

DEPARTMENT OF THE ATTORNEY GENERAL
OFFICE OF DISPUTE RESOLUTION

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

In the Matter of
STUDENT¹, by and through the Parents,
PARENT-1 and PARENT-2,

Petitioners,

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAII,

Respondent.

DOE-SY2324-033

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing

Dates: July 8-12, 2024

Time: 9:30 a.m.-4:00 p.m.

[REDACTED]

Hearings Officer: Charlene S.P.T. Murata

DOE-SY2324-038

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In the Matter of
DEPARTMENT OF EDUCATION, STATE
OF HAWAII,

Petitioner,

vs.

PARENT-1 and PARENT-2, Parents of
Student, STUDENT,

Respondents.

¹ Personal identifiable information is provided in the Legend.

**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 §§ 8-60-1, et seq.

II. INTRODUCTION

On April 4, 2024, the Department of Education, State of Hawaii (“DOE”) received a Request for Due Process Hearing Complaint from Student, by and through Student’s Parents (collectively “Parents”). The Office of Dispute Resolution (“ODR”) subsequently received a copy of Parents’ Request for Due Process Hearing Complaint (“Parents’ Complaint”), assigned case number DOE-SY2324-033 to Parents’ Complaint, and filed Parents’ Complaint on April 5, 2024. Parents’ Complaint was assigned to the undersigned Hearings Officer.

On April 10, 2024, DOE responded to Parents’ Complaint by submitting Department of Education’s Response to Petitioners’ Request for Impartial Hearing.

On April 30, 2024, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for May 6, 2024.

On May 2, 2024, DOE submitted a Request for IDEA Impartial Due Process Hearing Complaint in response to Parents’ request for an independent educational evaluation. DOE’s Request for IDEA Impartial Due Process Hearing Complaint was assigned case number DOE-SY2324-038 (“DOE’s Complaint”). DOE’s Complaint was assigned to Administrative Hearings Officer Chastity T. Imamura.

On May 6, 2024, a prehearing conference took place for Parents' Complaint. Present at the prehearing conference were Charlene S.P.T. Murata, Hearings Officer; Carl Varady, Esq. for Parents; and Deputy Attorney General Kevin M. Richardson ("Mr. Richardson") and District Educational Specialist ("DES") for DOE. During the prehearing conference, the parties requested the consolidation of Parents' Complaint and DOE's Complaint for hearing. On May 7, 2024, under Parents' Complaint, DOE submitted a written request for consolidation of the two cases and DOE's request was granted on May 14, 2024. See Respondent's Motion to Consolidate Cases for Hearing; Declaration of Kevin M. Richardson, filed May 7, 2024; Order Granting Respondent's Motion to Consolidate Cases for Hearing; Declaration of Kevin M. Richardson, filed May 7, 2024, issued on May 14, 2024. DOE's Complaint was then reassigned to the undersigned Hearings Officer.

On May 14, 2024, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties for Parents' Complaint and DOE's Complaint, setting a prehearing conference for May 15, 2024.

On May 15, 2024, Mr. Varady, Mr. Richardson, Deputy Attorney General Ronald D. Rodriguez ("Mr. Rodriguez"), and the undersigned participated in a prehearing conference. The prehearing conference was not completed on that day and the parties were in agreement that it be continued to another day, and agreed on a May 20, 2024 date. See Notice of Further Prehearing Conference; Subjects to be Considered, issued on May 16, 2024.

On May 16, 2024, DOE submitted a request to extend the 45-day decision deadline from June 16, 2024 to June 18, 2024 for DOE's Complaint so that Parents' Complaint and DOE's Complaint would have the same 45-day decision deadline. Parents did not object to this request and DOE's request was granted on May 16, 2024. See Order Granting Petitioner's Request to

Extend the 45-Day Decision Deadline in DOE-SY2324-038 from June 16, 2024, to June 18, 2024; Declaration of Kevin M. Richardson, filed May 16, 2024, issued on May 16, 2024.

On May 20, 2024, Mr. Varady; Mr. Richardson, Mr. Rodriguez, DES, and the undersigned participated in a further prehearing conference. During the prehearing conference, the due process hearing was scheduled for July 8-12, 2024 [REDACTED]

On May 21, 2024, a Prehearing Order was issued to the parties, setting forth the issues and procedures for the due process hearing, and deadlines for submission of witness and exhibit lists, and exhibits.

On May 28, 2024, DOE submitted two motions: (1) Department of Education, State of Hawaii's Motion Requesting Permission to Allow Virtual Testimony of SLP; Memorandum in Support of Motion; Declaration of DES; and (2) Department of Education, State of Hawaii's Motion Requesting Permission to Allow Virtual Testimony of GED Teacher; Memorandum in Support of Motion; Declaration of DES. Parents opposed both motions. DOE's request regarding GED Teacher was granted and its request regarding SLP was denied. See Petitioners'- Respondents' Opposition to Department of Education, State of Hawaii's Motion Requesting Permission to Allow Virtual Testimony of GED Teacher and SLP, filed on June 3, 2024; Order Granting Department of Education, State of Hawaii's Motion Requesting Permission to Allow Virtual Testimony of GED Teacher; Memorandum in Support of Motion; Declaration of DES, filed on May 28, 2024, issued on June 13, 2024; Order Denying Department of Education, State of Hawaii's Motion Requesting Permission to Allow Virtual Testimony of SLP; Memorandum in Support of Motion; Declaration of DES, filed on May 28, 2024, issued on June 13, 2024.

On May 30, 2024, DOE submitted Department of Education, State of Hawaii's Request to Extend the 45-Day Decision Deadline in DOE-SY2324-033 and DOE-SY2324-038 from June

18, 2024, to August 2, 2024; Declaration of Kevin M. Richardson. On June 3, 2024, Parents filed Petitioners'-Respondents' Statement of Non-Waiver of the 45-Day Decisional Deadline. On June 6, 2024, an Order Granting Department of Education, State of Hawaii's Request to Extend the 45-Day Decision Deadline in DOE-SY2324-033 and DOE-SY2324-038 from June 18, 2024, to August 2, 2024; Declaration of Kevin M. Richardson, filed May 30, 2024, issued on June 6, 2024.

On June 28, 2024, the parties timely submitted their witness list, exhibit list, and exhibits. Parents also submitted Petitioners'-Respondents' Memorandum of [sic] in Support of Request for Relief. DOE was given the option of submitting an opening brief but was not required to do so. DOE elected not to submit an opening brief.

The due process hearing took place on July 8-12, 2024 [REDACTED]. All participants in the due process hearing appeared in-person except for GED Teacher, who appeared remotely via video and audio. The undersigned Hearings Officer presided over the matter. Parents were represented by Mr. Varady, and DOE was represented by Mr. Richardson. Due to the parties invoking the witness exclusionary rule, Parents waived Parent-1 and Parent-2's presence until after their respective testimonies. Parent-1 was present on July 10-12, 2024. Parent-2 did not participate in the due process hearing after Parent-2 testified. Mr. Rodriguez and DES were present during all days of the due process hearing.

Parents called Student², Private BCBA, Parent-1, Parent-2, and SPED Teacher³ as their witnesses during the due process hearing. DOE called GED Teacher⁴, SSC, SPED Teacher, and SLP. Parents recalled Parent-1 as a rebuttal witness.

Parents' exhibits are numbered 1 through 35. DOE's exhibits are numbered 1 through 87. The parties did not object to the opposing side's exhibits and all exhibits were admitted into evidence during the hearing.

On July 25, 2024, DOE submitted Department of Education, State of Hawaii's Second Request to Extend the 45-Day Decision Deadline in DOE-SY2324-033 and DOE-SY2324-038 from August 2, 2024, to August 23, 2024; Declaration of Kevin M. Richardson. On July 26, 2024, DOE's request to extend the 45-day decision deadline was granted, extending the 45-day decision deadline to August 23, 2024. See Order Granting Department of Education, State of Hawaii's Second Request to Extend the 45-Day Decision Deadline in DOE-SY2324-033 and DOE-SY2324-038 from August 2, 2024, to August 23, 2024; Declaration of Kevin M. Richardson, issued on July 26, 2024.

On August 9, 2024, DOE timely submitted its closing brief. Parents submitted their closing brief on August 9, 2024 at 4:31 p.m.

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

² While Student was testifying, Student's [REDACTED] was present and sat next to Student to provide Student with emotional/moral support. DOE did not object to Student's [REDACTED] being present.

³ Due to SPED Teacher being named as a witness by both parties, the parties agreed that SPED Teacher would testify once during DOE's case-in-chief, and Parents would not be limited to questions asked during DOE's direct examination.

⁴ GED Teacher testified via videoconference.

findings of fact, conclusions of law and decision. Although all the evidence was considered, only evidence relevant to the resolution of the issues is stated in the findings.

III. ISSUES PRESENTED

In Parents' Complaint, Parents allege that DOE denied Student a free and appropriate public education ("FAPE"). Parents raise the following issues:

- Issue 1 – Whether the DOE's eligibility determination on January 31, 2024 was appropriate when DOE
- (a) failed to identify Student's individual needs and address them in a proposed IEP;
 - (b) unilaterally determined that Student was not eligible;
 - (c) failed to provide Student with behavioral therapy interventions to develop appropriate attention behaviors, social skills, and communication behaviors;
 - (d) failed to consider that Student's educational progress was the result of the specialized instruction and related services Student was receiving;
 - (e) predetermined Student's eligibility;
 - (f) excluded Student's parents from full participation in the process of determining Student's continued eligibility; and/or
 - (g) did not consider a variety of sources in making the eligibility determination, including fully and fairly considering the recommendations of Student's health care providers and therapists.
- Issue 2 – Whether the DOE failed to implement Student's 2/28/2023 IEP⁵ by refusing to provide individualized instruction and related services during the 2023-2024 school year;
- Issue 3 – Whether the DOE exacerbated Student's emotional, psychological, and developmental problems, and deprived Student of educational opportunity by not implementing Student's 2/28/2023 IEP⁶.

Parents request the following remedies:

- Remedy 1 – Determine Student continues to be eligible for IDEA under the category of "██████████" based on Student's ██████████

⁵ The Prehearing Order states "2/20/2023 IEP"; however, during the due process hearing, Parents orally requested that the date be changed to "2/28/2023." DOE did not object and the date of the IEP was amended to "2/28/2023 IEP."

⁶ The Prehearing Order states "2/20/2023 IEP;" however, during the due process hearing, Parents orally requested that the date be changed to "2/28/2023." DOE did not object and the date of the IEP was amended to "2/28/2023 IEP."

needs;

Remedy 2 – Restore Student’s eligibility and implement Student’s IEP during stay put, until due process is completed, including exhaustion of any appeals, and adjust the IEP as necessary to meet Student’s individual needs;

Remedy 3 – Provide Student appropriate individualized instruction and related services in an environment that permits Student to realize Student’s potential for educational, social, emotional, and behavioral progress;

Remedy 4 – Provide Student with opportunities for communication and interaction with other typically developing students and peers;

Remedy 5 – Reimburse Student’s parents for educational and related services, assessments, evaluations, and similar expenses incurred in seeking alternative services and attorney’s fees and costs; and/or

Remedy 6 – Provide Student with compensatory education and/or related services which were required or should have been provided pursuant to Student’s 2023-2024 IEP.

