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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAI'I,

Respondents.

DOE-SY2324-027

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:

March 14, 2024

April 15-17, 2024

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

Petitioners bring forth this case under the Individuals with Disabilities Education Act (hereinafter "IDEA") to allege a number of procedural and substantive violations in the development of Student's Individualized Education Program (hereinafter "IEP") for the 2023-2024 school year. Petitioners seek reimbursement and placement of Student at a private program

¹ Personal identifiable information is contained in the Legend.

due to the alleged denial of a free appropriate public education (hereinafter “FAPE”) by the Department of Education, State of Hawai‘i (hereinafter “DOE”).

II. JURISDICTION

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

III. ISSUES PRESENTED

Petitioners assert eleven (11) issues in their Complaint and Resolution Proposal (hereinafter “Complaint”) to be addressed at the Hearing:

1. Whether the DOE failed to appropriately assess/evaluate and/or collect information on Student’s unique needs and/or present abilities/deficits prior to the development of the December 18, 2023 IEP (hereinafter “IEP-12/18/2023”).
2. Whether the IEP-12/18/2023 is a denial of FAPE because the DOE failed to appropriately discuss Student’s least restrictive environment (hereinafter “LRE”).
3. Whether the IEP-12/18/2023 is a denial of FAPE because the DOE failed to appropriately discuss Student’s social skills deficits.
4. Whether the IEP-12/18/2023 is a denial of FAPE because the DOE failed to appropriately discuss Student’s transportation needs.
5. Whether the IEP-12/18/2023 is a denial of FAPE because the DOE failed to appropriately discuss Student’s extended school year (hereinafter “ESY”) service needs.
6. Whether the IEP-12/18/2023 is a denial of FAPE because the DOE failed to appropriately discuss the frequency and duration of Student’s regular school year school day.
7. Whether the IEP-12/18/2023 provides Student a program that sufficiently describes Student’s placement.
8. Whether the IEP-12/18/2023 provides Student a program that sufficiently describes Student’s social skills deficits.
9. Whether the IEP-12/18/2023 provides Student a program that sufficiently describes Student’s need for transportation services.

10. Whether the IEP-12/18/2023 provides Student a program that sufficiently describes Student's need for ESY services.
11. Whether the IEP-12/18/2023 violates Section 504 of the Rehabilitation Act of 1973 (hereinafter "Section 504") where Student is only offered part-day, part-week services.

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

1. Find that the DOE denied Student a FAPE for the violations asserted.
2. Order the DOE to reimburse Parent and/or directly fund any privately-funded programs and/or services related to the denial of FAPE.
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).
4. Order compensatory education if Parent was unable to provide all the services Student required to ameliorate Student's losses.
5. Order such other relief as appropriate and/or justified under equity and/or the law.

IV. BACKGROUND

On January 29, 2024, the Department of Education, State of Hawai'i (hereinafter "Respondents" or "DOE") received a Complaint under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the IDEA, from Student, by and through Parent (hereinafter "Petitioners"). Respondents submitted a response to Petitioners' Complaint on February 8, 2024.

On March 1, 2024, a prehearing conference was held with Hearings Officer Chastity T. Imamura, Keith H.S. Peck, Esq. (hereinafter "Mr. Peck") on behalf Petitioners, and Bradford K. Chun, Esq. (hereinafter "Mr. Chun") on behalf of Respondents. The due process hearing (hereinafter "Hearing") was scheduled for March 14, 15, 25, 27, and 28, 2024. On March 6, 2024, Mr. Chun requested to continue the Hearing to a later date in April due to a conflict in scheduling. An agreement was made to start the hearing on March 14, 2024, as one of Petitioners' witnesses had already scheduled leave from work for the Hearing. The parties then agreed to continue the remainder of the Hearing to April 15-19, 2024. Based on Mr. Chun's

request to continue the Hearing, Respondents also prepared Respondents' Request to Extend the 45-Day Decision Deadline from April 13, 2024 to May 28, 2024.

Prior to the start of the Hearing, the parties stipulated to the Hearing being conducted via video conferencing pursuant to Hawai'i Revised Statutes Section 91-9(c). Both parties agreed to the following: a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting. An Order Regarding Video Conference Due Process Hearing was filed on March 4, 2024, which set forth the parameters of the video conference due process hearing.

The Due Process Hearing began on March 14, 2024. Present at the Hearing were Parents and Mr. Peck, on behalf of Petitioners; District Educational Specialist² and Mr. Chun on behalf of Respondents; this Hearings Officer; and the assigned court reporter. The first witness called was Parent 1, whose testimony was continued to April 15, 2024 and completed that day. Parent 2 testified on April 16, 2024 and Petitioners rested their case-in-chief. Respondents called Psychologist and SPED Teacher to testify on April 16, 2024 and rested their case-in-chief. Petitioners requested the opportunity to call a rebuttal witness that was not listed on their witness list filed on March 7, 2024. Respondents objected to Petitioners calling a witness that was not previously named in Petitioners' witness list, and this Hearings Officer also found that the proposed testimony of the rebuttal witness would be cumulative, since Parent 1 had already presented testimony on the same facts. The parties were given the option of providing an oral

² District Educational Specialist could not attend the Hearing on April 15, 2024, so District Representative attended the Hearing on District Educational Specialist's behalf.

closing argument, a written closing brief, or both. Oral closing arguments were presented by both Petitioners and Respondents on April 17, 2024. Petitioners submitted a written closing brief by the deadline of April 23, 2024. Respondents did not submit a written brief.

Each party submitted their exhibits for the Hearing by the disclosure deadline of March 7, 2024. The parties reviewed the exhibit and witness lists provided by the opposing party and neither party had any objections to the exhibits and/or witnesses listed in the disclosures. Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case and that at the close of each day and prior to the conclusion of the Hearing, this Hearings Officer would review the exhibits that had been received into evidence. On April 17, 2024, a List of Exhibits Received at Due Process Hearing was filed with the final list of exhibits submitted and received by the parties for consideration in this Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-016; Exhibit 2, pages 017-018; Exhibit 3, pages 019-020; Exhibit 4, pages 021-022; Exhibit 5, pages 023-024; Exhibit 6, pages 025-038; Exhibit 7, pages 039-043; Exhibit 8, pages 044-046; Exhibit 9, page 047; Exhibit 10, pages 048-049; Exhibit 11, page 050; Exhibit 12, pages 051-052; Exhibit 13, pages 053-057; Exhibit 14, pages 058-059; Exhibit 15; pages 060-061; Exhibit 16, pages 062-095; and Exhibit 17, an audio recording dated December 18, 2023.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-009; Exhibit 5, page 019; Exhibit 6, page 020; Exhibit 12, pages 029-030; Exhibit 13, pages 031-045; Exhibit 15, pages 048-054; Exhibit 16, page 055; Exhibit 17, page 056; Exhibit 18, pages 057-058; Exhibit 21, pages 062-077; Exhibit 22, pages 078-079;

Exhibit 31, pages 120-123; Exhibit 32, page 124; Exhibit 50 pages 154-155; Exhibit 51, page 156; Exhibit 52, page 157; and Exhibit 53, page 158.

