



2023 SEP 27 PM 4:39 **VP**

OFFICE OF DISPUTE RESOLUTION
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAII

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

Petitioners,

vs.

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

Respondents.

DOE-SY2223-041

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
July 19, 24, 2023 and
August 8, 2023

Hearings Officer: Charlene S.P.T. Murata

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

I. JURISDICTION

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

¹ Personal identifiable information is provided in the Legend.

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

II. INTRODUCTION

On May 30, 2023, the Department of Education, State of Hawaii and Keith T. Hayashi, Superintendent of the Hawaii Public Schools (“Respondents” or “DOE”) received a Complaint and Resolution Proposal, dated May 29, 2023, from Student, by and through Student’s Parent (collectively “Petitioners”).

On June 7, 2023, Respondents filed Department of Education’s Response to Petitioners’ Complaint and Resolution Proposal.

On June 20, 2023, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for July 3, 2023.

On July 3, 2023, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners, and Deputy Attorney General Catherine D. Piazza (“Ms. Piazza”) appearing on behalf of Respondents. During the prehearing conference, the parties agreed to have the due process hearing on July 19, 21, 24, 2023 and August 8, 2023.

On July 5, 2023, Respondents filed Department of Education, State of Hawaii’s Motion to Dismiss Complaint; Memorandum in Support of Motion; Declaration of Catherine D. Piazza; Exhibits “A-D” (“Motion to Dismiss”). On July 7, 2023, Petitioners filed Memorandum in Opposition to Respondent’s Motion to Dismiss; Declaration of [Parent]. On July 10, 2023, Respondents filed Department of Education, State of Hawaii’s Reply Memorandum in Support of Motion to Dismiss Complaint filed July 5, 2023. On July 17, 2023, an Amended Order Granting in Part and Denying in Part Department of Education, State of Hawaii’s Motion to

Dismiss Complaint; Memorandum in Support of Motion; Declaration of Catherine D. Piazza; Exhibits “A-D”, filed July 5, 2023, was issued to the parties (“7/17/2023 Order”). The 7/17/2023 Order dismissed portions of Petitioners’ Complaint as being beyond the statute of limitations (“SOL”) and limited the scope of Petitioners’ Complaint. As a result, instead of the five (5) year period stated in the Complaint, the instant due process hearing addresses the following Individualized Education Programs (“IEP”): October 6, 2021; December 1, 2021; May 6, 2022; February 9, 2023; and May 23, 2023. The 7/17/2023 Order also found that IEPs dated July 10, 2019; June 9, 2020; and December 8, 2020 were within the scope of Petitioners’ Complaint with respect to allegations regarding “prevocational skills needs” only.

On July 6, 2023, a Prehearing Order was issued to the parties, setting forth the issues and procedures for the due process hearing, and deadlines for submission of witness and exhibit lists; exhibits; and witness email addresses. Both parties timely submitted their witness list, exhibit list, and exhibits.

The due process hearing took place on July 19 and 24, 2023 and August 8, 2023 using Zoom, a video conferencing platform². All participants in the due process hearing appeared remotely via video and audio. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Ms. Piazza. Parent was present on behalf of Petitioners, and District Educational Specialist (“DES”) and Resource Teacher were present on behalf of Respondents.

² July 21, 2023 was taken off calendar at the request of Mr. Peck as Mr. Peck was ill. August 9, 2023 was added as a hearing date, but was not necessary as the due process hearing was completed on August 8, 2023. See Order Striking Due Process Hearing Date issued on July 20, 2023, and Order Adding Due Process Hearing Date issued on July 25, 2023.

Petitioners called Parent as their only witness during the due process hearing.

Respondents called the following witnesses during the due process hearing: Student Services Coordinator-1 (“SSC-1”), School Counselor, Transition Coordinator, Care Coordinator, Special Education Teacher (“SPED Teacher”). Petitioners did not call any rebuttal witnesses.

The following exhibits were admitted into evidence without objections: Petitioners’ Exhibits 1-3 (pages 1-233, “234-2xx”³, 05/23/2023 Audio File, 02/09/2023 Audio File); and Respondents’ Exhibits 13, 15, 18, 23, 26, 27, 32, 34-36, 39-43, 46-50, 53, 54, 56, 63, 64, 66, 68, 70, 97, 103, 112, 114, 117, 121, 123, 127, 128, 132, 134, 135, 146, 148, 157, 158, 162, 170, 171, 174, 178, 185-188, 194. Tr. Vol. III, 210:19-213:4, 356:15-358:14⁴.

On August 9, 2023, Respondents submitted a request to the undersigned Hearings Officer to extend the 45-day period in which a decision is due under HAR § 8-60-69, from August 13, 2023 to September 27, 2023, so that transcripts can be prepared and closing briefs can be filed. An Order Granting Respondents’ Request to Extend the 45-Day Decision Deadline from August 13, 2023 to September 27, 2023; Declaration of Catherine D. Piazza, filed August 9, 2023 was issued on August 10, 2023.

On September 8, 2023, the parties timely submitted their closing briefs⁵.

³ Exhibit 3, Pages “234-2xx” consists of ten (10) pages.

⁴ Transcript for due process hearing dated July 19, 2023 is designated “Tr. Vol. I.” Transcript for due process hearing dated July 24, 2023 is designated “Tr. Vol. II.” Transcript for due process hearing dated August 8, 2023 is designated “Tr. Vol. III.”

⁵ Ms. Piazza represented Respondents during the due process hearing. Respondents’ closing brief was submitted by Deputy Attorney General Carter K. Siu. It is the undersigned Hearings Officer’s understanding that Ms. Piazza is no longer with the Department of the Attorney General.

Having reviewed and considered all 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.

III. ISSUE PRESENTED

In their May 30, 2023 Complaint, Petitioners allege procedural and substantive violations of the IDEA. Specifically, Petitioners allege that the DOE denied Student a free and appropriate public education (“FAPE”). Petitioners raise the following issues:

Issue 1 – Whether Student’s IEP of 5/23/2023, and/or for the prior 5 years⁶, was sufficient to address Student’s academic, daily-living/access to the community and/or prevocational skills needs, and/or whether the discussion of these areas of concern were sufficient during the 5/23/2023 IEP meeting and the prior 5 years of meetings.

Issue 2 – Whether prior to the 5/23/2023 IEP meeting, and/or the prior 5 years of IEP meetings, the DOE had sufficiently sought information on Student’s academic, daily-living/access to the community and/or prevocational skills needs sufficient to draft an offer of FAPE.

Petitioners request the following remedies:

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

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

Remedy 3 – Find that the DOE has violated Student’s rights and order that an IEP meeting be held to address these violations;

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

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

⁶ The IEP dates are October 6, 2021; December 1, 2021; May 6, 2022; February 9, 2023; and May 23, 2023. Also, IEPs dated July 10, 2019; June 9, 2020; and December 8, 2020 with respect to allegations regarding “prevocational skills needs” only.

IV. FINDINGS OF FACT

Witnesses and Individuals Involved in Student's Education

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Parent, Tr. Vol. I, 19:7-20:5.
2. SSC-1 is a student services coordinator at Public [REDACTED] School. SSC-1 has been with Public [REDACTED] School for approximately twenty (20) years. SSC-1 assisted with Student's eligibility and evaluation when Student was at Public [REDACTED] School. The last time SSC-1 assisted with Student's IEP was in [REDACTED] SSC-1, Tr. Vol. II, 149:6-150:3, 169:1-7.
3. School Counselor worked for DOE for approximately thirty-four (34) years before retiring. [REDACTED]
[REDACTED] School Counselor was Student's counselor for the [REDACTED] school year. School Counselor, Tr. Vol. II, 172:18-173:16.
4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Care Coordinator, Tr. Vol. III, 242:6-243:5.

5. Transition Coordinator is a special education teacher, IEP writer, and transition coordinator at Public [REDACTED] School. Transition Coordinator has been with DOE for nineteen (19) years and has been in this position for ten (10) years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Transition Coordinator, Tr. Vol. III, 216:3-21, 227:12-17.

6. Care Coordinator is a special education teacher at Public [REDACTED] School. Care Coordinator has been a special education teacher for approximately twenty-three (23) years. Care Coordinator is Student's care coordinator in charge of transition, and Student's advisory class teacher. As a care coordinator in charge of transition, Care Coordinator makes sure that supports and services in an IEP are being implemented and transition needs are being met. As an Advisory class teacher, Care Coordinator teaches a small group of students social-emotional lessons, and Care Coordinator makes sure that these students feel comfortable on campus. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Care Coordinator, Tr. Vol. III, 231:18-234:6, 276:11-15; DOE Ex. 157 at 558.

7. SPED Teacher works for DOE at Public [REDACTED] School. SPED Teacher organizes meetings, collects data (such as functional data) from teachers, and writes IEPs for

students based on the information gathered. SPED Teacher wrote Student's draft IEPs. Although Student's IEPs for [REDACTED] to [REDACTED] grade indicate that SPED Teacher was Student's care coordinator, Student's actual care coordinator was Care Coordinator. SPED Teacher, Tr. Vol. III, 286:7-25, 340:9-341:2; DOE Ex. 53 at 189.

Student

8. Student is currently [REDACTED] years old. Pet. Ex. 1 at 1.
9. Student has a medical diagnosis of [REDACTED]
[REDACTED] Pet. Ex. 1 at 124;
Pet. Ex. 3 at 152, 156. Student is eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of [REDACTED] Pet. Ex. 1 at 43.
10. Student has a behavioral support plan that targets Student's inattentive behaviors (i.e., daydreaming, looking around/staring and delay in re-engaging in task); [REDACTED]
[REDACTED]
[REDACTED] eye blinking); intrusive thoughts; social communication skills; and organization skills. Pet. Ex. 1 at 123, DOE Ex. 132 at 495-496; Parent, Tr. Vol. II, 59:24-60:16. [REDACTED]
[REDACTED]
[REDACTED] Pet. Ex. 3 at 164. [REDACTED]
[REDACTED]
[REDACTED] Pet. Ex. 3 at 150-151.
11. When Student was about [REDACTED] years old, Student was found eligible for an IEP at a public [REDACTED] school. When Student was in the [REDACTED] grade, Student was transitioned

to a Section 504 Plan. Student then transferred to Private School where Student attended Private School for [REDACTED] Private School later informed Parent that Private School could not meet all of Student's needs and recommended that Student transfer back to a DOE school. Student returned to a DOE school for the [REDACTED] grade. Parent, Tr. Vol. I, 15:8-16:12.

12. Student is expected to graduate from high school in [REDACTED]

2018-2019 School Year

13. During the 2018-2019 school year, Student was in the [REDACTED] grade, attending Public [REDACTED] School. Pet. Ex. 1 at 125.
14. When Student started [REDACTED] grade at Public [REDACTED] School, the school implemented a Section 504 Plan dated November 14, 2016 for Student because that was the most current plan available. Pet. Ex. 1 at 125-126.
15. On September 11, 2018, Public [REDACTED] School developed a Section 504 Plan for Student ("2018 Section 504 Plan"). Pet. Ex. 1 at 123; DOE Ex. 27 at 059-060.
16. On September 18, 2018, DOE proposed that an initial evaluation under the IDEA be conducted to determine if Student qualified for special education and related services because Student continued to struggle in some classes, even though Student had a Section 504 Plan and was receiving numerous accommodations and medications. Pet. Ex. 1 at 122.
17. In June of 2019, the IEP team determined that Student was eligible for special education and related services under the eligibility category of [REDACTED]. The IEP team's determination was based on a speech-language assessment; audiology assessment; Smarter Balanced assessment; report cards; reports from general education

- teachers; and input from the IEP team, which included Parent. The IEP team determined that Student needed special education services to address “reading comprehension and fluency, socialization (working in groups), attending in the classroom, receiving instruction, following directions, concentration and focus, making inferences, generalizing, and self-advocacy.” DOE Ex. 15 at 036-038; DOE Ex. 18 at 043-044.
18. On July 10, 2019, an IEP meeting was held, resulting in an IEP dated July 10, 2019 (“7/10/2019 IEP”). Pet. Ex. 1 at 110-121.
19. At the time of the 7/10/2019 IEP meeting, Student was [REDACTED] years old.
20. Present at the 7/10/2019 IEP meeting were Parent, a vice principal of Public [REDACTED] School, SSC-1, a general education teacher, a speech/language pathologist, and a special education teacher. Pet. Ex. 1 at 121.
21. During the 7/10/2019 IEP meeting, Parent shared concerns about Student’s ability to maintain attention and concentration; motivation; organizational skills and inability to ask for help; lack of executive functioning skills; need for applied behavior analysis (“ABA”) strategies; help in understanding social cues; and need to increase fluency in recalling the definition of words. Pet. Ex. 1 at 111. Parent did not raise any concerns regarding Student’s [REDACTED] needs during the 7/10/2019 IEP meeting.
22. Although Parent did not specifically raise any concerns regarding Student’s [REDACTED] character traits such as organizational skills; ability to ask for help; and executive functioning are skills necessary to [REDACTED] SSC-1, Tr. Vol. II, 154:19-155:4.

23. An IEP team generally would not talk about transitional services when a student is in the [REDACTED] grade because the focus at that point is the student's education. Discussions about transition usually starts in the [REDACTED] grade. SSC-1, Tr. Vol. II, 156:4-14.
24. [REDACTED]
[REDACTED] Pet. Ex. 1 at 114.
25. The 7/10/2019 IEP contains a section (Box 13) that states: "Beginning at age [REDACTED] years, or younger if appropriate, statement of transition service needs focusing on the courses of study needed to reach post school goal(s)." Within the section is the following comment: "Not applicable at this time." Pet. Ex. 1 at 114.
26. Student's 7/10/2019 IEP also contains a section (Box 14) that states: "Beginning at age [REDACTED] years, or younger if appropriate, a statement of needed transition services and, if appropriate, a statement of interagency responsibilities or any needed linkages." There is nothing written in this section. Pet. Ex. 1 at 114.
27. Student's 7/10/2019 IEP provides Student with special education and numerous Supplementary Aids and Services, Program Modifications and Supports for School Personnel ("Supplementary Aids and Services"), such as Check for understanding; Use of graphic organizers; Visual timer to support time management; and thirty (30) minutes per week of school counseling that focuses on social cues, social language, recognizing emotions, and making and keeping friends. Pet. Ex. 1 at 118-119.
28. The 7/10/2019 IEP was based on a STAR Reading Assessment (6/18/2019); a speech-language assessment; and an [REDACTED] assessment. Pet. Ex. 1 at 111-112.
29. Student's least restrictive environment statement (Box 23) in the 7/10/2019 IEP states that "[Student] will receive specialized instruction for English Language Arts, Math,

Social Studies, and Science in the general education setting. [Student] will participate with [Student's] general education peers during Wheel, Electives, and any academic and non-academic activities in the general education setting. [Student] will not participate with [Student's] general education peers during [Student's] elective I Study Skills class." Pet. Ex. 1 at 120.

30. According to the 7/10/2019 IEP, the IEP Annual Review Date is July 10, 2020. Pet. Ex. 1 at 110.

2019-2020 School Year

31. During the 2019-2020 school year, Student was in the [redacted] grade, attending Public [redacted] School. Pet. Ex. 1 at 101.
32. On [redacted], Student turned [redacted] years old.
33. On June 9, 2020, an IEP meeting was held, resulting in an IEP dated June 9, 2020 ("6/09/2020 IEP"). DOE Ex. 35 at 084-096; DOE Ex. 34 at 082-083.
34. Present at the 6/09/2020 IEP meeting were Parent, Student Services Coordinator-2 ("SSC-2") from Public [redacted] School, a vice principal of Public [redacted] School, a general education teacher, and SSC-1. DOE Ex. 35 at 096.
35. During the 6/09/2020 IEP meeting, the IEP team discussed what courses of study Student would need [redacted] (Boxes 11, 13 of the 6/09/2020 IEP). [redacted]
[redacted]
[redacted]
[redacted]
[redacted] DOE Ex. 35 at 085, 88.

36. The 6/09/2020 IEP contains the same Parent Concerns as the 7/10/2019 IEP, except that the 6/09/2020 IEP elaborates on why it was important to increase Student's fluency in recalling definition of words. DOE Ex. 35 at 085.
37. The 6/09/2020 IEP contains similar goals and objectives as the 7/10/2019 IEP, except that the writing goal was changed slightly and the 6/09/2020 IEP has a goal targeting [REDACTED] Pet. Ex. 1 at 116; DOE Ex. 35 at 090, 092.
38. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] DOE Ex. 35 at 092; SSC-I, Tr. Vol. II, 157:5-22.
39. The 6/09/2020 IEP will continue to provide special education and the same Supplementary Aids and Services to Student as the 7/10/2019 IEP, with a slight change in the frequency. DOE Ex. 35 at 093-094.
40. According to the 6/09/2020 IEP, once Student enters [REDACTED] school, Student will be with general education peers for all classes and activities, including recess, lunch, field trips, and all other academic and non-academic activities. DOE Ex. 35 at 095.

