that no substantive rights were violated. As Petitioners state, a failure to have an appropriate LRE discussion is a procedural violation: “the procedural violation (the failure to discuss LRE options)...” Pet. Closing Brief, p. 11, FN4. “While the IDEA guarantees certain procedural safeguards for children and parents, the Ninth Circuit has recognized that not every procedural violation results in a denial of a FAPE. *See e.g., L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 909 (9th Cir.2009) (‘Procedural flaws in the IEP process do not always amount to the denial of a FAPE.’)” Dept. of Educ., Hawaii v. C.B., Civil No. 11-00576 SOM/RLP, 2012 WL 1537454, *2 (D.Haw. May 1, 2012). If a procedural

violation is found, a further inquiry must be made to determine whether the procedural violation resulted in a loss of educational opportunity; significantly infringed a parent's participation; or deprived a child of educational benefits. Amanda J., 267 F.3d 877, 892 (9th Cir.2001). A petitioner's burden to establish that a child was denied a FAPE does not stop when a petitioner has established a procedural violation. The petitioner must continue and establish that the procedural violation resulted in the denial of one of the three (3) aforementioned substantive rights. The DOE, in turn, would want to show, in their defense, that the procedural violation did not amount to a denial of any substantive rights. In this case, Petitioners argued that there was significant infringement on parental participation and loss of educational opportunity. Pet. Closing Brief, pp. 8, 10. Respondents, in turn, attempted to show that there was no loss of educational opportunity or deprivation of educational benefits because Student was appropriately placed in a special education setting during the 5/23/2023 IEP meeting. See DOE Closing Brief, p. 18.

Petitioners' argument, without citing to any legal authority, that an allegation of a procedural violation during a discussion about LRE is a *per se* substantive violation would relieve a petitioner from the burden of having to show that there was a violation of parental participation rights, loss of educational opportunity or deprivation of educational benefits¹⁰. If Petitioners' argument were to be accepted, this could create illogical results. For example, if the allegation is that DOE failed to comply with all the evaluation procedures, the DOE would be barred from arguing that, despite the procedural errors, the child was not eligible for special

¹⁰ Whether DOE denies a child a FAPE when a parent's participation is alleged to have been significantly infringed is fact specific as evidenced by the Ninth Circuit Court of Appeals when it pointed out in Doug C. v. Hawaii Dept. of Educ. that there are some circumstances where it is not a denial of FAPE to proceed without a parent present at an IEP meeting. Doug C. v. Hawaii Dept. of Educ., 720 F.3d 1038, 1047 (9th Cir.2013).

education and related services. Using Petitioners' logic, the DOE must then find the child eligible even though the child does not have an educational disability. Such unreasonable results would be avoided if petitioners must also prove that a substantive right was violated, as existing law requires.

2. Whether the DOE provided an appropriate placement¹¹ to implement Student's 11/14/2023 IEP in a timely manner.

In this issue, Petitioners are alleging that the DOE failed to timely "identify a location for Student's IEP to be implemented," and the amount of time DOE took to find a location is "a significant deviation from the IEP's requirements, akin to not implementing the IEP at all." This significant deviation, according to Petitioners, resulted in a denial of educational benefits to Student. Pet. Closing Brief, p. 18. Based on the evidence, Petitioners have failed to meet their burden in showing that the DOE failed to materially implement Student's 11/14/2023 IEP.

The Ninth Circuit Court in Van Duyn v. Baker School Dist. 5J held that "when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 815 (9th Cir.2007). "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." Van Duyn, 502 F.3d at 822.

¹¹ Although Petitioners use the term "placement" in this issue, Petitioners are not alleging that Student's placement in a general education setting in the 11/14/2023 IEP was inappropriate; rather, Petitioners are alleging that the DOE did not provide an appropriate location to implement Student's 11/14/2023 IEP.

The term FAPE means special education and related services that are provided in conformity with an IEP. 20 U.S.C. § 1401(9)(D). Special education and related services “need only be provided ‘in conformity with’ the IEP. There 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.” Van Duyn, 502 F.3d at 821.

To properly apply the *Van Duyn* standard, the Hearings Officer must analyze whether the DOE failed to implement specific provisions of C.J.’s IEP. *See Van Duyn*, 502 F.3d at 822. If the DOE has failed to implement specific provisions of C.J.’s IEP, the Hearings Officer must decide whether the failure was material. *Id.* In doing so, the Hearings Officer is required to determine whether “there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Id.* In this case, the Hearings Officer must determine whether the DOE materially failed to implement specific provisions of C.J.’s IEP despite its efforts after furloughs began.