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.

V. FINDINGS OF FACT

Student's special education needs

1. Student is currently [REDACTED] years old and lives within Home School's district. P-Ex.1, p.001-016; R-Ex.1, p.001-009.
2. Student does not have occupational therapy concerns that would prevent Student from accessing Student's education. *See* P-Ex.4, p.021-022; R-Ex.12, p.029-030.
3. Student scored in the [REDACTED] range on a standardized fine motor assessment, which indicates that Student can perform school-based occupational therapy tasks comparably to same-aged peers. P-Ex.4, p.021-022; R-Ex.12, p.029-030.
4. Student can grasp a pencil to copy pre-writing strokes, use a scissors to cut a short line, neatly use glue, and mostly stay within the lines while coloring. P-Ex.4, p.021-022; R-Ex.12, p.029-030.
5. Student has appropriate neuromuscular range of motion and strength to access a school environment. Student can maintain a seated position without support, explore play objects such as a swing and trampoline, and can maintain balance. P-Ex.4, p.021-022; R-Ex.12, p.029-030.
6. Student can follow one-step directions and work on a task for about [REDACTED] minutes without prompting. Student does need redirection to return to the task after a break.

Student has sensory issues with [REDACTED]. P-Ex.4, p.021-022; R-Ex.12, p.029-030.

7. Student can get [REDACTED] independently, [REDACTED]
[REDACTED]. P-Ex.4, p.021-022; R-Ex.12, p.029-030.
8. Student can use the [REDACTED] independently while [REDACTED]
[REDACTED]. Student avoids using unfamiliar [REDACTED] outside the home. P-Ex.4, p.021-022; R-Ex.12, p.029-030.
9. Student does not have physical therapy concerns that would prevent Student from accessing Student's education. *See* P-Ex.5, p.023-024.
10. Student is able to navigate around places independently, although sometimes Student does not visually scan the environment and does not attend to the path to travel. Student falls occasionally due to inattention or while multi-tasking. P-Ex.5, p.023-024.
11. Student can walk and run without falling and with fluid strides. Student can navigate across transitioning surfaces. P-Ex.5, p.023-024.
12. Student is able to navigate stairs using the handrail for safety and can balance or regain balance without concern. P-Ex.5, p.023-024.
13. Student can sit on and stand up from chairs, benches, and on the ground independently. P-Ex.5, p.023-024.
14. Student does not have cognitive concerns that would prevent Student from accessing Student's education. *See* P-Ex.6, p.025-038; R-Ex.13, p.031-045.
15. Student scored in the [REDACTED] range on a standardized test that compares the development of a child to same-aged peers in the areas of physical scale, adaptive behavior, social-

emotional, cognitive, and communication. Scores in the area of physical scale and social-emotional were [REDACTED] Student is still working on some skills in those areas but Student's skills are close to what same-aged peers can do. P-Ex.6, p.025-038; R-Ex.13, p.031-045.

16. On a standardized cognitive assessment, Student scored in the [REDACTED] [REDACTED] for the tests that were completed, and for the tests that were not completed due to behavioral issues, Student performed as well as or better than same-aged peers on the parts of the test that were completed. P-Ex.6, p.025-038; R-Ex.13, p.031-045.
17. Student knows colors, shapes, letters, can spell Student's name, and is extremely motivated to learn. P-Ex.6, p.025-038; R-Ex.13, p.031-045.
18. The behavioral functioning portion of the psychological assessment for Student was based on information on a scaled questionnaire completed by Parents. Student was not observed or tested directly for this portion of the assessment.³ P-Ex.6, p.025-038; R-Ex.13, p.031-045.
19. Student has difficulty with inattention/hyperactivity, defiance and aggressive behavior, social functioning, anxiety, and mood and affect. Student's scores on the assessment completed by Parents were all very elevated compared to same-aged peers. P-Ex.6, p.025-038; R-Ex.13, p.031-045.
20. Some behaviors demonstrated by Student in the classroom include taking [REDACTED] from others, losing interest in subjects and being inattentive to instruction, [REDACTED] from the

³ Student did display behaviors both during the assessment with Psychologist and during the observation portion of the assessment, and the behavioral functioning portion of the assessment was self-validating, so Student's scores for the behavioral functioning portion of the assessment appear to be accurate. P-Ex.6, p.025-038; R-Ex.13, p.031-045

area, getting frustrated easily, having temper outbursts, struggling to make friends, not getting along well with others, and [REDACTED]. P-Ex.6, p.025-038; R-Ex.13, p.031-045; *see also* R-Ex.31, p.120-123.

21. Student is beginning to recognize social cues, such as personal space, and is working on sharing and taking turns. P-Ex.6, p.025-038; R-Ex.13, p.031-045.
22. Student has difficulties with transitions and with identifying and regulating Student's emotions and/or using appropriate coping skills; however, is able to recognize emotions and use coping skills when prompted by an adult. P-Ex.6, p.025-038; R-Ex.13, p.031-045.
23. Student requires constant redirection during tasks and gets easily distracted by peers or noises in the environment. P-Ex.6, p.025-038; R-Ex.13, p.031-045.
24. Student would benefit from observing others modeling appropriate coping strategies; using items such as weighted blankets or deep pressure; having social opportunities to interact with peers at places such as the park or playground; repetition, role-playing, and modeling of expectations; and working with adults to redirect inattention while fading the adult support as soon as possible. P-Ex.6, p.025-038; R-Ex.13, p.031-045.

Evaluation and Development of Student's IEP

25. Student began attending [REDACTED] at Private Program in August [REDACTED] and had attended Private Program for a total of around eight (8) days. Testimony of Parent 1, Tr.V1, 16:2-17:2, 19:7-15; R-Ex.31, p.120.
26. Prior to that time, Student had not been evaluated or assessed for special education or related services. Testimony of Parent 1, Tr.V1, 15:19-23; P-Ex.3, p.019; P-Ex.6, p.025; R-Ex.13, p.031; R-Ex.18, p.057.