41. The 6/09/2020 IEP relies on the same assessments as those used for the 7/10/2019 IEP. The IEP team also considered information from Student's current IEP, teacher reports, current report cards, Parent input, and team input. DOE Ex. 36 at 097.
42. According to the 6/09/2020 IEP, the IEP Annual Review Date is June 9, 2021.

2020-2021 School Year

43. During the 2020-2021 school year, Student was in the [REDACTED] grade, attending Public [REDACTED] School. Pet. Ex. 1 at 83.
44. On December 5, 2020, Student took an iReady diagnostic test in reading and placed in the [REDACTED] level for Vocabulary; [REDACTED] level in Comprehension: Literature; [REDACTED] level in Comprehension: Informational Text; and [REDACTED] level overall. Pet. Ex. 1 at 84; DOE Ex. 63 at 244-245.
45. On December 8, 2020, an IEP meeting was held, resulting in an IEP dated December 8, 2020 ("12/08/2020 IEP"). Pet. Ex. 1 at 83-98; DOE Ex. at 102-117.
46. Present at the 12/08/2020 IEP meeting were Parent, three (3) general education teachers, two (2) special education teachers, a counselor, an assistant principal of Public [REDACTED] School, SPED Teacher, Care Coordinator, and Student's school-based behavioral health specialist, Behavioral Health Specialist ("BHS"). Pet. Ex. 1 at 98; DOE Ex. 97 at 358.
47. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Pet. Ex. 1 at 84-85.

48. All students at Public [REDACTED] School take Advisory class. Advisory class provides students with opportunities to explore who they are and what their interests are. During Advisory class, students are given interest surveys; are engaged in different activities to explore their interests; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Care Coordinator, Tr. Vol. III, 235:17-236:25, 243:6-24, 253:20-255:18.

49. During the 12/08/2020 IEP meeting, Parent shared concerns regarding Student's lack of organizational skills; lack of self-advocacy skills; the quality of the work that Student was doing; and the length of time it took Student to complete a task. Pet. Ex. 1 at 86; Parent, Tr. Vol. II, 93:3-24.

50. During the 12/08/2020 IEP meeting, the IEP team discussed Student's transition services needs, including the courses of study (Box 13) and interagency responsibilities or any needed linkages (Box 14). The 12/08/2020 IEP team discussed the courses Student was currently taking in the [REDACTED] grade, including Advisory and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The IEP team

determined that Student would need the following transition services and the individuals who would provide these transition services: teachers will continue to provide instruction in Reading, Writing, Math, Science, Social Studies, and Study Skills for

[REDACTED]

Student would also be provided instruction in social skills in the school [REDACTED] settings; [REDACTED]

[REDACTED]

[REDACTED] Pet. Ex. 1 at 87-88.

51. "ASVAB" is an assessment that is used for [REDACTED] and as an interest survey that provides information on what the test taker might be good at based on their interests. SPED Teacher, Tr. Vol. III, 296:22-297:4, 338:21-339:1; Care Coordinator, Tr. Vol. III, 280:15-281:1.

52. The 12/08/2020 IEP includes the following goals and objectives that could address prevocational skills needs: "effective verbal and non-verbal communication skills to increase [Student's] self-advocacy & ability to navigate social situations" and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Pet. Ex. 1 at 89,

95,

53. The 12/08/2020 IEP will provide Student with following Supplementary Aids and Services: (1) Checking for Understanding; (2) Preferential Seating to Minimize Distraction and Help Focus; (3) Structured Classroom Environment; (4) "Academic Vocabulary Lids per Content Area for Each Quarter;" (5) Step by Step Directions; (6) Use of Graphic Organizers; (7) Option to Type Classwork/Assignments/Projects/Homework/Assessments; (8) Preferred Peer Groupings for Group Activities; (9) Visual Timer to Support Time Management; and (10) Weekly Progress Emails. Pet. Ex. 1 at 96. Checking for Understanding; Step by Step Direction; Use of Graphic Organizers; and Visual Timer to Support Time Management are Supplementary Aids and Services that could address Student's [REDACTED] needs.
54. A Prior Written Notice of Department Action, dated December 9, 2020 ("12/09/2020 PWN"), was issued to summarize the 12/08/2020 IEP meeting and DOE's proposed offer of FAPE. Pet. Ex. 1 at 99-100; DOE Ex. 40 at 118-119. According to the 12/09/2020 PWN, "[t]ransition was addressed and updated at the meeting."
55. The proposed actions made by the IEP team during the 12/08/2020 IEP meeting were based on Student's current IEP; progress reports; assessment data; Present Levels of Academic Performance; Parent input; Teacher input; Student input; and functional data. Pet. Ex. 1 at 100.
56. According to the 12/08/2020 IEP, the IEP Annual Review Date is December 8, 2021, and Reevaluation Date is June 12, 2022. Pet. Ex. 1 at 83-98; DOE Ex. at 102-117.

2021-2022 School Year

57. During the 2021-2022 school year, Student was in the [REDACTED] grade.

58. On August 27, 2021, Student took an iReady diagnostic test in reading and placed in the [REDACTED] level for Vocabulary; [REDACTED] level for Comprehension in Literature and Informational Text; and [REDACTED] level overall. DOE Ex. 64 at 246-260.
59. On September 14, 2021, SPED Teacher emailed Parent regarding a "Consent Meeting" for October 27, 2021 and an annual IEP meeting for December 1, 2021. SPED Teacher asked Parent if Parent was agreeable to canceling the Consent Meeting and rescheduling it to after Student's June 2022 reevaluation was completed so that the IEP team could see how Student did throughout the school year. SPED Teacher also asked to keep the 12/01/2021 IEP meeting. Parent agreed to canceling the Consent Meeting and keeping the 12/01/2021 IEP meeting. DOE Ex. 97 at 357.
60. On October 4, 2021, Parent asked SPED Teacher if Public [REDACTED] School had received a letter from Pediatrician. DOE Ex. 97 at 359. On October 5, 2021, SPED Teacher informed Parent that SPED Teacher did not receive a letter from Pediatrician. DOE Ex. 97 at 359-360. [REDACTED] DOE Ex. 117 at 434-436.
61. On October 6, 2021, a revision IEP meeting was held to address concerns Parent had regarding Student's accommodations and modifications and issues relating to Study Hall, resulting in an IEP dated October 6, 2021 ("10/06/2021 IEP"). Pet. Ex. 1 at 64-80, 81-82; DOE Ex. 42 at 122-138.
62. Present at the 10/06/2021 IEP meeting were Parent, two (2) special education teachers, SSC-2, SPED Teacher, a general education teacher, a [REDACTED] teacher, a counselor, Assistant Principal-1, a [REDACTED] teacher, Care Coordinator, and BHS. Pet. Ex. 1 at 80.

63. The purpose of the 10/06/2021 IEP meeting was to revise Student's 12/08/2020 IEP. Student's 10/06/2021 IEP is similar to Student's 12/08/2020 IEP, except that the IEP team updated the "Parent Input" section to include Parent's update on Student's [REDACTED] concerns on focusing and keeping up with homework assignments; "workload overload;" and Parent's request that counseling address finding a solution to Student's organizational skills, time management, and self-advocacy needs. The Parent Input section also states, [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] In order to achieve this, [Student] needs to have the basic skill set of organization, time management, completing task on time, asking for clarification, meeting standards, etc." Pet. Ex. 1 at 67. The IEP team also updated Student's goals and objectives. See Pet. Ex. 1 at 70, 89. Additional supplementary aids and services were included in the 10/06/2021 IEP, and existing supplementary aids and services were further clarified or defined in the 10/06/2021 IEP. Examples of additional supplementary aids and services are: "Chunking of Assignments/Larger Tasks Into Smaller Manageable Parts" and "Please Provide [Student] with Hard Copies of Work." Examples of supplementary aids and services being further clarified or defined are: in the 12/08/2020 IEP, a service provided was "Checking for Understanding," while in the 10/06/2021 IEP, the service is further defined as "Frequent Checks for Understanding in the Form of Open Ended Questions to Demonstrate Comprehension;" and "Step by Step Directions" is refined to "Provide Step by Step Visual Instructions to Assist [Student] with Independence." Pet. Ex. 1 at 77, 96.

64. Box 13 [REDACTED]
[REDACTED] and Box 14 [REDACTED]
[REDACTED]
[REDACTED] remained the same as the 12/08/2020 IEP. Pet. Ex. 1 at 68-69.
65. The 10/06/2021 IEP contains five (5) goals and objectives: (1) Student will demonstrate effective verbal and non-verbal communication skills to increase self-advocacy and ability to navigate social situations; (2) increase Student's knowledge of Reading Literature and Reading Informational Text; (3) improve Student's writing skills; (4) increase proficiency in Math; and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Pet. Ex. 1 at 70-76.
66. According to the 10/06/2021 IEP, Student will receive special education and counseling services. Student "will receive Specialized Instruction in the General Education setting for Language Arts, Math, Social Studies, and Science. [Student] will participate in the General Education setting for all other Courses, Electives, and Non-Academic activities." Student will also receive two hundred seventy (270) minutes per quarter of counseling services. Pet. Ex. 1 at 77, 79.
67. The 10/06/2021 IEP contains the following twelve (12) Supplementary Aids and Services: (1) Frequent Checks for Understanding in the Form of Open Ended Questions to Demonstrate Comprehension; (2) Preferential Seating to Minimize Distractions and Help Focus; (3) Frontload Vocabulary, Key Terms, Themes, Prior to Introducing the Lesson; (4) Tie New Concepts to Previously Learned Lessons and Real Life

Experiences; (5) Provide Step by Step Visual Instructions to Assist with Independence; (6) Use of Graphic Organizers and Thinking Maps; (7) Option to Type Classwork, Homework, Assignments, Projects, and Assessment; (8) When Doing a Group Activity, Pair Student with a Group of Positive Peers; (9) Use of Planner for Visual Organization; (10) Chunking of Assignments/Larger Tasks Into Smaller Manageable Parts; (11) If Student has Missing Assignments More Than a Week Old, Notify Parent; and (12) Provide Student with Hard Copies of Work. Student will be provided these Supplementary Aids and Services for approximately two (2) months until Student's IEP Annual Review Date, which was December 8, 2021. Pet. Ex. 1 at 67, 77.

68. The 10/06/2021 IEP was finalized after the 10/06/2021 IEP meeting by Parent and SPED Teacher. Parent and SPED Teacher discussed, via email, specific information and changes Parent wanted in the 10/06/2021 IEP. DOE Ex. 103 at 382-385.
69. On October 8, 2021, Student's progress in meeting the goals in the 10/06/2021 IEP was assessed. Student was either emerging or progressing on all of Student's goals. DOE Ex. 185 at 714-728.
70. A Prior Written Notice of Department Action, dated October 19, 2021 ("10/19/2021 PWN"), was issued to summarize the 10/06/2021 IEP meeting. According to the 10/19/2021 PWN, the purpose of the 10/06/2021 IEP meeting was to discuss Student's current level of comprehension in Student's core classes; how Student's accommodations and modifications were being met in the classes; whether a majority of Student's work/explanation/instructions can be done in class instead of Study Hall; and the effectiveness of Student's current accommodations and modifications. The 10/19/2021 PWN also noted that Parent had expressed concerns about how Student's

accommodations and modifications were being delivered in Student's classes, and the amount of time Student was spending in Study Hall and its time conflict with Student's in-home ABA services. The IEP team decided to update Student's accommodations and modifications instead of waiting until Student's annual IEP meeting because Student's accommodations and modifications had not been updated since [REDACTED] school due to COVID-19. According to the 10/19/2021 PWN, the basis for the proposed action/refused action is noted as "functional data." Pet. Ex. 1 at 81-82; DOE Ex. 43 at 139-140.

71. On November 23, 2021, a senior behavior analyst from Private Agency, wrote a letter recommending that Student receive ABA therapy in the school setting. The letter further states that "[Student] may not engage in what is perceived as the typical 'challenging behaviors' in the classroom, but [Student] is not effectively learning and this is being demonstrated in other ways. One example is being below grade level in multiple subject areas. [Student's] disability interferes with [Student's] ability to learn new skills as well as develop meaningful relationships with others." Pet. Ex. 3 at 163; DOE Ex. 194 at 841.
72. On November 29, 2021, Student took a GRADE reading assessment and scored a grade equivalent of [REDACTED] Pet. Ex. 1 at 45.
73. On December 1, 2021, an annual IEP meeting was held, resulting in an IEP dated December 1, 2021 ("12/01/2021 IEP"). According to the 12/01/2021 IEP, Student's next IEP Annual Review Date is December 1, 2022. Pet. Ex. 1 at 44-59; DOE Ex. 46 at 144-159.

74. Present at the 12/01/2021 IEP meeting were Parent, a special education teacher, SSC-2, SPED Teacher, Assistant Principal-1, BHS, and a general education teacher. Pet. Ex. 1 at 59.

75. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Pet. Ex. 1 at 45-46.

76. During the 12/01/2021 IEP meeting, Parent provided updated information about Student. Parent expressed concerns regarding Student's current performance and decline in recent test scores; along with Student's behavior in the classroom and how that was affecting Student's ability to make progress. The IEP team also discussed "[Parent's] requests for additional testing which is currently underway" and a "copy of the email from [Parent] detailing [Parent's] concerns has been placed in [Student's] file." Pet Ex. 1 at 47.

77. During the 12/01/2021 IEP meeting, the IEP team updated Boxes 11 [REDACTED]
[REDACTED] 12 [REDACTED] and 13 [REDACTED]
[REDACTED] of Student's IEP. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The IEP team discussed the courses Student had already taken and credits Student earned during [REDACTED] the courses Student was currently taking during [REDACTED] and the courses Student had to take during [REDACTED] year [REDACTED] Box 14 [REDACTED]

[REDACTED]
[REDACTED] was not changed from Student's 10/06/2021 IEP. Pet. Ex. 1 at 49-50.

78. Although the number of goals remained the same as the 10/06/2021 IEP, the 12/01/2021 IEP updated Student's goals and objectives. The 12/01/2021 IEP goals included increasing Student's knowledge of reading literature; improving writing skills; demonstrating an understanding of grade level common core standards in Math; [REDACTED]
[REDACTED]
[REDACTED] and identifying and demonstrating self-management skills as evidenced by an increase in the use of interpersonal (i.e. verbal and non-verbal communication, problem solving, self-awareness skills) and intrapersonal skills (i.e. time management, organization, emotional regulation) to navigate the school day. Pet. Ex. 1 at 51-55.
79. The Services and Supplementary Aids and Services in the 12/01/2021 IEP are almost the same as those in the 10/06/2021 IEP. The only difference is that the Special Education services in the 12/01/2021 IEP is described as [REDACTED]⁷ Pet. Ex. 1 at 56-57.
80. The 12/01/2021 IEP will continue to provide Student with "Specialized Instruction in the General Education setting for Language Arts, Math, Social Studies, and Science. [Student] will participate in the General Education setting for all other Courses, Electives, and Non-Academic activities." Pet. Ex. 1 at 58.

⁷ It is unclear from the record what [REDACTED] means, but Petitioners have not raised this as an issue.

81. A Prior Written Notice of Department Action, dated December 6, 2021 (“12/06/2021 PWN”), was issued to summarize the 12/01/2021 IEP meeting. The 12/06/2021 PWN documented that “transition was addressed, reviewed, and updated at the meeting,” and that Student “recently expressed interest in becoming a [REDACTED].” DOE’s proposed offer of FAPE was based on Student’s current IEP, progress reports, assessment data, Present Levels of Academic Performance, Parent input, Teacher input, Student input, and functional data. “The team also discussed [Parent’s] recent requests and concerns (please see email in file) which are already in the process of being addressed. Once finalized, we will convene another meeting.” Pet. Ex. 1 at 60-61; DOE Ex. 47 at 160-161.
82. On December 15, 2021, a meeting was held to discuss Parent’s request for a functional behavior assessment (“FBA”) and independent educational evaluation (“IEE”), both of which were rejected. A Prior Written Notice of Department Action issued the same day as the meeting noted that Student has a Student Support Plan to address Student’s condition-related “idiosyncrasies,” and social-emotional and learning needs. Pet. Ex. 1 at 62-63.
83. On December 17, 2021, Student’s progress in meeting the goals in the 10/06/2021 IEP was assessed. Student was progressing on all of Student’s goals. DOE Ex. 188 at 714-728.
84. On December 17, 2021, Student’s progress in meeting the goals in the 10/06/2021 IEP was assessed. Student was progressing on all of Student’s goals. DOE Ex. 188 at 714-728.
85. On [REDACTED] Student turned [REDACTED] years old.