Dept. of Educ., Hawaii v. C.J., 2011 WL 6002621, CV. No. 10-00257 AWT-BMK, at *4 (D.Haw. Nov. 29, 2011).

Student’s 11/14/2023 IEP states that Student will receive 600 minutes of special education services per week in a general education setting from November 20, 2023 to May 23, 2024. (FOF 66). Student’s LRE statement reads: “[Student] will participate with typically developing/non-disabled peers in a regular [REDACTED] program. Services will be provided in the General education classroom.” (FOF 68). The 11/17/2023 PWN notes that “Services will be available once [Student] enrolls in an [REDACTED] program.” (FOF 72). A school capable of implementing Student’s 11/14/2023 IEP was not found until December 15, 2023—approximately one (1) month after the 11/14/2023 IEP was developed. (FOF 87).

During the one (1) month period after the development of the 11/14/2023 IEP, DES attempted to locate a school that could implement Student’s 11/14/2023 IEP. On November 17, 2023, DES contacted an EOEL coordinator to find a school for Student. (FOF 70, 71). On

November 21, 2023, DES received confirmation from a coordinator of [REDACTED] that there were no schools with space available for Student. (FOF 75). DES also reached out to an EOEL representative on the same day to inquire if there were any schools with an opening for Student. (FOF 74, 75). DES informed Parent-1 that DES expected the EOEL representative to call DES that day or the next day with the necessary information. (FOF 74). By November 29, 2023, DES still had not heard back from the EOEL representative and had called another school to inquire about their EOEL classroom and found out that this school's EOEL classroom did not offer an inclusion setting. (FOF 79). On November 30, 2023, at 3:45 p.m., Petitioners filed the instant Complaint. At 4:43 p.m. on the same day, DES informed Parent-1 that DES had completed the forms for Public School's EOEL classroom. (FOF 81). On or about December 15, 2023, DOE was able to secure a space for Student at Public School-2, which has an [REDACTED] [REDACTED] program with general education inclusion capability. (FOF 87).

Although the process was understandably frustrating for Parent-1, DOE did not materially fail to implement Student's 11/14/2023 IEP. While Parent-1 had been struggling with Home School on Student's placement since May of 2023, DOE's efforts in locating a school that could implement Student's 11/14/2023 IEP must be viewed after the 11/14/2023 IEP was developed. Pursuant to the 11/14/2023 IEP, Student had to be in the general education setting beginning on November 20, 2023. Petitioners filed the instant Complaint on November 30, 2023, ten (10) days after the date when Student was supposed to start in a general education setting. At the time that the Complaint was filed, DOE did not fail to implement Student's 11/14/2023 IEP as ten (10) calendar days—seven (7) school days—is not material. Whether DOE failed to implement the 11/14/2023 IEP after November 30, 2023 was speculative at the time the Complaint was filed.

Even if the period after the filing of the Complaint is considered in determining whether the DOE materially failed to implement the 11/14/2023 IEP, Petitioners would still fail to meet their burden. Between November 20, 2023 and December 15, 2023, Student missed approximately [REDACTED] days of school in a general education setting¹². DES actively searched for a school, within and outside of Student's school district, that could implement Student's 11/14/2023 IEP. (FOF 79, 81). It is reasonable to expect that it would take time to secure a location, as Parent-1 acknowledged when Parent-1 hoped that Student would have a school to attend by January of 2024. (FOF 70). [REDACTED] school days to secure a location does not amount to a material failure to implement Student's 11/14/2023 IEP.

For the reasons stated above, the undersigned Hearings Officer finds that Petitioners have not met their burden in showing that the DOE materially failed to implement Student's 11/14/2023 IEP.