27. Student began displaying concerning behaviors at Private Program and due to those behaviors, Parents were advised to withdraw Student from Private Program unless Student could return with an aide. Testimony of Parent 1, Tr.V1, 19:7-20:23; R-Ex.31, p.120-123.
28. These behaviors included taking [REDACTED] out of other children's hands and running away with them; opening doors or pushing down gates to go outside; [REDACTED]; running away from teachers when they try to correct Student; and [REDACTED] R-Ex.31, p.120.
29. Parents also observed concerning behaviors with Student in the home setting [REDACTED] [REDACTED] Testimony of Parent 1, Tr.V2, 101:8-103:7.
30. Based on the information from Private Program and their own observations and concerns, Parents sought an evaluation for special education and related services with the DOE. Testimony of Parent 1, Tr.V1, 23:13-22; R-Ex.5, p.019; R-Ex.6, p.020.
31. The DOE conducted cognitive, occupational therapy, and physical therapy assessments as part of Student's initial evaluation for special education and related services under the IDEA. Testimony of Parent 1, Tr.V1, 24:15-25:2, 28:6-30:19; P-Ex.3, p.019-020; P-Ex.4, p.021-022; P-Ex.5, p.023-024; P-Ex.6, p.025-038; R-Ex.12, p.029-030; R-Ex.13, p.031-045; R-Ex.18, p.057-058.
32. Student's cognitive assessment was conducted over two sessions: the observation portion at Student's private occupational therapy session and the testing portion done with Student at Home School. Testimony of Parent 1, Tr.V1, 25:3-26:9, 80:10-83:8, Tr.V2, 107:1-110:7; Testimony of Psychologist, Tr.V3, 276:13-277:5, 278:21-279:5.
33. The entirety of the behavioral assessment for the cognitive assessment was based on

information from Parents; however, Psychologist was able to observe Student's behaviors consistent with the behavioral assessment results at both cognitive assessment sessions.

Testimony of Parent 1, Tr.V2, 116:3-8; Testimony of Psychologist, Tr.V3, 279:1-280:13; P-Ex.6, p.025-038; R-Ex.13, p.031-045.

34. Out of the possible settings where the first cognitive assessment portion could have been done, the private occupational therapy session was conducive to gathering meaningful information about Student. Testimony of Psychologist, Tr.V3, 276:10-277:5.
35. The reevaluation conducted with Student demonstrated a need for Student for special education and related services for [REDACTED], as demonstrated by the cognitive assessment. The physical therapy and occupational therapy assessments showed that Student did not have a need for special education and related services in those two areas. P-Ex.3, p.019-020; P-Ex.4, p.021-022; P-Ex.5, p.023-024; P-Ex.6, p.025-038; R-Ex.12, p.029-030; R-Ex.13, p.031-054; R-Ex.18, p.057-058.
36. An eligibility meeting was held on December 5, 2023, and prior to the meeting, Parents were provided with the results of the initial evaluation completed with Student. Student was determined to be eligible for special education and related services under the category of [REDACTED]. Parents agreed with this result and signed consent for provision of special education and related services. Testimony of Parent 1, Tr.V1, 24:15-29:11, Tr.V2, 121:3-122:21; P-Ex.3, p.019-020; R-Ex.15, p.048-054; R-Ex.16, p.055.
37. On December 18, 2023, Student's IEP team met to develop Student's IEP for the remainder of the 2023-2024 school year. See P-Ex.1, p.001-016; P-Ex.16, p.062-095; R-Ex.17, audio recording dated December 18, 2023 (hereinafter "12/18/23 audio"); R-

Ex.21, p.062-077.

38. Prior to the start of the meeting, a draft IEP had been prepared, which included completed portions of the present levels of performance⁴ (hereinafter “PLEPs”), goals and objectives, and LRE. Testimony of Parent 1, Tr.V2, 176:22-7; *see* P-Ex.1, p.001-016; P-Ex.16, p.064-077; P-Ex.17, 12/18/23 audio.
39. While no mention is made specifically of the draft being prepared, a review of the IEP meeting recording and the IEP-12/18/2023 demonstrate that SPED Teacher is reading off of a draft of an IEP for Student based on the information from Student’s initial evaluation. P-Ex.1, p.001-016; P-Ex.16, p.064-077 (*e.g.* P-Ex.16, p.077, SPED Teacher refers to pages as SPED Teacher describes proposed IEP goals/objectives); P-Ex.17, 12/18/23 audio, approximate time 43:41-46:33 (hereinafter referenced as “P-Ex.17, 12/18/23 audio [43:41-46:33]”).
40. Despite SPED Teacher’s testimony⁵ that the least restrictive environment portion of the IEP does not get completed until after the IEP meeting, SPED Teacher told Parents during the IEP meeting, “[o]n page fourteen is the least restrictive environment and this is where [Student] will get the services in the special education classroom with special education peers not general ed peers.” P-Ex.16, p.077; P-Ex.17, 12/18/23 audio [45:58-46:12].
41. During the IEP meeting, SPED Teacher read the draft IEP to Parents and welcomed some discussion or input from Parents only during the PLEPs and goals and objectives. *See* P-

⁴ While this Hearings Officer recognizes that the appropriate term for this section of the IEP is the present levels of academic achievement and functional performance (“PLAAFPs”), the IEP form used by the DOE references PLEPs, so the term PLEPs will be used in this Decision to correspond with the IEP form that was used in this case.

⁵ Testimony of SPED Teacher, Tr.V3, 344:16-21.

Ex.1, p.001-016; P-Ex.16, p.064-077; P-Ex.17, 12/18/23 audio [10:32-43:42].

42. No discussion was held during the IEP meeting of Student's eligibility for ESY services, nor were Parents informed that Home School could collect data during school breaks to further determine Student's eligibility for ESY services. Testimony of Parent, Tr.V1, 33:3-6, 41:3-12; Testimony of Parent 2, Tr.V3, 230:1-6; *see* P-Ex.16, p.062-095; P-Ex.17, 12/18/23 audio.
43. At no time did the IEP team discuss the continuum of environments available to Student, nor did the team discuss the possible academic and non-academic benefits that Student could gain from being in a general education environment, an inclusion environment, or a special education environment.⁶ Testimony of Parent 1, Tr.V1, 38:18-40:13; *see* P-Ex.16, p.062-095; P-Ex.17, 12/18/23 audio.
44. No discussion was held regarding possible supplementary aids and supports that could be provided to Student within a general education setting that could allow Student to attend class in that setting, nor were any details of a regulation plan or behavioral plan discussed with Parents at the IEP meeting. *See* P-Ex.16, p.062-095; P-Ex.17, 12/18/23 audio.
45. No discussion was held regarding a need, based on Student's behaviors and [REDACTED] eligibility, for transportation as an IEP service for Student. Testimony of Parent 1, Tr.V1, 33:7-35:13; Testimony of Parent 2, Tr.V3, 224:20-225:13; *see* P-Ex.16, p.062-095; P-Ex.17, 12/18/23 audio.
46. Parents were informed by the Home School IEP team that Student's LRE would be a fully self-contained special education classroom because that was the only available

⁶ No discussion was held regarding the rest of the continuum of placements, however they are not relevant to this case, as no one is alleging that Student would need to be in a more restrictive environment than those mentioned in the FOF.

