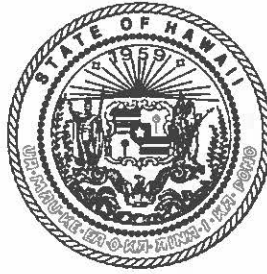


2024 OCT 22 PM 3: 22 *AK*



OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAI'I,

Respondents.

DOE-SY2324-036

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:

August 12-14, 20-21, 26-27, 2024

September 13, 16-17, 23-27, 2024

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

Petitioners STUDENT, by and through PARENTS (hereinafter collectively referred to as "Petitioners"), submitted a Request for IDEA Impartial Due Process Hearing (hereinafter "Complaint") against the DEPARTMENT OF EDUCATION, STATE OF HAWAI'I, (hereinafter collectively "Respondents"), pursuant to the Individuals with Disabilities Education Act ("IDEA"), on April 26, 2024. On May 7, 2024, Respondents submitted DOE's Response to

¹ Personal identifiable information is contained in the Legend.

Petitioners' Request for IDEA Impartial Due Process Hearing. Petitioners were granted leave to file an amended complaint, and they filed Petitioners' Due Process Complaint and Resolution Proposal (hereinafter "Amended Complaint") on May 31, 2024. The DOE's Response to Petitioners' Amended Complaint was submitted on June 10, 2024.

On July 2, 2024, a prehearing conference was held with this Hearings Officer; Parents and Student, as well as [REDACTED], on behalf of Petitioners; and District Educational Specialist (hereinafter "DES") and Vice Principal (hereinafter "VP"), on behalf of Respondents. At the prehearing conference, the Due Process Hearing (hereinafter "Hearing") was scheduled for August 12-15, 2024, for Petitioners' case and August 20-23, 2024 for Respondents' case.²

The parties agreed to conduct the Hearing via the Zoom videoconferencing application. An Order Regarding Videoconference Due Process Hearing was issued on July 3, 2024, which set forth the parameters for the due process hearing. A court reporter participated in the video conference hearing to swear in the witnesses and transcribe the proceedings. Each witness was given a set of instructions with their Zoom meeting invitation and prior to being sworn in for their testimony. All witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform, and witnesses and parties were instructed to ensure the confidentiality of the proceedings by participating in a private setting.

The Due Process Hearing began on August 12, 2024. Present at the Hearing were Parent 1 and Student, on behalf of Petitioners;³ DES, on behalf of Respondents; this Hearings Officer;

² Petitioners noted in the prehearing conference that because Student was not receiving educational services, the Hearing should be expedited. This Hearings Officer initially set time limits for both parties in an attempt to finish the Due Process Hearing and Decision within the first forty-five day deadline.

³ Based on this Hearings' Officer's ruling, Petitioners could have Student present throughout the proceedings even though Student would be testifying. Parent 1 was designated as the primary party for the proceedings, and Parent 2 was allowed to be present throughout the proceedings

and the assigned court reporter. Petitioners called Parent 2, Former Board-Certified Behavior Analyst 1 (hereinafter “Former BCBA 1”), Special Education Department Chair (hereinafter “SPED Chair”), to testify. SPED Chair’s testimony was continued to August 14, 2024 at Petitioners’ request, which also included a request to skip August 13, 2024 as a hearing date and to allow for longer breaks between Petitioners’ hearing dates. This request was granted, and the Hearing was rescheduled to August 14, 2024 (full day), August 15, 2024 (half day), August 20, 2024 (full day), and August 21, 2024 (half day) for Petitioners case, and August 22-23, 2024 (full days), and August 26-27, 2024 (full days) for Respondents’ case. On August 14, 2024, Petitioners also called [REDACTED], Former Board-Certified Behavior Analyst 2 (hereinafter “Former BCBA 2”), and Occupational Therapist (hereinafter “OT”) to testify. OT’s testimony continued August 15, 2024, when Tutor and Student also testified. Student’s testimony was not completed on August 15, 2024 and was continued to a later date. The Hearing continued to August 20, 2024, when Petitioners called Former Board-Certified Behavior Analyst 3 (hereinafter “Former BCBA 3”), Vice Principal (hereinafter “VP”), and Current Board-Certified Behavior Analyst (hereinafter “Current BCBA”) to testify. Current BCBA’s testimony was continued to August 21, 2024. The Hearing continued to August 26, 2024, where Petitioners resumed the testimony of Student and also recalled VP to testify. Parent 1 submitted Parent 1’s written testimony on August 26, 2024 and DES was provided with time to review it before starting cross examination of Parent 1 on August 26, 2024. Parent 1 was allowed to present oral redirect testimony and did so on August 27, 2024, after completion of cross examination. Due to Petitioners’ case taking longer than the Hearing dates scheduled, additional Hearing dates were scheduled for September 13, 16-17, and 23-27, 2024. Petitioners requested the opportunity to

after Parent 2 completed Parent 2’s testimony to comply with the witness exclusion rule.

recall Current BCBA, as Parent 1 indicated that Parent 1 was feeling ill on the day that Current BCBA's testimony was completed and neglected to ask Current BCBA some questions on a topic that was not covered previously.⁴ Over Respondents' objection, this Hearings Officer allowed Petitioners to recall Current BCBA, who testified on September 13, 2024. After the testimony of Current BCBA was completed, Petitioners rested their case-in-chief. Respondents began their case on September 13, 2024 with the testimony of VP.⁵ The Hearing was continued to September 16, 2024, where Respondents called Previous School Care Coordinator (hereinafter "Previous School CC") to testify. Cross examination took longer than expected⁶ and Respondents' next two witnesses, Former Board-Certified Behavior Analyst 4 (hereinafter "Former BCBA 4") and District Resource Teacher (hereinafter "DRT") testified on September 17, 2024. The Hearing continued to September 23, 2024, where Respondents called Former Care Coordinator (hereinafter "Former CC") and Behavioral Health Specialist (hereinafter "BHS") to testify. Respondents case continued to September 24, 2024, when Student Services Coordinator (hereinafter "SSC") and Former Board-Certified Behavior Analyst 5 (hereinafter "Former BCBA 5") testified. On September 25, 2024, DES submitted DES's written testimony and Petitioners were given additional time to review the document before starting cross examination of DES on that date. DES's cross examination continued to September 26, 2024

⁴ This Hearings Officer limited the testimony of Current BCBA on September 13, 2024 to the subjects that had not been examined during Current BCBA's initial testimony and also limited the amount of time that Petitioners would be able to examine Current BCBA.

⁵ This Hearings Officer had allotted an equal number of days to Petitioners and Respondents for presentation of their cases. Due to this, the parties did not agree that Respondents could examine VP on subjects outside the scope of what was asked on direct examination and Respondents were allowed to recall VP during their case-in-chief.