D. TUITION REIMBURSEMENT FOR PRIVATE SCHOOL

Petitioners seek reimbursement for sending Student to [REDACTED] Center from August 2023 to December 2023, Private School from January 2024 to May 2024, and transportation. Pet. Closing Brief, pp. 8, 17, 25. The U.S. Supreme Court has recognized the rights of parents who disagree with a proposed IEP to unilaterally withdraw their child from public school and place the child in a private school and request reimbursement for tuition at said private school from the local educational agency. Florence County School Dist. Four v. Carter, 510 U.S. 7, 12, 114 S. Ct. 361, 364-365, 126 L.Ed.2d 284 (1993) (citing School Comm. of Burlington v. Department of Ed. of Mass., 471 U.S. 359, 369-370, 105 S. Ct. 1996, 2002-2003, 85 L.Ed.2d 385 (1985)), see

¹² The undersigned takes judicial notice of the Hawaii DOE's 2023-2024 Official School Calendar. <https://www.hawaiipublicschools.org/DOE%20Forms/2023-24calendar.pdf>

also 20 U.S.C. § 1415(b)(6), (f)(1)(A). A parent who unilaterally places a child in private school pending review proceedings under the IDEA is entitled to reimbursement if the parent can establish that (1) the public placement violated the IDEA, and (2) the private school placement was proper under the IDEA. Doug C., 720 F.3d 1038, 1041, 1047-1048 (9th Cir.2013) (citing Carter, 510 U.S. at 15, 114 S. Ct. 361). If both are met, “the district court must then exercise its ‘broad discretion’ and weigh ‘equitable considerations’ to determine whether, and how much, reimbursement is necessary.” C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist., 635 F.3d 1155, 1159 (9th Cir.2011) (citing Carter, 510 U.S. at 15-16, 114 S. Ct. 361).

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

In this case, the public placement of Student violated the IDEA in such a manner that Student was denied a FAPE. This Hearings Officer now examines whether the unilateral placement of Student at [REDACTED] Center and Private School were proper under the IDEA.

[REDACTED] Center is a [REDACTED] center located in [REDACTED] and operates from 10:00 a.m. to 9:00 p.m. (FOF 92). Children between the ages of eighteen (18) months and six (6) or (7) years old attend [REDACTED] Center. (FOF 93). The number of children who attend [REDACTED] Center varies day to day, and there is no set schedule for any of the children. (FOF 93). [REDACTED] Center is not a school or an

educational setting. (FOF 93). Petitioners fail to demonstrate that [REDACTED] Center provides educational instruction specially designed to meet the unique needs of Student, supported by such services as are necessary to permit Student to benefit from instruction; however, reimbursement is appropriate and justified in equity under the circumstances. Home School's procedural error resulted in harm to Student and Parent-1. Student was in a non-educational setting since August of 2023 and DOE did not offer an IEP compliant with IDEA regulations until November of 2023. While [REDACTED] Center is not an educational setting, Home School deemed it appropriate enough to provide Student with services at [REDACTED] Center until a school could be located for Student. DOE had also offered to reimburse Parent-1 for [REDACTED] Center, and it seems appropriate that DOE follow through with its offer. (FOF 71).

Private School is a private school in the State of Hawaii that educates [REDACTED] to [REDACTED] graders. (FOF 95). Private School has nondisabled students. (FOF 96). Student is in the [REDACTED] class and is doing well. (FOF 102, 103). Currently, Student's curriculum at Private School includes reading [REDACTED] stories; learning how to trace and copy letters; learning about coins; attending dance classes and [REDACTED]; taking [REDACTED]; and being paired with an older student so that the older student can help Student. (FOF 101). Private School can provide Student with the supplementary aids and services listed on Student's 11/14/2023 IEP except for consultation for speech and language services. (FOF 100). Private School also allows Student's RBT to provide ABA services to Student at school. (FOF 99).

The "Ninth Circuit [has] held that a private program does not need to meet all of a student's educational needs, and merely needs to provide specially designed educational instruction for the unique needs of the student." L.S., 2019 WL 1421752, at *14 (citing C.B., 635 F.3d at 1159). The "Supreme Court has held that the IDEA's requirements of public schools

are not applicable to private school placement.” Id. at *15 (citing Carter, 510 U.S. at 13-14, 114 S.Ct. 361). Parental placement can be appropriate even if it does not meet state standards. 34 C.F.R. § 300.148(c). Based on the foregoing reasons, Petitioners have proven that placement at Private School is proper for reimbursement purposes. Petitioners have also proven that Private School is an appropriate placement for Student.

Under IDEA, if Petitioners succeed in meeting their burden of proving that the DOE violated the IDEA and denied Student a FAPE, and that the private placement is proper, the reviewing body has the authority to consider equity in determining whether and in what amount tuition reimbursement is to be awarded to a parent that unilaterally places a child at a private program. C.B., 635 F.3d at 1159. “Regarding reimbursement, courts may consider any relevant factor, including the reasonableness of the private tuition, [citation omitted], and the conduct of parents in the IEP formulation process.” LS, 2019 WL 1421752, at *14. The undersigned finds that Petitioners are entitled to full reimbursement for Private School from January 2024 to May 2024 because the tuition is reasonable and Parent-1’s conduct was reasonable.