In DOE’s Complaint, DOE raises the following issue: Whether the public evaluation conducted by the DOE was appropriate under the IDEA. DOE seeks the following remedies:

Remedy 1 – A finding that the reevaluation conducted by the DOE and dated 1/12/2024 was an appropriate evaluation; and/or

Remedy 2 – A finding that the Independent Educational Evaluation (“IEE”) being requested by parents should not be conducted at public expense.

IV. FINDINGS OF FACT

Individuals involved in Student’s education and care

1. Private BCBA is a board-certified behavior analyst in the states of [REDACTED] and is self-employed. Private BCBA started working with Student about a month before the due process hearing and administered to Student the Vineland Assessment and Assessment of Functional Life Skills (“AFLS”) during a three (3)

month period before working with Student. Private BCBA, Tr. Vol. I, pp. 68-70, 93, 95, 117, 119, 121.

2. Private Psychologist has a Ph.D. in clinical psychology and neuropsychology and is licensed in the state of Hawaii. Private Psychologist has been Student's mental health provider since Student was [REDACTED] years old. Parents Ex. 2; DOE Ex. 76 at 294-295.
3. SPED Teacher was Student's special education teacher and care coordinator in the [REDACTED] grade. SPED Teacher has been a teacher for nineteen (19) years, and a special education teacher for three (3) years. SPED Teacher has a bachelor's degree in English; a master's degree in teaching; and has done doctorate degree level training in special education, literary, English, Hawaiian culture, and education. SPED Teacher works at Public Charter School [REDACTED]. SPED Teacher, Tr. Vol. IV, pp. 497-500.
4. SSC is a student services coordinator and special education department lead at Public Charter School. [REDACTED]
[REDACTED]. As a student services coordinator, SSC addresses student concerns; conducts initial evaluations; facilitates reevaluations; is involved in the IEP process from determining a student's needs to eligibility to development of an IEP; coordinates services for all IEP and Section 504 students; participates in the decision-making process regarding when services are warranted and when changes might occur; and often serves as an administration designee for meetings. SSC has a master's degree in special education and education leadership. SSC has been in special education for twenty-five (25) years: half as a special education teacher and the other half in SSC's current position. SSC, Tr. Vol. III, pp. 417-419.

5. SLP is a speech/language pathologist. SLP has been a speech/language pathologist for approximately twenty-eight (28) years. SLP has a bachelor's degree in communication sciences and disorders, and a master's degree in speech/language pathology. SLP has been a contracted speech/language pathologist with the DOE since 2013 and contracted with Public Charter School since August of 2022. As a speech/language pathologist, SLP looks at different types of communication disorders, such as articulation, speech production, comprehension and expression of language, and how a person communicates with other people. SLP primarily works with children, and many of them are diagnosed with [REDACTED]. SLP became Student's speech therapist in August of 2022. SLP, Tr. Vol. V, pp. 666-669.
6. GED Teacher was Student's math teacher during [REDACTED]; and a student council advisor, which Student was a part of during [REDACTED] year. GED Teacher has a master's degree in teaching. GED Teacher, Tr. Vol. III, pp. 331-334.
7. DVR Representative is a [REDACTED] Rehabilitation Specialist with the State of Hawaii, Department of Human Services, [REDACTED] [REDACTED] [REDACTED] DOE Ex. 60 at 217.

Student

8. Student is currently [REDACTED] years old and in the [REDACTED] grade for the 2024-2025 school year and is on track to [REDACTED] [REDACTED]
9. Student was medically diagnosed with [REDACTED] at the age of [REDACTED] years old by Private Psychologist. Parents Ex. 2.
10. In December of 2023, Student was medically diagnosed with [REDACTED] [REDACTED] DOE Ex. 76 at 294-295.

11. Student was eligible for special education and related services pursuant to the IDEA and H.A.R. Chapter 60 under the category of [REDACTED] prior to being found ineligible on January 31, 2024. DOE Ex. 5 at 022.
12. Student has been receiving special education and related services under the IDEA since [REDACTED] DOE Ex. 9 at 027-028.
13. Student entered Public Charter School in July of 2018 when Student was in the [REDACTED] grade and currently attends Public Charter School. DOE Ex. 9 at 027, Ex. 80 at 301; Student, Tr. Vol. I, p. 18.
14. Public Charter School [REDACTED]
[REDACTED] During the 2023-2024 school year, [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]. [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
Student, Tr. Vol. I, pp. 17-18, 65.
15. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Parent-2 works with Student every day, ranging from a five to ten-minute check-in with Student to helping Student with Student's assignments. Parent-2, Tr. Vol. II, pp. 132, 168, 199.
16. Student is very intelligent, respectful, hardworking, and with the supports provided through Student's IEPs is excelling in [REDACTED] school. Parents Ex. 28; DOE Ex. 11 at 030-

031, Ex. 50 at 139-141, Ex. 72 at 288-289, Ex. 73 at 290, Ex. 74 at 291-292, Ex. 75 at 293, Ex. 77 at 296-297, Ex. 78 at 298, Ex. 79 at 299-300, Ex. 80 at 301.

17. During Student's [REDACTED] year [REDACTED]
[REDACTED]
[REDACTED] DOE Ex. 34 at 109, Ex. 39 at 117-118.

18. Shortly before the instant due process complaints were filed, during Student's first semester of [REDACTED] year in [REDACTED] school, Advisor/English Teacher, who was Student's advisor and English teacher, described Student as respectful, polite, showing leadership qualities, and was actively involved in [REDACTED] and engaged with his/her teachers. Advisor/English Teacher, however, also noted that "While [Student] is an effective team member who collaborates well with others, [Student] typically keeps to [him/herself] in advisory, working independently and engaging in group activities primarily when prompted." DOE Ex. 78 at 298.

Facts of Case

19. On April 9, 2018, Private Psychologist sent a letter to the DOE, informing the DOE that "[Student] acknowledged that [he/she] has had thoughts of suicide in recent weeks, because of fears of disappointing others, and not being able to anticipate how [his/her] actions impact others. This now creates a second diagnosis of (F31.0) [REDACTED]
[REDACTED]
[REDACTED]" Private Psychologist also expressed concerns that the school was considering "switching [Student] from a special education status to a 504 plan." Private Psychologist explained that "[Student] is about to

transition to [REDACTED] school [and that] [t]his is a time when a child with [REDACTED] is likely to experience a lot of stressful adjustment issues....” Private Psychologist recommended that Student remain eligible for special education under IDEA and that Student be provided additional supports, including in-school counseling, to address any suicidal ideation Student may have in the school setting. Parents Ex. 5.

20. In April of 2018, DOE held an eligibility meeting to determine if Student continued to qualify for special education and related services under the IDEA. As a part of the eligibility determination, DOE conducted the following assessments: occupational therapy, psychoeducational, Woodcock-Johnson IV Test of Achievement, speech/language (consisting of the Clinical Evaluation of Language Fundamental, Fifth Edition; Test of Pragmatic Language, Second Edition; and other assessments), and three (3) separate observations by a student services coordinator. Student was found to no longer be eligible for special education and related services. DOE Ex. 71 at 271-273.
21. On November 8, 2018, Parents filed a request for an impartial due process hearing, alleging that the DOE improperly rescinded Student’s eligibility for IDEA special education. The case was assigned case number DOE-SY1819-022. DOE Ex. 71 at 261.
22. On April 22, 2019, an administrative decision was issued for case DOE-SY1819-022, finding that the DOE violated the IDEA by improperly rescinding Student’s IDEA eligibility and that Student was IDEA eligible. DOE Ex. 71 at 258-287.
23. On May 29, 2019, Private Psychologist sent a letter to Public Charter School to provide recommendations for Student’s upcoming IEP meeting. Private Psychologist recommended, *inter alia*, counseling or speech therapy to work on pragmatic speech skills because Student did not filter what Student was thinking before speaking which

caused social problems; continue with speech therapy to address articulation issues; school to be aware of academic subjects and times when Student was prone to boredom as Student was likely to tear paper and put it in Student's mouth; school should seek input from Student's private occupational therapist to help Student "regulate self-stimulation types of behavior and avoid negative attention from peers"; provide Student with "therapeutic practice in social settings to work on [social skills]" because Student tends to perceive him/herself as "always right"; and provide Student with breaks to allow Student to re-establish regulation because Student had reported feeling intermittent stress throughout the day. Parents Ex. 4.

24. On March 22, 2021, Private Psychologist sent a letter to SSC, summarizing the recent treatment Student was receiving from Private Psychologist ("3/22/2021 Letter"). Private Psychologist informed SSC that Student was exhibiting [REDACTED] [REDACTED] [REDACTED] [REDACTED] and that Student had "asked for therapy for [him/herself], knowing that [he/she] was becoming increasingly stressed and angry and unable to verbalize and work through [his/her] feelings." Parents Ex. 3.
25. On or about March 30, 2021, Public Charter School decided to conduct Student's triennial reevaluation "without conducting formalized assessments" and that they would "collect data at the school level." Public Charter School "considered conducting formalized assessments to get a standardized test score related to [Student's] social/behavioral skills[.]" but they "did not think [they] needed a standardized score in order to discuss eligibility. [They] decided to conduct informal observations and develop [their] own checklist to identify areas of concern and [Student's] strengths." Public Charter School's proposed/refused actions were based on "Observations, IEP and

subject area progress reports, IXL Diagnostic in Reading and Math[.]” DOE Ex. 7 at 025.

26. On April 15, 2021, an eligibility meeting took place with the following individuals in attendance: Parent-1, SSC, a behavior health specialist, an administrator, a special education teacher, a general education teacher, and a speech/language pathologist. DOE Ex. 8 at 026.
27. An Evaluation Summary Report, provided to Parents on April 20, 2021, summarized the triennial reevaluation for Student (“4/20/2021 ESR”). According to the 4/20/2021 ESR, “The team conducted a review of existing data and completed informal observations.” The 4/20/2021 ESR then summarized information related to the areas of concerns, which included cognitive, speech/language, sensory, and academic. According to the 4/20/2021 ESR, Student met the eligibility criteria for [REDACTED] under the IDEA and “[Student] continue[d] to need specially designed instruction to address [his/her] [REDACTED] [REDACTED]” Parents Ex. 12; DOE Ex. 9 at 027-028.
28. A Prior Written Notice, dated April 20, 2021 (“4/20/2021 PWN”), states that “Currently, [Student] has difficulty with [REDACTED] [Student] does not spontaneously comment or ask questions in order to maintain a conversation with a peer. [Student] has not been able to develop peer relationships appropriate to [Student’s] developmental level.” The 4/20/2021 PWN further states, “The providers and teachers have not had many opportunities to observe [Student] interacting with peers in an unstructured setting. Due to the pandemic, [Student] has been receiving instruction virtually therefore there is very little unstructured time. In addition, [Student’s] parents have concerns about regression of [Student’s] social skills.” DOE’s proposed/refused

actions were based on “Input from team members, [Private Psychologist’s] letter, IXL Diagnostic, Report Card.” Parents Ex. 13; DOE Ex. 10 at 029.