⁶ Respondents had objected throughout the cross examination of most of their witnesses, as Petitioners asked many questions that were outside the scope of direct examination and this Hearings Officer allowed Petitioners some leeway in asking those questions. This led to several of the witnesses going past their anticipated time, despite the objections noted by Respondents.

and Speech-Language Pathologist (hereinafter “SLP”) and Principal also testified on that date. On September 27, 2024, Respondents called Psychiatric Nurse Practitioner (hereinafter “PNP”) to testify. DES wanted to submit additional testimony based on questions that were asked of PNP and was allowed to do so. Petitioners were given time to review the written testimony and cross-examined DES on that date regarding the additional testimony. Petitioners requested to present rebuttal evidence, but this Hearings Officer did not allow Petitioners to call or recall additional witnesses for rebuttal. This Hearings Officer did permit Parent 1 to submit written rebuttal testimony at the conclusion of the Hearing. Respondents were given time on that date to review the document and cross-examine Parent 1. The Hearing was concluded on September 27, 2024.

Both parties did not submit their evidence to the other party by the given deadline of August 5, 2024 at 4:30 p.m.,⁷ but both parties did receive the electronic files of Petitioners’ and Respondents’ respective exhibits by August 6, 2024. Since both parties’ submissions were late, this Hearings Officer allowed all exhibits to be considered, notwithstanding the delay in production. The parties were given the option of starting Hearing one day later to account for the delay in disclosures, but the parties elected not to do so. Notwithstanding the instructions in the Prehearing Order, Petitioners submitted their exhibits in a drive in separate, unpaginated documents. The Office of Dispute Resolution (hereinafter “ODR”) staff printed and paginated Petitioners’ exhibits and compiled an exhibit list with the exhibit and page numbers for ease of reference. During the Hearing process, Petitioners discovered that some attachments had not been uploaded with the documents that were included in the exhibits. This Hearings Officer

⁷ The Office of Dispute Resolution received Respondents’ exhibits by August 5, 2024 at 4:30 p.m. but the electronic link and access to the files were not granted to Petitioners until August 6, 2024.

agreed to admit those exhibits over the objection of Respondents. The ODR staff included the additional attachments, repaginated the pages, and produced an edited exhibit list for ease of reference during the Hearing.

Prior to the start of the Hearing on August 12, 2024, Petitioners noted that they just received a large number of emails from an open records request that may include documents that they would like to use for the Hearing. This Hearings Officer gave them the option of continuing the Hearing to submit additional disclosures, with the understanding that an extension of the decision deadline would likely be necessary, or to proceed without the use of the additional exhibits. Petitioners elected to proceed to have the Hearing and Decision completed in an expedited manner.

Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case and that requests for exhibits would be received at any time, as long as the parties could state the relevance of the document or exhibit being offered. During the Hearing, due in part to the large number of exhibits that Petitioners had submitted, Petitioners requested the ability to provide a list of exhibits that they referred to during witness testimony if they were unable to specify the exhibit and/or page number at the time. The parties were also instructed that due to the large number of video recordings being proposed, timestamps of the relevant portions of the recordings or transcripts of the recordings would be necessary to have the Decision done by the deadline. At the conclusion of the Hearing, this Hearings Officer instructed the parties to provide lists of additional exhibits, timestamps, and/or transcripts from the disclosures that they wanted received in evidence by Tuesday, October 1, 2024. This Hearings Officer received an email from Petitioners on Tuesday, October 1, 2024, requesting an extension of time for the list of exhibits,

timestamps, and/or transcripts due to illness. This Hearings Officer granted Petitioners' request and extended the deadline to Friday, October 4, 2024.

On Monday, October 7, 2024, a List of Exhibits Received at Due Process Hearing was issued, which listed the exhibits from both parties that would be considered as part of the Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows:⁸ Exhibits 1-4; Exhibits 6-16; Exhibits 18-21; Exhibits 23-29; Exhibits 31-40; Exhibits 43-44; Exhibit 47; Exhibits 50-52; Exhibits 54-57; Exhibits 60-61; Exhibits 63-66; Exhibits 68-82; Exhibits 84-85; Exhibits 87-88; Exhibits 90-95; Exhibits 97-106; Exhibits 109-114; Exhibits 117-119; Exhibits 122-144; Exhibits 147-151; Exhibits 153-160; Exhibits 162-164; Exhibits 166-175; Exhibits 177-184; Exhibits 186-187; Exhibits 189-200; Exhibits 202-207; Exhibits 209-217; Exhibits 219-221; Exhibits 223-231; Exhibits 233-235; Exhibits 237-239; Exhibits 241-242; Exhibits 244-245; Exhibits 247-249; Exhibits 251-253; Exhibits 256-259; Exhibits 261-267; Exhibits 269-273; Exhibits 275-297; Exhibit 299; Exhibits 301-306; Exhibits 309-312; Exhibit 314; Exhibits 316-324; Exhibit 326; Exhibits 328-332; Exhibits 334-374.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 0002-0099, 0100-0101, 0103-0167, 0169-0170, 0172-0175, 0277-0370, 0372-0465, 0467-0564; Exhibit 2, pages 0569, 0571, 0573-0578, 0580-0581, 0583, 0585, 0591-0593, 0595-0598, 0600-0602, 0604-0605, 0607-0610, 0616-0617, 0619-0620, 0622, 0631-0633, 0635-0638, 0640-0643, 0645-0646, 0648, 0650, 0652-0654, 0658, 0660-0661, 0663, 0665, 0667-

⁸ Petitioners Exhibits include both paginated documents as well as cloud-drive links to audio/video recordings, so only the exhibit numbers are being listed here. For further information regarding page numbers, etc., please refer to the Amended List of Exhibits Received at Due Process Hearing, issued on October 10, 2024.

0668, 0670, 0672-0673, 0675-0676, 0678-0679, 0681, 0683-0685, 0687-0690, 0692, 0694-0695, 0697-0698, 0700-0701, 0703-0704, 0706, 0708, 0710, 0712-0713, 0715, 0724, 0726, 0728-0733, 0735-0736, 0738, 0740, 0742-0743, 0745-0746, 0748, 0750-0751, 0753, 0755-0756, 0758-0760, 0762, 0764-0765, 0767, 0769, 0771-0772, 0774-0775, 0777-0778, 0780-0783, 0785, 0787-0788, 0790-0791, 0793-0794, 0796-0797, 0799, 0801-0802, 0804-0805, 0807-0809, 0811-0812, 0814-0815, 0817, 0819-0821, 0823-0825, 0827-0829, 0831-0832, 0834-0837, 0839-0842, 0844-0849, 0851-0852, 0854-0855, 0857-0859, 0861-0862, 0864-0865, 0867-0870, 0872-0873, 0875, 0877, 0878-0880, 0882-0883, 0884-0888, 0890-0892, 0900, 0901-0902, 0904-0905, 0907-0909, 0911-0914, 0916-0917, 0919-0922; Exhibit 3, pages 0926, 0935-1039, 1041-1058, 1060-1062, 1064-1095, 1097-1140, 1142-1221, 1223-1249, 1251-1280, 1282-1283, 1285-1320, 1333-1337, 1339; Exhibits 4, pages 0656-0657, 0717-0722, 1393-1396, 1398-1400, 1402-1403, 1405-1407, 1409-1412, 1414-1415, 1421, 1423-1424, 1426-1434, 1436, 1438, 1440, 1442-1449, 1451-1452, 1454-1455; Exhibit 5, consisting of 12 audio/video recordings dated 3/30/2023, 5/15/2023, 05/24/2023, 6/13/2023, 6/14/2023, 6/22/2023, 7/7/2023, 7/31/2023, 9/11/2023, 10/19/2023, 2/9/2024, 4/26/2024; Exhibit 6, pages 1457-1470, 1471.