In December of 2022, months before Student was to start [REDACTED], Parent-1 contacted Home School to begin the evaluation process for special education services, alerting Home School to Student’s Disability and qualification for ABA services. (FOF 6, 7). Since the 5/23/2023 IEP meeting, Parent-1 expressed concerns about Student being placed in a special education setting and was cooperative during the IEP formulation process. (FOF 32). Due to Home School’s lack of experience or training, Home School admittedly did not consider Student’s LRE during the 5/23/2023 IEP meeting. Tr. Vol. III, 293:22-294:2. Parent-1 filed the State Complaint on September 12, 2023, which was almost four (4) months after the 5/23/2023 IEP meeting. (FOF 52). On [REDACTED], the DOE found Home School failed to “ensure

that FAPE is provided in the LRE where the child's unique needs (as described in the child's IEP) can be met..." (FOF 60). On November 14, 2023, Student's IEP was revised, and Student's placement was changed to a general education setting. (FOF 68). After the 11/14/2023 IEP was developed, Home School offered to provide some special education services to Student at [REDACTED] Center while it looked for a location to implement Student's 11/14/2023 IEP. (FOF 74, 77). Petitioners filed the instant Complaint on November 30, 2023. By December 5, 2023, DOE was aware that Parent-1 would be sending Student to Private School. (FOF 85). Ten (10) days later, on December 15, 2023, the parties had a resolution meeting for the instant Complaint and they were not able to resolve this matter. On January 5, 2024, almost a month after the resolution meeting, Parent-1 registered Student for Private School (FOF 88) and Student started school at Private School on January 8, 2024 (FOF 89). Private School's tuition for January 2024 to May 2024 is approximately \$4,600.00. (FOF 98).

Respondents argue that Petitioners are not entitled to reimbursement for the January 2024 to May 2024 tuition because Petitioners failed to comply with 20 U.S.C. § 1412(a)(10)(C)(iii), which requires Petitioners to provide either verbal or written notice that Parent-1 was rejecting the placement proposed by the district, and stating Parent-1's concerns and intent to enroll Student in a private school at public expense. According to 20 U.S.C. § 1412(a)(10)(C)(iii), "the cost of reimbursement...may be reduced or denied" if Petitioners fail to comply with the notice requirements. Reduction or denial is discretionary and not mandatory. The undersigned declines to reduce or deny reimbursement. Parent-1 did everything right. Parent-1 contacted Home School in December of 2022 to inform Home School that Student will soon be in [REDACTED], has Disability, and receives ABA services. Even though Parent-1 soon after decided not to move forward with Student's registration at Home School, the information

provided by Parent-1 in December should have alerted Home School to the potential issues the IEP team may have in placing Student. Home School denied Parent-1 the chance to meaningfully participate in the formulation of Student's IEP since May of 2023. Parent-1 was not able to meaningfully participate until half a year later in November of 2023. Student should have started school in August of 2023 in an educational setting that complied with LRE requirements, but an appropriate setting was not offered until November of 2023. Four (4) months in the life of a [REDACTED] year old child is significant. And while Student could have attended school with other special needs students at Home School, forcing Parent-1 to choose between an educational setting Parent-1 believed would not address Student's educational needs or suffer the consequences of not taking what is being offered by Home School are not fair choices. The undersigned declines to penalize Parent-1 for refusing to accept something less than what Student needs. Parent-1 was cooperative during the entire IEP formulation process and credible during the due process hearing. Contrary to Respondents' closing brief, Parent-1's conduct did not delay the enrollment of Student and Parent-1 actively tried to find a school that could implement Student's 11/14/2023 IEP, which Parent-1 was not required to do. Based on the foregoing, Petitioners are entitled to tuition reimbursement, in full, for attendance at Private School from January 2024 to May 2024.

Respondents denied Student a FAPE when the 5/23/2023 IEP team committed a procedural violation by failing to have an appropriate discussion regarding Student's placement. This procedural violation amounted to a substantive failure because Parent-1's right to parental participation during the formulation process was significantly infringed, and better educational options were not considered for Student during the 5/23/2023 IEP meeting.