29. On April 27, 2021, an IEP meeting was held, resulting in an IEP with the same date (“4/27/2021 IEP”). Parent-1, SSC, a behavioral health specialist, a vice principal, a counselor, a special education teacher, a speech/language pathologist, and a general education teacher were present at the 4/27/2021 IEP meeting. The 4/27/2021 IEP notes that the IEP Annual Review Date was April 27, 2022, and the Reevaluation Date was April 15, 2024. Parents Ex. 15; DOE Ex. 19 at 044-052.
30. According to the 4/27/2021 IEP, Student will receive the following Special Education and Related Services: special education for 60 minutes per week; counseling for 240 minutes per quarter; and speech/language therapy for 240 minutes per quarter. Parents Ex. 15 at 7 of 9; DOE Ex. 19 at 050.
31. According to the 4/27/2021 IEP, Student will also receive the following Supplementary Aids and Services, Program Modifications and Supports for School Personnel (“Supplementary Aids and Services”):
- Allow to chew gum in class.
 - Advanced notice and transition support for changes in settings, schedule, or routines.
 - Check for understanding with regards to perspective taking.
 - School to home communication after face-to-face school days.
 - Prompts to use self-calming and/or regulation strategies.
 - Allow use of a fidget toy or other sensory supports.
 - Support with giving constructive feedback or disagreeing politely.
 - Occupational Therapy Consultation.
 - Speech/Language Teacher Consultation.
 - Counseling Teacher Consultation.
 - Data/summaries of Speech/Language and Counseling sessions.
 - Transition supports for new [REDACTED] [REDACTED] put into place before the start of school year.

Parents Ex. 15 at 7 of 9; DOE Ex. 19 at 050.

32. In the 4/27/2021 IEP, under the Clarification of Services and Supports section, the IEP states: “The transition supports are because [Student] may feel anxious about starting [REDACTED].” Parents Ex. 15 at 7 of 9; DOE Ex. 19 at 050.
33. According to a Prior Written Notice, dated May 3, 2021 (“5/03/2021 PWN”), DOE proposed the special education and related services listed in the 4/27/2021 IEP because, “Special education, counseling, and speech-language direct services are proposed in order to address [Student’s] difficulties in the area of social communication, especially during periods of unstructured time. Speech, counseling, and occupational therapy teacher consultation are proposed in order to provide the teacher with the necessary strategies to support [Student] in generalizing the skills being taught in direct sessions so that [Student] can successfully apply them in unstructured settings (such as lunchtime)[.]” The 5/03/2021 PWN notes that Parent-1 requested a behavior support plan but that was rejected because “we decided not to include it in the Supplementary Aids and Services at this time because [Student] does not exhibit problematic behaviors in the school setting that impact [Student’s] educational performance.” The 5/03/2021 PWN also notes that DOE’s proposed/refused actions were based on “Parent input, teacher input, related service providers input/weekly reports, work samples, report card, IXL Diagnostic[.]” Parents Ex. 14; DOE Ex. 20 at 053.
34. On May 17, 2021, an IEP meeting was held to revise Student’s IEP, resulting in an IEP with the same date (“5/17/2021 IEP”). Parent-1, a vice principal, a special education teacher, and two (2) general education teachers were present at the 5/17/2021 IEP meeting. Parents Ex. 17; DOE Ex. 21 at 054-062.

35. The Special Education and Related Services and Supplementary Aids and Services in the 5/17/2021 IEP are the same as the 4/27/2021 IEP. Parents Ex. 17 at 7 of 9; DOE Ex. 21 at 060.
36. The Clarification of Services and Supports section in the 5/17/2021 IEP contains more information than the 4/27/2021 IEP. According to the Clarification of Services and Supports section in the 5/17/2023 IEP, “The transition supports are because [Student] may feel anxious about [REDACTED] [REDACTED] [REDACTED].” The clarification section then listed the following options for sensory supports: option to doodle on a notepad; velcro on binders; chewing gum; water bottles with chew straws; crunchy snacks, such as pretzels, apples, carrots; fidget toys; or other tools that support efforts to focus and/or maintain a calm body and mind. Parents Ex. 17 at 7 of 9; DOE Ex. 21 at 060.
37. A Prior Written Notice, dated May 19, 2021, was issued to explain what occurred at the 5/17/2021 IEP meeting. According to the 5/19/2021 PWN, the services proposed by the DOE will remain the same. In the 5/19/2021 PWN, it was noted that “[Parent-1] requested that [Student] receive additional work when [Student] already understands an assignment the teacher is reviewing...” Parent-1’s request was rejected by the school members of the IEP team because they “didn’t think the accommodation was appropriate since it [didn’t] help [Student] address [Student’s] areas of need and [Student] [was] already successfully accessing the general education instruction. Since [Student’s] IEP addresses [Student’s] needs for Socialization, it may be beneficial for [Student] to communicate and help peers when [Student] understands a concept being taught.” DOE’s proposed/refused actions were based on “Input from team members, report card, observations[.]” According to the 5/19/2021 PWN, “[t]he only thing that

was added to this revision IEP was the Clarification of Supports and Services section.

We listed some possible Sensory Supports.” Parents Ex. 16; DOE Ex. 22 at 063-064.

38. On April 20, 2022, an annual IEP meeting was held, resulting in an IEP with the same date (“4/20/2022 IEP”). Parent-1, GED Teacher, SSC, two (2) general education teachers, a speech/language pathologist, a special education teacher, and a counselor were present at the 4/20/2022 IEP meeting. The 4/20/2022 IEP notes that the IEP Annual Review Date was April 20, 2023, and the Reevaluation Date was April 15, 2024. Parents Ex. 19; DOE Ex. 23 at 065-073.

39. According to the 4/20/2022 IEP, Student will receive the following Special Education and Related Services: special education for 60 minutes per week; speech/language therapy for 240 minutes per quarter; and counseling for 210 minutes per quarter. Parents Ex. 19 at 7 of 9; DOE Ex. 23 at 071.

40. According to the 4/20/2022 IEP, Student will receive the following Supplementary Aids and Services:

- Prompts/reminders to use calming or regulations strategies.
- Allow Student to chew gum during class.
- Use of a fidget toy.
- Remind Student to utilize a coping mechanism when feeling stressed in class.
- Since Student becomes anxious when beginning new things, allow Student to come to the new class before school.
- Remind Student to utilize mindfulness strategies to help Student stay regulated in school.
- Data/summaries of Speech and Language and BHS.

Parents Ex. 19 at 7 of 9; DOE Ex. 23 at 071.

41. A Prior Written Notice, dated April 25, 2022, was issued (“4/25/2022 PWN”) to summarize what occurred during the 4/20/2022 IEP meeting. According to the 4/25/2022 PWN, DOE proposed that Student receive: “60 minutes per week of Special

Education services to address [his/her] challenges in social communication...240 minutes per quarter of Speech and Language Services to address [Student's] challenges in social communication...210 minutes per quarter of Counseling to continue to improve [Student's] problem-solving strategies. If the opportunity becomes available counseling will take place in person and will involve a peer when possible. Currently, related services are being offered via teletherapy.” According to the 4/25/2022 PWN, the proposal was made because “[Student] requires Special Education to provide support in the school setting with applying social communication skills and problem-solving strategies to fully access the general education curriculum. [Student] will receive Speech and Language Services due to [Student's] challenges in social communication. [Student] will receive Counseling services due to [Student's] need to continue to improve [his/her] problem-solving strategies.” The IEP team also “considered [] keeping [Student's] Counseling minutes at 240 minutes per quarter[,]” but this option was rejected because “[Student's] consistent use of problem-solving and coping strategies without prompting learned in counseling sessions show consistent progress and it was agreed that a slight reduction in service would still be sufficient to meet [Student's] needs.” The 4/25/2022 PWN notes that “[t]hese decisions were based on standardized tests, teacher records, counselor and speech therapists reports as well as observations.” Parents Ex. 18; DOE Ex. 24 at 074.

42. On June 3, 2022, Private Psychologist conducted an updated evaluation of Student, resulting in a report dated June 13, 2022 (“6/13/2022 Private Report”). According to the 6/13/2022 Private Report, “[Student] has had episodes of experiencing [REDACTED] secondary to [Student's] [REDACTED]. [Student] intermittently experienced adjustment issues

to new circumstances, which resulted in elevating [his/her] [REDACTED] levels, particularly when insufficiently prepared for change. As a result, [he/she] would intermittently meet diagnostic criteria for an [REDACTED].” The 6/13/2022 Private Report also states that Student has “inflexible adherence to routines, insistence on sameness, or ritualized patterns of verbal behavior...[is] very rigid about [his/her] morning routine...[and] [t]his evaluator also observed some ritualized patterns of verbal behavior in [his/her] initiation of interactions with others.” The report states that “[Student] continues to meet criteria for the diagnosis of (F84.0) [REDACTED] [REDACTED] [REDACTED].” Private Psychologist recommended that Student seek support services from a private behavioral health agency to help develop skills of independence, particularly out in the community; receive preferential seating in a classroom; receive occasional breaks if Student is experiencing some level of sensory overload, which could cause challenges with distractibility and has the potential to create [REDACTED]. Parents Ex. 2; Private BCBA, Vol. I, p. 69. DOE did not receive a copy of the 6/13/2022 Private Report until after the instant due process complaints were filed. SSC, Tr. Vol. III, pp. 453-454.

43. On December 14, 2022, SPED Teacher sent an email to Student and Parent-2 asking for their availability to have an IEP meeting, “[b]ecause [Student] has met all of [Student’s] goals a few months early, I would like to gather the team to have an IEP revision meeting to talk about new needs and goals for next semester.” DOE Ex. 32 at 106.

