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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

In the Matter of the DEPARTMENT OF
EDUCATION, STATE OF HAWAI'I,

Petitioner(s),

vs.

Parent(s)/Guardian(s) of STUDENT,¹

Respondents.

DOE-SY2324-040

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing: July 1, 2024

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On May 29, 2024, the Department of Education, State of Hawai'i (hereinafter "Petitioners" or "DOE") submitted a Request for IDEA Impartial Due Process Hearing under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities Education Act, against the Parents/Guardians of Student. (hereinafter "Respondents").

On May 30, 2024, a Letter to Parties, Hearing Process Guidelines, Notice of Prehearing

¹ Personal identifiable information is contained in the Legend.

Conference and Subjects to Be Considered, Zoom Invitation, and Zoom User Guide were sent via email and (both certified and non-certified) U.S. Postal Service Mail to Parents, on behalf of Respondents. In the Letter to Parties and the Notice of Prehearing Conference, notice was provided to both parties that the prehearing conference in this case was scheduled for Thursday, June 6, 2024 at 9:30 a.m.

On June 3, 2024, Respondents sent a letter to the Office of Dispute Resolution indicating that they were unavailable for the June 6, 2024, prehearing conference date [REDACTED]

[REDACTED] Respondents requested that the due process hearing be set with more than fourteen (14) days notice to the family [REDACTED]

[REDACTED]

[REDACTED]

On June 6, 2024, a prehearing conference was held through a Zoom videoconference with this Hearings Officer, DES, and RT. At the prehearing conference, the Due Process Hearing (hereinafter "Hearing") was scheduled for July 1-2, 2024, from 9:00 a.m. to 4:00 p.m., to accommodate Respondents' request for fourteen (14) days notice for the hearing dates. A Prehearing Order and Order Regarding Videoconference Due Process Hearing was issued on June 6, 2024 and sent to Respondents via email, and both certified and non-certified U.S. Mail. Within the prehearing conference, Respondents were notified that they had the option of appearing in person at the Office of Dispute Resolution (hereinafter "ODR") to take part in the due process hearing or the option to participate via telephone call.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Thereafter, the Hearing continued using the Zoom video conferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by the ODR. Present in the video conference Hearing were Hearings Officer Chastity T. Imamura, DES and RT on behalf of Petitioners, as well as the assigned court reporter. Petitioners called Psychologist and Student Services Coordinator (hereinafter “SSC”) to testify, and Petitioners completed the presentation of evidence on that date. Due to the completion of evidence on July 1, 2024, the hearing date of July 2, 2024 was cancelled.

Petitioners submitted their exhibits for the Hearing by the disclosure deadline of June 24, 2024. Petitioners requested that the following exhibits submitted by Petitioners be received into evidence: Petitioners' Exhibits 1-5, 8-10, 12-13, 15-22, 24-25, 27, 29, 36-38, 46, and 77. Respondents did not submit any exhibits for the Hearing; however Respondents did send letters to the ODR on June 3, 2024 and June 12, 2024, which appear to outline their position on the issue(s) in this case. The letters were time-stamped and made a part of the ODR case record and will also be accepted as evidence on behalf of Respondents as ODR Exhibits 1-2. The above-listed exhibits submitted by Petitioners were considered for the Decision in this case and a List of Exhibits Received at Due Process Hearing is being filed along with this Decision.

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

II. JURISDICTION

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

III. ISSUES PRESENTED

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

Issue - Petitioners are requesting that this Hearings Officer find that the cognitive and academic assessments, and the observation done as part of Student's initial evaluation in November 2023 are valid and were appropriately conducted in compliance with the IDEA.

Remedy – Petitioners are requesting that this Hearings Officer find that Parents are not

entitled to an independent educational evaluation (hereinafter “IEE”).