- option at Home School. Testimony of Parent 1, Tr.V2, 127:13-20; P-Ex.16, p.079-083; P-Ex.17, 12/18/23 audio [50:38-59:11].
47. The Home School IEP team members also informed Parents that Student belonged in the fully self-contained special education classroom because Student had attended a general education setting and was not successful in that setting. P-Ex.16, p.085-086; P-Ex.17, 12/18/23 audio [1:04:05-1:06:10].
48. SPED Teacher also informed Parents that Student belonged in the fully self-contained special education classroom because SPED Teacher had other students with behavioral problems similar to Student's that have gone to a general education classroom and were not successful. P-Ex.16, p.086-087; P-Ex.17, 12/18/23 audio [1:06:33-1:07:39].
49. Principal told Parents that due to another engagement, Principal had to leave and that the offer that was discussed at the IEP meeting on December 18, 2023 would be their IEP offer but that Principal would look into other options for Student and they could reconvene another meeting to modify Student's IEP once Principal got the information. Testimony of Parent 1, Tr.V2, 152:8-14; Testimony of Parent 2, Tr.V3, 241:18-242:11; P-Ex.16, p.093-095; P-Ex.17, 12/18/23 audio [1:20:39-1:26:47].
50. The IEP team did not reconvene after the December 18, 2023 IEP meeting. Testimony of Parent 1, Tr.V2, 187:23-188:2.
51. Parents did not receive the final IEP-12/18/2024 until the mediation that occurred after Parents filed a complaint with the State of Hawai'i, which was in or around January 2024. Testimony of Parent 1, Tr.V2, 177:8-14, 209:5-12.
52. A prior written notice (hereinafter "PWN"), dated December 19, 2023 (hereinafter "12/19/2023") was prepared and provided to Parents, detailing the IEP offer from the

IEP-12/18/2023. Testimony of Parent 1, Tr.V2, 209:13-21; P-Ex.2, p.017-018; R-Ex.22, p. 078-079.

Post-IEP meeting information

53. On [REDACTED], Parents filed a State Written Complaint with the State of Hawai'i DOE Special Education Division (hereinafter "State Complaint"). Testimony of Parent 1, Tr.V1, 37:4-8; P-Ex.12, p.051-052.
54. The primary issue alleged in the State Complaint was that Student's LRE was predetermined and that Parent's ability to participate in the development of Student's IEP-12/18/2023 was infringed upon by the DOE's refusal to discuss the continuum of placements and insistence that they could only provide what was available. Testimony of Parent 1, Tr.V1, 37:9-18; *see* P-Ex.12, p.051-052.
55. The parties entered into mediation after the filing of the State Complaint, but no successful agreement came out of the mediation process. The State Complaint is currently pending the outcome of this Hearing. Testimony of Parent 1, Tr.V1, 37:19-38:12.
56. On January 29, 2024, Parents sent an email to Home School requesting assistance in enrolling Student into Home School for the remainder of the 2023-2024 school year. testimony of Parent 1, Tr.V2, 153:9-155:20; R-Ex.52, p.157.
57. Student did not attend Home School for the remainder of the 2023-2024 school year. Testimony of Parent 1, Tr.V2, 153:19-24.
58. Petitioners filed the instant Complaint on January 29, 2024. R-Ex.1, p.001.

Private Program

59. Private Program is a general education [REDACTED] program that provides [REDACTED]

services to primarily non-disabled children. Testimony of Parent, Tr.V1, 54:20-24, 62:25-63:4; P-Ex.7, p.039-043.

60. Student began attending Private Program again on [REDACTED]. Testimony of Parent 1, Tr.V1, 45:7-11.
61. Parents were able to hire an aide for Student to attend Private Program with Student. Student's aide previously worked at a [REDACTED] program for over twenty (20) years. Testimony of Parent 1, Tr.V1, 46:7-48:8, 49:13-50:17.
62. Parents provided Private Program with Student's IEP-12/18/2023 to allow Private Program to work with Student on some goals and objectives. Testimony of Parent 1, Tr.V1, 48:9-49:12.
63. Student has been learning to regulating Student's emotions, taking directions from teachers, and doing what other children in Private Program are doing. Testimony of Parent 1, Tr.V1, 47:2-48:8, Tr.V2, 181:12-20.
64. Private Program cost is approximately One Thousand One Hundred Thirty-Five Dollars plus tax (\$1,135) per month. Parents have an enrollment contract with Private Program and have paid tuition for February⁷ and March⁸ 2024 as of the Hearing. Testimony of Parent 1, Tr.V1, 45:12-46:7, 54:25-55:4; P-Ex.8, p.044-046.
65. Parents separately hired⁹ Student's aide, who Parents pay at the rate of Twenty-Seven Dollars (\$27) per hour. Student attends school for five (5) hours per day, five (5) days

⁷ February's payment was Five Hundred Fifty-Six Dollars and Sixty Cents (\$556.60). P-Ex.8, p.044.

⁸ March's payment was One Thousand One Hundred Sixty-Nine Dollars and Ninety-Three Cents (\$1,169.93). P-Ex.8, p.045.

⁹ Parent testified about Student's aide being a "1099" hire, indicating that there is an employment contract or a W-9 or 1099 IRS form that is being prepared for tax purposes. Testimony of Parent, Tr.V1, 51:2-11.

per week and Parents pay Student's aide for the approximately twenty-five (25) hours per week that the aide attends school with Student. Testimony of Parent 1, Tr.V1, 46:7-19.