E. PETITIONERS' SECTION 504 OF THE REHABILITATION ACT OF 1974 CLAIM

Petitioners' Complaint "assert[s] Student's eligibility for rights and protections under Section 504 of the Rehabilitation Act of 1974." Petitioners' Complaint, p. 2. Petitioners, however, did not present any evidence or argument during the due process hearing and in their closing brief regarding their Section 504 claim. Based on the lack of evidence or argument to support this claim, the undersigned Hearings Officer concludes that Petitioners have effectively abandoned their Section 504 claim and have not met their burden of proof.

VI. DECISION

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer concludes that Petitioners have proven a denial of FAPE when the DOE failed to appropriately discuss and determine Student's least restrictive environment for the 5/23/2023 IEP.

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

1. The IEP team shall, within ten (14) calendar days of this Order, decide if any additional tests or assessments are necessary to determine Student's current needs and revise Student's IEP. Any assessments are to be scheduled and completed within forty-five (45) calendar days of this Order.
2. An IEP revision team meeting shall be held within fourteen (14) calendar days of the completion of all aforementioned assessments.
3. Any delay in scheduling and completing any required assessment because it requires the Student's physical presence to complete the assessment will extend the deadlines set herein by the number of days attributable to the delay.

4. Any delay in meeting any of the deadlines in this Order because of an act or acts of Petitioners and/or their representatives and/or their private providers, will extend the deadlines set herein by the number of days attributable to Petitioners and/or their representatives and/or their private providers. Respondents shall document in writing any delays caused by Petitioners and/or their representatives and/or their private providers.
5. Respondents shall reimburse Petitioners for private school tuition at Private School for January 2024 to May 2024 in the amount of four thousand six hundred dollars (\$4,600.00). (FOF 98).
6. Respondents shall reimburse Petitioners for the registration fee to Private School in the amount of five hundred dollars (\$500.00). (FOF 88).
7. Respondents shall reimburse Petitioners for the application fee to Private School in the amount of fifty dollars (\$50.00). (FOF 83).
8. Payments pursuant to paragraphs 5, 6 and 7 shall not exceed a total amount of five thousand one hundred dollars (\$5,150.00).
9. Respondents shall reimburse Petitioners the amount paid to █████ Center in the amount of one thousand two hundred seventy-five dollars (\$1,275.00). (FOF 94).
10. Respondents shall reimburse Petitioners within thirty (30) calendar days of receiving proof of payment from Petitioners for paragraphs 5, 6, 7 and 9.
11. Respondents will reimburse Petitioners for mileage for transportation from August 10, 2023 to December 27, 2023. (FOF 94). Petitioners shall provide verification of Student's residential address ("home") to Respondents within ten (10) calendar days of this Order. Mileage reimbursement shall be for transporting Student from home to

Center and from Center to home. Respondents are only responsible for one roundtrip transportation a day. In the event that Student is transported to Center from another location or from Center to another location, reimbursement shall not exceed the amount for transporting Student to Center from home or from Center to home. Petitioners must provide proof that Student attended Center for the days that a mileage claim is made. The number of days shall not exceed forty-one (41) days. The mileage rate shall not exceed the IRS published standard mileage rate for the applicable period for which reimbursement is sought. Any request for reimbursement of transportation mileage to and from Center shall be made by June 13, 2024. Any request for reimbursement of transportation mileage to and from Center not made by June 13, 2024 is waived.

12. Respondents will reimburse Petitioners for mileage for transportation from January 8, 2024 to May of 2024. Petitioners shall provide verification of the last day of school in May of 2024 at Private School within ten (10) calendar days of this Order. Petitioners shall provide verification of Student's residential address ("home") to Respondents within ten (10) calendar days of this Order. Mileage reimbursement shall be for transporting Student from home to Private School and from Private School to home. Respondents are only responsible for one roundtrip transportation a day. In the event that Student is transported to Private School from another location or from Private School to another location, reimbursement shall not exceed the amount for transporting Student to Private School from home or from Private School to home. Petitioners must provide proof that Student attended Private School for the days that a mileage claim is made. The mileage rate shall not exceed the IRS

published standard mileage rate for the applicable period for which reimbursement is sought. Any request for reimbursement of transportation mileage to and from Private School shall be made by June 13, 2024. Any request for reimbursement of transportation mileage to and from Private School not made by June 13, 2024 is waived.

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 thirty (30) days from the date of the decision to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. § 1415 (i)(2) and § 8-60-70(b).

DATED: Honolulu, Hawaii, May 13, 2024.

/s/ Charlene S.P.T. Murata
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