Each party representative was allowed to provide a written statement to submit as their testimony, with the opposing party allowed to cross-examine them on their written testimony after enough time to review the testimony. Both parties elected to proceed with written testimony. These written statements by the party representatives were received as exhibits next in order on their respective exhibit lists. Both parties were informed prior to the beginning of the Hearing that they would be allowed to provide either an oral closing argument, a written closing brief, or both, or neither. At the conclusion of the hearing, both parties requested the opportunity to submit a written brief instead of having a verbal closing argument. A Post-Hearing Order was

issued on September 30, 2024, which provided the deadline for the written submissions as Friday, October 11, 2024 at 4:30 p.m. Both Petitioners and Respondents submitted written closing briefs by the deadline of Friday, October 11, 2024.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding,⁹ the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision.

II. JURISDICTION

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

III. ISSUES PRESENTED

Petitioners raised twelve (12) issues in the Complaint to be addressed at the Hearing:

1. The DOE’s chronic mismanagement has not been addressing and/or meeting Student’s needs and/or has not been in compliance with Student’s individualized education program (hereinafter “IEP”) requirements, resulting in a denial of a free appropriate public education (hereinafter “FAPE”).
2. The DOE’s creating of delays has prevented progress in Student’s placement, resulting in a denial of FAPE.
3. The DOE has not been providing the qualified psychiatric provider to provide services and conducting weekly training meetings per Student’s IEP since October 30, 2023, resulting in a denial of FAPE.
4. DOE administration creating anguish and regression for Student by forcing known [REDACTED] triggers and intentional time delays of progress upon Student, and not observing IEP need such as needing transitions ahead of time, only one major change at a time, needing accommodations to access general education, needing trusted providers to progress in goals, etc., which resulted in a denial of FAPE.

⁹ This Hearings Officer notes that while the testimony of all witnesses and all received exhibits were reviewed by this Hearings Officer, only the relevant information taken from the testimony and exhibits are cited to in this Decision. Not all witness testimony or exhibits are cited herein.

5. Student has had a lack of accessible general education and access to subject-specific [REDACTED] teachers, resulting in a denial of FAPE.
6. Student has not received appropriate education and/or support per Student's IEP, resulting in a denial of FAPE.
7. Barriers are in place that prevents Parents from being able to participate as needed in Student's highly individualized homebound program, which relies heavily on Parents (for example, Petitioners' request for email record access was not met, request to be included on emails in order to participate was not answered, and access to data collection and reporting was severed, etc.), resulting in a denial of FAPE.
8. The DOE failed to implement and/or adhere to Student's IEP, to include but not limited to: BCBA direct services and consultative parent education services were not provided to Student and Parents between 3/9/2023 to 1/11/24¹⁰, not providing access to monthly data, not notifying parents of personnel and other changes, etc.
9. Parents, at the request of Student, have requested and been denied to have detailed sensitive medical data and/or non-current data removed from the IEP. As the IEP will eventually be widely distributed between multiple teachers in the [REDACTED] setting with access being easily breached, Parents felt that was a reasonable and necessary request that would not impact Student's programming. Failure to remove and/or update such information and/or relying on non-current information in the PLEP for programming resulted in a denial of FAPE.
10. Consultative services providers (including the behavioral health specialist, speech-language pathologist, and multiple board-certified behavior analysts) have not been providing consultation services in compliance with Student's IEP, resulting in a denial of FAPE.
11. Student has been receiving services on a non-current IEP and outdated plans attached to the IEP and Parents' consent for evaluations have been refused, resulting in a denial of FAPE.
12. Parents do not have access to decision makers in IEP meetings, which is impacting Parents' ability to address and/or discuss Student's programming and progress deficits, resulting in a failure to implement Student's IEP, resulting in a denial of FAPE.¹¹

Petitioners request the following remedies to address the alleged violations above:¹²

1. Find that the DOE denied Student a FAPE for the violations asserted.
2. Order the DOE to remedy any violations of FAPE that are found.

¹⁰ A previous state complaint decision addressed the period between 3/26/23 to 10/23/23-the date the initial state complaint was filed.

¹¹ Respondents have objected to this issue as presented due to a lack of jurisdiction and this issue is being considered in this Decision over Respondents' objection.

¹² Petitioners had a long list of remedies included in their Complaint, however, this Hearings Officer noted that many of the remedies were not available under the IDEA and that the remedies listed here would cover any remedies available to them in equity and/or under the IDEA.

3. Order compensatory education if appropriate.
4. Order such other relief that is appropriate and justified in equity and/or under the law, under the circumstances.

IV. FINDINGS OF FACT

Witness background and other information

1. Parent 1 is the primary caregiver of Student and has become heavily involved in Student's IEP program, being that Student is currently placed in home instruction. Testimony of Parent 1, Transcript of Proceedings, Volume 6 and 7 (hereinafter referenced as "Tr.V6-Tr.V7"). *See also* Petitioners' Exhibit 373, pages 1678-1714 (hereinafter "P-Ex.373, p.1678-1714"); *see also e.g.*, P-Ex.72; P-Ex.77; P-Ex.79-80; P-Ex.138; P-Ex.150; P-Ex.169; P-Ex.173-174; P-Ex.181; P-Ex.184; P-Ex.192; P-Ex.194-195; P-Ex.197-199; P-Ex.210-211; P-Ex.23; P-Ex.239-240; P-Ex.247; P-Ex.336-372; P-Ex.374; R-Ex.5, IEP meeting recordings.
2. Parent 1 has mentioned repeatedly both in the Hearing and in many of the recorded IEP meetings, that Parent 1 has [REDACTED], which makes being the primary resource for Student's program difficult for Parent 1. *See e.g.* Testimony of Former BCBA 4, Tr.V10, 1172:16-21; Testimony of BHS, Tr.V11, 1370:2-23; Testimony of Parent 1, Tr.V15, 1711:19-1712:3; P-Ex.177, 5/24/2023 IEP meeting recording, approximate time stamp [11:55-12:50] (hereinafter referenced as P-Ex.177, 5/24/23 IEP recording [11:55-12:50]); P-Ex.184, 6/13/23 IEP meeting recording [40:00-40:03]; P-Ex.197, 7/7/23 IEP recording [10:42-11:08].
3. Parents have also noted that Parent 1's role in Student's care has created extra stress on Parent 1 over the years. Parent 1 has expressed to Current BCBA that Parent 1 is overwhelmed by not receiving support in all the roles that Parent 1 must hold in Student's

program, such as checking on curriculum that might be appropriate for Student and tracking daily behaviors and responses that occur in relation to the IEP implementation. Testimony of Parent 2, Tr.V1, 47:20-24; Testimony of Current BCBA, Tr.V8, 828:7-830:16; Testimony of Former CC, Tr.V11, 1309:3-10; *see also* Testimony of Parent, P-Ex.373, p.11.