44. On January 18, 2023, an IEP meeting was held with the following people in attendance: Student, Parent-1, GED Teacher, SPED Teacher, SLP, SSC, and a behavioral health specialist. Parents Ex. 21; DOE Ex. 25 at 082.
45. On January 30, 2023, Parent-1 sent an email to SPED Teacher to express concerns regarding the 1/18/2023 IEP meeting: “I have a concern regarding our meeting on Jan. 18th, 2023. I was led to believe it was a meeting to come up with new goals for [Student] since [Student] is reported to have mastered [Student’s] goals. As I reported at the meeting, Parents [sic] observations of [Student] shows [Student] has not mastered [his/her] goals. My main concern is [Public Charter School] has decided to re-evaluate [Student’s] eligibility a year before it is required by [Student’s] IEP. Is it an option for Parents to decline your offer and keep [the reevaluation] date as stated in [Student’s] current IEP...I’m sure the team can come up with new goals for [Student] to work on for next year. And re-evaluate [Student] as required by law, at the stated date in [Student’s] current IEP.” DOE Ex. 32 at 105-106.
46. On January 31, 2023, SPED Teacher responded to Parent-1’s 1/30/2023 email with the following message: “The meeting we have scheduled for [February] 8 is called a Student Needs meeting, and it is an opportunity for us as a team to discuss [Student’s] needs in more detail. It is the first step in the re-evaluation process, which we feel is needed based on the observations and reports from [Student’s] team of specialists. *IF* the team agrees that a re-evaluation is necessary at the Student Needs meeting, we would then move forward to the Eligibility meeting. To prepare for an eligibility meeting, I would work with the team (which includes parents) to collect an array of data from multiple sources so that we may have an informed discussion about whether or not

[Student] still qualifies for an IEP. *IF* the team reaches the conclusion that an IEP is not warranted, a 504 plan is a possible second option to continue support if that is appropriate. We will not simply withdraw support if [Student] truly needs it to succeed. I want to be clear that no decisions have been made and no decisions will be made without you, the parents.” DOE Ex. 32 at 105.

47. Due to Parents’ objections, the Student Needs meeting scheduled for February 8, 2023 was cancelled and Student’s reevaluation was not advanced. DOE Ex. 58 at 167.
48. On February 28, 2023, the IEP team resumed the IEP meeting they had started on January 18, 2023. Student, Parent-1, GED Teacher, SPED Teacher, SLP, SSC, a science teacher, and a behavioral health specialist were present at the 2/28/2023 IEP meeting. The January 18, 2023 and February 28, 2023 IEP meetings resulted in an IEP with the same dates (“2/28/2023 IEP”). The 2/28/2023 IEP notes that the IEP Annual Review Date was February 28, 2024, and the Reevaluation Date was April 15, 2024. Parents Ex. 21; DOE Ex. 25 at 075-083.
49. According to the 2/28/2023 IEP, Student will receive the following Special Education and Related Services: special education for 30 minutes per week; and speech/language consult for 30 minutes per semester. Parents Ex. 21 at 6 of 9; DOE Ex. 25 at 080.
50. According to the 2/28/2023 IEP, Student will receive the following Supplementary Aids and Services: testing in a quiet setting with access to a stress-reducing device (such as a stress ball); and extended time on tests. Both supplementary aids will be provided “on testing days.” Parents Ex. 21 at 6 of 9; DOE Ex. 25 at 080.
51. In the Clarification of Services and Supports section of the 2/28/2023 IEP, the IEP states: “SPED support to occur on campus during [REDACTED] times or other times

outside of class. Speech-Language Consult to occur at least 1 time per semester and can include consultation with teachers and/or observation of student in general education setting.” Parents Ex. 21 at 6 of 9; DOE Ex. 25 at 080.

52. The 2/28/2023 IEP contains one (1) measurable annual goal: “[Student] will be able to use [his/her] communication and self-advocacy skills to succeed in new and challenging environments like [REDACTED] classes, [REDACTED], and other [REDACTED] settings.” DOE Ex. 25 at 079.
53. According to the 2/28/2023 IEP, “[Student’s] needs in the area of adjusting to new and unfamiliar situations can impact [Student’s] ability to successfully participate in the general education setting.” DOE Ex. 25 at 077.
54. According to the 2/28/2023 IEP, Student does not meet the standard for extended school year. DOE Ex. 25 at 080.
55. A Prior Written Notice, dated March 1, 2023, was issued (“3/01/2023 PWN”) to summarize what occurred during the 2/28/2023 IEP meeting. According to the 3/01/2023 PWN, it was proposed that “[Student] will receive 30 minutes per week of special education services and support for [Student’s] IEP year. [Student] will also receive a speech consultation 1 time per semester.” The 3/01/2023 PWN states that the proposal was made “[d]ue to [Student’s] difficulties with advocating for [him/herself] in new and unfamiliar situations/settings, [Student] requires specialized instruction to help [Student] access the general education curriculum.” According to the 3/01/2023 PWN, other options the IEP team considered was “doing [Student’s] annual re-evaluation early because [Student] had met all of the goals in [his/her] previous IEP.” This option was rejected because “[Parent-1] felt strongly that [Student] was still struggling in certain

communication scenarios and asked the team to reconsider this suggestion.” DOE’s proposed/refused actions were based on “Feedback from the student, parents, teachers, and specialists...The team also examined test scores, grades, social activities, [REDACTED] performance, and other examples of [Student’s] success.” Parents Ex. 20; DOE Ex. 26 at 084.

56. During the 2023-2024 school year, SPED Teacher worked with Student on the annual goal set out in the 2/28/2023 IEP. SPED Teacher also kept track of how Student was doing as a [REDACTED] by periodically speaking with Parent-2, Student’s mentor, and the [REDACTED] of the [REDACTED], and SPED Teacher would also check-in with Student on a weekly basis. Student was provided with the special education and speech/language consult listed in the 2/28/2023 IEP and testing accommodations were made available to Student. Public Charter School implemented the 2/28/2023 IEP. SPED Teacher, Tr. Vol. IV, pp. 525-532, 640-642.
57. On September 25, 2023, Student sent an email to SPED Teacher regarding the need for accommodations during test taking for an [REDACTED] course and [REDACTED]: “Me and [Parent-2] have been talking about the new steps I’ve been taking this semester with [REDACTED] & [REDACTED]. When we decided to take this big step, we did it with the knowledge that I could handle the hard work that goes into these classes, but we did not consider the [REDACTED] and worries about time constraints and limits of both courses exam-wise. Despite my huge growth over the years, I still have slight difficulties with sudden changes. I can handle the work for [REDACTED], but 15 minutes for 27 questions on a test is too little time for me...I would like to add the accommodation for more time for tests and exams for these new courses to the IEP. Both me and [Parent-2] think that

this is a great idea to help me move forward in my academics and to keep me cool and regulated.” The next day, SPED Teacher responded to Student: “We can definitely have a meeting to discuss adding this accommodation to your IEP. Because we have not worked on this issue together at all, I would like to have you join me during [REDACTED] this week and next week so that I can get a feel for what you are working on and what the need is. We typically do observations and try some interventions before making an IEP change....” DOE Ex. 36 at 112-113.

58. On or about October 2, 2023, SPED Teacher logged the following information into Public Charter School’s internal computer tracking system: “[Student] asked for support because [Student] was feeling anxious about timed tests in [REDACTED] class... We discussed why timed tests are important practice to help students succeed on the final [REDACTED] test. We made a plan to practice timed tests with various test-taking strategies during [REDACTED] to help alleviate some of the stress. [Student] is going to talk with [Parent-2] and plan to meet with me during [REDACTED] on Thursdays.” DOE Ex. 37 at 114, Ex. 39 at 117-118; SPED Teacher, Tr. Vol. IV, pp. 628-629.

59. On October 2, 2023, Parent-2 sent the following email message to SPED Teacher: “[Parent-2] thinks that test and exams within [Public Charter School] [Student] has it under control. Things outside of the ‘norm’ like [REDACTED] class, [REDACTED], volunteering, and even [REDACTED], that makes the regulation wonky. [Parent-2] will try to work on a ‘reset’ (meditative or breathing exercise) so outburst/meltdown do not occur or [Student] knows to take a personal time out...” DOE Ex. 39 at 117-118.

65. On December 7, 2023, Private Psychologist, sent a letter to SSC and SPED Teacher (“12/07/2023 Letter”). In the 12/07/2023 Letter, Private Psychologist addressed Student’s upcoming [REDACTED] exam. [REDACTED]
[REDACTED] Private Psychologist also wrote: “However the fact that this test is a different setting, and that it is a different kind of class and testing experience, added to the fact that all of this is new to [Student], is contributing to significant [REDACTED]. [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [Student’s] ability to regulate [Student’s] emotions and behavior is compromised, and affects [Student’s] ability to focus and perform adequately.” Private Psychologist further wrote: “I am recommending/requesting that [Student] be provided with testing in a quiet, non-distracting setting, separate from the usual location for this testing, in order to accommodate [Student’s] challenges in dealing with [Student’s] distractions and [REDACTED]. I would also recommend time-and-a-half be provided to allow [Student] time for calming [REDACTED].
This request is consistent with [Student’s] previous IEP accommodations, and is consistent with accommodations we typically request for children with [REDACTED]” Parents Ex. 1; DOE Ex. 76 at 294-295.
66. On December 8, 2023, Student, Parent-1, Parent-2, and SPED Teacher participated in an IEP meeting to revise Student’s IEP. Following the IEP meeting, SPED Teacher sent Parent-1 a copy of Student’s revised IEP. DOE Ex. 28 at 093, Ex. 62 at 223.

67. On December 10, 2023, Parent-1 asked SPED Teacher to rephrase the accommodations in the Supplementary Aids and Services section of the revised IEP to include the following details: [REDACTED] [REDACTED] DOE Ex. 62 at 222-223.
68. On December 11, 2023, SPED Teacher informed Parent-1 that SPED Teacher had “pulled the language for [Student’s] accommodations directly from a list of state-approved accommodations for testing...so I cannot add everything that you wrote...” DOE Ex. 46 at 127-129; DOE Ex. 62 at 221-228. Parent-1 was provided another copy of the revised IEP, a Prior Written Notice, dated December 12, 2023 (“12/12/2023 PWN”), and a “Consent to Amend the Annual IEP” form to allow DOE to amend the IEP without holding another IEP meeting. DOE Ex. 46 at 127-128.
69. The 12/12/2023 PWN states that DOE proposed “add[ing] two accommodations for [Student] pertaining to testing,” [REDACTED] [REDACTED].” The 12/12/2023 PWN also notes that “SPED teacher met with [Student] on several occasions to work on test taking skills, understanding the [REDACTED] exam, and to practice. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] In making the proposed/refused actions, Public Charter School “used timed practice sessions with sample tests provided by the [REDACTED] website to recreate the situation as

authentically as possible. We also considered [Student's] report of [Student's] experience, as well as feedback from [Parent-1]." Parents Ex. 22; DOE Ex. 30 at 095.

70. On December 17, 2023, Parent-1 signed the "Consent to Amend the Annual IEP" form, allowing DOE to amend the 2/28/2023 IEP without having another IEP meeting. The IEP meeting on December 8, 2023, and amendments made pursuant to Parent-1's consent on December 17, 2023, resulted in an IEP dated "12/17/2023, 12/08/2023" ("December 2023 IEP"). The December 2023 IEP indicates that the IEP Annual Review Date was February 28, 2024 and the Reevaluation Date was April 15, 2024. Parents Ex. 23; DOE Ex. 28 at 086-093; DOE Ex. 29 at 094.
71. According to the December 2023 IEP, Student will continue to receive the same special education and related services as in the 2/28/2023 IEP. Parents Ex. 23 at 6 of 8; DOE Ex. 28 at 091.
72. According to the December 2023 IEP, Student will receive the following Supplementary Aids and Services: testing in a quiet setting [REDACTED] [REDACTED] and extended time on tests as needed, up to 50%. Parents Ex. 23 at 6 of 8; DOE Ex. 28 at 091.
73. On December 21, 2023, Parent-2 informed a school counselor that Student and Parent-2 were mistaken about not needing accommodations for an upcoming [REDACTED] exam and asked the school counselor if Student could have the accommodation of extra time. Parent-2 stated that "[Student] had [an] appointment with [Student's] therapist yesterday. We all talked about it. [The therapist] had actually asked [Student] to request for just the time extension on the [REDACTED] exam and take the test with [Student's] peers...." DOE Ex. 47 at 130-132.