86. March 11, 2022, Student's progress in meeting the goals in Student's 12/01/2021 IEP was assessed. Student was either emerging or progressing on all of Student's goals. DOE Ex. 186 at 729-735.
87. On April 8, 2022, Student took an iReady reading assessment and scored an overall grade equivalent of [REDACTED] Pet. Ex. 1 at 41.
88. On May 6, 2022, an eligibility meeting was held for Student's triennial reevaluation, which was due June 12, 2022. DOE Ex. 23 at 053; DOE Ex. 112 at 414-420.
89. Present at the 5/06/2022 eligibility meeting were Parent, SSC-2, SPED Teacher, Resource Teacher, Assistant Principal-1, BHS, a clinical psychologist, a general education teacher, a counselor, a [REDACTED] teacher, and a special education teacher. DOE Ex. 48 at 177.
90. During the 5/06/2022 eligibility meeting, the IEP team discussed if any assessments were needed to determine eligibility, discussed eligibility, and the IEP team's decision. DOE Ex. 23 at 053.
91. An IEP dated May 6, 2022 was drafted as a result of the eligibility meeting ("5/06/2022 IEP"). The 5/06/2022 IEP is the same as the 12/01/2021 IEP, except that the least restrictive environment statement (Box 23) was changed slightly to include "[Student] will also receive Counseling services" in the 5/06/2022 IEP. The IEP Annual Review Date remained the same—December 1, 2022. DOE Ex. 48 at 162-177.
92. A Prior Written Notice of Department Action, dated May 11, 2022 ("5/11/2022 PWN"), was issued following the 5/06/2022 eligibility meeting and it is the same as the 12/06/2021 PWN, except that the date was changed to May 11, 2022. DOE Ex. 49 at 178-179.

93. On May 12, 2022, an Evaluation Summary Report (“5/12/2022 ESR”) for the reevaluation was provided to Parent. The purpose of the reevaluation was to determine if Student continued to be eligible for special education and related services and to provide additional information about Student’s strengths and areas of need. The current education data showed that challenges continued to impact Student’s ability to perform on grade level with his/her general education peers. The 5/12/2022 ESR noted that Student was provided a variety of teaching approaches (e.g., Teacher-Directed Instructions and Practice, Group Discussions, Problem Solving, Cooperative Learning, etc.), and given time after school during Study Hall to meet with teachers to get help and work on assignments to improve Student’s grades. Student’s grades at the time of the reevaluation in May of 2022 were as follow: [REDACTED]

[REDACTED]

[REDACTED] Student’s teachers in [REDACTED]

[REDACTED] noted that

Student was missing assignments and that Student’s grades would improve if Student’s missed assignments were completed. Student’s [REDACTED] teacher noted that Student had an increase in [REDACTED] and frequency of [REDACTED] Pet. Ex. 1 at 40-43; DOE Ex. 68 at 273-276.

94. On May 27, 2022, Student’s progress in meeting the goals in Student’s 5/06/2022 IEP was assessed. Student was progressing on all of Student’s goals. DOE Ex. 188 at 736-742.

2022-2023 School Year

95. During the 2022-2023 school year, Student was in the [REDACTED] grade. DOE Ex. 194 at 819.

96. On August 24, 2022, Student saw Pediatrician. According to Pediatrician's notes, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Pet. Ex. 3 at 152-156;
DOE Ex. 194 at 847-851.
97. On September 6, 2022, School Counselor introduced him/herself to Parent and informed Parent that School Counselor would be Student's counselor for the 2022-2023 school year. Parent informed School Counselor that Student was seeing Pediatrician and Private Psychologist to help Student with Student's [REDACTED]
[REDACTED] and Student was receiving ABA services from a private board-certified behavior analyst. Parent also informed School Counselor that Student [REDACTED]
[REDACTED]
[REDACTED] DOE Ex. 117 at 434-436.
98. Private Psychologist is a psychologist located on [REDACTED] DOE Ex. 117 at 434-436.
99. On September 30, 2022, Student's progress in meeting the goals in Student's 5/06/2022 IEP was assessed. Student was progressing on all of Student's goals. DOE Ex. 188 at 743-751.
100. On October 16, 2022, Parent asked SPED Teacher for the contact information of the person who was in charge of the [REDACTED] program at Public [REDACTED] School so that Parent could speak with this person in preparation for an upcoming November IEP

meeting. DOE Ex. 121 at 444. SPED Teacher informed Parent that the [REDACTED] [REDACTED] program at Public [REDACTED] School is an elective class and that the teacher for 2022-2023 school year was [REDACTED] Teacher. SPED Teacher also informed Parent that a description of the class can be found in Student's Registration Handbook from the previous school year. DOE Ex. 121 at 444-445.

101. On October 17, 2022, Student took a GRADE reading assessment and scored a grade equivalent of [REDACTED] Pet. Ex. 1 at 21.

102. On October 19, 2022, Parent asked SPED Teacher for the contact information for "the [REDACTED] coordinator who could attend the November meeting to talk about the State's [State Agency]" as Parent would like to reach out to that person before their November meeting. Parent informed SPED Teacher that "One of the goals for [Student] is to be independent and capable of [REDACTED]

[REDACTED] conduct the required task, work with others, stay on task, etc." On the same day, SPED Teacher informed Parent that "[Care Coordinator,] who is [Student's] Advisory teacher and Care Coordinator[,] would be in charge of [Student's] [REDACTED]....At [Student's] meeting however, I will have the [State Agency] application for you to take home and fill out. Once [State Agency] receives the completed application form, they will be in touch with you to discuss things further." SPED Teacher also informed Parent that State Agency has its own eligibility screening process. DOE Ex. 121 at 444-445.

103. According to State Agency, its purpose is "to assist eligible individuals with disabilities [REDACTED] State Agency assigns an eligible individual with a [REDACTED] specialist who will provide counseling and

guidance to assist the individual through the [REDACTED] process. The [REDACTED] process includes eligibility determination, creating an [REDACTED] plan, receiving services, obtaining [REDACTED] follow-ups, and successful closure. An eligible individual will develop an Individualized Plan for [REDACTED] ("IPE"), which spells out the individual's specific [REDACTED] goal and the specific services that are needed to help the individual achieve that goal. Examples of services that may be in an IPE are diagnosis and treatment of physical and mental impairments; [REDACTED] counseling and guidance; [REDACTED] services; [REDACTED] services; [REDACTED] services; and transportation services. DOE Ex. 194 at 811-812.

104. In determining an individual's eligibility for State Agency services, State Agency may require additional tests, exams, and evaluations. DOE Ex. 194 at 811.
105. SPED Teacher testified that she did not know if State Agency provides functional assessments. SPED Teacher, Tr. Vol. III, 325:10-21.
106. On October 25, 2022, Parent sent the following email to [REDACTED] Teacher: "I found a description about your [REDACTED] program online...Online it says that a [REDACTED] is required to sign up for the [REDACTED] program. My [son/daughter], [Student] wants to learn [REDACTED]
[REDACTED]
[REDACTED] My [son/daughter] has a IEP meeting coming up and I was wondering if you would be willing to attend to talk about supports needed to help [Student] comprehend and pass the [REDACTED] test which is a prerequisite to the [REDACTED] course....Does the school conduct an assessment to see if the student

is a good candidate to [REDACTED] or is this a parent's decision?....IEP meeting is November 22, 2022 at noon." Pet. Ex. 2 at 146. [REDACTED] Teacher responded to Parent's email and informed Parent that Public [REDACTED] School was not offering after-school [REDACTED] courses, but [REDACTED] Teacher was currently teaching three (3) in-school courses. [REDACTED] Teacher informed Parent that Student could sign up to be on a waiting list. [REDACTED] Teacher then informed Parent that "About the IEP situation, I have taught several students with IEPs. The main thing would be [REDACTED] Our first [REDACTED] lesson is to evaluate their [REDACTED] abilities; if they need practice at home, [REDACTED] So since there is a waiting list already, I would focus on having [Student] practice [REDACTED] at home...To get a [REDACTED] certificate, [Student] needs 50 hours of practice [REDACTED] so that's something you can start working on right now...." Pet. Ex. 2 at 148. In response, Parent informed [REDACTED] Teacher that Student would register for the in-class session next school year and asked if supports could be offered to Student to help Student pass the written [REDACTED] test. Pet. Ex. 2 at 147.

107. [REDACTED] Teacher did not respond to Parent's question regarding available supports to help Student pass the written [REDACTED] test, nor did [REDACTED] Teacher respond to Parent's request that [REDACTED] Teacher attend an upcoming 11/22/2022 IEP meeting to talk about supports needed to help Student comprehend and pass the [REDACTED] test.

108. On October 26, 2022, Parent asked Care Coordinator for a copy of Student's [REDACTED] plan in preparation for an upcoming IEP meeting. DOE Ex. 128 at 478. In response, Care Coordinator sent Parent a copy of [REDACTED] goals that Student was working on in

Advisory class, and informed Parent that the IEP team could discuss and update Student's transition goals at their upcoming IEP meeting. DOE Ex. 128 at 477-478.

109. On October 28, 2022, Parent asked Care Coordinator for the contact information of the [REDACTED] counselor or the person who helps students with [REDACTED] at Public [REDACTED] School. DOE Ex. 128 at 477. In response, Care Coordinator informed Parent that Public [REDACTED] School has three (3) [REDACTED] counselors, and Care Coordinator would make sure that Student knew who they were. Care Coordinator also provided Parent with their contact information. DOE Ex. 128 at 477-478. Parent asked Care Coordinator if they could set up a meeting with the [REDACTED] counselors to talk about the [REDACTED] goals in more detail as Parent would like to know what services are attached to the [REDACTED] goals in advance of the IEP meeting scheduled for November 22, 2022. Parent also informed Care Coordinator that Parent was awaiting the State Agency application from the school, and that Parent had spoken to State Agency and they informed Parent that a [REDACTED] counselor would be assigned to Student if Student is found eligible for services. Parent informed Care Coordinator, "I would like to involve this person for the IEP meeting, if we can process [Student's] paperwork in time." Care Coordinator forwarded Parent's request to SPED Teacher. DOE Ex. 128 at 477. SPED Teacher then responded to Parent's request for information and provided Parent with the location and hours of the [REDACTED] Center at Public [REDACTED] School and informed Parent that Student's assigned [REDACTED] counselor was C&C Counselor and informed Parent that Parent could contact C&C Counselor to schedule an appointment. A few minutes later, Parent responded to SPED Teacher that Parent had left a message for C&C Counselor and that Parent would

work with C&C Counselor on a plan to help Student get ready for [REDACTED]

[REDACTED] DOE Ex. 128 at 478.

110. On October 31, 2022, Parent emailed BHS, School Counselor, SPED Teacher, Private Psychologist, Private Agency-2, and a school clinical psychologist a Zoom link for a November 7, 2022 meeting to discuss Student's most recent behavioral support plan. Parent informed the school members of the 11/07/2022 meeting that Parent had invited Private BCBA and Private Psychologist to the 11/07/2022 meeting. DOE Ex. 132 at 493-496.
111. Private BCBA is Student's private board-certified behavior analyst and works for Private Agency-2. DOE Ex. 127 at 473-476
112. On November 1, 2022, Parent emailed C&C Counselor, SPED Teacher, and Assistant Principal-1 a variety of questions and concerns, including: (1) setting up an appointment with C&C Counselor, Student and Parent to discuss what is needed to obtain [REDACTED]
[REDACTED]
[REDACTED] (2) Parent is still waiting for an application for State Agency from the school and would like to discuss with C&C Counselor possible [REDACTED]
[REDACTED] (3) Parent found out from a friend who is a teacher that "that the DOE's Exceptional Support Branch (ESB) spoke about the [State Agency] [REDACTED]
[REDACTED] services at a recent SPIN conference" and Parent asked ESB if they could share their presentation and resources; and (4) discussing possible technology related pathways available at Public [REDACTED] School. Pet. Ex. 2 at 145. SPED Teacher responded to Parent that same day, writing: "To avoid any further confusion, are you okay with waiting until the meeting to discuss everything? There are different people who can

answer different questions so I'm concerned that through multiple emails things may get lost in the translation so to speak. For example, your questions about [Student's] pathway can be answered by [School Counselor], all [State Agency] questions are answered by [State Agency] personnel whom you would work with directly if [Student] is deemed eligible through them, anything regarding [REDACTED] can be answered by [C&C Counselor], etc....All the parties who can answer your questions will be invited to the meeting. Also, the [State Agency] application was mailed last week..." Pet. Ex. 2 at 144.

113. The Exceptional Support Branch/Special Education Section is part of DOE's Office of Student Support Services and it published an "Individualized Education Program Post-Secondary Transition Handbook" ("Handbook") to provide guidance to school personnels in developing transition plans for IEPs. Pet. Ex. 3 at 165-216. The Handbook states that the "goal of transition planning is to support students with disabilities to learn the skills necessary to reach their [REDACTED] goals (PSGs) and successfully transition to the [REDACTED]" Pet. Ex. 3 at 170.

114. According to the Handbook, DOE recognizes that the "purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for [REDACTED]
[REDACTED]" Pet. Ex. 3 at 170.

DOE also recognizes that beginning at age [REDACTED] or younger if appropriate, a student's IEP must include appropriate measurable [REDACTED] goals, transition services, and transition assessments. Pet. Ex. 3 at 181.

115. The Handbook provides, among other things, information on State Agency's role in the transition process for qualified students. For example, State Agency participates in transition planning meetings and/or attends IEP meetings as appropriate; begins working with eligible students prior to their [REDACTED] to develop an IPE; and in collaboration with DOE, will provide transition services and [REDACTED] Transition Services ("Pre-ETS") to students with disabilities. Transition planning provided by State Agency will include, but is not limited to, [REDACTED] counseling; [REDACTED] learning experiences; instruction in self-advocacy; counseling for opportunity in [REDACTED]; and [REDACTED] training. Pet. Ex. 3 at 171-172.
116. The Handbook also provides information and guidance to DOE personnel on the purpose of transition planning and types of transition services schools can give their students. For example, the Handbook explains that the "transition planning process provides awareness to students, families, educators, the community, and [REDACTED] service providers of the roles and responsibilities of each team member involved...." Pet. Ex. 3 at 170. The Handbook advises that the transition process includes age-appropriate transition assessments, which is an ongoing process of collecting data on a student's preferences, interests, needs, and strengths ("PINS") as it relates to current and future [REDACTED] education, [REDACTED] personal and social environment (Pet. Ex. 3 at 190); an IEP team must write a student's [REDACTED] goals based on an age-appropriate transition assessment (Pet. Ex. 3 at 200); and informs school personnel that they can administer a "functional [REDACTED] assessment," which is "[a]n additional assessment process if the regular [REDACTED] assessment has not provided enough information to make a [REDACTED] program decision. Additional assessment activities

(e.g., situational assessments, community-based assessments, assistive technology evaluations) can be performed to get more information about the student's needs, preferences, and interests." Pet. Ex. 3 at 204.

117. According to the Handbook, transition services can be in the form of instruction; related services; community experiences; development of [REDACTED] and other [REDACTED] [REDACTED] objectives; acquisition of [REDACTED] skills; and functional [REDACTED] assessments. Pet. Ex. 3 at 203-204.

118. The Handbook provides an "Academic and Functional Activities, Supports and Services Table," which lists, among other things: State Agency referral to determine eligibility; Community-Based Instruction (CBI), including [REDACTED] readiness; visiting [REDACTED] [REDACTED] Pet. Ex. 3 at 204-205.

119. The Handbook also provides guidance on how to fill out the "Agency Responsible/Linkages" column in Box 14 of an IEP: "Document only the agency(ies) that is/are providing and/or paying for transition services to the student. This is not a place for HIDOE staff or parent(s)/legal guardian(s). If the IEP team decides that there is no need for an agency to provide transition services to the student, please leave this column **blank**." (Bold/underline in original). Pet. Ex. 3 at 213.

120. The Handbook contains a list of assessments, and their website links, that school personnels can use in formulating transition plans for students. These assessments measure foundational skills required for success in the [REDACTED] assesses self-determination skills; assesses the behaviors and competencies youth need to achieve their long term goals; assesses an individual's knowledge, skills, and social

communication abilities; gathers information about learners in non-school environments; pictorial interest inventory to help students identify their [REDACTED] interests; RIASEC; identify students' strengths and needs to produce annual transition goals referenced in the common core; and a ready to print student interview. Pet. Ex. 3 at 198-199.

121. On November 2, 2022, Parent reiterated that Parent "would like [Student] to take [REDACTED] at [Public [REDACTED] School] next year. In order to get into the [REDACTED] [REDACTED] program, it sounds like [Student] needs to pass the [REDACTED] test. So I would like to discuss this option at the IEP team meeting." Parent also informed the school members of the IEP team that Parent had reached out to State Agency-2 for help. DOE Ex. 127 at 474.
122. On November 7, 2022, Parent, BHS, School Counselor, Private BCBA, Private Psychologist, and a school clinical psychologist participated in a virtual meeting to discuss Student's behavioral support plan. The team discussed Student's inattentive behaviors, [REDACTED] intrusive thoughts, social communication skills, and organization skills. Parent, Tr. Vol. II, 103:19-106:18; School Counselor, Tr. Vol. II, 179:15-180:13, 181:11-185:10; DOE Ex. 132 at 491-492.
123. On November 10, 2022, Transition Coordinator emailed to State Agency Counselor, a [REDACTED] rehabilitation counselor at State Agency, a completed application form for Student. DOE Ex. 134 at 501.
124. Also on November 10, 2022, SPED Teacher informed Parent that there was a field trip to [REDACTED] for [REDACTED] and that Student could attend. Parent informed SPED Teacher that Parent would like Student to attend the field trip, but

Student was quite hesitant because there would be [REDACTED] on the field trip. No supports were offered to Student to ease Student's concerns about being a [REDACTED] among [REDACTED] so that Student could attend the field trip. Pet. Ex. 1 at 21-26; DOE Ex. 53 at 185-190; DOE Ex. 135 at 502-503; Care Coordinator, Tr. Vol. II, 240:13-25.