4. Parent 2 works in [REDACTED] and assists with Student's education when possible, however Parent 2 [REDACTED] and is not able to be present at all times or meetings, but Parent 1 will often show Parent 2 meeting recordings and notes from meetings that Parent 2 is unable to attend. Testimony of Parent 2, Tr.V1, 40:13-23, 78:16-79:3.
5. Neither Parent 1 nor Parent 2 have any specialized training, education, and/or qualifications in education or as educators. Testimony of Parent 2; Tr.V1, 82:3-12.
6. Parents are concerned that Student's program has often had challenges with finding appropriate long-term service providers to allow Student to progress in Student's program. Testimony of Parent 2, Tr.V1, 41:2-18, 43:20-44:23, 50:25-51:6.
7. Former BCBA 1 is a licensed board-certified behavior analyst who is also a licensed mental health counselor. Former BCBA 1 has been qualified as an expert witness to testify in the areas of behavior analysis and mental health counseling. Testimony of Former BCBA 1, Tr.V1, 96:6-98:9; P-Ex.311, p.1501-1502.
8. SPED Chair was the special education department chair at Previous School but also had Student in [REDACTED] at [REDACTED] [REDACTED]. SPED Chair observed that when Student was in [REDACTED], Student had difficulties with large groups of peers and had many sensitivities, but [REDACTED], could not express Student's need for breaks or

- other support. Testimony of SPED Chair, Tr.V1, 158:21-159:22.
9. [REDACTED] has a bachelor's degree in psychology and has experience in working with children with special needs as a registered behavior technician (hereinafter "RBT") and a paraprofessional. Testimony of [REDACTED], Tr.V2, 207:11-208:2.
 10. Former BCBA 2 is a licensed board-certified behavior analyst and certified special education teacher in the State of Hawai'i who used to work for the DOE and also worked for private companies to provide behavioral services under insurance programs. Testimony of Former BCBA 2, Tr.V2, 264:3-265:16.
 11. Former BCBA 2 was qualified as an expert witness as a board-certified behavior analyst and a special education teacher. Testimony of Former BCBA 2, Tr.V2, 265:24-266:9.
 12. OT is an occupational therapist licensed in the State of Hawai'i and has been working as an occupational therapist in school settings since 2005. Testimony of OT, Tr.V2, 310:14-20.
 13. OT has experience in working with children with disabilities, including autism, and related sensory issues. Testimony of OT, Tr.V2, 310:21-311:15.
 14. Tutor has an elementary education degree and has worked as an elementary school teacher in the State of Hawai'i, but is not currently a certified teacher in Hawai'i. Tutor has worked for the Lindamood-bell learning processes [REDACTED] and is now a private tutor. Testimony of Tutor, Tr.V3, 357:7-19, 380:22-381:1.
 15. The Lindamood-bell learning process involves working with students that have difficulty with auditory and visual processing as it pertains to reading, reading fluency, and spelling. The program works with students to hone auditory and orthographic processing skills, and to visualize a word or concept to help with reading skills. Testimony of Tutor, Tr.V3, 357:23-359:3.

16. Tutor was qualified as an expert witness in the area of the visualizing/verbalizing program due to Tutor's [REDACTED] experience in providing such services and also because Tutor had previously been in the position at the Lindamood-bell company to hire and train new employees on the program. Testimony of Tutor, Tr.V3, 359:6-360:19.
17. Former BCBA 3 has been a board-certified behavior analyst since around 2020 and has worked with children with various disabilities. Former BCBA 3 has also had supervisor experience as a board-certified behavior analyst. Testimony of Former BCBA 3, Tr.V4, 422:21-423:13.
18. Former BCBA 3 was qualified as an expert witness as a board-certified behavior analyst in the area of behavior analysis. Testimony of Former BCBA 3, Tr.V4, 423:14-424:2.
19. Current BCBA is a licensed behavior analyst in the State of Hawai'i who is also a board-certified behavior analyst. Current BCBA also holds a provisional special education teaching license in the State of Hawai'i. Testimony of Current BCBA, Tr.V4, 539:20-540:5.
20. Current BCBA was qualified as an expert as a board-certified behavior analyst. Testimony of Current BCBA, Tr.V4, 540:16-542:1.
21. Previous School CC is currently [REDACTED] and has worked in education for ten years. Previous School CC was a special education teacher and special education department head for Previous School prior to [REDACTED]. Previous School CC is a certified special education teacher and a highly qualified English teacher. Testimony of Previous School CC, Tr.V9, 950:20-24.
22. Former BCBA 4 is a doctorate-level board-certified behavior analyst who has a doctoral degree in psychology, a master's degree in behavior analysis, and bachelor's degree in

liberal studies. Former BCBA 4 has worked in the field of applied behavior analysis (hereinafter “ABA”) for over twenty years and has published articles and gave presentations in the area of behavior analysis. Testimony of Former BCBA 4, Tr.V10, 1095:24-1096:17; R-Ex.4, p.1405-1407.

23. Former BCBA 4 was qualified as an expert witness in the area of ABA as a board-certified behavior analyst. Testimony of Former BCBA 4, Tr.V10, 1097:8-16.
24. DRT is currently a district resource teacher on the [REDACTED] team for the DOE and has been in that position since 2017, where DRT supports other board-certified behavior analysts that work in the DOE. DRT is also a special education teacher and a board-certified behavior analyst and provides professional development and consultation and training for teachers. Testimony of DRT, Tr.V10, 1202:20-1203:13.
25. DRT was qualified as an expert witness as a board-certified behavior analyst based on DRT’s training and experience in working with students prior to the State of Hawai‘i requiring specific board-certified qualifications for behavior analysts. Testimony of DRT, Tr.V10, 1203:18-1208:11.
26. Former CC was a special education department chair at Home School prior to retiring on June 30, 2024. Testimony of Former CC, Tr.V11, 1272:5-1273:8.
27. BHS is the behavioral health specialist assigned to Home School. BHS has a master’s degree in social work and currently teaches the doctoral psychology program and the undergraduate social work program. BHS has experience in working with individual and group therapy in private practice and specializes in [REDACTED]
[REDACTED] [REDACTED] [REDACTED] Testimony of BHS, Tr.V11, 1351:5-21; R-Ex.4, p.1393-1396.