74. On or about December 21, 2023, Student passed [REDACTED] English [REDACTED], which satisfies Student's [REDACTED] year English requirement. DOE Ex. 48 at 133-135.
75. Quarterly IEP reports were taken of Student's progress on the 2/28/2023 IEP goal. Student was assessed on May 26, 2023, October 6, 2023, and December 21, 2023, to see whether Student was meeting Student's short-term objectives for the annual goal. There were three (3) short-term objectives. On May 26, 2023 and October 6, 2023, Student was progressing in two (2) short-term objectives and mastered one (1) short-term objective. On December 21, 2023, Student mastered all three (3) short-term objectives. DOE Ex. 49 at 136-138.
76. On January 8, 2024, Parent-2 asked SPED Teacher for contact information to DVR because Parent-2 wanted Student to get exposure to working. SPED Teacher provided Parent-2 with DVR Representative's contact information. DVR Representative emailed Parent-2 a brochure that explained the type of services DVR offered and explained that DVR could assist Student in such things like exploring [REDACTED] opportunities and [REDACTED]. DVR Representative also sent Parent-2 consent and release of information forms to fill out and sign, which Parent-2 completed on January 10, 2024. DOE Ex. 60 at 216-218.
77. On January 12, 2024, a meeting was held to discuss Student's needs in preparation for Student's triennial reevaluation. Parent-1, SPED Teacher, SSC, SLP, GED Teacher, Advisor/English Teacher, and a science teacher were present at the meeting. During the 1/12/2024 meeting, Parent-1 informed the school members of the team that Parent-1 did not know what assessments could be done for the reevaluation and would defer to the

school members' recommendation. Parent, Tr. Vol. II, pp. 320-321; SSC, Tr. Vol. III, pp. 483-484; DOE Ex. 12 at 032.

78. A prior written notice, dated January 12, 2024 ("1/12/2024 PWN"), was issued proposing that "a triennial re-evaluation will be conducted with no new assessments[,] because "[c]urrent data is sufficient for determining the student's eligibility." The team considered conducting formal assessments but rejected this option because, according to the 1/12/2024 PWN, the current data was sufficient for determining eligibility. DOE's proposed/refused actions were based on "[redacted]"⁷ ELA⁸ & math scores, current grades, teacher feedback, parent feedback, observations." Parents Ex. 24; DOE Ex. 13 at 033.
79. On January 24, 2024, Parent-2 sent an email to DVR Representative stating that Parent-2 had questions regarding paperwork that DVR had sent to Parent-2 and that Parent-2 would try to call DVR Representative that week. DOE Ex. 60 at 216.
80. On January 30, 2024, Parent-1 sent the following email to SSC and SPED Teacher: "I would like to bring up a few concerns before [Student's] Eligibility Meeting. [Student's] IEP Team, has brought up the option of a 504 plan for [Student] in our last two meetings. When [Student] started [his/her] [redacted] and [redacted] class, [Student's] [redacted] went/goes up. The Team recognized and agreed to implement accommodations to [Student's] current IEP, to help [Student] cope with this new challenge. As we continue to prepare [Student] for [redacted] [redacted] [redacted], and [redacted], Parents believe an IEP is needed to ensure all accommodations are followed. As a [redacted]-year-old, [Student's] IEP requires a Transition Plan, under IDEA.

⁷ [redacted] is an academic diagnostic test for all [redacted] school students. DOE Ex. 35 at 110-111.

⁸ English Language Arts.

Section 504 of the Rehabilitation Act of 1973, [sic] do not have the same right to school-based transition plans. At [Student's] needs meeting, it was agreed upon that [Student] needs continued help/work on [Student's] Transition Plan...good academics is not a reason to take away an IEP. We need to transition [Student] to the next level. [Student] has already shown some weak spots [REDACTED] [REDACTED] [REDACTED] We need to maintain [Student's] IEP for [REDACTED], to help [Student] with this transition...Again, we have already observed [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [Student] continues to see [Private Psychologist] to help [Student] [REDACTED] [REDACTED] [REDACTED] [REDACTED] We are also trying to revisit with [Individual]⁹ to see how [he/she] can help [Student] with this transition.” That same day, SPED Teacher emailed the following response to Parent-1: “Is [Student] already working with [DVR Representative] from DVR? If so, you are welcome to invite [him/her] to the IEP meetings if you would like to have [his/her] input, as well.” DOE Ex. 53 at 150-151.

81. On January 31, 2024, Student, Parent-1, Parent-2, SPED Teacher, SSC, SLP, and GED Teacher¹⁰ participated in an eligibility meeting. During the eligibility meeting, SPED Teacher, GED Teacher, and SLP shared their impressions of how well Student was performing in school. Advisor/English Teacher was not present to share

⁹ Individual is an occupational therapist. SPED Teacher did not know who Individual was and did not inquire. SPED Teacher, Tr. Vol. IV, pp. 584-586; Parent-2, Tr. Vol. II, p. 188.

¹⁰ GED Teacher left the eligibility meeting (at 00:54:37) shortly after Student was found to no longer meet the criteria for [REDACTED] and did not return to the meeting. Also, according to the attendance sheet for the 1/31/2024 eligibility meeting, Advisor/English Teacher was present at the meeting, but Advisor/English Teacher was actually not there. See video of eligibility meeting at DOE Ex. 87.

Advisor/English Teacher's opinions about how Student was doing in school. Parents Ex. 25 at 3 of 3; DOE Ex. 14 at 034, Ex. 87.

82. During the 1/31/2024 eligibility meeting, the team [REDACTED] [REDACTED] whether Student has a [REDACTED] [REDACTED] and agreed that Student did not have an [REDACTED] Parents Ex. 26; DOE Ex. 15 at 035-037.
83. During the 1/31/2024 eligibility meeting, the team also [REDACTED] if Student qualified for special education and related services under the category of [REDACTED]. The school members of the team determined that Student's disability did not significantly affect [REDACTED] [REDACTED]. According to [REDACTED] Parent and student shared that [Student] can still struggle to communicate in settings [Student] may find intimidating, such as [Student's] first [REDACTED] class. [Student] shared that [his/her] volunteer [REDACTED] has gone well even though [Student] [REDACTED] to unfamiliar people within the community as [Student] perceives that to be an experience that is lower pressure than a [REDACTED] class. [Student] also shared that socializing with large groups of unfamiliar adults (ie, at [Student's] [REDACTED] social gathering) can still be intimidating." [REDACTED] also notes that "[Student] reports that social interactions with peers and familiar people go well and that [Student] is satisfied with [Student's] social interactions with peers and adults in the [REDACTED] school educational setting. Again, [Student] reports that in new experiences, such as [Student's] first [REDACTED] class, socializing can be more intimidating. Teachers report that [Student] works well with others in [his/her] face-to-face and virtual classes and often takes the lead in collaborative activities...The speech pathologist observed [Student] demonstrating positive social skills in advisory and at lunch...The

care coordinator also noted that [Student] brings a lot of wit and humor to [his/her] interactions...Parents shared that [Student] is better at socializing within structured settings and expressed a concern that [Student] still does not interact with older and/or younger family members or new people with different interests than [Student].”

According to [REDACTED], “Based on information gathered from a variety of sources the disability of [REDACTED] does not adversely affect the student’s educational performance and participation in activities” and “[Student] does not meet the criteria for eligibility under the category of [REDACTED].” Parents Ex. 27; DOE Ex. 16 at 038-039.

84. On February 6, 2024, Parent-2 sent another email to DVR Representative with questions about the DVR paperwork. DOE 60 at 215-216.
85. On February 7, 2024, SPED Teacher emailed Student, Parent-1, Parent-2, SSC and SLP documents from the reevaluation and a copy of the Procedural Safeguards. Attached to the email was an Evaluation Summary Report dated February 7, 2024 (“2/07/2024 ESR”), a Prior Written Notice dated February 7, 2024 (“2/07/2024 PWN”), the [REDACTED] [REDACTED] dated January 31, 2024, and the [REDACTED] [REDACTED] dated January 31, 2024. DOE Ex. 55 at 153-162. DOE Ex. 56 at 163.
86. The 2/07/2024 ESR summarizes the triennial reevaluation and notes that Student excels academically, is one of the top students in Student’s [REDACTED] class, and has excellent leadership skills in the educational setting and within the community. The 2/07/2024 ESR also states, “[Student] does not demonstrate the need for academic nor social/emotional/behavioral interventions in order to access the [REDACTED] school curriculum, engage in all tasks and activities...However, in Semester 1, [Student] took [Student’s]

first [REDACTED] courses, which [Student] shared had caused [Student] some feelings of stress based on the new experience and a higher workload. Based on student and parent feedback, [Student] was provided with some test-taking support to help [Student] prepare for [his/her] [REDACTED] exam, as well as extended time and a quiet test setting. [Student] shared that [he/she] does not need these accommodations for [his/her] [REDACTED] school level courses but that it was critical to [Student's] success in [REDACTED] classes.” According to the 2/07/2024 ESR, the “team conducted a review of existing data,” which consisted of reviewing Student’s ‘[REDACTED] Diagnostic assessments’ that showed Student “consistently tested at a [REDACTED] level and exceeded grade level expectations across all strands of reading comprehension and math” and Student received all [REDACTED] on Student’s report card and successfully completed Student’s first [REDACTED] [REDACTED] courses. The 2/07/2024 ESR notes that the review of existing data also consisted of Student sharing that “although [Student] still sometimes feels intimidated in new, unfamiliar settings (e.g., when working in large groups with [REDACTED] [REDACTED] or when taking [his/her] first [REDACTED] course), [Student] feels very satisfied with [his/her] abilities to successfully communicate and socially interact with others in [his/her] current educational setting...” The 2/07/2024 ESR further states: “Based on all of the information and data gathered from multiple sources, [Student] does not meet the eligibility criteria for [REDACTED]. While [Student] does have [REDACTED] [REDACTED], this [REDACTED] is not significantly affecting [his/her] [REDACTED] [REDACTED] in the educational setting at this time.” While the 2/07/2024 ESR contains a couple of brief summaries about what teachers collectively thought

about Student, it does not have any summaries of formal observations and there is no mention of Student's [REDACTED]. Parents Ex. 29; DOE Ex. 17 at 040-041.