125. On November 28, 2022, Private Psychologist sent a letter to the IEP team regarding Student ("11/28/2022 Letter"). Private Psychologist wrote the 11/28/2022 Letter at the request of Student's "parents to share information that may be relevant for updating [Student's] IEP." According to Private Psychologist, "[Student's] concentration and [Student's] ability to access [Student's] education are directly affected by stress levels. When stress levels are up, [REDACTED] and behaviors increase, and [Student's] focus and attention decline. This in turn creates a sense of overwhelm, and impacts [Student's] ability to effectively complete [Student's] academic work." According to Private Psychologist, Student's sources of stress are getting behind on schoolwork; difficulty understanding math; unable to differentiate statements/suggestions from rules (which was resolved); and fear of getting teased (which was resolved). Pet. Ex. 3 at 150-151.

126. On November 28, 2022, Parent sent an email to the other members of the IEP team ("11/28/2022 Email") in preparation for the upcoming IEP meeting scheduled for November 30, 2022. A portion of Parent's 11/28/2022 Email states: "Please find our parents' concerns for this re-evaluation period below. Please replace all previous concerns in the IEP with this narrative...<PARENTS CONCERNS>...The goal is to help [Student] become an independent, self directed learner during and [REDACTED] school. Development of defined self advocacy and calming strategies are necessary this year to

manage [REDACTED] which causes [Student] to be the ongoing subject of disability related taunting/embarrassment and causes loss of educational opportunities...Failure to manage stress, [REDACTED] and taunting last school year, triggered [REDACTED] and mental health related concerns which required professional support from [REDACTED] licensed clinical psychologists. [Student] now talks to a clinical/neurological psychologist on a weekly basis to help [Student] manage [Student's] condition...Special concern this year is [Student] is nearing [REDACTED] and [Student] lacks a comprehensive transition plan. Parents requested [State Agency] [REDACTED] service support and access to [REDACTED] [REDACTED] pathways, with disability services attached. Understanding what [REDACTED] pathways are best suited to [Student's] needs/abilities, would be helpful to finding the best placement for [Student]. [REDACTED] pathways will require community based support (transportation [REDACTED] disability studies) which is not included in the current transition plan (IEP 5.6.22). [Student] has no ambitions to join [REDACTED] or taking the ASVAB. [Student] has the potential to engage in [REDACTED] and [REDACTED] opportunities if adequate supports are put in place...<END>" DOE Ex. 162 at 572-573. PARENTS CONCERNS were copied verbatim onto Student's 2/09/2023 IEP. Pet. Ex. 1 at 24-25; DOE Ex. 53 at 188-189. Parent also informed the other members of the IEP team that Parent would be inviting Private BCBA and State Agency-2 Advocate to the meeting and that Parent was providing the school with access to Student's private providers with the intention of best supporting Student. DOE Ex. 162 at 572-573.

127. On November 29, 2022, Parent resent Parent's 11/28/2022 Email to the IEP team and a copy of a letter from Private Psychologist. DOE Ex. 162 at 572.

128. On November 30, 2022, the IEP team met to begin the annual review of Student's IEP. After meeting for approximately three (3) hours, the IEP team was not able to finish the IEP and continued the IEP meeting to February 9, 2023. Pet. Ex. 1 at 39; DOE Ex. 50 at 180. The record does not indicate who was present at the 11/30/2022 IEP meeting⁸.
129. On November 30, 2022, after the IEP meeting, Parent sent an email to the other IEP team members, stating that Student needed behavioral supports because there were no [REDACTED] options to manage Student's [REDACTED] symptoms, and provided the IEP team with a portion of Student's private neurologist's report regarding the [REDACTED] of Student's condition. DOE Ex. 162 at 571.
130. On December 1, 2022, Parent informed School Counselor, C&C Counselor, and others that Parent wanted Student to enroll at [REDACTED] and pursue [REDACTED]. Parent shared that "If [Student] qualifies for courses less than [REDACTED] [REDACTED] or fails one of these courses, my concern is whether it would affect [Student's] ability to [REDACTED]" Parent asked that if Student is accepted that Student be given a [REDACTED] next year. DOE Ex. 146 at 530-531; DOE Ex. 148 at 536.
131. On December 2, 2022, C&C Counselor thanked Parent for informing the school about Student's interest in taking a [REDACTED] next school year. C&C Counselor explained to Parent that Public [REDACTED] School has two (2) Early [REDACTED] Program partnership with [REDACTED] (1) [REDACTED], which is held on Public [REDACTED] School's campus; and (2) [REDACTED] which is held on [REDACTED] campus or online. C&C Counselor provided Parent with website links that explained the

⁸ After the 11/30/2022 IEP meeting, Parent sent an email to the IEP team, thanking them for devoting their time on November 30, 2022 to the IEP meeting. Transition Coordinator was not part of the email. DOE Ex. 162 at 571.

differences between [REDACTED] and [REDACTED] DOE Ex. 146 at 531-532; DOE Ex. 148 at 536. Parent informed C&C Counselor that Parent wanted Student to participate in the [REDACTED] Program at [REDACTED]. Parent also expressed an interest in seeing how Student would do on a math and English placement assessment and wanted to discuss whether Student could also qualify to take English at [REDACTED] through the [REDACTED] Program. DOE Ex. 146 at 532-533; DOE Ex. 148 at 537-538.

132. On December 5, 2022, Student and Student's parent signed a "Fall 2023 [REDACTED] Application" to take Math [REDACTED] and English [REDACTED] at [REDACTED] on [REDACTED] [REDACTED] campus through the [REDACTED] Program. DOE Ex. 171 at 602.
133. On December 16, 2022, Student's progress in meeting the goals in Student's 5/06/2022 IEP was assessed. Student was progressing on all of Student's goals. DOE Ex. 188 at 752-760.
134. On January 4, 2023, SPED Teacher emailed to Parent, Student, State Agency Counselor, and Care Coordinator a link to a virtual meeting with State Agency scheduled for January 6, 2023. SPED Teacher informed Parent that Care Coordinator would assist Student with logging into the meeting, and State Agency Counselor would facilitate the meeting. DOE Ex. 157 at 558; School Counselor, Tr. Vol. II, 204:1-5.
135. On January 6, 2023, Student participated in a virtual intake meeting with State Agency Counselor. Care Coordinator was present to help Student during the intake process. Care Coordinator, Tr. Vol. III, 244:6-21, 271:15-272:2.
136. On January 9, 2023, Student was accepted into [REDACTED] Program for the Fall 2023 semester. DOE Ex. 158 at 559-560.

139. Present at the 2/09/2023 IEP meeting were Student, Parent, SPED Teacher, Assistant Principal-2, SSC-3, School Counselor, C&C Counselor, Care Coordinator, BHS, State Agency-2 Advocate, two (2) general education teachers, a [REDACTED] Teacher, a [REDACTED] Teacher, two (2) special education teachers, and a school clinical psychologist. Pet. Ex. 1 at 36; DOE Ex. 53 at 200. Transition Coordinator was not present.
140. No one from State Agency was present at the 2/09/2023 IEP meeting. DOE did not invite anyone from State Agency to the meeting. SPED Teacher testified, “We didn’t invite them directly. But [Parent] was informed that [Parent] was more than welcome to invite them.” SPED Teacher, Tr. Vol. III, 319:8-19.
141. During the 2/09/2023 IEP meeting, Parent asked if Public [REDACTED] School could provide Student with [REDACTED] experience or transition support if Student were to find an [REDACTED] [REDACTED] but Parent was informed that Public [REDACTED] School could not provide such supports to Student. It was explained to Parent that only students who are on the [REDACTED] can receive community-based instruction, but Student is on the [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Student being on the [REDACTED]
[REDACTED] meant that Student’s schedule at school consists of classes, such as [REDACTED]
[REDACTED] and [REDACTED] Parent was referred to Non-Profit Organization to get help

Pet. Ex. 1 at 30; DOE Ex. 53 at 194. Respondents’ version of the 2/09/2023 IEP is likely the accurate version because Petitioners’ and Respondents’ version of page 11 of the 5/23/2023 IEP is the same as page 11 of Respondents’ version of the 2/09/2023 IEP. DOE Ex. 53 at 194; DOE Ex. 56 at 216; Pet. Ex. 1 at 11.

with [REDACTED] Pet. Ex. 3, 2/09/2023 Audio File at 00:00:00-00:00:50, 00:06:10-00:08:45. It was suggested that Student could be a [REDACTED] for Care Coordinator. As a [REDACTED] for Care Coordinator, Student may have an opportunity to go to the school's technology department to observe what they do and possibly help them. Student, however, could not be a [REDACTED] for the technology department. As a [REDACTED] for Care Coordinator, Student may also have a chance to "check out other CTE things." Pet. Ex. 3, 2/09/2023 Audio File at 00:00:50-00:06:20. The school members of the IEP team informed Parent that DOE can help Student with transition on the educational side, but State Agency was responsible for providing [REDACTED] training supports to Student. Pet. Ex. 3, 2/09/2023 Audio File at 00:15:10-00:20:00.

142.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] SPED Teacher, Tr. Vol. III, 347:23-350:2.

143.

Non-Profit Organization is a non-profit organization that offers [REDACTED]
[REDACTED] to eligible individuals with disabilities. SPED Teacher, Tr. Vol. III, 317:12-318:16, 330:3-332:7, 343:7-344:8.

144. Transition Coordinator is not familiar with Non-Profit Organization and did not know what Non-Profit Organization would provide Student. Transition Coordinator, Tr. Vol. III, 225:18-227:7.
145. SPED Teacher does not “know the depths of what [Non-Profit Organization] offer[s].” SPED Teacher, Tr. Vol. III, 331:24-332:7.
146. The 2/09/2023 IEP notes that Student scored a grade equivalent of [REDACTED] on Student’s 10/17/2022 GRADE reading assessment, and it lists the results of a Social and Emotional Learning (“SEL”) Student Assessment conducted in September of 2022. Student scored “Strength” to “Medium Strength” in the SEL Student Assessment in the following areas: Sense of Belonging; Grit; Growth Mindset; Social Awareness; Emotion Regulation; Self-Efficacy; and Self-Management. Pet. Ex. 1 at 21; DOE Ex. 53 at 185.
147. The 2/09/2023 IEP lists Student’s current grades as follow: [REDACTED]
[REDACTED]
[REDACTED] Teachers from each class provided information on Student’s behavioral strengths and concerns, academic strengths and concerns, and additional comments, if any. The teachers reported that Student’s [REDACTED] were not noticeable in class; Student asked for clarification if Student had questions; and Student was able to self-advocate. Care Coordinator reported that Student was working on getting information on [REDACTED] and getting more information for [REDACTED] as Student plans to [REDACTED] Teachers for [REDACTED] reported that Student missed assignments or an exam, and once the missed assignments or exam

- were completed, Student's grades would improve. Pet. Ex. 1 at 21-24; DOE Ex. 53 at 185-188.
148. Under the "Parent Input" section of the 2/09/2023 IEP, the IEP team copied verbatim Parent's 11/28/2022 Email¹⁰. Pet. Ex. 1 at 24-25; DOE Ex. 53 at 188-189; DOE Ex. 162 at 572-573.
149. Student was present during the 2/09/2023 IEP meeting and shared with the IEP team that he/she enjoys being at school, and no one teases Student at Public [REDACTED] School. Student also talked a little about volunteering, and the bill that Student helped sponsor. Pet. Ex. 1 at 25; DOE Ex. 53 at 189.
150. The 2/09/2023 IEP contains a summary of events relating to transition services that had occurred, such as Transition Coordinator submitting Student's State Agency application on November 10, 2022; Student declining to go on a field trip to [REDACTED] C&C Counselor referring Parent to Public [REDACTED] School's website for a list of [REDACTED] SPED Teacher giving Parent contact information for Non-Profit Organization; and Student expressing an interest in going to [REDACTED] and wanting to pursue [REDACTED] Pet. Ex. 1 at 25-26, 39; DOE Ex. 53 at 189-190.
151. The 2/09/2023 IEP notes that two (2) personal interviews with Student were conducted—one on November 2, 2022, and another on November 30, 2022 (Box 11). The two (2) personal interviews were conducted by Care Coordinator in [REDACTED] class where Student shared with Care Coordinator that Student wanted to [REDACTED] and

¹⁰ The 2/09/2023 IEP notes that the email was sent on November 29, 2022, which is the date Parent resent the 11/28/2022 Email. DOE Ex. 162 at 572-573.

[REDACTED] The personal interviews were quick, informal, and unplanned¹¹. Care Coordinator, Tr. Vol. III, 246:2-22, 272:22-274:25; DOE Ex. 53 at 189-190.

152. The 2/09/2023 IEP summarizes Student's Preferences, Interests, Needs and Strengths in Transition Planning (Box 12). According to the summary, [REDACTED] Student would like to attend [REDACTED] and then obtain [REDACTED]. [REDACTED] While Student is able to independently care for him/herself, Student had not stated whether Student would [REDACTED]. [REDACTED] The summary also states that Student will continue to explore the different [REDACTED] options through Student's Advisory class and the [REDACTED] Center. Student was offered the opportunity to be a [REDACTED] to Care Coordinator and assist the technology department when needed. The IEP notes that Parent inquired about [REDACTED] and support for Student, and Parent was informed that Public [REDACTED] School offers a [REDACTED] class that can be taken as an elective and was provided the name of the [REDACTED] class teacher. The summary further states that Student is able to complete assigned grade level work with the supports provided to Student. Student can further narrow down what [REDACTED] Student is interested in through research in Advisory class, with Student's [REDACTED] counselor, and/or through State Agency. Pet. Ex. I at 26; DOE Ex. 53 at 190.

¹¹ Care Coordinator testified: "Q. And how did you conduct the interview? A. In advisory class I asked [Student] about some clarification on [Student's] work. [Student] was – [Student] had turned in assignments regarding [Student's] interests, [Student's] [REDACTED] interests. I got clarification. And then I gave the information to the IEP writer." Care Coordinator, Tr. Vol. III, 246:12-17, 274:12-25.

153. According to Care Coordinator, [REDACTED] in the technology or “IT” department at Public [REDACTED] School help with setting up computers and installing equipment, networking, troubleshooting computer issues; providing customer service and support; and moving things around. Care Coordinator proposed that Student be Care Coordinator’s [REDACTED] so that Care Coordinator could monitor Student’s emotions and be a source of assistance in the event Student gets stressed or anxious. Care Coordinator, Tr. Vol. III, 247:1-248:17. Student, however, could not be a [REDACTED] for the technology department. Pet. Ex. 3, 2/09/2023 Audio File at 00:00:42-00:06:10.
154. The 2/09/2023 IEP summarizes Student’s [REDACTED] Goals and Transition Services (Box 13). Student’s [REDACTED] goals are to attend [REDACTED] and be [REDACTED]. The transition services that will be provided to Student to meet Student’s [REDACTED] goals are: teachers will continue providing Student with instruction in Reading, Writing, Math, Science, Social Studies, and Study Skills for [REDACTED] Training and [REDACTED] Preparation, and provide instruction in [REDACTED] readiness and social skills (e.g. listening, communication, advocating, problem solving, critical thinking) within their lessons in the classroom; School Counselor and Care Coordinator will assist Student with [REDACTED] that correspond with Student’s [REDACTED] Public [REDACTED] School will notify parents about [REDACTED] and [REDACTED] registration through “synrevoice,” school bulletins or mailers; Parents are encouraged to reach out to a [REDACTED] counselor regarding any questions they have about [REDACTED] procedures, [REDACTED] program requirements; Student will continue to research areas of interest with Care Coordinator in Advisory class; and Transition Coordinator will offer field trips to a [REDACTED]. Box 13 also states

that “[Student] has been accepted into [State Agency] and will work with them directly” and “currently receives [State Agency] services;” and “[Parent] was also provided contact information for [Non-Profit Organization] which assists people with disabilities, if they qualify, [REDACTED] programs.” Pet. Ex. 1 at 27-28; DOE Ex. 53 at 191-192.

155. Box 13 also states: “Representatives of any outside agency must be invited to the IEP team meeting with prior consent. Document the transition services that are likely to be provided or paid for by an outside agency.” Pet. Ex. 1 at 27; DOE Ex. 53 at 191.