28. BHS was qualified as an expert witness in the areas of clinical social work and psychiatric provider services. Testimony of BHS, Tr.V11, 1352:3-1355:11.
29. SSC is the current student services coordinator at Home School and is involved with Student's case in that role and also attends some IEP team meetings as the general education teacher. Testimony of SSC, Tr.V12, 1421:8-1422:13.
30. SSC was initially a high school teacher with the DOE since [REDACTED], went back to school to get a master's degree in counseling and returned to the DOE in the role of a counselor for around [REDACTED], and has been a student services coordinator for the past [REDACTED] years. Testimony of SSC, Tr.V12, 1421:8-15.
31. Former BCBA 5 is a board-certified behavior analyst since [REDACTED] who has practiced in both private settings and as a DOE contracted provider. Former BCBA 5 has a bachelor's degree in psychology, a master's degree in behavior analysis and therapy, and a master's degree in interdisciplinary leadership. Testimony of Former BCBA 5, Tr.V11, 1472:8-24; R-Ex.4, p.1414-1415.
32. Former BCBA 5 was qualified as an expert witness as a board-certified behavior analyst over Petitioners' strongly stated and repeated objections.¹³ Testimony of Former BCBA 5, Tr.V11, 1472:25-1478:16.
33. DES has been an [REDACTED] district educational specialist for approximately five years. DES is trained in conducting practical functional assessments (hereinafter "PFA") up the level 3

¹³ Petitioners objected to Former BCBA 5's testimony as whole and again as an expert witness because of information that Parent 1 had about another student's case from another parent, both of whom were unrelated to this case. This issue was brought up at least twice in the Hearing even after it was explained to Petitioners that the information from another person not related to this case about a different student is not allowable in these proceedings. Testimony of Former BCBA 5, Tr.V11, 1475:22-1476:16.

status. Testimony of DES, Tr.V13, 1530:3-8; Tr.V14, 1618:3-5; R-Ex.6, p.1457-1463.

34. SLP is a licensed speech and language pathologist who is licensed in Hawai‘i and two other states. SLP has provided speech-language services in many different settings, such as school settings, within clinics, and within hospital settings. SLP has a master’s degree in communication disorders and a bachelor’s degree in speech and language pathology.

Testimony of SLP, Tr.V14, 1590:19-7; R-Ex.4, p.1398.

35. SLP has been qualified as an expert in the area of speech-language pathology. Testimony of SLP, Tr.V14, 1591:12-1592:21.

36. Principal is the principal of Home School and has assigned VP to be the administrator for Student’s case. Testimony of Principal, Tr.V14, 1630:19-1631:16.

37. PNP is a board-certified psychiatric nurse practitioner who is licensed in the State of Hawai‘i as an advanced practice registered nurse and a registered nurse and by the American Nurses Credentialing Center as a family nurse practitioner and a psychiatric mental health nurse practitioner. PNP has experience in providing behavioral health services and counseling in clinical and school settings. Testimony of PNP, Tr.V15, 1653:12-19; R-Ex.4, p.1409.

38. PNP has been qualified as an expert witness as a psychiatric nurse practitioner. Testimony of PNP, Tr.V15, 1653:22-1655:16.

39. At the Hearing, Petitioners did not call any of Student’s medical or private providers to testify. Petitioners did submit two letters from Student’s private treatment team. *See* P-Ex.29, p.0118; P-Ex.323, p.1646.

40. The majority of evidence regarding concerns for Student from Student’s private treatment team consisted of emails from Parents to the DOE indicating what the Hospital personnel

were reporting to Parent. No medical records, discharge summaries, or other documents besides the two letters submitted were directly from Hospital or any of Student's private treatment team. *See e.g.* P-Ex.31, p.0125-0135; P-Ex.32, p.0136-0153; P-Ex.37, p.0168-0172; P-Ex.101, p.0509-0520; P-Ex.160, p.0764-0771; P-Ex.329, p.1658-1660.

41. Former PSP, who was instrumental in running Student's program from April 2022 to October 2023 did not testify at the Hearing. *See* Testimony of OT, Tr.V3, 342:2-21; Testimony of Previous School CC, Tr.V9, 955:25-957; P-Ex.336-372; P-Ex.373-374; P-Ex.373, p.1698.

Student's diagnoses/needs

42. Student is [REDACTED] years old, is currently in the [REDACTED] grade, and has been placed in home instruction. Home School is Student's district home school. Testimony of Student, Tr.V3, 392:22-393:2.

43. Student has been diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁴ R-Ex.1, p.0003.

44. Student was found eligible for IDEA special education and related services in [REDACTED] under

¹⁴ This information was taken from Student's IEP dated February 8, 2024, which is the most current IEP; however, some of these diagnoses are under contention by Petitioners.

the category of [REDACTED]. R-Ex.1, p.0003.

45. A comprehensive psychiatric assessment was last conducted with Student with Former Psychiatrist in September 2018. A psychoeducational assessment was last conducted with Student in May 2018. *See* R-Ex.1, p.4-16.
46. Student is [REDACTED] with high cognitive ability and has had success with natural environment teaching and has had adverse reactions to discrete trial training. Testimony of Former BCBA 2, Tr.V2, 268:16-273:7; Testimony of Current BCBA, Tr.V4, 555:7-557:3.
47. Student testified at the Hearing and was well-spoken and articulate. Student did not have trouble answering questions on direct examination and cross-examination, as well as follow-up questions by this Hearings Officer. *See* Testimony of Student, Tr.V3, 392:3-413:24; Tr.V6, 641:15-377:20.
48. Student did not appear to have any responses based on the interaction at the Hearing, even though there was at least one person with whom Student was unfamiliar. Student continued to attend several days of the Hearing without any noted responses.¹⁵ *See* Testimony of Student, Tr.V3, 392:3-413:24; Tr.V6, 641:15-377:20; *see also* Tr.V2; Tr.V3; Tr.V7; Tr.V9; Tr.V12.
49. Much of Student's [REDACTED] centers around Student not having control or not having a say in the things that are going on in Student's life. Testimony of [REDACTED] 1, Tr.V2, 214:11-15, 219:7-11; Testimony of Former BCBA 2, Tr.V2, 294:7-295:20.

¹⁵ During Student's testimony, although Student was not showing any signs of hesitation or distress, Parent asked Student twice whether Student was okay. Both times, Student responded that Student was fine. This happened again during the testimony of Previous School CC. Testimony of Student, Tr.V6, 658:13-21; Testimony of Previous School CC, Tr.V9, 974:21-975:2.

50. [REDACTED]
[REDACTED]
[REDACTED] Testimony of Student, Tr.V3, 393:11-394:5.
51. Student liked the format of the Acellus online learning program because it allowed Student to move around freely between subjects and also to review or go back to certain lessons if Student needed additional time to remember the necessary information. Testimony of Student, Tr.V3, 394:6-396:18, 397:11-16, 398:3-400:9.
52. Student requires extra time to learn subjects or complete assignments, due in part to Student's [REDACTED]. Student needs additional time to review information that Student needs to remember for an assignment, since Student has difficulty with [REDACTED]. As a result, when Student is completing an assignment or learning new material, Student often reviews the material several times. Testimony of Student, Tr.V3, 395:20-397:10, Tr.V6, 645:18-646:5.
53. Student's learning style changes day-to-day, where sometimes Student likes to read more, sometimes Student prefers to watch videos, and sometimes Student looks things up on the internet to learn. Student prefers to be able to learn based on how Student is feeling that day and also have breaks to watch non-work related videos. Testimony of Student, Tr.V6, 646:14-647:9.
54. Student testified that Student needs a baseline with a provider in order for the provider to start working on goals and objectives with the provider. Sometimes this takes six months or longer for Student to get to know the provider that Student is working with before Student can 'trust' them to work on goals or other things that their position entails. Testimony of Student, Tr.V6, 654:3-15.