87. According to the 2/07/2024 PWN, Student was found not eligible for special education services under the category of [REDACTED] because “the disability is not significantly impacting [Student’s] verbal and non-verbal communication skills or [his/her] social skills. [Student] is also exceeding expectations with above average performance across all courses....” The 2/07/2024 PWN states that “Data that the team examined for this eligibility determination included: [REDACTED] Diagnostic assessment scores for reading and math, student grades, student writing samples, teacher feedback, student feedback, and parent feedback.” The 2/07/2024 PWN also notes the concerns Parents shared: (1) “[Student] continues to get nervous in more intimidating settings (ie [sic] [Student’s] [REDACTED] class and a recent social gathering of [REDACTED] at the [REDACTED]) but agreed that [Student] is doing well in [his/her] [REDACTED] school setting”; (2) “[Student] still does not socially interact much with family members younger and older than [Student] that have differing interests than [Student]”; (3) “Primary concern is not with [Student’s] current educational performance but ensuring that [Student] receives the support necessary to succeed when [Student] goes into [REDACTED] and encounters new experiences”; and (4) “Parent expressed that all they want is an accommodation for extended time for standardized tests that can utilize in [REDACTED].” The 2/07/2024 PWN then states, “It was agreed by the school team that as a next step, an evaluation under Section 504 can be initiated to ensure that [Student] continues to receive the necessary accommodations and [REDACTED] support as a student identified with a disability. However, parents have

expressed that they do not want to move forward with an evaluation under Section 504 at this time.” Parents Ex. 30; DOE Ex. 18 at 042-043.

88. On February 27, 2024, Parent-1 sent SPED Teacher the following email: “I have a question regarding [Student’s] eligibility last year. [Public Charter School] wanted to reevaluate [Student’s] eligibility because [Student] had mastered all [Student’s] IEP goals. Parents protested and [Public Charter School] cancelled eligibility meeting and turned it into an IEP meeting. I was never given a reason why that was done. Can you please explain how [Student] was determined eligible last year and not this year?” On February 29, 2024, SPED Teacher sent the following reply to Parent-1: “Last year a reevaluation was not conducted for [Student], so there was never an eligibility meeting scheduled. The team did consider conducting a reevaluation early and holding a reevaluation meeting but considered your feedback and decided to just wait until [Student’s] triennial was due, which was this year (April 2024). [Student’s] previous eligibility meeting was in April 2021, and this was revisited again in our most recent eligibility meeting held on Jan. 31, 2024. I hope this helps provide some clarification in response to your question.” DOE Ex. 58 at 167.
89. On March 6, 2024, Parent-2 sent another email to DVR Representative after not having received a response to Parent-2’s February 6, 2024 email. SPED Teacher was included in Parent-2’s email and was aware that DVR Representative was not responding to Parent-2’s emails. DOE Ex. 60 at 215.
90. On April 1, 2024, Parent-1 sent the following email to SSC: “Parents disagree that [Student] is not eligible for an IEP and reject the offer of the 504 plan. We invoke stay

put for all specialized instruction and related services in [Student's] most recent IEP, adjusted for changes in [his/her] needs or progress.” DOE Ex. 63 at 227.

91. On April 3, 2024, SSC replied to Parent-1's request for stay put, stating that Public Charter School did not receive a due process complaint. DOE Ex. 63 at 227.
92. On April 4, 2024, DOE received Parents' Complaint.
93. On April 19, 2024, a resolution meeting was held to discuss Parents' Complaint. At the end of the resolution meeting, Parent-1 requested an IEE. After the resolution meeting, SSC sent the following email to Parent-1 regarding Parent-1's request for an IEE: “At the close of our resolution session today, you requested an Independent Educational Evaluation (IEE). However, in our most recent reevaluation for [Student] we did not conduct any formal assessments. Just to clarify, which type of assessment is it that you are requesting?” Parent-1 replied to SSC that “at that reevaluation meeting, I asked if the team knows of any assessments that would be helpful for [Student], because there is no way a parent will know all assessments that are available. During the SPIN¹¹ conference I attended, I learned, ‘Neuropsychological and Occupational Therapy evaluations’ may be helpful.” Parents Ex. 11; DOE Ex. 3 at 014, Ex. 4 at 015-019, Ex. 66 at 238-239.
94. On May 2, 2024, DOE filed a request for due process hearing, seeking a determination that the evaluation conducted by the DOE was appropriate and Parents' request for an IEE at public expense was not warranted.

¹¹ The SPIN conference was for parents of children with special needs to help them find resources to assist their children [REDACTED] school. Student, Tr. Vol. I, pp. 24-25.

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. In this consolidated due process hearing, Parents have the burden of proof for Parents’ Complaint; and DOE has the burden of proof for DOE’s Complaint.

B. IDEA REQUIREMENTS

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

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

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

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

The school is not required to “maximize the potential” of each student; rather, the school is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational

benefit.” Rowley, 458 U.S. at 200. However, the United States Supreme Court in Endrew F. v. Douglas County Sch. Dist. held that the educational benefit must be more than *de minimus*. The Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas County Sch. Dist., 137 S. Ct. 988, 1001 (2017). See also, Blake C. v. Hawaii Dept. of Educ., 593 F.Supp.2d 1199, 1206 (D. Haw.2009).

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

C. ISSUES FOR DETERMINATION

1. Whether the DOE’s eligibility determination on January 31, 2024 was appropriate.

In this allegation, Parents allege in Parents' Complaint that DOE's determination on January 31, 2024 that Student was no longer eligible for special education and related services was not appropriate because DOE committed the following errors:

- (a) failed to identify Student's individual needs and address them in a proposed IEP;
- (b) unilaterally determined that Student was not eligible;
- (c) failed to provide Student with behavioral therapy interventions to develop appropriate attention behaviors, social skills, and communication behaviors;
- (d) failed to consider that Student's educational progress was the result of the specialized instruction and related services Student was receiving;
- (e) predetermined Student's eligibility;
- (f) excluded Student's parents from full participation in the process of determining Student's continued eligibility; and/or
- (g) did not consider a variety of sources in making the eligibility determination, including fully and fairly considering the recommendations of Student's health care providers and therapists.

Based on the evidence, Parents have met their burden of proof in showing that the eligibility determination on January 31, 2024 was not appropriate because Public Charter School predetermined Student's eligibility, excluded Student's parents from full participation in the process of determining Student's continued eligibility, and did not consider a variety of sources in making the eligibility determination.

First, Public Charter School predetermined Student's eligibility and did not consider Parents' input. A school violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement. K.D. v. Dept. of Educ., Hawaii, 665 F.3d 1110, 1123 (9th Cir.2011). "Predetermination is a species of procedural violation because the IDEA 'requires that the placement be based on the IEP, and not vice versa.'" Cupertino Union Sch. Dist. v. K.A., 75 F.Supp.3d 1088, 1099 (N.D.Cal. Dec. 2, 2014). A "court must still consider whether the procedural error led to a substantive violation of the IDEA, or whether the procedural error caused the loss of educational opportunity, seriously

infringed the parents' opportunity to participate in the IEP formulation process, or caused a deprivation of educational benefits." K.A., 75 F.Supp.3d at 1099. While DOE can "determine[] that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation,"¹² Public Charter School's conduct following its decision to advance Student's triennial reevaluation supports Parents' allegation that Public Charter School had already determined that Student was no longer eligible for special education and related services before the 1/31/2024 eligibility meeting or steered Student's eligibility to a predetermined outcome.

Towards the end of Student's first semester in [REDACTED] grade, on December 14, 2022, SPED Teacher proposed that the IEP team meet for "an IEP revision meeting to talk about new needs and goals for next semester" because Student had met all of Student's goals early. (FOF 43). An IEP meeting was held on January 18, 2023. (FOF 44). On January 30, 2023, Parent-1 expressed concerns about the purpose of the 1/18/2023 IEP meeting to SPED Teacher. (FOF 45). Parent-1 objected to Public Charter School's effort to advance Student's reevaluation by one (1) year and requested that Public Charter School develop new goals for Student to work on and reevaluate Student on or about April 15, 2024 as stated in Student's current IEP at that time. (FOF 38, 45). SPED Teacher replied to Parent-1's concerns by explaining that the meeting scheduled for February 8, 2023 was a "Student Needs meeting," which was "the first step in the re-evaluation process, which we feel is needed based on the observations and reports from [Student's] team of specialists." (FOF 46). SPED Teacher reassured Parent-1 that should the team agree on February 8, 2023 that a reevaluation was necessary, they would then move forward with an eligibility meeting. SPED Teacher also reassured Parent-1 that "to prepare for an eligibility

¹² H.A.R. § 8-60-35(a)(1).

meeting, I would work with the team (which includes parents) to collect an array of data from multiple sources so that we may have an informed discussion about whether or not [Student] still qualifies for an IEP.” (FOF 46). Due to Parent-1’s objection to having a reevaluation one (1) year early, the Student Needs meeting was canceled, and the IEP team met on February 28, 2023 to continue revising Student’s IEP. (FOF 47, 48). The IEP team then developed the 2/28/2023 IEP which provided Student with 30 minutes per week of special education, 30 minutes per semester of speech/language consult, and accommodations for testing. (FOF 48, 49, 50). The IEP team also developed a new goal to work on Student’s communication and self-advocacy skills. (FOF 52).

When Student’s triennial reevaluation deadline approached, planning for Student’s triennial reevaluation began. On January 12, 2024, a meeting was held to discuss Student’s needs in preparation for the triennial reevaluation. Parent-1 deferred to Public Charter School regarding what type of assessments, if any, should be conducted for the reevaluation. (FOF 77). Public Charter School determined that no new assessments were needed to determine Student’s eligibility. (FOF 78). As such, the team did not “collect an array of data from multiple sources” as SPED Teacher had stated when Public Charter School wanted to advance Student’s reevaluation in early 2023. (FOF 46).

On January 30, 2024, the day before the eligibility meeting, Parent-1 made a point of sharing Parent-1’s concerns with SSC and SPED Teacher. Parent-1 shared concerns about [REDACTED]; Student’s need to receive help to prepare for [REDACTED], and [REDACTED]; and that Student continues to see Private Psychologist to help with Student’s [REDACTED]. (FOF 80). In response to Parent-1’s concerns, SPED Teacher informed Parent-1 that Parent-1 was welcome to invite DVR

Representative to any upcoming IEP meetings¹³. (FOF 80).

On January 31, 2024, based on ‘[REDACTED] Diagnostic assessment scores for reading and math, student grades, student writing samples, teacher feedback, student feedback, and parent feedback,’ Public Charter School determined that Student was no longer eligible for special education services. (FOF 87). After the eligibility meeting, an evaluation summary report was provided to Parents on February 7, 2024. The 2/07/2024 ESR documented Student’s academic success and that Student sometimes feels “stress” and “intimidated” when experiencing something new or in a new setting. (FOF 86). The 2/07/2024 ESR did not summarize any formal observations conducted, information provided by Private Psychologist, or Parents’ repeated concerns [REDACTED] [REDACTED]¹⁴.