66. Student lives approximately [REDACTED] miles from Private Program. P-Ex.9, p.047.

VI. CONCLUSIONS OF LAW

Burden of Proof

As the party seeking relief in an administrative hearing challenging an IEP under IDEA, Petitioners have the burden of proving the allegations of a denial of FAPE. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 819-820 (9th Cir. 2007). The IDEA's procedural safeguards have addressed the DOE's natural advantage in information and expertise in IDEA cases and, as such, do not require a burden-shifting provision in administrative proceedings for the school districts to prove that the IEPs designed for students are appropriate. *Schaffer*, 546 U.S. at 60-61, 126 S.Ct. at 536-537, 163 L.Ed.2d 387.

IDEA framework

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

Special education means "specially designed instruction to meet the unique needs of a child with a disability" and related services are the supportive services required to assist a student to benefit from their special education. *Id.* To provide a FAPE in compliance with the

IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.”

Dep’t of Educ. of Hawai‘i v. Leo W. by & through Veronica W., 226 F.Supp.3d 1081, 1093 (D. Hawai‘i 2016).

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

The DOE is not required to “maximize the potential” of each student; rather, the DOE is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048. However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*, held that the educational benefit must be more than *de minimus*. 137 S.Ct. 988, 197 L.Ed.2d 335 (2017). The Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S.Ct. at 1001, 197 L.Ed.2d 335; *see also, Blake C. ex rel. Tina F. v. Hawai‘i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai‘i 2009).

In deciding if a student was provided a FAPE, the two-prong inquiry is limited to (a) whether the DOE complied with the procedures set forth in IDEA; and (b) whether the student’s

IEP is reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051. “A state must meet both requirements to comply with the obligations of the IDEA.” *Doug C. v. Hawai‘i Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013); *see also, Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

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

Petitioners’ arguments

In their Complaint, Petitioners have alleged ten (10) issues that deal with procedural violations by the DOE that resulted in substantive IDEA violations in Student’s IEP-12/18/2023. Petitioners’ counsel acknowledged at the prehearing conference that the first six (6) issues are procedural in nature for the IEP team’s failure to comply with the procedural requirements of the IDEA, and that Issues #7-#10 deal with the failure of the IEP-12/18/2023 to address Student’s needs, in part, based on the failure to appropriately follow the IDEA procedures. As an initial matter, this Hearings Officer finds that the DOE’s failure to comply with the procedural requirements of the IDEA have resulted in a denial of FAPE to Student by significantly infringing on Parents’ ability to participate in the development of Student’s IEP-12/18/2023 and resulting in a loss of educational opportunity for Student. Therefore, this Decision will be focused on the allegations of procedural violations during the IEP meeting on December 18,

2023 resulting in the DOE's denial of FAPE to Student. Further, Petitioners did not produce any evidence or provide any support, legal or otherwise, to support their claim in Issue #11, so this Hearings Officer finds that Issue #11 has been abandoned and will not address it accordingly.

A. Petitioners have proven that Respondents violated procedures under the IDEA in developing Student's IEP-12/18/2023, which resulted in a denial of FAPE to Student

Petitioners allege six (6) procedural violations in the development of Student's IEP-12/18/2023: that the DOE failed to properly assess/evaluate Student; failed to appropriately discuss Student's LRE; failed to appropriately discuss Student's social skills deficits; failed to appropriately discuss Student's transportation needs; failed to discuss Student's ESY needs; and failed to discuss the frequency and duration of Student's school day. Based on the record, this Hearings Officer finds that the DOE failed to appropriately discuss Student's LRE and transportation needs, which resulted in a denial of FAPE to Student based on the significant infringement on Parents' ability to participate in the development of Student's IEP-12/18/2023 and a loss of educational opportunity for Student.

1. Student was properly assessed/evaluated for the IEP team to determine Student's eligibility and to develop Student's IEP-12/18/2023

Petitioners' first issue alleges that the DOE failed to appropriately assess or evaluate and/or collect information on Student's unique needs and/or present abilities/deficits prior to the development of the IEP-12/18/2023. It is unclear what Petitioners dispute regarding the initial evaluation process that occurred for Student, but nonetheless, this Hearings Officer finds that based on the record, the DOE properly evaluated Student to determine eligibility under the IDEA for special education and related services and to develop an IEP for Student.

In order to ensure that children with disabilities receive appropriate programming and services to access their education in a way that is tailored to their needs, the IDEA requires that a

school district conduct a full and individual initial evaluation that ensures that the child is assessed for all areas of suspected disability. 20 U.S.C. §1414(a)(1), (b)(2)-(3); *Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1109 (9th Cir. 2016).

In this case, Parents requested an evaluation under the IDEA due to Student having demonstrated behaviors at the Private Program and at home that raised their concerns that Student may have difficulties that could affect Student's education. *Findings of Fact 30* (hereinafter referenced as "*FOF 30*"). Their primary concerns for Student were in the areas of social, behavioral, and fine motor skills. *FOF 27-31*. The DOE and Parents met to discuss Parents' concerns and determined that Student would participate in occupational therapy, physical therapy, and cognitive/psychoeducational assessments as part of Student's initial evaluation. *FOF 31*. The assessments were conducted by DOE personnel and the reports were provided to Parents prior to the eligibility meeting. Parents participated in the evaluation process and observed Student's assessments as they were being conducted. Parents did not dispute the results of the evaluation, agreed that Student was eligible for special education and related services under the IDEA, and expressed their consent for the DOE to provide such services to Student. *FOF 36*. Petitioners have not raised any specific allegations regarding impropriety of any of the assessments, other than noting that the psychoeducational assessment could have been conducted at other locations. Petitioners offer no authority or support for the position that the psychoeducational assessment results were skewed based on part of it being done at Student's private occupational therapy session.¹⁰ Nothing in the record supports that the

¹⁰ During the questioning of Parent 2, Petitioners seem to imply that Parents might have provided slightly embellished or inaccurate information to ensure that Student would be determined to be eligible for special education, however the testimony of Psychologist and the answers as explained by Parents support that the results of the assessment were accurate. See Testimony of Parent 2, Tr.V3, 263:13-264:11; Testimony of Psychologist, Tr.V3, 328:9-23.

psychoeducational results were negatively affected by the location where the observation session part of the assessment was conducted.

Petitioners have offered no evidence or support for their allegation that Student was not properly assessed and/or evaluated to determine Student's eligibility or to use that information to develop an IEP for Student. This Hearings Officer concludes that Petitioners have not met their burden of proof on this issue.

2. The IEP team appropriately discussed Student's social skills deficits in developing Student's IEP

Petitioners next allege that the IEP team did not appropriately discuss Student's social skills needs in the development of Student's IEP-12/18/2023. While Petitioners again do not specify or allege any specific failure of the DOE to address Student's social skills needs, Petitioners appear to base their argument on the LRE that was provided in Student's IEP-12/18/2023, which will be discussed later in this Decision.