IV. FINDINGS OF FACT

Witness Background

1. Psychologist is a school psychologist for the State of Hawai‘i Department of Education, assigned to Home School’s district. Psychologist has a bachelor’s degree in psychology and a master’s degree in counseling psychology. Testimony of Psychologist, Transcript of Proceedings, page 12, line 5, through line 13 (hereinafter referenced as “Tr.12:5-13”).
2. Psychologist’s duties include conducting assessments and working with administrators and IEP teams to develop educational programs for students. Psychologist has conducted well over one thousand (1000) assessments during Psychologist’s more than ten (10) years of employment with the State of Hawai‘i Department of Education. Testimony of Psychologist, Tr.12:22-13:2.
3. SSC is the student services coordinator and special education teacher at Home School. SSC has been the student services coordinator and special education teacher for ten (10) years and prior to that had been solely a special education teacher for nineteen (19) years. Testimony of SSC, Tr.29:14-30:13.
4. SSC has a bachelor’s degree in elementary education and a master’s degree in special education. SSC is licensed as a special education and elementary education teacher in the State of Hawai‘i and has received credentials as a highly qualified teacher for elementary school and special education. SSC has administered over twenty (20) academic assessments and has conducted over twenty (20) classroom observations as part of evaluations under the IDEA. Testimony of SSC, Tr.29:23-30:3.

Case background

5. Student is [REDACTED] years old and is enrolled in Home School, [REDACTED]
[REDACTED] Prior to August 2023, Student was determined to be eligible for special education services and had been receiving special education and related services from the DOE in prior school years. Testimony of Psychologist, Tr.13:3-7; Testimony of SSC, Tr.31:1-15; Petitioners' Exhibit 21, pages 0051 (hereinafter referenced as "P-Ex.21, p.0051").
6. In August 2023, shortly after the school year began, Parents revoked consent for Student to receive special education services from the DOE and Student was placed in the general education classes. Student continued to receive offers for additional help that was available, such as meeting with teachers or receiving tutoring in certain subjects, but no special education services pursuant to any educational program. Testimony of SSC, Tr.61:17-62:9, 63:16-64:15; P-Ex.21, p.0051.
7. In October 2023, Parents requested that Student be evaluated for special education services again. Student's teachers also noticed that Student had been struggling and could benefit from an educational program. Testimony of SSC, Tr.31:16-22, 32:24-34:3; P-Ex.4, p.0021.
8. In October and November 2023, a student-focused team (hereinafter "SFT") met to determine what assessments and information was needed to determine if Student was eligible for special education and related services under the IDEA. Parents were present at the meetings and participated as team members of the SFT. Testimony of SSC, Tr.31:23-32:3; P-Ex.9, p.0029.
9. The concern for the team was that since Student had not been receiving services,

Student may need additional help. The SFT determined that Student's evaluation would consist of a cognitive assessment, an academic assessment, and a classroom observation. Testimony of SSC, Tr.33:6-13.

10. A prior written notice (hereinafter "PWN") was developed for the SFT meetings and noted the agreed upon assessments and observation would be done to determine Student's eligibility. The PWN was provided to Parents. Testimony of SSC, Tr.32:22-33:5; P-Ex.10, p.0030-0031.

11. On November 16, 2023, Parents signed a consent form approving the cognitive and academic assessments and the classroom observation listed in the PWN. P-Ex.12, p.0033-0034.

Student's assessments/observation

12. Student's academic assessment was conducted on December [REDACTED] with SSC. SSC was able to easily establish a rapport with Student, who was cooperative and compliant during the assessment. Testimony of SSC, Tr.39:6-14; P-Ex.2, p.0007-0016.

13. SSC utilized the Wechsler Individual Achievement Test – Fourth Edition (WIAT-4) as the instrument to conduct Student's academic assessment. SSC had been trained and had experience in administering the WIAT-4, as the WIAT-4 is also an instrument that is widely recognized by professionals in SSC's field as a reliable test for academic achievement. Testimony of SSC, Tr.57:9-58:5.

14. Student listened carefully to the assessment directions and instructions and did not hesitate to ask questions when necessary. Student appeared to put forth Student's best efforts during the entire assessment. Based on Student's cooperation and

compliance with SSC and Student's efforts put into answering the questions on the assessment, the results of the academic assessment were a valid indicator of Student's current academic capabilities. Testimony of SSC, Tr.39:10-14, 61:8-16; P-Ex.2, p.0010.