156. DOE did not invite State Agency to the 2/09/2023 IEP meeting. No one from State Agency was present at the 2/09/2023 IEP meeting. Box 13 does not indicate any outside agency as being responsible for any transition services to be provided to Student. Pet. Ex. 1 at 27-28; DOE Ex. 53 at 191-192.

157. The 2/09/2023 IEP summarizes the courses Student took and passed in Student’s [REDACTED] years, and the courses Student was taking in [REDACTED] year. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Pet. Ex. 1 at 28; DOE Ex. 53 at 192.

158. The 2/09/2023 IEP contains four (4) goals and objectives aimed at (1) improving reading skills; (2) improving math skills; (3) exploring areas of interest and [REDACTED] and [REDACTED] goals by participating in a field trip to [REDACTED] [REDACTED] to learn about [REDACTED] and by the middle of [REDACTED] taking the

██████████ and (4) increasing use of social awareness skills, self-awareness skills, and an organizational system. Pet. Ex. 1 at 30-33; DOE Ex. 53 at 194-197. There are no goals and objectives related to the ██████ position with Care Coordinator.

159. Student's 2/09/2023 IEP provides Student with special education and counseling services, and the same Supplementary Aids and Services as the 12/01/2021 IEP except that notification to Parent for missing assignments was removed at Parent's request. Pet. Ex. 1 at 34-35, 38; DOE Ex. 53 at 198-199; DOE Ex. 54 at 202.
160. According to the 2/09/2023 IEP, "[Student's] difficulty with Reading Comprehension and Mathematics limit [Student's] ability to achieve grade level standards. [Student] requires Specialized Instruction and Programming to address [Student's] academic needs." Pet. Ex. 1 at 25; DOE Ex. 53 at 189.
161. According to the 2/09/2023 IEP, for the remainder of the 2022-2023 school year, "[Student] will receive Specialized Instruction in the General Education setting for Language Arts, Math, Social Studies, and Science" and "will participate in the General Education setting for all other Courses, Electives, and Non-Academic activities." At the start of the 2023-2024 school year, "[Student] will receive Specialized Instruction in the General Education setting for Language Arts and Social Studies" and "will participate in the General Education setting for all other Courses, Electives, and Non-Academic activities." Pet. Ex. 1 at 35; DOE Ex. 53 at 199.
162. On February 13, 2023, Parent sent an email to the school members of the IEP team, State Agency-2 Advocate, State Agency Counselor, and Private Psychologist, listing Parent's continued concerns and questions around Student's transition plan. Parent

stated that it was unclear if Student would be able to [REDACTED]

[REDACTED] Student's areas of interests were [REDACTED]

[REDACTED] Parent explained that being a [REDACTED] was not the right fit for Student because Student "needs to be highly motivated to stay on task." Parent asked for another meeting so that they could discuss Student's transition plan in greater detail. Parent asked that specific objectives for the [REDACTED] position with Care Coordinator be included in the [REDACTED] section of the IEP to identify what skills would be taught or learned. Parent asked for [REDACTED] opportunities with direct supervision and training; that Student be provided help in developing Student's [REDACTED] provide assistance to Student to learn [REDACTED]

[REDACTED] that DOE provide transportation to [REDACTED]

[REDACTED] provide Student with supports so that Student can attend [REDACTED] in Student's [REDACTED] and improve Student's social skills for [REDACTED]

Parent also informed the IEP team that Parent was including State Agency Counselor in this email so that State Agency Counselor would know what was happening because they had a meeting coming up with Transition Coordinator. Pet. Ex. 2 at 139-140.

163. A Prior Written Notice of Department Action dated February 16, 2023 ("2/16/2023 PWN") was issued to summarize the IEP meeting held on November 30, 2022 and February 9, 2023 and DOE's FAPE proposal. The basis for DOE's proposed action

were current IEP; progress reports; assessment data; Present Levels of Academic Performance; Parent input; Teacher input; Student input; and functional data. According to the 2/16/2023 PWN, “[Student] is currently receiving [State Agency] services. [Student’s] counselor is [State Agency Counselor].” The 2/16/2023 PWN also memorializes DOE’s responses to Parent’s 2/06/2023 email stating: “There are currently no [REDACTED] opportunities on campus for students other than [REDACTED]” “The [REDACTED] opportunities through the DOE that [Parent] inquired about are for the [REDACTED] [REDACTED] “[Parent] was informed that both the [REDACTED] Counselor and IEP Writer called the program at [Public [REDACTED] School-2] that [Parent] referenced and confirmed that the program is not for [REDACTED] students. It is for their Fully Self Contained [REDACTED] students;” “[Student’s] [REDACTED] Counselor...refer[red] [Parent] to [Public [REDACTED] School’s] website which [] include a list of [REDACTED]” “Through a [REDACTED] class with [Student’s] Care Coordinator, [Care Coordinator], [Student] will have the opportunity to observe and potentially assist [Public [REDACTED] School’s] Tech Department. The opportunities will vary depending on the needs of the Tech Department;” and “IEP Writer provided [Parent] with the contact information for a resource that assists with [REDACTED] training, and youth transition support. [Non-Profit Organization]...” Pet. Ex. 1 at 37-39; DOE Ex. 54 at 201-203.

164. On February 22, 2023, Assistant Principal-2 informed Parent that “The IEP and PWN documents are our offer of FAPE. Please continue to work with [Student’s] [State

Agency] Counselor, [State Agency Counselor] regarding [Student's] [REDACTED] training, placement and support...." Pet. Ex. 2 at 138.

165. On March 10, 2023, Student's progress in meeting the goals in Student's 2/09/2023 IEP was assessed. Student was progressing in all the goals, except for one where Student was emerging. DOE Ex. 188 at 761-765.
166. On March 31, 2023, C&C Counselor sent an email to the [REDACTED] Program advisor and Student to inform the advisor that Student had completed a [REDACTED] application and [REDACTED] application to start a course in Fall of 2023, and asked the advisor to schedule an online meeting with Student as the next step in the registration process. DOE Ex. 171 at 601-602; School Counselor, Tr. Vol. II, 203:16-21.
167. On April 29, 2023, Parent asked School Counselor if it was possible to modify Student's [REDACTED] schedule so that Student could start Student's Public [REDACTED] School classes at [REDACTED] because Student would be trying to enroll in [REDACTED] next school year and would not be able to return to Public [REDACTED] School's campus until [REDACTED] Parent further informed School Counselor that Parent will be meeting with [REDACTED] [REDACTED] and [REDACTED] counselors in two (2) weeks. DOE Ex. 174 at 610.
168. On May 1, 2023, School Counselor responded to Parent's request to modify Student's [REDACTED] schedule: "I will try my very best to adjust [Student's] schedule to accommodate [Student's] [REDACTED] classes. If it is at all possible, it would be better for [Student] to take the [REDACTED] class in the afternoon...If it is not possible for [Student] to take the classes in the afternoon, I will talk with our team and see what options we have...." DOE Ex. 174 at 610. About an hour later, after speaking with Assistant Principal-2, School Counselor informed Parent that there was no alternative

schedule available for Student. School Counselor explained that Student needed to be on campus at Public [REDACTED] School in the morning for a “Personal Transition Plan” class [REDACTED] School Counselor suggested that Student select a [REDACTED] Program class that was later in the day. Pet. Ex. 2 at 137; DOE Ex. 174 at 611. Parent responded to School Counselor, explaining that “Because [Student] scored [REDACTED]¹² is only offered in the morning at [REDACTED] I didn’t see lower options than [REDACTED]...They don’t offer the [REDACTED] classes in the afternoon, but it looks like [REDACTED] could be offered on Monday and Wednesdays at [REDACTED]...I am working to transfer [Student] to [REDACTED] from [REDACTED]....As I explained to your administrators, [REDACTED] [REDACTED] The key is to get [Student] acclimated to [REDACTED] and [REDACTED] by setting a good foundation for [Student]. This is my approach to a transition plan as the school offers no [REDACTED] services for [Student] while [Student] is in school. Its [sic] possible for [Student] to take advisory on Tuesday/Thursday and Fridays. But, [Student] can stay an extra year. I will resend my request to administrators for a request to meet and re-send my questions from the last meeting.” Pet. Ex. 2 at 136; DOE Ex. 174 at 611-612.

169. On May 5, 2023, Assistant Principal-2 informed Parent that “As we [had] discussed at the last IEP meeting, [Student] can access [REDACTED] exploration and preparation through [Student’s] advisory class and with the [REDACTED] at [Public

¹² It is unclear from the record if [REDACTED] and [REDACTED] are similar courses or if it was a typographical error in the email exchange between Parent and School Counselor.

[REDACTED] School]. As [School Counselor] stated, the [REDACTED] course is a required credit for [REDACTED] and is scheduled into our bell schedule...I want to confirm that we are happy to modify [Student's] schedule to include only the courses required for [REDACTED] to free up [Student's] day for other [REDACTED] opportunities....” On the same day, Parent responded to Assistant Principal-2 with the following email (“5/05/2023 Email”): “I am re-requesting an IEP meeting to address the following concerns that I am unsatisfied with in [Student's] current IEP....1. [REDACTED] 2. [REDACTED] Skills 3. Social Skills 4. [REDACTED] 5. [REDACTED] 6. Compensatory Education.” DOE Ex. 174 at 613.

170. On May 10, 2023, SPED Teacher and Parent agreed to meet on May 23, 2023. Parent informed SPED Teacher that “given the decision on the inability of the school to modify [Student's] schedule to accommodate [REDACTED] classes, I would like to request another IEP meeting. I will need to postpone discussions with the [REDACTED] [REDACTED] counselor if [Student] can't leave campus to attend the [REDACTED] class next school year.” Pet. Ex. 2 at 133-134; DOE Ex. 174 at 615.

171. On May 11, 2023, Assistant Principal-2 sent a confirming email to Parent, stating “We can connect virtually at 2:00 p.m. on May 23 for [Student's] IEP meeting. I would like to restate that we are happy to modify [Student's] schedule to include only the courses required for [REDACTED] to free up [Student's] day for other [REDACTED] opportunities. I encourage you to keep your appointments with [REDACTED] and [REDACTED] counselors so you can bring information about [Student's] [REDACTED] options to the IEP meeting.” DOE Ex. 174 at 615.

172. On May 22, 2023, Parent gave SPED Teacher a list of needs that Parent wanted the IEP team to add to Student's IEP. Among other things, Parent again reiterated that the current IEP was not adequate to provide a continuum of services to Student to transition to [REDACTED]. According to Parent, the IEP lacked goals and objectives on how the IEP would address Student's [REDACTED] coursework so Student can take DOE's [REDACTED] program; access to [REDACTED] [REDACTED] Pet. Ex. 2 at 131-132; DOE Ex. 174 at 616-617.
173. On May 23, 2023, a revision IEP meeting was held, resulting in an IEP dated May 23, 2023 ("5/23/2023 IEP"). The IEP Annual Review Date remained the same – February 9, 2024. Pet. Ex. 1 at 1-17; DOE Ex. 56 at 206-222.
174. Present at the 5/23/2023 IEP meeting were Student, Parent, SPED Teacher, Assistant Principal-2, School Counselor, C&C Counselor, Care Coordinator, BHS, and a general education teacher. Pet. Ex. 1 at 17. Transition Coordinator was not present.
175. DOE did not invite anyone from State Agency to the 5/23/2023 IEP meeting and no one from State Agency attended the meeting. SPED Teacher, Tr. Vol. III, 319:8-19.
176. During the 5/23/2023 IEP meeting, Parent was informed that DOE does not put services in IEPs to help disabled students learn [REDACTED] [REDACTED] (Pet. Ex. 3, 5/23/2023 Audio File at 00:35:23-00:37:04). The school members of the IEP team also informed Parent and Student that Student could take the ASVAB interest survey, which Student was supposed to have done at the time of the last IEP discussion, but Student forgot. Pet. Ex.

3, 5/23/2023 Audio File at 00:53:00-00:54:44. Parent and the school members of the IEP team continued to disagree that [REDACTED] and functional assessments [REDACTED] are State Agency's responsibility to offer to Student. Pet. Ex. 3, 5/23/2023 Audio File at 00:52:00-00:53:00, 00:54:40-00:59:13.

177. The 5/23/2023 IEP is the same as the 2/09/2023 IEP except that the 5/23/2023 IEP contains additional Parent Concerns. The additional Parent Concerns state: "[Parent] wanted it noted that [Parent] is in disagreement with the Department of Education's (DOE) Transition Plan. [Parent] is rejecting certain components of it. [Parent] believes that [Student] should have access to [REDACTED] services. [Parent] does not believe that it is any outside agencies, e.g. [State Agency], [Non-Profit Organization], responsibility to teach [Student] certain things such as how to obtain [Student's] [REDACTED] [Parent] believes this is the responsibility of the DOE." Pet. Ex. 1 at 6.
178. SPED Teacher testified that when determining the transition goals for a child, the IEP team looks at the child as a whole and looks at functional data from teachers on how the child is performing in class; interest surveys; and consults with counselors. With Student in particular, the IEP looked at Student's ability to navigate the campus; Student's punctuality; Student's ability to get from point A to point B in the allotted time without being late; and participation in Advisory class. SPED Teacher, Tr. Vol. III, 325:25-326:16, 334:14-335:3.
179. Care Coordinator testified that Care Coordinator was not sure if DOE provided Student with any formal assessments to determine Student's [REDACTED] skills or deficits, but

DOE did give Student the RIASEC test and gathered information about Student through classroom observation, grades, and teacher reports. Care Coordinator, Tr. Vol. III, 272:22-274:25. The RIASEC test is not listed under Transition Assessments in either the 2/09/2023 IEP (Box 11) or 5/23/2023 IEP (Box 11)¹³.

180. RIASEC is a test that enables students to identify [REDACTED] that match their set of interests, traits, skills, and abilities. Pet. Ex. 3 at 199

181. At the end of Student's [REDACTED] year, [REDACTED] SPED Teacher, Tr. Vol. III, 355:1-13.

182. On May 24, 2023, School Counselor sent an email to Parent, informing Parent that "In order to put [Student] with [Care Coordinator] to [REDACTED]
[REDACTED]
[REDACTED] I think this is a good choice as it would allow [Student] to focus on [Student's] English class." DOE Ex. 178 at 624-625.

183. On May 25, 2023, Parent responded to School Counselor's 5/24/2023 email: "Respectfully, I disagree that the [REDACTED] position qualifies as [REDACTED] as we requested a transition plan with measurable requested goals and objectives. All[,] Since January 2023, I requested a meeting, and re-clarified that I wanted an IEP meeting to request a comprehensive transition plan for [Student] with measurable goals, and objectives which are based off science based assessments. Science based assessments are needed vs self administered assessments to help determine [Student's] [REDACTED] needs....I am asking for a IEP meeting to discuss which courses are needed to enter the

¹³ It is unclear from the record when Student was given the RIASEC test.

[REDACTED] program [Student] is targeting, establishing goals and objectives for [REDACTED] skill development and [REDACTED] Access to [REDACTED] is essential to address [Student's] needs in being a [REDACTED] DOE Ex. 178 at 624-625.

184. A few hours later on May 25, 2023, School Counselor emailed Parent: "Hi [Parent], I'm so glad that [Student] stopped by and that we were able to talk on the phone. Here is a recap of what we discussed. [REDACTED]

[REDACTED] Letters will be mailed late June to inform students. If [Student] is able to, you are leaning toward [Student] taking these classes...." DOE Ex. 178 at 625. Parent responded to School Counselor that evening: "I will follow up with the school next week about [Student's] school schedule. As I mentioned prior, [Student] has the opportunity to attend [REDACTED] at [REDACTED] [REDACTED] in the mornings. I have requested a change in home school status to transfer [Student] from [REDACTED] to [REDACTED] next year. I'll know more in a few weeks." DOE Ex. 178 at 626.

185. On May 26, 2023, Assistant Principal-2 sent the following email to Resource Teacher, the principal of Public [REDACTED] School, SPED Teacher, SSC-3, and other DOE employees: "...Here is the email with the parent request for an assessment and a meeting. We plan to send home the PWN from the meeting we just had on 5/23/23. After you review the IEP and PWN for [Student], **please let us know if we need to do an assessment for [REDACTED] skills.** [Bold in original]. We can follow up with a meeting that includes

[State Agency] to document that [State Agency] services/resources were rejected by the parent....” DOE Ex. 178 at 626.