Student's IEP-12/18/2023 and the discussions at the IEP meeting on December 18, 2023, revolves primarily around Student's lack of skills to socialize with other students. The letter from Private Program, the occupational therapy, physical therapy, and psychoeducational assessment all note concerns about Student being able to engage with other students at school without engaging in behaviors that could cause unfavorable results, such as taking a [REDACTED] from another student or yelling in the other students' faces. The IEP-12/18/2023 had three (3) specific goals and objectives that were designed to develop Student's social skills with other students. See P-Ex.1, p.007-008; R-Ex.21, p.068-070. The supplementary supports and aids section of the IEP-12/18/2023 provided a regulation plan and a behavior plan, as well as supports for allowing Student to talk about feelings or learning coping skills. See P-Ex.1, p.014; R-Ex.21, p.075.

Petitioners have not provided any evidence or support to meet their burden to prove that the DOE failed to appropriately discuss services and supports to address Student's social skills deficits in the IEP-12/18/2023.

3. Petitioners have not proven that the DOE's failure to appropriately discuss Student's ESY service needs rises to a denial of FAPE for Student

Petitioners argue that the IEP team failed to appropriately discuss Student's ESY needs at the December 18, 2023 meeting. While it does appear that the IEP team failed to engage in an appropriate discussion regarding ESY needs for Student, Petitioners have not demonstrated that this failure resulted in a denial of FAPE.

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

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

In this case, Student had only attended Private Program for a total of eight (8) days before the IEP meeting in December 2023. *FOF 25*. Student had not previously attended any type of educational program that could provide data for the IEP team to use to determine whether Student was eligible for ESY services. The standard for evaluating the appropriateness of an IEP is commonly known as the “snapshot rule,” as it is determined whether the IEP was designed to appropriately address a student’s unique needs based on what was objectively reasonable at the time the IEP was developed. *J.W. ex rel. J.E.W. v. Fresno Unified School Dist.*, 626 F.3d 431, 439 (9th Cir. 2010) (*citing Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)). However, the IEP team did not discuss the matter with Parents, perhaps informing Parents that after Student began attending school, they could take data after a short break before reconvening another IEP meeting to further discuss ESY. The IEP-12/18/2023 also does not reflect any such discussion about a later determination for ESY services. *See P-Ex.1, p.001-016; R-Ex.21, p.062-077*.

While it may have been a procedural violation for the IEP team not to discuss the topic of collecting data and reconvening to address Student’s possible need for ESY services, Petitioners have not proven that it has resulted in a loss of educational opportunity for Student, significant infringement on Parents’ participation in the IEP meeting for the development of the IEP-12/18/2023, or a deprivation of educational benefits to Student. This Hearings Officer concludes that the failure to discuss ESY services for Student did not result in a denial of FAPE.

4. Student was denied a FAPE because the DOE failed to properly discuss Student's LRE and transportation needs, which denied Parents the ability to meaningfully participate in the development of Student's IEP and resulted in a loss of opportunity for Student

Petitioners final three (3) arguments for procedural violations are that the DOE failed to appropriately discuss Student's LRE and transportation needs.¹¹ Based on the evidence presented in the record, this Hearings Officer concludes that Student was denied a FAPE because the DOE predetermined Student's placement and supports in Student's IEP-12/18/2023, which resulted in a significant infringement of Parents' ability to participate in the development of Student's IEP and resulted in a loss of educational opportunity for Student.

One of the underlying purposes of the IDEA is to educate disabled students in regular classrooms with peers and remove them from such a setting only when it is necessary to place them in alternative settings for them to access their education. 20 U.S.C. §1412(5)(B); *Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. by and through Holland*, 14 F.3d 1398, 1403 (9th Cir. 1994). "Special classes, separate schooling, or other removal of students with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes ***with the use of supplementary aids and services cannot be achieved satisfactorily.***" 20 U.S.C. §1412(a)(5)(A); H.A.R. §8-60-15(2). In the *Rachel H.* case, the Ninth Circuit Court of Appeals adopted a four-factor balancing test to determine an appropriate placement for a disabled student under the IDEA. The test looked at 1) the educational benefits of placement in a regular education class, 2) the non-academic benefits of placement in a regular education class, 3) the effect of the disabled student

¹¹ While this Hearings Officer notes that Petitioners also argue that the IEP team did not discuss the frequency and duration of Student's school day schedule, this Hearings Officer believes that the arguments and conclusion are inter-related to the failure of the DOE to have an appropriate LRE discussion at the IEP meeting, so this issue will not be addressed.

on the teacher and other children in the regular class, and 4) the cost of mainstreaming the disabled student. *Id.* While this test proposes a standard of review for administrative hearings and courts, many school districts have wisely adopted this test in discussing a student's LRE during an IEP meeting.

In this case, the evidence is that Student's [REDACTED] is not being able to regulate Student's emotions or get along with other peers due to some behaviors that Student displays. *See FOF 18-24.* Student does not need special education services such as occupational therapy, physical therapy, speech-language therapy, or any real cognitive accommodations to allow Student to access Student's education. *FOF 2-17.* While the IEP-12/18/2023 focuses on Student's difficulties and needs in learning to get along with others and manage behaviors in the classroom, Student's IEP-12/18/2023 places Student in a fully self-contained special education classroom. *FOF 40.* The IEP team did not discuss any possible options for Student to attend school in the general education class setting with the support of close supervision or an educational assistant/aide to ensure that Student did not misbehave or [REDACTED] from the classroom. *FOF 44.* When confronted by Parents about the possibility of Student needing a less restrictive environment than the fully self-contained special education classroom, the IEP team simply told them that this setting was all that Home School had to offer and so that is where Student would be placed. *FOF 46.* This is not appropriate under any circumstances to determine a student's educational placement under the IDEA.

Based on the facts of this case, it appears that there are some factors that could have led to the IEP team's decision that Student could be in a general education environment with supplementary supports, such as close supervision, a clearly defined behavior or regulation plan, or an educational assistant assigned to Student to prevent Student from [REDACTED]. Student's

cognitive assessment results noted that Student scored at [REDACTED] in academic areas compared to same-aged peers. *FOF 14-17*. Student can perform daily life skills similar to same-aged peers, [REDACTED]. *FOF 3-8, 10-13*. Student could gain many academic benefits through being in a general education classroom with peers, such as learning reading skills, like alphabets and sight words, and math skills, like learning numbers and counting. Non-academic benefits could be socialization with general education peers, learning appropriate behaviors by modeling by peers, and being able to interact with same-aged nondisabled peers. While it is certainly possible that Student's behaviors in this case could negatively affect the teacher and other children in the classroom, the IEP team's duty was to determine if there are supplementary aids and supports that could minimize those negative effects or whether they were too great to manage with aids and supports. However, unlike the evidence that was presented by Respondents at the Hearing,¹² none of this analysis or discussion took place at the IEP meeting about Student's LRE on December 18, 2023.