15. Student scored in the [REDACTED] range in the areas of reading, math, writing, and oral language; however, Student scored in the [REDACTED] range for reading comprehension, sentence combining, receptive vocabulary, and oral word fluency. Testimony of SSC, Tr.34:21-37:10; P-Ex.2, p.0008-0014.
16. Student's scores on the academic assessment in December [REDACTED] were consistent with Student's results on a previous academic assessment from 2021, where Student struggled with the same areas of weakness. P-Ex.2, p.0015.
17. SSC was able to assess implications for learning for Student and make recommendations for academic services and supports for Student to make progress based on the WIAT-4 results. These implications for learning and recommendations for services and supports were included in the academic assessment report prepared by SSC. Testimony of SSC, Tr.37:11-39:5; P-Ex.2, p.0014-0016.
18. Student's classroom observation was conducted on December [REDACTED] by SSC. SSC observed that Student was able to work with normal classroom distractions and sat quietly without any significant behaviors that would impact Student's academic progress. P-Ex.3, p.0019.
19. Student was quiet and did not appear to take part in conversations in class, volunteer answers when the class was asked to volunteer, or ask the teacher any follow-up or clarification questions after instructions were given. SSC recommended that Student

be provided the accommodation to check with Student for understanding of the task that Student is required to do to ensure that Student understands the assignment. P-Ex.3, p.0019.

20. SSC's academic assessment and observation report was provided to the SFT and Parents and was reviewed at the SFT meeting in January 2024. Testimony of SSC, Tr.43:8-44:1; P-Ex.37, p.0142-0151.
21. Student's cognitive assessment was conducted with Student on January [REDACTED] at Home School by Psychologist. Student was familiar with Psychologist, having completed previous assessments with Psychologist in the past. Testimony of Psychologist, Tr.13:4-13; P-Ex.1, p.0002.
22. Psychologist used the Reynolds Intellectual Assessment Scales – Second Edition (RIAS-2) as the instrument to conduct Student's cognitive assessment. Psychologist had been trained and had experience in administering the RIAS-2, as the RIAS-2 is an instrument that is widely recognized by other professionals in Psychologist's field as a reliable test for cognitive abilities. Testimony of Psychologist, Tr.13:14-14:4, 22:12-23:7.
23. During the cognitive assessment, Student was quiet and compliant. Student responded to all questions from Psychologist and appeared to put forth Student's best efforts in completing the assignments in the assessments. Based on Student's efforts in completing the assessment, Student's cognitive assessment results appear to be valid. Testimony of Psychologist, Tr.19:21-20:4, 23:8-23; P-Ex.1, p.0002.
24. With the exception of three (3) subtests, Student scored within the [REDACTED] [REDACTED] range for the RIAS-2. Student's primary difficulties were in the areas of

- [REDACTED]. Testimony of Psychologist, Tr.23:24-24:2; P-Ex.1, p.0001-0004.
25. The results of Student's cognitive assessment were consistent with the results of Student's academic assessment. *Compare* P-Ex.1, p.0001-0005, and P-Ex.2, p.0007-0016.
26. Psychologist was also able to develop implications for learning and recommendations for services and supports to help Student make progress in school. Testimony of Psychologist, Tr.17:23-19:8; P-Ex.1, p.0004-0005.
27. Psychologist presented the results of Student's cognitive assessment to Parents at the eligibility meeting and provided Parents with a copy of Psychologist's cognitive assessment report. Testimony of Psychologist, Tr.21:8-17.

Post-evaluation background

28. After the assessments and observation were completed, the SFT team met to review the evaluation materials and determine Student's eligibility for special education and related services. Testimony of Psychologist, Tr.20:5-8; Testimony of SSC, Tr.43:8-16.
29. The team met on January 17, 2024 via telephone conference. Present at the meeting were Psychologist, SSC, Parents, and other team members. Testimony of Psychologist, Tr.20:9-21:2; Testimony of SSC, Tr.42:15-43:7; P-Ex.15, p.0039.
30. The team reviewed the categories for eligibility under the IDEA but only thoroughly discussed Student's eligibility under the categories that were relevant to Student, including [REDACTED]. Testimony of SSC, Tr.44:7-11, 58:21-59:20.