186. A Prior Written Notice of Department Action, dated May 26, 2023 (“5/26/2023 PWN”) memorialized what was discussed at the 5/23/2023 IEP meeting. The 5/26/2023 PWN states that the IEP team members met on May 23, 2023 at Parent’s request to address Parent’s 5/05/2023 Email. The 5/26/2023 PWN further states that there was no new data to justify changing the offer of FAPE in the 2/09/2023 IEP, so the 2/09/2023 IEP would be revised to update the “Parent Concern” section only. Pet. Ex. 1 at 18-19.
187. Also on May 26, 2023, Student’s progress in meeting the goals in Student’s 2/09/2023 IEP was assessed. Student was either progressing or mastered all of Student’s goals in the 2/09/2023 IEP. DOE Ex. 188 at 766-772.
188. On May 27, 2023, in the morning, Parent acknowledged receipt of a revised IEP and PWN. Parent asked SPED Teacher, “Could you please modify the PWN to reflect in the section below that I requested that the coursework proposed by [School Counselor] be included into a overall transition program for [Student]. ‘[School Counselor] informed [Parent] about the different options that [Public █████ School] offers where [Student] would be able to possibly access the █████ and █████ classes on [Public █████ School’s] campus. [Parent] indicated that [Parent] would think about it.’ I will be in █████ during those dates. Could a math and English teacher be available for the meeting so a modification of math and English goals can be considered. I am requesting the math and English goals and objectives to be modified to show how these courses will specifically help [Student] enter █████ or █████ smoothly. As I mentioned to [School Counselor] previously, [Student] may have the

opportunity to enter [REDACTED] in Fall 2023 but the courses are in the morning. [Student] won't return to campus until [REDACTED] on certain mornings. This will affect [Student's] [REDACTED] course. [REDACTED] has a program called Trio which is run by an amazing counselor who wants to help [Student] with transitioning to [REDACTED]. Based on [Student's] needs at the moment, I feel this would greatly help [Student]. This is why I requested a modification to [Student's] schedule on the last email I sent over prior to the meeting." Pet. Ex. 2 at 128. In the evening, Parent informed SPED Teacher, Assistant Principal-2, and SSC-3 that it did not make sense to hold another IEP meeting as Parent had expressed him/herself to the best of Parent's abilities as to what Student needed to be prepared for [REDACTED] education, [REDACTED]. Parent stated: "My requests for services made no difference in the outcome at the last IEP meeting. Therefore, I am withdrawing my request for another IEP." Pet. Ex. 2 at 127.

189. On May 30, 2023, DOE received the instant Complaint.

190. In the Summer of 2023, Parent was informed that Student was a possible candidate for Public [REDACTED] School's [REDACTED] Program for the 2023-2024 school year. If Parent elected to enroll Student in the [REDACTED] Program, Student would take [REDACTED] [REDACTED] during the school day at Public [REDACTED] School for the Fall semester. If Student receives a grade of [REDACTED] or better in [REDACTED] Student would qualify to enroll in [REDACTED] in the Spring semester. [REDACTED] is an online course taught by a [REDACTED] Professor. Student would take [REDACTED] during the school day and be assisted by a Public [REDACTED] School teacher. Pet. Ex. 2 at 130.

191. Student is currently taking [REDACTED] classes. SPED Teacher, Tr. Vol. III.
329:6-18

V. CONCLUSIONS OF LAW

A. BURDEN OF PROOF

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

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

B. IDEA REQUIREMENTS

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs.” Bd. of Educ. v. Rowley, 458 U.S. 176, 179-91, 102 S. Ct. 3034, 3037-3043 (1982); Hinson v. Merritt Educ. Ctr., 579 F.Supp.2d 89, 98 (2008) (citing 20 U.S.C. §1400(d)(1)(A)). A free and appropriate public education (“FAPE”) includes both special education and related services. H.A.R. § 8-60-1; H.A.R. § 8-60-3; 20 U.S.C. § 1401(9); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 34 C.F.R. § 300.101.

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

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

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

The mechanism for ensuring a FAPE is through the development of a detailed, individualized instruction plan known as an Individualized Education Program (“IEP”) for each child. 20 U.S.C. §§ 1401(9), 1401(14), and 1414(d). The IEP is a written statement, prepared at a meeting of qualified representatives of the local educational agency, the child’s teacher(s), parent(s), and where appropriate, the child. The IEP contains, among other things, a statement of the child’s present levels of academic achievement and functional performance, a statement of the child’s annual goals and short-term objectives, and a statement of specific educational services to be provided for the child. 20 U.S.C. § 1414(d). The IEP is reviewed and, if appropriate, revised, at least once annually. 20 U.S.C. § 1414(d). The IEP is, in effect, a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Burlington v. Dept. of Educ. of the Commonwealth of Massachusetts, 471 U.S. 359, 368, 105 S. Ct. 1996, 2002 (1985). An IEP must be evaluated prospectively as of the time it was created. Retrospective evidence that materially alters the IEP is not permissible. R.E. v. New York City Dept. of Educ., 694 F.3d 167 (2nd Cir.2012).

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

C. ISSUES FOR DETERMINATION

Issue 1. Whether Student’s IEP of 5/23/2023, and/or for the prior 5 years, was sufficient to address Student’s academic, daily-living/access to the community and/or

██████████ skills needs, and/or whether the discussion of these areas of concern were sufficient during the 5/23/2023 IEP meeting and the prior 5 years of meetings.

AND

Issue 2. Whether prior to the 5/23/2023 IEP meeting, and/or the prior 5 years of IEP meetings, the DOE had sufficiently sought information on Student's academic, daily-living/access to the community and/or ██████████ skills needs sufficient to draft an offer of FAPE.

This due process hearing concerns the following IEPs: 7/10/2019 IEP; 6/09/2020 IEP; 12/08/2020 IEP¹⁴; 10/06/2021 IEP; 12/01/2021 IEP; 5/06/2022 IEP; 2/09/2023 IEP; and 5/23/2023 IEP. Petitioners seek a decision on whether any of these IEPs denied Student a FAPE by failing to sufficiently (1) address Student's academic, daily-living/access to the community and/or ██████████ skills needs; (2) discuss Student's academic, daily-living/access to the community and/or ██████████ skills needs during the IEP meetings; and (3) seek information on Student's academic, daily-living/access to the community and/or ██████████ skills needs prior to the IEP meetings to draft an offer of FAPE. Based on the evidence, Petitioners have met their burden of proof with respect to the 2/09/2023 IEP and 5/23/2023 IEP as they relate to Student's daily-living/access to the community and ██████████ skills needs. In all other respects, Petitioners failed to meet their burden of proof.

Federal regulations require that "[b]eginning not later than the first IEP to be in effect when the child turns ██████████ or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including

¹⁴ Allegations for the 7/10/2019 IEP, 6/09/2020 IEP, and 12/08/2020 IEP are limited to "prevocational skills needs" only.

courses of study) needed to assist the child in reaching those goals.” 34 C.F.R. § 300.320(b); see also 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

Transition services is defined in 34 C.F.R. § 300.43, which reads:

- (a) *Transition services* means a coordinated set of activities for a child with a disability that—
 - (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes—
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

See 20 U.S.C. § 1401(34).

In the State of Hawaii, for students [REDACTED] years old and above, or younger if appropriate, an IEP must contain a statement of “the transition services, needed to assist the student in reaching those goals, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.” See H.A.R. § 8-60-44(b)(2)(B).

(a) 7/10/2019 IEP, 6/09/2020 IEP and 12/08/2020 IEP

Petitioners’ allegations for the 7/10/2019 IEP, 6/09/2020 IEP and 12/08/2020 IEP concern Student’s prevocational skills needs only. As an initial matter, the Complaint was received by DOE on May 30, 2023. The SOL to file a complaint on matters relating to the

identification, evaluation, educational placement, or provision of a FAPE to a student with a disability is two (2) years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. H.A.R. § 8-60-61(a). The SOL to file a complaint concerning Student's [REDACTED] skills needs for the 7/10/2019 IEP, 6/09/2020 IEP and 12/08/2020 IEP were July 10, 2021; June 9, 2022; and December 8, 2022, respectively.

Therefore, the SOL for these three IEPs has run. Student's 7/10/2019 IEP states that Student's [REDACTED] goals were to go to [REDACTED] (FOF 24). Student's 7/10/2019 IEP also contains a section that states: "Beginning at age [REDACTED] years, or younger if appropriate, statement of transition service needs focusing on the courses of study needed to reach [REDACTED] school goal(s)." Underneath this statement are the typed-written words: "Not applicable at this time." (FOF 25). Also, in the 7/10/2019 IEP document is the statement: "Beginning at age [REDACTED] years, or younger if appropriate, a statement of needed transition services and, if appropriate, a statement of interagency responsibilities or any needed linkages." (FOF 26). Parent, who was present at the 7/10/2019 IEP meeting, knew, or should have known, that [REDACTED] skills needs could have been discussed during the IEP meeting or addressed in the IEP. (FOF 20). Student's 6/09/2020 IEP and 12/08/2020 IEP also have the same statements. Therefore, the SOL to file a complaint concerning the deficiencies in the IEPs, discussion during the IEP meetings, and gathering of information about Student's [REDACTED] skills needs for the 7/10/2019 IEP, 6/09/2020 IEP and 12/08/2020 IEP has run, and are barred from this administrative due process hearing¹⁵.

Even assuming that Petitioners are not barred by the SOL, Petitioners fail to meet their burden of proof. Petitioners did not offer any evidence to support their claim that the 7/10/2019

¹⁵ Although Respondents filed a Motion to Dismiss based on the SOL, Respondents did not attach any IEPs to their Motion to Dismiss.

IEP was insufficient to address Student's [REDACTED] skills needs, or that the discussion during the 7/10/2019 IEP meeting was insufficient. Petitioners also did not offer any evidence to establish that for Student, who was [REDACTED] years old at the time, a discussion into Student's [REDACTED] needs would have been appropriate. (FOF 19). During the 7/10/2019 IEP meeting, Parent expressed concerns regarding Student's organizational skills, inability to ask for help, and a lack of executive functioning skills, all of which could be necessary [REDACTED] skills or needed skills to [REDACTED] (FOF 21, 22).

Petitioners also did not offer any evidence to support their claim that the 6/09/2020 IEP was not sufficient to address Student's [REDACTED] skills needs or that the discussion was insufficient during the 6/09/2020 IEP meeting. Student's 6/09/2020 IEP addresses Student's [REDACTED] skills needs by requiring Student to take an [REDACTED] class and an [REDACTED] focusing on areas of [REDACTED]; and contains a [REDACTED] Education" goal. (FOF 35, 37, 38). If more was needed to address Student's [REDACTED] skills needs, Petitioners did not proffer any evidence to support this, nor did Petitioners make any arguments in their Closing Brief.

Petitioners also did not offer any significant evidence to support their claim that the 12/08/2020 IEP was not sufficient to address Student's [REDACTED] skills needs or that the discussion was insufficient during the 12/08/2020 IEP meeting. During the 12/08/2020 IEP meeting, Parent shared concerns regarding Student's lack of organizational skills; lack of self-advocacy skills; the quality of the work that Student was doing; and the length of time it took Student to complete a task. (FOF 49). The 12/08/2020 IEP team offered or planned to offer Student various transition services that included continued instruction in core classes and Study Skills for [REDACTED] Training and [REDACTED] Preparation; registration for courses that correspond

to Student's [REDACTED]; provide instruction in social skills in the school and [REDACTED] settings; assist Student with researching various [REDACTED] opportunities; offer Student the ASVAB assessment; and information on [REDACTED] training programs would be offered to Student. (FOF 50). And some of the goals and objectives and Supplementary Aids and Services in the 12/08/2020 IEP addresses [REDACTED] skills needs. (FOF 52, 53). Even if Parent had wanted more, Petitioners did not present any evidence that more was needed, nor did Petitioners argue in their Closing Brief what more was needed. Petitioners also did not argue how the discussion during the 12/08/2020 IEP meeting was insufficient to address Student's [REDACTED] skills needs.

Lastly, Petitioners did not offer any evidence or arguments as to what information the DOE should have sought prior to the 7/10/2019, 6/09/2020 and 12/08/2020 IEP meetings but did not. Furthermore, even if DOE failed to sufficiently seek information about Student's [REDACTED] skills needs, this would, at best, amount to a procedural violation as Petitioners failed to establish that Student's substantive rights were violated during the formulation of the 7/10/2019, 6/09/2020, and 12/08/2020 IEPs

Based on a lack of evidence, Petitioners fail to meet their burden of proof for the 7/10/2019 IEP, 6/09/2020 IEP and 12/08/2020 IEP.

(b) 10/06/2021 IEP

The purpose of the 10/06/2021 IEP meeting was to discuss some concerns Parent had about how Student's accommodations and modifications were being delivered in Student's classes and whether they were meeting Student's needs; the amount of time Student was spending in Study Hall; and the time conflict between Study Hall and Student's in-home ABA services. (FOF 63, 70). The IEP team revised Student's IEP and decided to implement the 10/06/2021 IEP for the next two (2) months until Student's annual IEP review on December 8,

2021. (FOF 63, 67). Student's 10/06/2021 IEP is similar to Student's 12/08/2020 IEP, except that the IEP team updated the "Parent Input" section to include Parent's update on Student's [REDACTED] concerns about Student's ability to focus and keep up with homework assignments; "workload overload;" and Parent's request that the counseling sessions address finding a solution to Student's organizational skills, time management, and self-advocacy needs. (FOF 63). The IEP team added Supplementary Aids and Services and further clarified/defined existing Supplementary Aids and Services to address Parent's concerns. (FOF 63). While Petitioners allege that the discussion during the 10/06/2021 IEP meeting and the resulting IEP were insufficient, Petitioners did not provide any evidence to establish that the discussion and 10/06/2021 IEP were insufficient¹⁶, nor did Petitioners make any arguments in their Closing Brief. In any event, as explained below, Student's 10/06/2021 IEP was sufficient to address Student's academic, [REDACTED] to the community and [REDACTED] skills needs. Therefore, Petitioners fail to meet their burden of proof with respect to Issue 1 as it applies to the 10/06/2021 IEP.

(1) Academic Needs

During the 10/06/2021 IEP meeting, the IEP team discussed Parent's concerns about Student's ability to focus and keep up with homework assignments, and the workload that Student was receiving. (FOF 63). The 10/06/2021 IEP provides goals and objectives that are aimed at improving Student's reading and writing skills, and increasing proficiency in Math. (FOF 65). The 10/06/2021 IEP addresses Student's academic needs by providing Supplementary

¹⁶ Parent's testimony confirming what is written on the 10/19/2021 PWN and Petitioners' Exhibit 1, page 67, of the 10/06/2021 IEP, is insufficient to establish that the discussion during the 10/06/2021 IEP meeting and the resulting IEP were insufficient. Parent, Tr. Vol. II, 93:25-96:7.

Aids and Services, such as Frequent Checks for Understanding in the Form of Open Ended Questions to Demonstrate Comprehension; Preferential Seating to Minimize Distractions and Help Focus; Frontload Vocabulary, Key Terms, Themes, Prior to Introducing the Lesson; Option to Type Classwork, Homework, Assignments, Projects, and Assessments; Chunking of Assignments/Larger Tasks Into Smaller Manageable Parts; and Providing Student with Hard Copies of Work. (FOF 67). The 10/06/2021 IEP further addresses Student's academic needs by providing Student with specialized instruction in the general education setting for Student's core classes, and participation in the general education setting for all other courses, electives, and non-academic activities. (FOF 66).

(2) [REDACTED] to Community Needs

The IEP team discussed Student's [REDACTED] to community needs by addressing Parent's concerns about Student's need to learn independence, organizational skills, time management skills, and self-advocacy. (FOF 63). The 10/06/2021 IEP contains goals and objectives that will address verbal and non-verbal communication skills to increase self-advocacy and ability to navigate social situations. (FOF 65). The following Supplementary Aids and Services in the 10/06/2021 IEP helps Student's daily-living/access to community needs: Tie New Concepts to Previously Learned Lessons and Real Life Experiences; Provide Step by Step Visual Instructions to Assist Student with Independence; Use of Graphic Organizers and Thinking Maps; Use of Planner for Visual Organization; and When Doing a Group Activity, Pair Student with a Group of Positive Peers. (FOF 67).

(3) [REDACTED] Skills Needs

The IEP team discussed Parent's concerns about Student's organizational skills, time management and self-advocacy needs, and completing tasks on time. (FOF 63). The IEP team

also discussed helping Student find a [REDACTED] (FOF 63). The 10/06/2021 IEP contains a goal and objectives to help Student begin planning and preparing for [REDACTED] goals by researching [REDACTED] interests in [REDACTED] Exploration courses and completing interest surveys. (FOF 65). The 10/06/2021 IEP also lists the courses that Student needed to take [REDACTED] and the courses that Student was currently taking. (FOF 50, 64). The 10/06/2021 IEP also lists transition services that would be provided to Student and the individuals who would provide them. (FOF 50, 64).

Lastly, Petitioners did not offer any evidence or arguments as to what information the DOE should have sought prior to the 10/06/2021 IEP meeting but did not. During the 10/06/2021 IEP revision meeting, the IEP team considered “functional data” about Student and information provided by Parent. (FOF 70). Prior to the 10/06/2021 IEP meeting, on August 27, 2021, Student took an iReady diagnostic test in Reading. (FOF 58). The 10/06/2021 IEP was revised to reflect information provided by Parent. (FOF 68). Petitioners have not argued, and the undersigned declines to guess, what additional information DOE should have sought for the purpose of conducting the 10/06/2021 IEP meeting. Therefore, Petitioners fail to meet their burden of proof in Issue 2 as it applies to the 10/06/2021 IEP.