55. Student made the most progress in Student's program when Student had well-established, trusted providers providing services to Student. Testimony of Former BCBA 1, Tr.V1, 144:21-145:9; Testimony of [REDACTED], Tr.V2, 220:15-17.
56. Student testified that "[REDACTED]" can trigger Student and because [REDACTED]
[REDACTED] Because of the apparent random and large numbers of things that can trigger Student, Student needs the ability to pause lessons to reset before continuing on with assigned tasks. Testimony of Student, Tr.V6, 643:13-644:12.
57. Student can sometimes "[REDACTED]" the triggers but it depends entirely on what triggered Student and how difficult the information is that Student is trying to learn. Testimony of Student, Tr.V6, 644:13-18.
58. Student has developed the ability to recognize when Student is being triggered and coping skills to address Student's responses to the triggers, such as taking a break, doing physical activity, running water over Student's hands, or start working on something different. Testimony of Student, Tr.V6, 644:19-645:12.
59. Based on testimony of Parent 1 and [REDACTED], Student's [REDACTED] [REDACTED] are not generally observable to unfamiliar people and usually involve Student being negative about Student, Student turns inward and shuts down, and Student has difficulty engaging. Student also struggles to recall anything that occurs when Student has a [REDACTED] [REDACTED]. Testimony of [REDACTED], Tr.V2, 223:22-225:15.
60. According to other individuals that have worked with Student, Student does display physical symptoms when Student is having a [REDACTED] [REDACTED]. See Testimony of Former BCBA 2, Tr.V2, 290:9-291:4 (Former BCBA 2 observed Student have [REDACTED]

██████████ regarding Former BCBA 1's maternity leave and eventual absence from Student's team); Testimony of OT, Tr.V2, 317:22-318:9 (OT observed that Student was having some carry-over stress responses from Student's reaction to Former BCBA 4 in around March 2023); Testimony of Tutor, Tr.V3, 374:16-375:18 (Tutor has observed physical responses in Student, such as grunting, sighing, sliding down in the chair, and occasionally getting into a loop of typing and deleting and typing the same things over again when Student is dysregulated); Testimony of Current BCBA, Tr.V4, 552:16-554:12 (When Student is having a ██████████, one of the first or second behaviors that presents is that Student has negative self-talk and observable physical changes, such as looking away or through a person, having a grimace on Student's face, saying things like "██████████"); *see also* P-Ex.29, p.118-119.

61. Student went to the Home School campus for an open house and stayed on campus for approximately one and a half to two hours before Student became overwhelmed and had to leave. Parents accompanied Student to the campus, but no one had told the DOE that Student planned to attend. There were approximately two hundred people that attended the event. Testimony of Student, Tr.V6, 668:3-23; Testimony of VP, Tr.V8, 906:3-7, 934:17-935:6; Testimony of Parent 1, Tr.V15, 1710:15-1711:5, 1718:11-1722:15.
62. No one besides Parents had observed any signs of Student struggling while Student was at the open house event. Testimony of VP, Tr.V8, 863:3-25; Testimony of Parent 1, Tr.V15, 1720:8-1722:15.
63. Student does not currently envision being able to learn in a classroom environment as part of Student's future, but Student hopes just to be able to go onto the campus and learn how to be there. Testimony of Student, Tr.V6, 675:4-13.

64. Regarding Student's behavior goals and objectives worked on with Former BCBA 4, Student has disputed mastering the goals and objectives, but Student acknowledged that Student has been making progress on each of the goals, sometimes in a percentage close to mastery level.¹⁶ P-Ex.170, 5/15/23 IEP meeting recording [1:10:52-1:36:22].
65. Student has developed Student's own systems to work on certain goals and objectives, such as understanding nuances in directional words by following and/or creating three-step verbal directions with familiar people. P-Ex.170, 5/15/23 IEP meeting recording [1:10:52-1:11:20].
66. Student has learned coping skills to allow Student to walk away when Student feels stressed or needs a break to regulate Student's emotions/stressors and return when Student is ready. P-Ex.170, 5/15/23 IEP meeting recording [1:20:50-1:21:41].
67. Student has made progress on learning to disengage properly from a conversation, at least fifty percent of the time when Student is involved in [REDACTED] training or other meetings, although Student is better about disengaging in online situations than in person. P-Ex.170, 5/15/23 IEP meeting recording [1:25:25-1:27:04]
68. Student has also come up with Student's own strategies to accomplish goals and objectives that are behavior goals and objectives in the IEP. Testimony of Former BCBA 1, Tr.V1, 134:22-135:8; P-Ex.170, 5/15/23 IEP meeting recording [1:33:37-1:34:42].
69. Since working with Current BCBA, Student has been making significant progress in some behavioral goals but has not made progress in other goals, such as social goals, since they had been put on hold and Student needed more foundational skills to progress on those goals. Testimony of Current BCBA, Tr.V8, 809:22-811:7.

¹⁶ The mastery level noted in the IEP is eighty percent accuracy.

Student's IEP

70. Student's IEP is ninety-eight pages long and was last revised on February 8, 2024 (hereinafter "IEP-02/08/2024").¹⁷ Student's IEP's present levels of educational performance section (hereinafter "PLEPs") is fifty-three pages. R-Ex.1, p.0002-0099; R-Ex.5, 2/9/24 IEP meeting recording.
71. The most recent date for updated information in Student's PLEP is March 2023, which is only to note that Student does not want the service providers to use the word "Goal" and use the word "Mission" instead. R-Ex.1, p.0041.
72. Most of the updated baseline or other information about Student's strengths, needs, and concerns are from 2018 and 2022. *See* R-Ex.1, p.0003-0055.
73. The goals and objectives in Student's IEP-02/08/2024 are based on the information in the PLEPs, which is from 2022 at the earliest. *See* R-Ex.1, p.0057-0085.
74. Current BCBA has a working draft of a BSP that Current BCBA uses for Student's program, but it is not attached to the IEP-02/08/2024. Current BCBA has been updating it because it is the analyst's responsibility to ensure that the BSP is updated to be current with Student's behaviors and needs. Testimony of Current BCBA, Tr.V5, 594:9-595:12.
75. Student's behavior support plan (hereinafter "BSP") related to IDEA special education and related services was last updated in 2020. Testimony of Current BCBA, Tr.V4, 543:18-21.
76. OT had prepared updates for Student's IEP as of June 2023, however the updates by OT were not included in any of the subsequent versions of Student's IEP, including the IEP-

¹⁷ The Exhibit that was entered into the record, R-Ex.1, p.0002-0099, and the meeting invitation, P-Ex.276, p.1353-1355, are dated 02/08/2024, but the IEP meeting recording is dated February 9, 2024. This Hearings Officer will proceed with the 02/08/2024 date, as the evidence from both parties show that there was only one IEP meeting at around that time.

02/08/2024. OT had also intended to create a sensory plan for Student after discussing sensory-based input that has worked in the past for Student, such as a tire swing or rope swing (for vestibular input) and push ups (for proprioceptive input). Testimony of OT, Tr.V3, 326:15-327:4, 345:23-352:24.