31. Based on the information that the team had from the evaluation of Student, the team determined that Student best fit under the category of [REDACTED]. A worksheet noting the requirements under that category was completed and the results showed that Student was eligible under the category of [REDACTED]. Testimony of Psychologist, Tr.21:3-7; Testimony of SSC, Tr.44:12-49:21; P-Ex.18, p.0042-0046.
32. At the meeting, Parents agreed with the team that Student needed special education services and should be found eligible under the IDEA, but Parents disagreed with the category of [REDACTED]. Parents did not, however, have any suggestions or requests that Student be found eligible under a different category. Testimony of Psychologist, Tr.21:18-22:4; Testimony of SSC, Tr.49:1-6, 58:6-20, 60:12-20.
33. On January 22, 2024, Parents signed a consent form for the DOE to provide special education services to Student. P-Ex.24, p.0060.
34. On February 2, 2024, the IEP team met with Parents to develop Student's IEP. At the meeting, Parents informed Home School that Parents disagreed with the assessments for Student's evaluation and requested an IEE. Testimony of SSC, Tr.53:8-55:4; P-Ex.46, P.0164.
35. Later that afternoon, Parent called Home School and offered to 'renegotiate' the services to be provided in Student's IEP in lieu of conducting an IEE. Testimony of SSC, Tr.54:2-55:4; P-Ex.38, p.0164; P-Ex.77, p.0418.
36. Principal sent multiple letters to Parents to seek clarification on what assessment(s) Parents were challenging in their request for the IEE, or what other reasons they had

to request the IEE. Home School did not receive a response from Parents. Testimony of SSC, Tr.55:5-58:12.

37. Multiple attempts were made to schedule an IEP review meeting to discuss Parent's offer to renegotiate Student's services in lieu of an IEE, however Home School was not able to meet with Parents until May 9, 2024. Testimony of SSC, Tr.55:5-58:12; P-Ex.46, p.0226-0227.

38. Prior to this time, Parents had informed the school that Parents would not accept any documents via certified or U.S. Mail or via email communication. Testimony of SSC, Tr.53:1-7.

39. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Testimony of SSC, Tr.51:21-52:20.

40. After having difficulties with communicating with Parents to schedule an IEP meeting to develop Student's IEP, Home School held an IEP meeting with Parents on May 9, 2024. Testimony of SSC, Tr.56:13-17; P-Ex.29, p.95.

41. At the May 9, 2024 IEP review meeting, Parent again requested an IEE from Home School. Testimony of SSC, Tr.56:18-20.

42. On May 29, 2024, the instant Complaint was filed wherein the DOE requested that Parents' request for the IEE be denied. Testimony of SSC, Tr.57:5-7.

43. On June 3, 2024, Parents sent the ODR a letter dated June 2, 2024, indicating that their unhappiness with the IEP offer provided by the DOE and alleging that Home School [REDACTED] not

providing Parents with the IEP offer that they would like for Student. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See ODR Exhibit 1, p.1-3.

44. On [REDACTED]

[REDACTED]

Testimony of SSC, Tr.61:17-22.

V. CONCLUSIONS OF LAW

A. 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)). H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39. 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 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).

A parent has a right to an independent educational evaluation of their child if they disagree with the evaluation that was completed by the school district. H.A.R. §8-60-57; 20 U.S.C. §1415(b)(1) and (d)(2)(A); 34 C.F.R. §300.502. Once an IEE is requested, the school district must either file a due process complaint or provide the parent with an IEE at public expense. *Id.*

B. Validity of the Assessments Conducted by Petitioners

Petitioners argue that the cognitive and academic assessments completed in January [REDACTED] by Psychologist and December [REDACTED] by SSC, respectively, and the classroom observation conducted by SSC in December 2023 for Student's initial evaluation were appropriate. Hawaii Administrative Rules Section 8-60-36(c) provide the parameters by which assessments for students undergoing an evaluation or reevaluation for special education services under the IDEA must be conducted. H.A.R. §8-60-37(b)-(c); 34 C.F.R. §300.304(b)-(c). The record here demonstrates that the cognitive and academic assessments, as well as the classroom observation comply with the recommended requirements under the IDEA.