(c) 12/01/2021 IEP

On December 1, 2021, the IEP team met to hold an annual IEP meeting to update Student’s IEP. (FOF 73). There is limited evidence regarding the 12/01/2021 IEP meeting and the resulting IEP. With respect to the 12/01/2021 IEP, Parent testified: “I requested assistance for [Student’s] [REDACTED]¹⁷ at an IEP meeting, I believe December 2020 and 2021. I requested

¹⁷ According to Parent, Student’s [REDACTED] were in the form of [REDACTED] statements,” such as “nigger” and “fuck,” either through verbal statements or text messaging. Parent, Tr. Vol. II, 59:24-60:21.

support for [Student's] [REDACTED] via multiple e-mails sent to the school. I asked for support for [Student] because [Student] was getting bullied...." Parent, Tr. Vol. II, 58:21-59:23¹⁸.

Petitioners did not present any evidence to establish why the supports in the 12/01/2021 IEP and the discussion during the 12/01/2021 IEP meeting were insufficient. Petitioners also did not make any arguments in their Closing Brief regarding the sufficiency of the 12/01/2021 IEP and its meeting, and the undersigned Hearings Officer declines to guess why the 12/01/2021 IEP and its meeting were insufficient. Petitioners fail to meet their burden in showing that the 12/01/2021 IEP meeting and the resulting IEP were not sufficient. The 12/01/2021 IEP was sufficient to address Student's academic, [REDACTED] to community needs, and [REDACTED] skills needs. Student will continue to receive the same Services and Supplementary Aids and Services as in the 10/06/2021 IEP. (FOF 66, 67, 79). The 12/01/2021 IEP further addresses these areas of concerns in the following manner:

(1) Academic Needs

The 12/01/2021 IEP team discussed the courses and credits Student had already taken and earned, the courses Student was taking at the time of the 12/01/2021 IEP meeting, and the courses Student still needed [REDACTED] (FOF 75, 77). The 12/01/2021 IEP contained

¹⁸ Parent also testified during the hearing that Parent and Private BCBA drafted a document (Petitioners' Exhibit 3, pages 157-162) "to articulate [Student's] needs to [Student's] IEP team regarding language, math, and [REDACTED] skills. We put together this document in hope that the DOE would consider these goals and objectives as it relates to [Student's] needs." Parent, Tr. Vol. II, 66:6-67:21. Parent further testified that Parent remembers Petitioners' Exhibit 3, pages 157-162, being submitted for the December 2021 IEP because Private BCBA could not attend the December 2021 IEP meeting and State Agency-2 Advocate attended the IEP meeting instead. However, Parent was mistaken as to which IEP meeting Exhibit 3, pages 157-162, was written for because Parent did not attend the 12/01/2021 IEP meeting with anyone from State Agency-2. Parent, Tr. Vol. II, 66:6-67:16; FOF 74. According to the record in this hearing, Parent reached out to State Agency-2 for help in November of 2022. (FOF 121). Also, Parent later testified that Petitioners' Exhibit 3, pages 157-162, may have been submitted to the DOE for an IEP meeting in 2022. Parent, Tr. Vol. II, 131:7-132:11.

goals and objectives that targeted Student's reading and math skills. (FOF 78). The 12/01/2021 IEP will continue to provide Student with "Specialized Instruction in the General Education setting for Language Arts, Math, Social Studies, and Science [and] [Student] will participate in the General Education setting for all other Courses, Electives, and Non-Academic activities." (FOF 80).

(2) [REDACTED] to Community Needs

The 12/01/2021 IEP included an updated goal to help Student identify and demonstrate self-management skills as evidenced by an increase in the use interpersonal and intrapersonal skills to navigate the school day. (FOF 78).

(3) [REDACTED] Skills Needs

The 12/01/2021 IEP included an updated goal of beginning to plan and prepare for [REDACTED] goals through [REDACTED] Research Activities with 100% participation through Student's [REDACTED] Class, and Student will, in Student's [REDACTED] develop a positive school profile and [REDACTED] (FOF 78).

Lastly, Student's 12/01/2021 IEP was based upon information from Student's current IEP, progress reports, assessment data, Present Levels of Academic Performance, and input from Parent, Student, teachers, and functional data. (FOF 81). Petitioners do not articulate what additional information DOE should have considered, but did not, in preparing the 12/01/2021 IEP. Therefore, Petitioners fail to meet their burden of proof with respect to Issue 2 as it applies to the 12/01/2021 IEP.

(d) 5/06/2022 IEP

On May 6, 2022, the IEP team convened a meeting to discuss Student's continued eligibility for special education services and Student's triennial reevaluation, which was due June

12, 2022. (FOF 88). The IEP team discussed if any assessments were needed to determine eligibility; discussed eligibility; and then discussed the IEP team's discussion. (FOF 90). An IEP, dated May 6, 2022, was drafted as a result of the eligibility meeting, and it is almost the same as the 12/01/2021 IEP. (FOF 91). DOE also reissued the 12/06/2021 PWN but changed the date of the PWN to May 11, 2022. (FOF 92). Petitioners did not present any evidence, or make any arguments, as to why they believe the 5/06/2022 IEP and the discussion during the eligibility meeting were insufficient. As such, Petitioners fail to meet their burden of proof for Issue 1 as it applies to the 5/06/2022 IEP.

Petitioners also fail to present any evidence or make any arguments as to why they believe DOE did not sufficiently seek information on Student's academic, [REDACTED] to the community and/or [REDACTED] skills needs to hold the eligibility meeting and draft the 5/06/2022 IEP. Therefore, Petitioners fail to meet their burden of proof with respect to Issue 2 as it applies to the 5/06/2022 IEP.

(e) 2/09/2023 IEP

The annual review of Student's IEP started on November 30, 2022, and concluded on February 9, 2023, resulting in an IEP dated February 9, 2023 ("2/09/2023 IEP"). (FOF 128, 138). After the 11/30/2022 IEP meeting but before the 2/09/2023 IEP meeting, on January 6, 2023, Student participated in a virtual intake meeting with State Agency Counselor on January 6, 2023 (FOF 135); and was accepted into [REDACTED] Program for the Fall 2023 semester on January 9, 2023 (FOF 136).

On February 6, 2023, Parent informed the school members of the IEP team that Student had been accepted by State Agency and asked "could [State Agency Counselor] be invited to the IEP meeting? We would like to discuss transition services to [REDACTED] while

[Student] is in school.” (FOF 137). Parent also asked the school members of the IEP team whether the school could teach Student how to catch the bus so that Student could attend classes at [REDACTED] during the Fall 2023 semester, and Parent informed the school members of the IEP team that Parent would be asking for [REDACTED] skills training as part of Student’s transition plan at the 2/09/2023 IEP meeting. (FOF 137).

On February 9, 2023, the IEP team met to continue discussing Student’s IEP. Present at the February 9, 2023 IEP meeting were Student, Parent, SPED Teacher, Assistant Principal-2, SSC-3, School Counselor, C&C Counselor, Care Coordinator, BHS, State Agency-2 Advocate, teachers, and a school clinical psychologist. (FOF 139). Not present at the 2/09/2023 IEP meeting was State Agency Counselor. DOE did not invite anyone from State Agency to Student’s 2/09/2023 IEP meeting. (FOF 140). Also not present was Transition Counselor, whose responsibilities included working with State Agency. (FOF 5, 139).

During the 2/09/2023 IEP meeting, Parent asked if Public [REDACTED] School could provide Student with [REDACTED] or transition supports if Student were to find an [REDACTED] but Parent was informed that Public [REDACTED] School could not provide those supports to Student. It was explained to Parent that only students who are on the [REDACTED] can receive community-based instruction, and Student was on the [REDACTED]. Unlike [REDACTED] students whose curriculum or education focuses on independent living skills, Student’s curriculum or education consisted of classes, such as [REDACTED] and [REDACTED]. Parent was referred to Non-Profit Organization to get help with [REDACTED] (FOF 141). It was suggested that Student be a classroom cleaner or a [REDACTED] for Care Coordinator. As a [REDACTED] for Care Coordinator, Student may have an opportunity to go to the school’s technology department to observe what they do and possibly help them. Student, however, could not be a

█ for the technology department. As a █ for Care Coordinator, Student may also have a chance to “check out other CTE things.” (FOF 141). The school members of the IEP team informed Parent that DOE can help Student with transition on the educational side, but State Agency was responsible for providing █ supports to Student. (FOF 141). During the 2/09/2023 IEP meeting, C&C Counselor referred Parent to Public █ School’s website to get information on internships at Public █ School and SPED Teacher gave Parent the contact information for Non-Profit Organization. (FOF 150).

Petitioners did not meet their burden of proof in showing that the discussion during the 2/09/2023 IEP meeting and the resulting IEP were not sufficient to address Student’s academic needs. Petitioners, however, did meet their burden of proof in showing that the discussion during the 2/09/2023 IEP meeting and the resulting IEP were not sufficient to address Student’s █ to the community and █ skills needs.

(1) Academic Needs

The 2/09/2023 IEP is sufficient to address Student’s academic needs. At the time of the 2/09/2023 IEP meeting, Student had earned █ out of █ credits toward █ (FOF 157). The 2/09/2023 IEP contains goals and objectives aimed at improving Student’s reading and math skills. (FOF 158). Student will receive special education and counseling services at school, and the 2/09/2023 IEP contains Supplementary Aids and Services to help Student while in school, such as frequent checks for understanding; preferential seating to minimize distractions and help focus; frontload vocabulary, key terms, themes, prior to introducing a lesson; the option to type classwork, homework, and assessments; chunking of assignments; and providing Student with hard copies of work. (FOF 67, 79, 159). Student will receive specialized instruction in the general education setting for Student’s core

classes, and Student will participate in the general education setting for all other courses, electives, and non-academic activities. (FOF 161). Student was progressing in Student's 10/06/2021 IEP goals (FOF 84); emerging or progressing in Student's 12/01/2021 IEP goals (FOF 86); progressing in Student's 5/06/2022 IEP goals (FOF 94, 133); and emerging or progressing Student's in 2/09/2023 IEP goals (FOF 165, 187).

Student was accepted into [REDACTED] for the Fall 2023 semester [REDACTED] [REDACTED] (FOF 132, 136), and was accepted into Public [REDACTED] School's [REDACTED] Program (FOF 190). Student is currently taking [REDACTED] classes (FOF 191). At the time of the 2/09/2023 IEP meeting, Student was passing all of Student's classes except for [REDACTED] which Student was averaging a [REDACTED] which Student was averaging an [REDACTED] Student's [REDACTED] teachers reported that Student was missing assignments or an exam and once those assignments or exam were completed, Student's grades would improve. (FOF 147).

Petitioners also fail to argue or show what information on Student's academic needs should have been sought prior to the 11/30/2022 and 2/09/2023 IEP meetings but was not. Based on the foregoing, Student's academic needs were being met by the 2/09/2023 IEP.

(2) [REDACTED] to Community and [REDACTED] Skills Needs

According to DOE's Handbook, "The goal of transition planning is to support students with disabilities to learn the skills necessary to reach their [REDACTED] goals (PSGs) and successfully transition [REDACTED] (FOF 113). DOE recognizes that the "purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for whatever comes next, including [REDACTED]

[REDACTED] (FOF 114). DOE also recognizes that beginning at age [REDACTED] or younger if appropriate, a student's IEP must include appropriate measurable [REDACTED] goals, transition services, and transition assessments. (FOF 114). DOE acknowledges that transition services can be in the form of instruction; related services; community experiences; development of [REDACTED] and other [REDACTED] living objectives; acquisition of daily living skills; and functional [REDACTED] assessments. (FOF 117). The 2/09/2023 IEP ignores much of what is in DOE's own Handbook, and IDEA requirements, and therefore is not sufficient to address Student's [REDACTED] to the community and [REDACTED] skills needs.

At the time of the 2/09/2023 IEP meeting, Student was [REDACTED] years old and a [REDACTED]. Much of Student's [REDACTED] had already passed¹⁹. Student's [REDACTED] goal was to go to a [REDACTED]. Up until this point, the IEP team had provided Student with minimal services towards achieving Student's [REDACTED] goal.

Student turned [REDACTED] years old when Student was in the [REDACTED] grade. (FOF 31, 32). When Student was in the [REDACTED] grade, the 6/09/2020 IEP team discussed what courses of study Student would need to [REDACTED] (FOF 35).

During Student's [REDACTED] the 12/08/2020 IEP team determined that Student would be provided the following transition services and the individuals who would be responsible for providing the services: teachers would continue to provide instruction in Student's classes; a grade level counselor and Care Coordinator would assist Student with registering for courses that

¹⁹ The undersigned Hearings Officer takes judicial notice of the fact that the 2022-2023 school year ends on May 26, 2023 for students in the State of Hawaii.

<https://www.hawaiipublicschools.org/DOE%20Forms/2022-23calendar.pdf>

correspond with Student's [REDACTED] pathway; a grade level counselor would provide [REDACTED] registration information; Care Coordinator and Transition Coordinator would assist Student in making a connection with Student's grade level counselor and [REDACTED] counselor; and the [REDACTED] counselor would assist Student with researching [REDACTED] websites and reviewing [REDACTED] procedures and [REDACTED] program requirements. (FOF 50). Student would also be provided instruction in social skills in the school and [REDACTED] settings; assistance with researching various [REDACTED] opportunities; be offered the ASVAB assessment and [REDACTED] field trips; and offered information on [REDACTED] programs. (FOF 50).

During Student's [REDACTED] the IEP team reviewed Student's IEP on October 6, 2021, and no changes were made to the transition services (Box 14). (FOF 64). On December 1, 2021, during Student's annual IEP review, the 12/01/2021 IEP team discussed the courses that Student was taking or still needed to take [REDACTED] (FOF 75, 77). Again, the transition services (Box 14) remained the same as the 10/06/2021 IEP. (FOF 77).

During Student's [REDACTED] Transition Coordinator submitted Student's application to State Agency on November 10, 2022 (FOF 123); Student was provided an opportunity to go on a field trip to [REDACTED] (FOF 124); Student was given an SEL Student Assessment in September of 2022 (FOF 146); and two (2) informal personal interviews were conducted in November of 2022 in [REDACTED] class. (FOF 151). Student was offered the opportunity to be a classroom cleaner or a [REDACTED] to Care Coordinator with the opportunity to observe the technology department and possibly help them. (FOF 141).

The 2/09/2023 IEP provides similar transition services as the previous IEPs. except that the teachers' roles were expanded to include providing instruction in [REDACTED] readiness and social skills within their lessons; a grade level counselor would no longer be responsible for providing

■■■■ registration information to Student, but Parent will receive notification through “synrevoice,” school bulletins, or mailers from Public ■■■■ School; and C&C Counselor will no longer assist Student with researching ■■■■ websites, and reviewing ■■■■ procedures and ■■■■ requirements, Parent would now be responsible for reaching out to C&C Counselor with any questions they may have about ■■■■ procedures and ■■■■ requirements. (FOF 154). The most significant changes to the transition services (Box 13²⁰) in the 2/09/2023 IEP are the documentation that “[Student] has been accepted into [State Agency] and will work with them directly;” Student “currently receives [State Agency] services;” and “[Parent] was also provided contact information for [Non-Profit Organization].” (FOF 154).

While the transition services offered to Student at the beginning of ■■■■ school was acceptable, offering similar transition services to Student as a ■■■■ is not acceptable. Student being accepted into State Agency is not a transition service that DOE is providing to Student. State Agency is a stakeholder that can support the transition process and assist Student in achieving Student’s goals. DOE in collaboration with State Agency can provide Student with the needed transition services. DOE was required to invite a representative from State Agency to the 2/09/2023 IEP meeting, but it did not. (FOF 139, 140). 34 C.F.R. § 300.321(b)(3). DOE was also required to provide a statement of interagency responsibilities (i.e., State Agency) or any needed linkages, but did not. (FOF 155, 156). H.A.R. § 8-60-44(b)(2)(B). Without a statement of interagency responsibilities, no one knows what State Agency’s responsibilities are, if any, towards Student. In addition, DOE and/or Parent wouldn’t know whether State Agency is failing to provide certain transition services, and DOE wouldn’t know whether or when it should “reconvene the IEP Team to identify alternative strategies to meet the transition objectives for

²⁰ The “boxes” in the 2/09/2023 IEP were renumbered from previous IEPs.

the child set out in the IEP” when State Agency fails to provide transition services. 34 C.F.R. § 300.324(c). Oddly enough, the 2/09/2023 IEP contains the statement: “Representatives of any outside agency must be invited to the IEP team meeting with prior consent. Document the transition services that are likely to be provided or paid for by an outside agency”—a statement that is not present in previous IEPs. (FOF 155). Yet, no one from State Agency was invited and the “Outside Agency Responsible” column in the 2/09/2023 IEP remains blank²¹. (FOF 156). Parent informed Care Coordinator on October 28, 2022 that Parent would like a representative from State Agency at the upcoming IEP meeting if Student’s paperwork was processed in time. (FOF 109). On November 1, 2022, in response to Parent’s numerous questions, SPED Teacher informed Parent that “all [State Agency] questions are answered by [State Agency] personnel whom you would work with directly if [Student] is deemed eligible through them,” and “All the parties who can answer your questions will be invited to the meeting.” (FOF 112). After Student was accepted into State Agency, Parent asked on February 6, 2023, “[C]ould [State Agency Counselor] be invited to the IEP meeting?” (FOF 137). There is no evidence that DOE sought Parent’s consent to allow State Agency Counselor to be present at the 2/09/2023 IEP meeting. DOE informing Parent that “[Parent] was more than welcome to invite them” does not satisfy DOE’s legal obligation. (FOF 140).