77. Student's IEP-02/08/2024 only provides three direct services to Student: 1) special education (two hundred ten minutes/week), 2) occupational therapy direct services (one hundred twenty min/week), and 3) board-certified behavior analyst direct services (one hundred fifty min/week). The IEP-02/08/2024 does not provide behavioral health specialist services as a direct service. It is provided as direct services subject to the transition plan in the clarification of services and supports to help when Student transitions to a public school campus. Testimony of BHS, Tr.V11, 1358:7-1358:14; R-Ex.1, p.0086-0089.
78. Student's IEP-02/08/2024 provides consultation minutes with the behavioral health specialist (sixty minutes/week), speech-language pathologist (ninety minutes/quarter), occupational therapist (sixty minutes/week), psychiatric provider (nine hundred ninety minutes/quarter),¹⁸ and board-certified behavior analyst (sixty minutes/week). The consultation minutes for the behavioral health specialist, occupational therapist, and board-certified behavior analyst are for the professionals to attend a weekly [REDACTED] training meeting with parent(s). The IEP-02/08/2024 also provides psychiatric education planning and participation of one thousand two hundred minutes per year. Parent education and training with the board-certified behavior analyst is also provided as a separate service in

¹⁸ The IEP indicates that the consultation is to school and parent, but it is not separated like the BCBA parent services.

- Student's IEP-02/08/2024. Parent receives ninety minutes per month of consultation with a special education teacher. R-Ex.1, p.0086-0089.
79. For extended school year, which starts seven calendar days after school is on break, Student receives direct services from the board-certified behavior analyst of one hundred fifty minutes per week and thirty minutes of parent education and training per week. The IEP-02/08/2024 also notes that one hundred ten minutes of psychiatric consult to the school and team is to be provided during ESY. R-Ex.1, p.0086.
80. Student's supplementary aids and services, program modifications and supports for school personnel includes, *inter alia*, a new provider orientation and protocols, a [REDACTED] transition protocols plan, a communication log, a behavior support plan (hereinafter "BSP"), a (sensory) regulation plan. R-Ex.1, p.0086-0087.
81. The clarifications of supplementary aids and services, program modifications and supports for school personnel section of the IEP-02/08/2024 is over six pages long. It includes onboarding and other information for new providers (e.g., having to inform parents in advance if the service provider will not be available, removing shiny jewelry when working with Student, onboarding requirements like shadowing and working with Student for several months before placing demands on Student, etc.). These new protocols are still in place for Student's new providers. Testimony of BCBA 1, Tr.V1, 105:23-106:14; R-Ex.1, p.0087-0093.
82. Student's IEP-02/08/2024 indicates that "[d]ue to [Student's] diagnosis of [REDACTED], it is determined that [Student] will be in a homebound setting. [Student] will not participate with peers in the general education setting on campus at this time. In light of [Student's] [REDACTED] as a part of [Student's] homebound program, [Student] will receive: Occupational

therapy, BCBA (direct service, parent education/training), specially designed education (tutor) provided virtually or in person to work on social goals, peer access & academics. Team will meet to go over transition plans and protocols prior to determining a new LRE.” R-Ex.1, p.0094.

Student’s IEP development history

83. Previous School began holding annual IEP meetings for Student in the spring of Student’s [REDACTED] grade year¹⁹ since Student’s IEP often took many meetings for multiple hours to complete. For Student’s IEP that would go with Student to Home School, Previous School attempted to hold meetings early to try to complete Student’s IEP for [REDACTED] grade. The IEP was not completed, so the IEP team agreed that Student would continue to get services under the previous IEP. Testimony of Previous School CC, Tr.V9, 964:5-965:23; *see also e.g.* P-Ex.72, 5/26/2022 IEP meeting recording; P-Ex.72, 6/2/2022 IEP meeting recording.
84. Former CC took over scheduling Student’s IEP meeting when Student progressed to Home School from Previous School. Former CC made many attempts to schedule IEP meetings and other for Student’s team between August 2023 and May 10, 2024. Despite the many meetings that were held, a new IEP for Student had not been completed as of the date of Former CC’s retirement on June 30, 2024. Testimony of Former CC, Tr.V11, 1286:2-12; R-Ex.4, p.717-722.
85. The IEP team spent over thirty hours in at least nineteen IEP meetings between May 2022 and October 2023 trying to develop an IEP for Student. *See* P-Ex.72, 5/26/22 IEP meeting recording; P-Ex.77, 6/3/22 IEP meeting recording; P-Ex.79, 6/22/22 IEP meeting

¹⁹ Based on the evidence in the record, Student was in [REDACTED] grade for the 2021-2022 school year.

recording; P-Ex.80, 6/30/22 IEP meeting recording; P-Ex.150/R-Ex.5, 3/30/23 IEP meeting recording;²⁰ P-Ex.170/R-Ex.5, 5/15/23 IEP meeting recording; P-Ex.173, 5/18/23 IEP meeting recording; P-Ex.177/R-Ex.5, 5/24/23 IEP meeting recording; P-Ex.184/R-Ex.5, 6/13/23 IEP meeting recording; P-Ex.187, 6/14/23 IEP meeting recording; P-Ex.192/R-Ex.5, 6/22/23 IEP meeting recording; P-Ex.195, 6/29/23 IEP meeting recording; P-Ex.197/R-Ex.5, 7/7/23 IEP meeting recording; P-Ex.199/R-Ex.5, 7/31/23 IEP meeting recording; P-Ex.210-211/R-Ex.5, 9/11/23 IEP meeting recording; P-Ex.228, 9/29/23 IEP meeting recording; P-Ex.237/R-Ex.5, 10/19/23 IEP meeting recording; P-Ex.241, 10/27/23 IEP meeting recording; P-Ex.247, 10/30/23 IEP meeting recording.

86. During many of the IEP meetings, Former PSP informed the IEP team that Former PSP would redraft parts of the PLEPs for the team's review but had not completed the drafts and gotten it to the schools in time. Former PSP also interjected a lot of information for Student's PLEPs section in the meetings, since the information was not given to the team prior to the meeting. *See e.g.*, P-Ex.197, 7/7/23 IEP recording.
87. During most of the IEP meetings, Petitioners (including Parents, Student, and [REDACTED]) interject during the IEP meetings, sometimes raising discussions regarding a part of the PLEP that the team was not working on at the time or raising their complaints about the overall DOE behaviors. The IEP team would end up spending extra time discussing the side topics or requests from Petitioners that took time from the discussions for the agenda items. These interjections often took extra unnecessary time during which the team could have been discussing the development of the IEP. *See e.g.*, Testimony of Former CC,

²⁰ Where Petitioners and Respondents submitted the same IEP meeting recordings, this Hearings Officer used Respondents' copy for ease of reference.

Tr.V11, 1282:1-24; Testimony of SLP, Tr.V14, 1593:7-12; P-Ex.184, 6/13/23 IEP meeting recording [0:00-3:04, 18:00-50:00]; P-Ex.192, 6/22/23 IEP meeting recording [3:15-12:14]; P-Ex.199/R-Ex.5, 7/31/23 IEP meeting recording [27:00-30:00].