As an initial matter, Student had previously been deemed eligible for special education and related services under the IDEA but Parents had revoked their consent for Home School to provide special education services to Student in August [REDACTED]. *FOF 5-6.* The SFT meeting was done at Parents' request and because Student's teachers had also noticed that Student was struggling without the services that Student had previously been receiving. *FOF 7.* At the SFT meeting in October and November 2023, the team, including Parents, determined that for Student's new initial evaluation, a cognitive and academic assessment were necessary to see how Student was doing in light of not having received services for several months. *FOF 8-9.* A

classroom observation was also agreed upon by the SFT. *FOF 10*. Parents signed the consent form for Home School to conduct the assessments and classroom observation. *FOF 11*. After the evaluation was done, the team determined again that Student was eligible for special education and related services and Parents agreed with the decision. *FOF 31-32*. Parents disagreed with the category that the rest of the team had agreed upon based on the criteria laid out under the IDEA, but again signed consent for Home School to provide special education services. *FOF 32-33*.

The academic and cognitive assessments conducted with Student utilized reliable instruments that the assessors were familiar with and had training and experience in administering. *FOF 13, 22*. Student was compliant in both assessments and appeared to put forth Student's best efforts to complete the test satisfactorily, making the results reliable. *FOF 12, 14, 23*. Student's assessment scores were consistent with each other and with previous assessments conducted with Student in prior evaluations. *FOF 16, 25*. Both assessors were able to derive implications for Student's learning from the results of the assessments and were able to make recommendations for services and supports for Student to make academic progress in the classroom. *FOF 17, 26*. Petitioners have proven that the assessments conducted in December 2023 and January 2024 for Student's initial evaluation were appropriate and valid indicators of Student's strengths and needs, sufficient to allow the IEP team to both determine Student's eligibility for IDEA services and to create an appropriate IEP for Student.

Parents have not challenged the validity of any of the assessments or the reevaluation completed for Student. *See e.g., FOF 34-36, 41*. [REDACTED]

[REDACTED]

[REDACTED].² Testimony of SSC, Tr.59:21-61:1.

C. Parents are not entitled to an independent educational evaluation at public expense

Under the IDEA, parents are entitled to an IEE when they disagree with a school district's evaluation done for their child with a disability. This IEE means "an evaluation conducted by a qualified examiner who is not employed by the department;" and, if so warranted, the IEE would be at "public expense, meaning that the department either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent." H.A.R. §8-60-57(a)(3); 34 C.F.R. §300.502(a)(3). As part of the rules provide, the school district is to provide parents with the information on where to obtain an IEE and for the department's criteria for IEEs. H.A.R. §8-60-57(a)(2); 34 C.F.R. §300.502(a)(2). Even if the DOE's assessments are determined to be valid, Parents in this case are still entitled to obtain an IEE, however, not at public expense. H.A.R. §8-60-57(a)(4); 34 C.F.R. §300.502(a)(4).

Here, Petitioners have proven that the assessments and observation conducted as part of Student's evaluation were valid and conducted in compliance with the IDEA. Parents have not set forth any problems, concerns, or inaccuracies regarding any of the assessments conducted for Student's reevaluation. Further, Parents have not obtained an IEE to which they could point to in order to dispute the assessments performed by Petitioners. This Hearings Officer concludes that Petitioners have proven that Parents are not entitled to an IEE at public expense. If an IEE is obtained for Student, it would be a cost to Parents and not the DOE.

² [REDACTED]

[REDACTED] See e.g. ODR Exhibit 1.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that the cognitive and academic assessments and classroom observation conducted by Petitioners to be appropriate for the determination of Student's eligibility for special education and related services under the IDEA, as well as the development of Student's IEP. Parents are not entitled to an independent educational evaluation at public expense.

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, July 12, 2024.



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