Home School's position in this matter was that their system of placing students with problem behaviors into this special education classroom for [REDACTED] to help them learn appropriate behaviors may have and may still work for the students entering their school. However, this is not what the IDEA envisions regarding IEPs and LRE placements for disabled students. An IEP should be written in a fashion to address a student's unique needs such that the same IEP may be taken to a different school and implemented in a such a way as to address the student's needs at the new school before having to draft a new IEP. *Y.B. on behalf of S.B. v.*

¹² See e.g. Testimony of Psychologist, Tr.V3, 299:14-301:9; Testimony of SPED Teacher, Tr.V3, 353:10-355:4.

Howell Township Board of Education, 4 F.4th 196, 199 (3rd Cir. 2021); 20 U.S.C.

§1414(d)(2)(C)(i)(I). The Court in *Y.B.* noted that of particular importance is that an IEP focuses on the services needed to provide a student with a FAPE, not on the brick-and-mortar location where those services are provided. *Id.*

In this case, it is clear from the IEP meeting recording that Home School created this specific IEP-12/18/2023 for Student to be enrolled in Home School based on the setting that Home School provides. *FOF 40, 43-46, 49.* Student's placement in the IEP-12/18/2023 does not take into consideration the possibilities that at other schools, general education settings with educational assistants or inclusion settings are available or that at other schools, a fully self-contained setting is reserved for severely disabled students who need assistance with more than behavioral concerns. If Student would transfer to a different school under the IEP-12/18/2023, Student could be placed in a more restrictive environment than is inappropriate for Student in that school.

Moreover, the Home School IEP team members appeared to immediately dismiss Parents' concerns or suggestions that Student attend a different school with a wider selection of students that Student would engage with and instead assumed that Student would attend Home School because it was within their school district. The entirety of the IEP meeting consisted of SPED Teacher basically telling Parents what Student would get through their offer of FAPE with very little discussion, explanation, or input from anyone besides SPED Teacher.¹³ Student's

¹³ This Hearings Officer notes that SPED Teacher made many comments during the IEP meeting about having had students with difficulties similar to Student that have been placed in this same setting because the other students had failed in the general education setting. *FOF 48.* This is the exact opposite of ensuring that the IEP is individualized for each student based on the student's needs, when the IEP team members are simply comparing the student with students they've had in the past.

services, supplementary aids, and LRE were dictated to Parents by SPED Teacher with agreement by Principal. *FOF 39-40, 44.* The team did not also discuss any opportunities that Student would have during the school day to interact with nondisabled peers. At the Hearing, SPED Teacher testified that Student's interaction with nondisabled peers would basically be limited to greeting them in the morning waiting area and greeting them during passing times at school. Even at assemblies where general education students gather, Student would be with the other special education students that do not interact with others during the assemblies. *See* Testimony of SPED Teacher, Tr.V3, 361:4-362:3, 362:11-365:9.

The IEP team did not appropriately discuss transportation or the frequency or duration of the school day for Student, which is related to the pre-determination that Student would be placed in the fully self-contained special education setting at Home School. *FOF 43-45.* During the meeting, Parents were basically told that they were to drop and pick Student up at a certain spot on Home School's campus, without discussing a possible need, due to Student's behaviors, for Student to learn to ride the school bus with or without an aide. *FOF 45.* Even if the IEP team determined that Student did not need IDEA services for transportation, it should have been discussed as an option based on Student's needs.

The end result of the failure of the IEP team to appropriately discuss, with Parent input, Student's LRE, services, and other supplementary aids and supports, was that Student did not attend Home School's fully self-contained special education classroom for the remainder of the 2023-2024 school year. Parents were also led to believe that the IEP-12/18/2023 offer that was described in the PWN-12/19/2023 was a tentative offer until Principal could gather additional information to reconvene an IEP meeting to further discuss Parent's concerns. *FOF 49.* The result of the IEP team's failure to appropriately develop Student's IEP-12/18/2023 was a denial

of FAPE to Student based upon a loss of educational opportunity and significant infringement on parental participation. Petitioners have met their burden of proof that the DOE denied Student a FAPE for not appropriately discussing Student's needs for transportation and an appropriate least restrictive environment for Student subsequently developing an IEP that did not properly address Student's needs.

B. Petitioners are entitled to tuition reimbursement for Private Program

Petitioners are seeking tuition reimbursement for Student's tuition at Private Program for the remainder of the 2023-2024 school year and the entire 2024-2025 school year as a remedy for any denials of FAPE by Respondents. 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 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 also* 20 U.S.C. §1415(b)(6), (f)(1)(A). However, parents are entitled to reimbursement for placement at a private school only if a court concludes both that the public placement violated the IDEA and the private school placement was proper under the Act. *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 247, 129 S.Ct. 2484, 2496, 174 L.Ed.2d 168 (2009). The Ninth Circuit Court of Appeals has adopted the standard put forth by the Second Circuit in *Frank G. v. Bd. of Educ.*, 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. 459 F.3d 356, 365 (2nd Cir. 2006). They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of the handicapped

child, supported by such services as are necessary to permit the child to benefit from instruction.” *C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011), *citing Frank G. v. Bd. of Educ.*, 459 F.3d at 365.

In this case, Parents enrolled Student at Home School for the remainder of the 2023-2024 school year but did not send Student to Home School. Parents reenrolled Student at Private Program, starting on [REDACTED], and hired an educational assistant to attend school with Student, as was requested by Private Program. *FOF 60-61*. Private Program is a [REDACTED] program in the State of Hawai’i and is providing services to Student. *FOF 59*. Student was still attending Private Program as of the time of the Hearing and was making progress on some of Student’s IEP-12/18/2023 goals and objectives and socializing with other students at Private Program. *FOF 62-63*. Parents have paid Five Hundred Fifty-Six Dollars and Sixty Cents (\$556.60) for February 2024 and One Thousand One Hundred Sixty-Nine Dollars and Ninety-Three Cents (\$1,169.93) for March 2024. *FOF 64*. Parents also pay the educational assistant Twenty-Seven Dollars (\$27.00) per hour for up to twenty-five (25) hours a week to attend Private Program with Student. *FOF 65*. These amounts appear to be reasonable costs associated with Parents’ decision to send Student to Private Program instead of Home School under the IEP-12/18/2023.