Public Charter School’s decision to not do any assessments for the reevaluation and to rely on the same type of information it used to seek an early reevaluation, steered the eligibility outcome in one direction—a finding of no eligibility. This is a form of predetermination. In December of 2023, when Student met all of Student’s IEP goals, Public Charter School could have held an IEP meeting to discuss and set new goals and revise Student’s IEP. Instead, “based on the observations and reports from [Student’s] teams of specialists” (FOF 46), the school members of the IEP team determined that it was more appropriate to reevaluate Student’s

¹³ It is the DOE’s responsibility to ensure that a representative from any outside agency, such as DVR, be present at the IEP meetings with the consent of parents. DOE must also document the transition services that are likely to be provided or paid for by an outside agency. H.A.R. § 8-60-45(b)(3).

¹⁴ According to H.A.R. § 8-60-38(c)(1): “In interpreting evaluation data for the purpose of determining if a student is a student with a disability under sections 8-60-2 and 8-60-39, and the educational needs of the student, the department shall: (A) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student’s physical condition, social or cultural background, and adaptive behavior; and (B) Ensure that information obtained from all of these sources is documented and carefully considered.”

eligibility than to set new goals. The IEP team ended up not going through with an early reevaluation because Parent-1 objected. (FOF 47, 88). One year later, Public Charter School relied on “[REDACTED] Diagnostic assessment scores for reading and math, student grades, student writing samples, teacher feedback, student feedback, and parent feedback” to determine that Student was no longer eligible for special education. (FOF 87). Unlike in 2018 when DOE conducted several assessments and a student services coordinator conducted three (3) observations to determine Student’s eligibility (FOF 20), no such effort was made by Public Charter School this time around. This strongly suggests that Public Charter School did not believe that Student needed special education services under the IDEA and that Student could be supported with a Section 504 Plan. (FOF 19, 46, 87). Public Charter School essentially went through the motion of conducting a reevaluation, because it was required to, and expended little effort in trying to ascertain if Student is a student with a disability and Student’s needs. By predetermining Student’s eligibility, Parents’ participation rights were significantly infringed upon.

Second, DOE did not consider a variety of sources in making the eligibility determination. According to H.A.R. § 8-60-37(e)(1), “[T]he department shall evaluate a student with a disability in accordance with sections 8-62-36 through 8-60-43 before determining that the student is no longer a student with a disability.” As discussed *infra* in Issue 4, the DOE did not evaluate Student in accordance with H.A.R. §§ 8-62-36 through 8-60-43 before determining that Student was no longer eligible under the IDEA. While DOE argues that “other than receiving letters directly addressed to [Public Charter School] from Private Psychologist concerning testing accommodations and regression stemming from the pandemic, [Public Charter School] was otherwise unaware that Student was seeing private providers and/or

receiving any services outside of school,”¹⁵ the evidence shows otherwise. Before the eligibility meeting on January 31, 2024, Parent-1 sent an email to SSC and SPED Teacher informing them that “[Student] continues to see [Private Psychologist] to help [Student] with [REDACTED] [REDACTED] [REDACTED] [REDACTED]” and Parent-2 informed a school counselor that Student was seeing a “therapist.” (FOF 73, 80). Instead of trying to get more information from Parent-1 and Parent-2 about what, if any, new information Private Psychologist may have about Student, or inviting Private Psychologist to the eligibility meeting, Public Charter School did not do anything with the information provided by Parents. Furthermore, Advisor/English Teacher, who has an impression that appears to align with Parents’ concerns, was not at the eligibility meeting and the team made an eligibility decision without the benefit of Advisor/English Teacher’s input. (FOF 18, 81). Lastly, Parent-2 is not just a parent but also Student’s [REDACTED]. As Student’s [REDACTED], Parent-2 communicated concerns about Student’s [REDACTED] and the effects the [REDACTED] had on Student while Student was in the process of accessing Student’s education. (FOF 59-62). During the due process hearing, SSC explained a [REDACTED] importance in the education of students at Public Charter School:

[W]e’re a [REDACTED], right, and the [REDACTED] is a critical piece to that, where the [REDACTED] might observe things that we may not see, especially in [REDACTED] during this time. And so that feedback is super important things to take into account when we’re looking at how is the student functioning across the board just – not only when they’re in the [REDACTED] classroom setting at [Public Charter School.]

SSC, Tr. Vol. III, p. 431. Yet, the school members of the team minimized Parent-2’s contribution and concerns about Student’s [REDACTED] and struggles in a social setting, explaining that it may be a matter of being an introvert vs. extrovert. DOE Ex. 86 at 337-340, Ex. 87 at

¹⁵ DOE Closing Brief, p. 12.

00:43:00-00:52:45. Due to Public Charter School's decision to not seek out information or data to determine whether Student is a student with a disability and Student's educational needs, the eligibility determination that followed was based on insufficient data and not appropriate.

2. Whether the DOE failed to implement Student's 2/28/2023 IEP by refusing to provide individualized instruction and related services during the 2023-2024 school year.

In this allegation, Parents allege that the DOE failed to implement Student's 2/28/2023 IEP by refusing to provide individualized instruction and related services during the 2023-2024 school year. For Hawaii public school students, the 2023-2024 school year starts on August 7, 2023 and ends on May 30, 2024¹⁶. The December 2023 IEP was developed on December 8 and 17, 2023. DOE received Parents' Complaint on April 4, 2024. DOE's obligation to implement Student's 2/28/2023 IEP is broken down into four (4) timeframes: (i) August 7, 2023 to December 17, 2023; (ii) December 18, 2023 to January 31, 2024; (iii) February 1, 2024 to April 4, 2024, and (iv) April 5, 2024 to May 30, 2024. Parents fail to meet their burden of proof with respect to this issue. DOE's implementation of Student's 2/28/2023 IEP for each timeframe will be discussed in turn.

(i) August 7, 2023 to December 17, 2023

The Ninth Circuit Court in Van Duyn v. Baker School Dist. 5J held that "when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 815

¹⁶ The undersigned takes judicial notice of the Hawaii State Department of Education 2023-2024 Official School Calendar. See <https://www.hawaiipublicschools.org/DOE%20Forms/2023-24calendar.pdf>.

(9th Cir.2007). “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” Van Duyn, 502 F.3d at 822.

The term FAPE means special education and related services that are provided in conformity with an IEP. 20 U.S.C. § 1401(9)(D). Special education and related services “need only be provided ‘in conformity with’ the IEP. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.” Van Duyn, 502 F.3d at 821.

Parents fail to meet their burden of proof in showing that the DOE refused to provide Student with individualized instruction and related services pursuant to the 2/28/2023 IEP. Prior to Student being found not eligible for special education and related services on January 31, 2024, Public Charter School was implementing Student’s 2/28/2023 IEP by providing Student with the special education, speech/language consult, and accommodations listed in the 2/28/2023 IEP. (FOF 56).

As for Parents’ argument in their Closing Brief that Parent-2 testified that “Under the February 28, 2023 IEP, DOE did not work directly with [Student] on interpersonal and social communication. [Parent-2], as [Student’s] [REDACTED] and [REDACTED] [] provided that special instruction,”¹⁷ the undersigned finds Parents’ argument unpersuasive. During Parent-2’s testimony about working on Student’s interpersonal and social communication skills under the 2/28/2023 IEP, Parent-2 was specifically testifying about Student being a [REDACTED]¹⁸.

¹⁷ Parents’ Closing Brief, p. 44.

¹⁸ Parent-2, Tr. Vol. II at pp. 167-168.

Student's volunteerism at a [REDACTED] takes place off school campus and not during school hours. Not having a school personnel with Student or to oversee Student's extracurricular activities outside of school does not mean that Public Charter School was not working with Student on Student's interpersonal and social communication skills at school. SPED Teacher periodically spoke with Parent-2, Student's mentor, and the [REDACTED] of the [REDACTED] about how Student was doing, and SPED Teacher would also check-in with Student on a weekly basis. (FOF 56). Student's 2/28/2023 IEP contains a goal on improving Student's communication and self-advocacy skills, which SPED Teacher worked on with Student and Student mastered the goal in December of 2023. (FOF 56, 75). As such, Parents fail to meet their burden in showing that the DOE did not work directly with Student on interpersonal and social communication skills.

(ii) *December 18, 2023 to January 31, 2024*

When the December 2023 IEP was completed on December 17, 2023, the December 2023 IEP became the operative IEP that DOE had to implement. (FOF 70). Therefore, DOE did not fail to implement Student's 2/28/2023 IEP as it was no longer the most recent IEP. But regardless of whether it was under the 2/28/2023 IEP or the December 2023 IEP, Public Charter School was providing Student with special education, speech/language consult, and testing accommodations, as the two IEPs have the same Special Education and Related Services and Supplementary Aids and Services¹⁹. (FOF 50, 56, 71, 72).

(iii) *February 1, 2024 to April 4, 2024*

¹⁹ Although SPED Teacher's testimony was about the 2/28/2023 IEP, the December 2023 IEP contains the same annual goal, special education services, and Supplementary Aids and Services, with a slight modification to the "Extended time on tests" supplementary aid. DOE Ex. 25 at 075-083, Ex. 28 at 086-093.

In addition to the December 2023 IEP superseding the 2/28/2023 IEP, when DOE determined on January 31, 2024 that Student was no longer eligible for special education services, DOE was no longer obligated to implement any IEP. As such, from February 1, 2024 to April 4, 2024, when DOE received Parents' Complaint, DOE did not fail to implement Student's 2/28/2023 IEP.

(iv) *April 5, 2024 to May 30, 2024*

In addition to the December 2023 IEP superseding the 2/28/2023 IEP, and DOE determining on January 31, 2024 that Student was no longer eligible for special education services, DOE had received Parents' Complaint on April 4, 2024 and agreed to stay put. Therefore, DOE did not fail to implement Student's 2/28/2023 IEP during this time period.

Based on the foregoing, Petitioners fail to meet their burden of proof in showing that DOE materially failed to implement Student's 2/28/2023 IEP during the 2023-2024 school year.

3. Whether the DOE exacerbated Student's emotional, psychological, and developmental problems, and deprived Student of educational opportunity by not implementing Student's 2/28/2023 IEP.

In this issue, Parents allege that DOE's failure to implement Student's 2/28/2023 IEP (1) exacerbated Student's emotional, psychological, and developmental problems, and (2) deprived Student of an educational opportunity. As discussed in Issue 2, *supra*, DOE did not materially fail to implement Student's 2/28/2023 IEP. Even assuming that DOE failed to implement the 2/28/2023 IEP, Parents fail to show or argue that Student's emotional, psychological, and developmental problems were exacerbated by the failure or that Student was deprived of an educational opportunity. Therefore, Parents fail to meet their burden with respect to this issue.