Considering the school members of the 2/09/2023 IEP team refused to provide Student with any community-based instruction and informed Parent that State Agency was responsible for providing [REDACTED] training supports to Student, DOE’s failure to invite State Agency to the 2/09/2023 IEP meeting and failure to document what transition services State

²¹ This column was labeled “Agency Responsible/Linkages” in previous IEPs. DOE Ex. 48 at 167 (5/06/2022 IEP); Pet. Ex. 1 at 49 (12/01/2021 IEP), 68 (10/06/2021 IEP), 87 (12/08/2020 IEP).

Agency would be providing to Student resulted in a loss of educational opportunity for Student and significantly impeded Parent's opportunity to participate in the decision-making process. Due to the uncertainty of who was responsible for what, Student was deprived of some educational opportunities. For example, SPED Teacher did not know if State Agency provides functional [REDACTED] assessments (FOF 105), yet DOE did not administer any functional [REDACTED] assessment to Student. (FOF 179, 185). Parent had been inquiring about [REDACTED] [REDACTED] class since October 16, 2022 (FOF 100) and on October 25, 2022, Parent even asked [REDACTED] Teacher to attend an IEP meeting to discuss supports needed to help Student comprehend and pass a [REDACTED] test, but [REDACTED] Teacher did not attend. (FOF 106, 107). Parent being informed that Public [REDACTED] School offers a [REDACTED] class as an elective and the name of the teacher (FOF 100) are insufficient to meet Student's needs. DOE's Handbook contains possible services that can be offered to students, which includes assisting students with navigating the community (transportation, traffic rules, etc.) and [REDACTED] [REDACTED] (FOF 118). IDEA regulations provide that "*Special education* includes...Travel training; and [REDACTED] education." 34 C.F.R. § 300.39(a)(2)(ii) and (iii). DOE is responsible for providing "travel training" and [REDACTED] education" to Student.

DOE committed procedural and substantive violations in the formulation of the 2/09/2023 IEP. The 2/09/2023 IEP is insufficient to meet Student's [REDACTED] to the community and [REDACTED] skills needs. The discussion was insufficient because a representative from State Agency was not present and Student had not been given any meaningful assessments to determine Student's needs, preferences, and interests. The procedural violations constitute a denial of FAPE because it resulted in a loss of educational opportunity for Student and significantly impeded Parent's opportunity to participate in the decision-making

process. Therefore, Petitioners met their burden of proof with respect to Issue 1 as it relates to the 2/09/2023 IEP.

For the same reasons articulated above, Petitioners have also met their burden of proof with respect to Issue 2 as it relates to the 2/09/2023 IEP—DOE did not sufficiently seek information on Student's [REDACTED] to the community and/or [REDACTED] skills needs prior to the IEP meeting to draft an offer of FAPE. There is not much information about Student's [REDACTED] to the community and/or [REDACTED] skills needs. Student was given an SEL assessment in September of 2022 (FOF 146), and two (2) brief informal interviews in November of 2022 (FOF 151). Although there are a variety of transition and [REDACTED] assessments available to Public [REDACTED] School, Public [REDACTED] School did not use them. (FOF 120). DOE's main source of information about Student was through classroom observations; teacher reports; consultation with counselors; interest surveys; grades; and observation of Student being punctual, able to navigate the school campus, and participating in [REDACTED] class. (FOF 178, 179). The school members of the IEP team's limited inquiry into Student's [REDACTED] to the community and [REDACTED] skills needs was likely the result of the IEP team's misunderstanding that they are only responsible for Student's educational side of the transition process. (FOF 141).

(f) 5/23/2023 IEP

After the 2/09/2023 IEP meeting, on February 13, 2023, Parent asked if another meeting could be organized so that the team could discuss Student's transition plan in greater detail. (FOF 162). On April 29, 2023, Parent requested that Student's [REDACTED] schedule be modified so that Student [REDACTED] take a math course. (FOF 167). On May 1, 2023, School Counselor denied Parent's request, stating that Student had

to be on Public [REDACTED] School campus in the morning because Student had to take an [REDACTED] class that was required [REDACTED] (FOF 168). Parent explained to School Counselor that because Student scored so poorly in math, the lowest math course Student could take is scheduled for the morning. (FOF 168). Parent informed School Counselor that Parent would prefer that Student attend Public [REDACTED] School for an additional year and go to a [REDACTED] [REDACTED] during [REDACTED] so that Student could get acclimated to [REDACTED] instead of having Student rush to complete [REDACTED] class in [REDACTED] so that Student [REDACTED] (FOF 168). Parent informed School Counselor that this was Parent's approach to a transition plan since Public [REDACTED] School does not offer any transition or community-based instruction services to Student. (FOF 168). On May 5, 2023, Assistant Principal-2 denied Parent's request, informing Parent that Student "can access [REDACTED] exploration and preparation through [Student's] [REDACTED] class and with the [REDACTED] Center at [Public [REDACTED] School]." (FOF 169). Assistant Principal-2 informed Parent that Public [REDACTED] School was willing to modify Student's [REDACTED] schedule so long as it did not impact Student [REDACTED] (FOF 169). Due to Public [REDACTED] School's decision not to modify Student's schedule to accommodate Student leaving Public [REDACTED] School campus to go to [REDACTED] for class, Parent renewed Parent's request for an IEP meeting. (FOF 169, 170). Parent wanted the following topics to be addressed in the 5/23/2023 revision IEP meeting: daily living skills; [REDACTED] skills; social skills; [REDACTED] transition; and compensatory education. (FOF 169). Due to the IEP team's continued misunderstanding of their obligation under the IDEA, Student's [REDACTED] to the community and [REDACTED] skills needs were again not addressed during the 5/23/2023 IEP meeting.

(1) Academic Needs

As discussed above, Student's 2/09/2023 IEP was sufficient to meet Student's academic needs. No additional information developed after the 2/09/2023 IEP meeting to suggest that Student's IEP cannot meet Student's academic needs. Since the 2/09/2023 IEP meeting, Student has been emerging, progressing or mastered the goals in the 2/09/2023 IEP, which includes goals and objectives relating to Student's academic needs. (FOF 165, 187). Therefore, Petitioners fail to meet their burden of proof and the 5/23/2023 IEP and discussion during the 5/23/2023 IEP meeting are sufficient to meet Student's academic needs. Also, DOE had sufficiently sought information on Student's academic needs prior to the 5/23/2023 IEP meeting to draft an offer of FAPE relating to Student's academic needs.

(2) [REDACTED] to Community Needs and [REDACTED] Skills Needs

The discussion during the 5/23/2023 IEP meeting and the resulting IEP were not sufficient to address Student's [REDACTED] to the community and [REDACTED] skills needs. DOE again failed to invite a representative from State Agency to the 5/23/2023 IEP meeting, and Transition Counselor, who works with State Agency, was also not present. (FOF 174, 175). The 5/23/2023 IEP also does not delineate what services State Agency will provide to Student²². (FOF 177). This instant case is so similar to Carrie I. ex rel. Greg I. v. DOE, Hawaii,

²² Transition Coordinator gave the following testimony:

Q. Is the particular services and supports that [State Agency] is providing to a child supposed to go into an IEP document?

A. Not that I know of.

Q. And in this case, in [Student's] case did you see any of the specificity what [State Agency] would be providing [Student] in [Student's] IEP?

A. I did not.

Q. [State Agency] and DOE are agencies within the state system, correct?

A. Correct.

Q. And do you know of whether or not the concerns that [Parent] raised for services that are related to transition at least in [Parent's] mind are being provided by [State

that the District Court's reasoning is worth repeating:

Here, it is undisputed that the 'participating agency that is likely to be responsible for providing or paying for transition services' is the State Department of [REDACTED] Rehabilitation, or "DVR." It is also undisputed that the SSC failed to invite a DVR representative to the IEP meeting (and, likewise, failed to seek the consent of Greg I.'s parents) as required by § 300.321(b)(3). It cannot seriously be disputed that it was not "appropriate" to invite a DVR representative where a goal of the July 19, 2010 IEP was to "mainstream" Greg I., and begin transitioning him to a [REDACTED] setting.

Although it remains speculative what would have occurred if the DOE had invited a DVR representative (who may have declined the invitation), the *opportunity* to have a representative during preparation of the July 19, 2010 IEP was certainly lost.

It is also undisputed that no assessments were conducted as required under 34 C.F.R. § 300.320(b)(1) in considering transition services. The lack of assessments alone is enough to constitute a lost educational opportunity. Indeed, in this precise context, a court found a denial of FAPE, reasoning that "[a] procedural fault rises to [a denial of FAPE] when a school fails to conduct proper assessments and then provides inadequate services."

Carrie I. v. DOE, Hawaii, 869 F.Supp.2d 1225, 1245, 1247 (D. Hawaii 2012) (brackets in

original). Similar to Carrie I., the IEP team's failure to comply with IDEA procedures resulted

in an IEP that was not sufficient and/or limited the discussion during the 5/23/2023 IEP meeting.

Parent's ongoing requests for services to help Student learn how [REDACTED] obtain a

Agency]?

A. I don't know.

Transition Coordinator, Tr. Vol. III, 224:3-17

██████████²³, and to receive ██████████ supports²⁴ have gone unaddressed because DOE considered these services to be CBI services that are reserved for ██████████ students or services that should be provided by State Agency. (FOF 141, 176, 172). Parent was informed during the 5/23/2023 IEP meeting that DOE does not put services in an IEP to help disabled students learn how ██████████ if these students are capable of ██████████ ██████████ (FOF 176). Regardless of what these services are called—i.e., “community-based instruction”—Student’s IEP should offer community experiences; development of ██████████ and other ██████████ objectives; and acquisition of daily living skills and provision of a functional ██████████ evaluation, which are appropriate in this case. 34 C.F.R. § 300.43(a).

Petitioners are not asking that Student be pulled out of the general education setting and be placed in a “self-contained classroom where the CBI services are delivered.” DOE Closing Brief, p. 18. Petitioners want transition services that will facilitate Student’s movement from

²³ Respondents argue that “The DOE believed Student already had the skill set to learn how to ride a bus because Student’s reading assessment indicated a ██████████ grade equivalent. Also [Student] could advocate for [him/herself], follow directions, and ask clarifying questions.” DOE Closing Brief, p. 17, FN1. The undersigned respectfully disagrees. Although catching the bus may seem like a simple exercise for some, Student is special and may need additional help beyond being able to read, follow directions, and advocating for him/herself. How will Student handle having an ██████████ while on the bus? Will Student be able to “advocate” for him/herself if Student is approached by a stranger? Will Student know what to do if Student misses Student’s stop? These are questions that currently have no answers, which is why it should be addressed by the DOE.

²⁴ There is a contradiction in Respondents’ position regarding where Student should be getting job training support. Although special education includes ██████████ education, which means “organized educational programs that are directly related to the preparation of individuals for ██████████” DOE takes the position that ██████████ training support is the responsibility of State Agency, yet argues in their Closing Brief that State Agency “was not responsible for providing transition services” because, arguably, “DOE was already planning to provide ██████████ and transition services on campus to Student.” DOE Closing Brief, p. 17, FN2; FOF 141, 176; 34 C.F.R. § 300.39(b)(5).

school to [REDACTED]
[REDACTED] all of which can benefit from community-based instruction or experiences. 34 C.F.R. § 300.43(a). Respondents do not cite to any legal authority in their Closing Brief that CBI is limited to students who are incapable of being successful in regular [REDACTED] school classes²⁵ and do not argue in their Closing Brief that CBI is reserved for [REDACTED] students. (FOF 142, DOE Closing Brief, p. 17, FN2). The transition services offered to Student should not be limited by Student's ability to get a [REDACTED] school diploma; the transition services offered to Student should be tailored to the unique needs of Student. DOE's obligation is to provide transition services "that is focused on improving the academic and functional achievement of the child." 34 C.F.R. § 300.43(a)(1) (bold added). DOE's obligation to provide transition services to improve a child's functional achievement should not be limited by the child's academic achievement.

Although Public [REDACTED] School offered Student a classroom cleaner position²⁶ (FOF 141), a [REDACTED] position with Care Coordinator²⁷ (FOF 141), and a field trip opportunity to [REDACTED] [REDACTED]²⁸ (FOF 124), the 5/23/2023 IEP still falls short in addressing Student's [REDACTED] [REDACTED] to the community and [REDACTED] skills needs. For the same reasons why the 2/09/2023 IEP denied Student a FAPE, the 5/23/2023 IEP also denies Student a FAPE because

²⁵ The fact that Public [REDACTED] School-2 has a similar policy of limiting [REDACTED] skills or [REDACTED] skills training to their fully self-contained students, and is hopeful that in the future these services will be opened up to [REDACTED] students is an indication that it is a school or DOE policy. (Pet. Ex. 3, 2/09/2023 Audio File at 00:10:10-00:11:00).

²⁶ Becoming a [REDACTED] Student's area of interests. (FOF 162).

²⁷ There are no goals or objectives connected to the [REDACTED] position with Care Coordinator. (FOF 158, 162, 177).

²⁸ Student did not feel comfortable attending the field trip because there would be [REDACTED] and Student was a [REDACTED]. No supports were offered to Student to ease Student's concern so that Student could attend the field trip. (FOF 124).

no substantive changes were made to the IEP; Parent's concerns and requests were stifled during the IEP meeting due to DOE's misunderstanding of their legal obligations; and no additional assessments or information about Student's [REDACTED] to the community and/or [REDACTED] skills needs were obtained between February 9, 2023 and May 23, 2023.

Section 504 Claim

Petitioners' Section 504 argument is beyond the scope of the issues raised in this due process hearing. Pet. Closing Brief, pp. 14-15. An impartial due process hearing is limited to issues that are raised in a due process hearing complaint:

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

20 U.S.C. § 1415(f)(3)(B). See Dept. of Educ., Hawaii v. C.B., Civil No. 11-00576 SOM/RLP, 2012 WL 1537454, *8 (D.Haw. May 1, 2012). There was no agreement to hear the issue of whether DOE's criteria in determining who receives CBI services is discriminatory. Although Petitioners' Complaint generally references Section 504, the issues as clarified during the prehearing conference did not include issues relating to Section 504 violations. H.A.R. § 8-60-65(e). The undersigned Hearings Officer has no authority or jurisdiction to decide issues other than those discreet issues raised in Petitioners' Complaint. Board of Education of the Green Local Sch. Dist. V. Redovian, 18 IDELR 1092, 1098 (E.D. Ohio 1992). Therefore, Petitioners' allegation of a Section 504 violation is denied. This ruling does not preclude Petitioners from filing a due process hearing request to specifically allege Section 504 violation(s) that will provide DOE with sufficient notice on the details of the alleged violation(s).

VI. DECISION

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer concludes that Petitioners have proven a denial of FAPE because (1) the 2/09/2023 IEP and 5/23/2023 IEP do not sufficiently address Student's [REDACTED] to the community and [REDACTED] skills needs; (2) the discussions about Student's [REDACTED] [REDACTED] to the community and [REDACTED] skills needs during the 2/09/2023 IEP meeting and 5/23/2023 IEP meeting were insufficient; and (3) DOE did not sufficiently seek information on Student's [REDACTED] to the community and [REDACTED] skills needs prior to the 2/09/2023 IEP meeting and 5/23/2023 IEP meeting to sufficiently draft an offer of FAPE.

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

1. The IEP team shall conduct a functional [REDACTED] evaluation;
2. The IEP team shall, within ten (10) school days of this Order, decide if any additional tests or assessments are necessary to determine Student's [REDACTED] to the community and [REDACTED] skills needs. Any assessments are to be scheduled and completed within forty-five (45) calendar days of this Order.
3. An IEP revision meeting shall be held within ten (10) school days of the completion of all aforementioned assessments.
4. DOE shall seek Parent's consent to invite a representative from State Agency to the IEP revision meeting, and if consent is given, invite a representative from State Agency to the IEP revision meeting.
5. Any delay in meeting any of the deadlines in this Order because of an act or acts of Petitioners and/or their representatives and/or their private providers, will extend the deadlines set herein by the number of days attributable to Petitioners and/or their

representatives and/or their private providers. Respondents shall document in writing any delays caused by Petitioners and/or their representatives and/or their private providers.

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 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 H.A.R. § 8-60-70(b).

DATED: Honolulu, Hawaii, September 27, 2023.



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