Petitioners have requested transportation reimbursement for the approximate [REDACTED] miles to take Student to Private Program from their home. *FOF 66*. While this Hearings Officer questions the need for Student to have transportation as a special education and/or related service under Student’s IEP, the failure of the IEP team to discuss it did result in a denial of FAPE to Student, so the request for reimbursement is reasonable. The IRS mileage reimbursement rate¹⁴

¹⁴ This is based on the IRS standard mileage rate to be used in computing the value of the

is Sixty-Seven Cents (\$0.67) per mile, so that is the rate the mileage reimbursement would be based. Petitioners are entitled to up to Fourteen Dollars and Seventy-Four Cents (\$14.74) per day for the [REDACTED] mile roundtrip to take Student to and from Private Program per day that Student attends Private Program.

Respondents argue that Petitioners should not be entitled to reimbursement due to the failure of Petitioners to notify the DOE more than ten (10) business days of placing Student in a private placement, pursuant to H.A.R. §8-60-27(d). This Hearings Officer notes that the costs of reimbursement described under the rules *may* be reduced if the parents do not give written notice prior to the removal of the student from the public school or inform the team at the IEP meeting. H.A.R. §8-60-27(d)(1)-(2). This Hearings Officer notes that Parents filed their State Complaint almost immediately after the IEP meeting on December 18, 2023 when they realized that the IEP team had decided on Student's placement prior to the start of the IEP meeting. *FOF 53*. Petitioners also filed the Complaint in this case on January 29, 2024, wherein Parents requested reimbursement for Private Program at the DOE's expense due to alleged IDEA procedural and substantive violations resulting in a denial of FAPE. *FOF 58*. Student did not begin attending Private Program until February 15, 2024, which is more than ten (10) business days after the filing of the Complaint. *FOF 60*.

Parents raised concerns about Student's placement in the IEP meeting on December 18, 2023, raising the least restrictive environment continuum and other factors during the IEP meeting discussion. The DOE was also on notice as early as Monday, December 21, 2023 that Petitioners were unhappy with the IEP-12/18/2023 and were requesting a new IEP meeting to

business use of an automobile for 2024. <https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2024-mileage-rate-increases-to-67-cents-a-mile-up-1-point-5-cents-from-2023>

discuss or review Student's IEP. The DOE also received a written Complaint in this case more than ten (10) business days prior to Student starting Private Program, which indicated the reasons why Parents were unhappy with the IEP-12/18/2023 and that they were seeking tuition reimbursement for Student. This Hearings Officer is not persuaded by Respondents' argument that Petitioners should not receive reimbursement due to the failure of Petitioners to notify the school regarding Student's placement in the Private Program and will not reduce Petitioners' award of reimbursement.

VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have proven that Respondents denied Student a FAPE by failing to discuss Student's LRE, other possible supplementary aids and supports, transportation, and frequency and duration of Student's school day while developing Student's IEP-12/18/2023. Petitioners have further proven that Private Program is an appropriate placement for Student and that Parents are entitled to tuition reimbursement to Private School for the remainder of the 2023-2024 school year. This Hearings Officer denies Petitioners' request for tuition reimbursement for the 2024-2025 school year and instead orders the IEP team to hold a meeting to develop a new IEP for Student for the 2024-2025 school year.

For the reasons stated above, IT IS HEREBY ORDERED –

1. Within 15 calendar days of this Decision, Home School and Parent(s)¹⁵ shall meet¹⁶ to determine whether a reevaluation should be done to obtain additional information

¹⁵ There is no requirement for both Parents to be present at the meeting if one is unable to make it.

¹⁶ Any meetings as required by this order may be conducted in person, virtually, or with a hybrid in-person and virtual setting, as agreed upon by the parties to expedite the process.

to develop an appropriate IEP for Student.

2. Within 30 calendar days of that meeting if it is determined that no reevaluation is needed¹⁷ or within 30 calendar days of the reevaluation being completed if one is ordered, the IEP team shall meet to discuss and develop a new IEP for Student for the 2024-2025 school year.
3. The DOE must have a district educational specialist and/or other person with knowledge of other options for [REDACTED] programs within the school district and the authority to assist in getting Student into such programs, in attendance at the IEP meeting to allow for discussion of placement of Student in a least restrictive setting that may not be offered at Home School, if the team determines that is appropriate.
4. Parents shall sign all necessary consents and/or paperwork needed for any evaluations, district exception applications, or other paperwork necessary for Student to get evaluated or to get into a program.
5. Any delays in the scheduling of meetings, provision of consents, scheduling of assessments or observations of Student, or for any other reason caused by Petitioners and/or Petitioners' advocates or representatives shall be documented by Respondents and shall extend the timelines set herein by the number of days attributable to Petitioners and/or Petitioners' advocates or representatives.
6. Petitioners shall be reimbursed for payments made to Private Program for February (\$556.60), March (\$1,169.93), April, May, June, and July 2024 for Student's attendance at Private Program upon Respondents' receipt of payment verification

¹⁷ If the team determines that no reevaluation is necessary, the IEP team meeting may be held on that same day if agreed upon by the parties.

from Private Program. Reimbursement payments shall not exceed One Thousand Two Hundred Dollars (\$1,200) per month.

7. Petitioners shall also be reimbursed for payments made to Student's educational assistant at the hourly rate of Twenty-Seven Dollars (\$27) for up to twenty-five (25) hours per week. Reimbursement shall be made after Parents provide an invoice to the DOE for the hours that Student's educational assistant worked, along with Private Program attendance records.¹⁸ Reimbursement for payments to Student's educational assistant shall not exceed Six Hundred Seventy-Five Dollars (\$675.00) per week.
8. Petitioners are responsible for providing proof of an employment contract and/or an independent contractor contract and/or a Form W-9 or Form 1099 to the DOE to receive reimbursement if required by either the DOE or tax collection agencies.
9. Petitioners shall be reimbursed for transportation costs at the rate of Sixty-Seven Cents (\$0.67) per mile for [REDACTED] miles per day that Student attends Private Program. Petitioners are responsible for providing attendance records for Student's attendance at Private Program to the DOE for transportation reimbursement.

¹⁸ This is required to demonstrate that Student's educational assistant worked and was paid by Parents to attend Private Program with Student. If, for example, Student did not attend school, the DOE is not required to reimburse Petitioners for the educational assistant's wages.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawai'i, May 7, 2024.



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