4. Whether the public evaluation conducted by the DOE was appropriate under the IDEA.

In this issue, DOE alleges that "the re-evaluation conducted by the DOE and dated

1/12/2024²⁰ was an appropriate evaluation” and Parents’ request for an IEE at public expense should be denied. DOE Ex. 5 at 023. The reevaluation conducted by the DOE was a triennial reevaluation and the reevaluation consisted of “no new assessments,” and relied solely on Student’s academic achievements, informal observations by teachers and SLP, and input from the IEP team. (FOF 81, 83). Based on the evidence, DOE failed to meet their burden in showing that the January 12, 2024 triennial reevaluation conducted by the DOE was appropriate.

a. IEE Requirements

An independent educational evaluation (“IEE”) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. 34 C.F.R. § 300.502(a)(3)(i). When a parent disagrees with an evaluation obtained by the public agency, the parent can request an IEE at public expense. “Public expense” means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. 34 C.F.R. §§ 300.502(a)(3)(ii), 300.502(b)(1). If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense. 34 C.F.R. § 300.502(b)(2). If the public agency files a due process complaint to request a hearing and the final decision is that the public agency’s evaluation is appropriate, the parent still has a right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b)(3).

The evaluation procedures are governed by 34 C.F.R. § 300.304 (2006). The regulation reads in relevant parts:

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

²⁰ January 12, 2024 is the date of a Prior Written Notice for a triennial reevaluation. (FOF 78).

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - (i) Whether the child is a child with a disability under § 300.8; and
 - (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum...;
- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 C.F.R. § 300.304(b) (2006); See also H.A.R. § 8-60-36(b). Federal regulations also require that assessments and other evaluation materials used to assess a child are: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided and administered in the child’s native language or other mode of communication likely to yield accurate information; (3) used for the purposes for which the assessments or measures are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of the assessments. 34 C.F.R. § 300.304(c)(1). In addition, the public agency must ensure that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. § 300.304(c)(6).

b. The Public Evaluation Conducted by the DOE was Not Appropriate under the IDEA

Whenever a parent asks for an IEE at public expense and the DOE elects not to provide the IEE, federal regulations require the DOE to “[f]ile a due process complaint to request a hearing to show that its evaluation is appropriate.” 34 C.F.R. § 300.502(b)(2)(i). See e.g.,

("[T]he school must defend the appropriateness of the evaluation as a whole and, thus, all of the assessments on which it relies. It cannot defend only some of the underlying data and demur on others because reaching an evaluative conclusion based on incomplete data would be, to borrow a phrase, arbitrary and capricious.") See also, Great Valley Sch. Dist., 121 LRP 20251, at 4 (Penn. SEA May 7, 2021) ("Here, the evaluation process undertaken in the fall of 2019 and the November 2019 RR that resulted, are both appropriate. The November 2019 RR included and considered data from the classroom, from the student's IEP goals, from related services providers, and from formal assessments and tests. The November 2019 RR included input from teachers, other educators, and parents.... At no point was any one single measure, element of input, assessment, or score used to understand the student's needs and identification.") In the instant case, the "evaluation" undertaken by Public Charter School for Student's triennial reevaluation was not appropriate.

Public Charter School used similar data to determine whether formal assessments should be done to determine eligibility and to make the eligibility determination itself. In deciding that no new formal assessments were needed for the reevaluation, Public Charter School relied on Student's "█ ELA & math scores, current grades, teacher feedback, parent feedback, observations." (FOF 78). In making the eligibility determination, the team considered "█ Diagnostic assessment scores for reading and math, student grades, student writing samples, teacher feedback, student feedback, and parent feedback." (FOF 87). The "█ Diagnostic assessments" are academic assessments administered to all students. (FOF 78, FN 7). Therefore, Public Charter School did not "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information" about Student and did not "use technically sound instruments that may assess the relative contribution of cognitive and

behavioral factors.” 34 C.F.R. § 300.304(b). Besides Student’s academic information, all other information is subjective. There is no objective functional and developmental information about Student. To the extent that there were insinuations during the hearing that Parents did not request any formal assessments, this does not negate the responsibility that Public Charter School has to conduct a comprehensive evaluation. While parent input is essential in the IEP formulation process, parents are laypeople with respect to IDEA and cannot be expected to have the same level of knowledge or expertise that school personnel have. Even though Parents did not ask for a particular assessment by name, Parents deferred to the school members of the team to know what assessments will be helpful in making an eligibility determination. (FOF 77).

In addition to not using a variety of assessment tools and strategies, the evaluation was not sufficiently comprehensive to identify all of Student’s special education and related services needs, whether or not commonly linked to the disability category in which Student was classified. 34 C.F.R. § 300.304(c)(6). Student was eligible for special education and related services under the IDEA category of [REDACTED]. (FOF 11). Public Charter School had sufficient information to know that Student’s challenges were not based on academic needs but were based on [REDACTED]. In 2018, DOE knew that Student had [REDACTED] due to [REDACTED] and was medically diagnosed with “[REDACTED] [REDACTED],” in addition to Student’s [REDACTED] diagnosis. (FOF 19). In March of 2021, Public Charter School was aware that Student was suffering from increased [REDACTED] [REDACTED] [REDACTED]. (FOF 24). In April of 2021, Public Charter School provided Student with transition supports to assist Student with Student’s [REDACTED] [REDACTED] [REDACTED] (FOF 32). In April of 2022, Public Charter School provided Student with Supplementary Aids and Services to enable Student to

deal with [REDACTED] [REDACTED] [REDACTED]. (FOF 40). In September of 2023, Student reached out to SPED Teacher to ask for accommodations during test taking to address Student's [REDACTED] and difficulties with sudden changes. (FOF 57, 58). In October of 2023, Parent-2 informed SPED Teacher that Student can manage routine tests and exams at Public Charter School, but "things outside of the 'norm' like [REDACTED] class, [REDACTED], volunteering, and even [REDACTED], that makes the regulation wonky." (FOF 59). SPED Teacher was also informed by Parent-2 that Student has the potential for "outburst/meltdown." (FOF 59). Also in October of 2023, Parent-2 informed SPED Teacher that Parent-2 was looking for something for Student to occupy Student's hands while taking tests because Student "has destroyed things in frustration at home while in class." (FOF 60). Parent-2 informed SPED Teacher that Parent-2 obtained several types of "stress balls" for Student to use for Student's "anxious hands." (FOF 61). In December of 2023, Private Psychologist informed SPED Teacher and SSC that Student, as an [REDACTED] child, frequently struggles with new circumstances. Private Psychologist explained that taking an [REDACTED] exam is different from taking a test in class, and that the difference in setting is causing Student to experience significant [REDACTED] [REDACTED]. Private Psychologist goes on to explain that "when [REDACTED] [REDACTED] [REDACTED] [Student's] ability to regulate [Student's] emotions and behavior is compromised, and affects [Student's] ability to focus and perform adequately." Private Psychologist then requested testing accommodations for Student, which Private Psychologist stated were accommodations psychologists "typically request for children with [REDACTED] [REDACTED]" (FOF 65). Also in December of 2023, Public Charter School added two (2) testing accommodations to Student's IEP because Student [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Even though SPED Teacher worked with Student to

familiarize Student with the [REDACTED] exam process, Student [REDACTED] [REDACTED] [REDACTED] [REDACTED] (FOF 69).

Additionally in December of 2023, Public Charter School received notice that Student was seeing a “therapist,” and that this therapist had suggested that Student request an accommodation for an upcoming [REDACTED] exam. (FOF 73). Lastly, Private Psychologist wrote to Public Charter School on May 29, 2019; March 22, 2021; and December 7, 2023 about Student, which should have alerted Public Charter School to Student’s possible psychological needs, especially when the March 22 and December 7 letters specifically mentioned [REDACTED] [REDACTED]. (FOF 23, 24, 65).

Based on the information available to Public Charter School, Public Charter School should have at the very least conducted a psychoeducational assessment. Public Charter School should have sought more information or data regarding [REDACTED] [REDACTED], difficulty dealing with new settings, typically keeping to him/herself, and engaging in group activities primarily when prompted. (FOF 18).

Furthermore, while the teachers and school personnel at Public Charter School did not believe that Student had any difficulty in accessing Student’s education while on school campus [REDACTED], Parent-2, who saw Student while Student was receiving academic instructions virtually at home [REDACTED], informed Public Charter School that Student “has destroyed things in frustration at home while in class” and insinuated that Student has had “outburst/meltdown.” (FOF 59, 60). Such concerning behavior may not fall within the [REDACTED] eligibility criteria, but the evaluation must be sufficiently comprehensive to identify all of Student’s special education and related services needs, whether or not commonly linked to the disability category of [REDACTED]. H.A.R. § 8-60-36(c)(6). The DOE was required to ensure that

Student was assessed in all areas related to the suspected disability, including social and emotional status, and communicative status. H.A.R. § 8-60-36(c)(4). DOE did not do this. Furthermore, Student has had special education and related services under the IDEA since [REDACTED] (FOF 12). To discontinue special education and related services [REDACTED] [REDACTED] [REDACTED] should be examined with much more seriousness than just considering informal observations, subjective input, and grades. Based on the foregoing reasons, the public evaluation conducted by the DOE was not appropriate under the IDEA.

D. ISSUE NOT ALLEGED IN DUE PROCESS COMPLAINT

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). Parents' Complaint does not allege any child find violations, and there was no agreement to hear such an issue. However, even if child find was appropriately alleged in Parents' Complaint, Parents will fail to meet their burden of proof. IDEA requires the DOE to "annually identify, locate, and evaluate, all students with disabilities residing in the State..." H.A.R. § 8-60-10. Clearly, Student has been identified and located as Student has been receiving special education services up until January 31, 2024. (FOF 83). Parents disagreeing with DOE's eligibility determination and DOE rejecting Parents' request for an IEE at public expense do not mean that Student was not evaluated. As discussed *supra*, the

evaluation was inappropriate, but it was still an evaluation. Therefore, there is no child find violation in this case.

VI. DECISION

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer concludes that Parents have proven a denial of FAPE when the DOE's eligibility determination on January 31, 2024 was not appropriate. The undersigned Hearings Officer further concludes that the public evaluation conducted by the DOE, and dated 1/12/2024, was not appropriate under the IDEA.


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

1. Student continues to be eligible for special education and related services under the IDEA;
2. Parents are entitled to an independent educational evaluation at public expense;
3. The IEE shall include, at a minimum, a neuropsychological assessment, a speech/language assessment, and an Applied Behavior Analysis assessment;
4. The IEP team shall, within ■ (14) calendar days of this Order, decide if any additional tests or assessments are necessary to determine Student's current needs and to revise Student's IEP. Any additional assessments the IEP team determines are necessary shall be part of the IEE;
5. An IEP revision team meeting shall be held within fourteen (14) calendar days of the completion of the IEE.
6. With Parents' consent, DOE shall invite a representative from DVR to the IEP revision team meeting.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawaii, August 23, 2024.



CHARLENE S.P.T. MURATA
Hearings Officer
707 Richards Street, Suite 520
Honolulu, Hawaii 96813
Phone: (808) 587-7680
Fax: (808) 587-7682
atg.odr@hawaii.gov