88. Petitioners were also sometimes inconsistent in their request to keep information in from prior IEPs for the new document versus asking to remove information from the IEP. *See e.g.*, Testimony of Previous School CC, Tr.V9, 966:1-968:6; P-Ex.184, 6/13/23 IEP meeting recording [18:00-50:00]; R-Ex.5, 5/24/23 IEP meeting recording [1:41:00-1:52:00]; R-Ex.5, 6/13/23 IEP meeting recording [1:37:00-1:55:00]; R-Ex.5, 7/31/23 IEP meeting recording [8:00-30:00].
89. Several of the IEP team members, including Parents, found that the IEP meetings were inefficient and not being productive. *See* Testimony of Parent 2, Tr.V1, 42:8-43:15; Testimony of Current BCBA, Tr.V5, 587:18-588:20; Testimony of Previous School CC, Tr.V9, 964:17-967:23; Testimony of Parent 1, P-Ex.373, p.15-16; Testimony of SLP, Tr.V14, 1593:7-12; *see also e.g.*, R-Ex.5, 3/30/23 IEP meeting recording,
90. Petitioners filed a state complaint in the fall of 2023, from which the State of Hawai‘i DOE compliance department found that the DOE committed violations regarding board-certified behavior analyst services. On January 4, 2024, the State of Hawai‘i DOE compliance department ordered that “1. The school must provide BCBA services in accordance with the student’s IEP[;] 2. No later than February 16, 2024, the IEP Team must convene to: 1) Revise the IEP to indicate that ABA services will be provided in person and virtually as documented on the April 6, 2023 PWN[;] 2) Determine whether compensatory services are appropriate. [] (1) If the IEP team determines compensatory services are warranted, a plan must be developed to detail the amount, location, and time the special education services

are to be provided. ...” R-Ex.5, IEP meeting recording [16:35]; *see also* Testimony of Parent 1, P-Ex.373, p.1705.²¹

91. On February 9, 2024, the IEP team met specifically to amend the IEP to address the decision made by the compliance department. Parents were present at the meeting and did not object to the IEP team making the amendment specifically as to the virtual and in-person services, but they did object to discussing the determination of compensatory education without the presence of a psychiatric provider. The school IEP team maintained that BHS is qualified to provide psychiatric services, so could be used to be the psychiatric provider in the determination of the compensatory services. R-Ex.5, 2/9/24 IEP recording [16:35-19:30].
92. The IEP team had several discussions throughout the February 9, 2024 meeting; compensatory time (minutes) for the time between March 27, 2023 and October 23, 2023, the time/format of the compensatory minutes, and the possibility of compensatory time between October 23, 2023 to January 11, 2024, when the new board-certified behavior analyst started on Student’s case. *See* R-Ex.5, 2/9/24 IEP recording.
93. The February 8, 2024 IEP (hereinafter “IEP-02/08/2024”) kept all the same information from the previous IEPs dated March 30, 2023 (hereinafter “IEP-03/30/2023”),²² August 24, 2022 (hereinafter “IEP-08/24/2022”),²³ and June 30, 2022, June 3, 2022, June 2, 2022, May 26, 2022, and May 24, 2022 (hereinafter “IEP-06/30/2022”).²⁴

²¹ This Hearings Officer notes that neither of the parties submitted the final decision by the State of Hawai‘i DOE compliance department as an exhibit to this Hearing, but a portion of the decision was shared in the February 9, 2024 IEP meeting recording, which is where this Hearings Officer acquired the quoted language.

²² R-Ex.1, p.0277-0370.

²³ R-Ex.1, p.0372-0465.

²⁴ R-Ex.1, p.0467-0564.

94. No new, updated information was added to the IEP-02/08/2024 besides the updated to the clarification section for the supplementary aids and supports. The February 9, 2024 update reads “ABA Services (BCBA direct services) will be provided in-person and virtually.” Testimony of VP, Tr.V8, 876:9-15; R-Ex.1, p.0089.
95. The prior written notice (hereinafter “PWN”) dated February 15, 2024 (hereinafter “PWN-02/15/24”) also noted the change to the IEP-03/30/2023 to add the language for the board-certified behavior analyst direct services. The PWN-02/15/2024 also noted that the DOE would be providing compensatory services for ABA services not provided from March 27, 2023 through October 23, 2023. The DOE noted that board-certified behavior analyst compensatory minutes to be provided for direct services (four thousand five hundred minutes), consultation to the team (one thousand eight hundred minutes), and parent education and training (nine hundred minutes). The compensatory minutes were to be available for eighteen months and to be provided at the discretion of the board-certified behavior analyst. R-Ex.1, p.0100-0101.
96. No new IEP has been developed for Student with updated information from providers such as OT and Current BCBA. Testimony of OT, Tr.V3, 345:23-352:24, Testimony of Current BCBA, Tr.V5, 594:9-595:12.
97. On April 26, 2024, Home School conducted a school-focused team (hereinafter “SFT”) meeting because Former PSP and Student’s family had requested updated assessments for Student. R-Ex.5, 4/26/24 IEP recording.
98. After the student focused team determined that Student would undergo an academic and behavioral assessment, Current BCBA was asked to conduct both assessments with Student. Current BCBA has the qualifications to conduct those assessments. Testimony of

Current BCBA, Tr.V8,796:3-16.

99. Current BCBA did not get approval based on Parents' consent to conduct the behavioral assessment and the academic assessment with Student until August 2024. Current BCBA had completed the PFA with Student by September 26, 2024. Testimony of Current BCBA, Tr.V8, 796:14-798:19; Testimony of DES, Tr.V14, 1624:5-16.

Student's educational background/services provided

100. The changes in Student's team since Former BCBA 1's failure to return to Student's IEP in 2022,²⁵ have been the result of a request of Petitioners to change the provider or the provider/personnel leaving their employment and not being able to continue with Student's team.
101. Home School awarded compensatory education minutes for the failure to provide board-certified behavior analyst minutes from March 27, 2023 through October 23, 2023, due to the decision made on a State complaint filed by Petitioners. Testimony of SSC, Tr.V12, 1423:1-16.

Board-Certified Behavior Analysts

102. Former BCBA 1 worked with Student from around June 2020 through February 2022. Former BCBA 1 had planned to take a several month break to go on maternity leave and had prepared Student in anticipation of Former BCBA 1's leave. Former BCBA 1 had planned to come back to work with Student's case again in May 2022. Former BCBA 1 also prepared a substitute BCBA, Former BCBA 3, to work with Student while Former

²⁵ This Hearings Officer notes that Former BCBA 1 left Student's team on February 2022 and was not able to return as scheduled in May 2022. As Petitioners' original complaint was filed on April 26, 2024, this Hearings Officer finds that the time period regarding the issues in this case begins after Former BCBA 1 failed to return to the team.

BCBA 1 was on leave. Testimony of Former BCBA 1, Tr.V1, 107:7-108:18.

103. Former BCBA 1 and the IEP team had anticipated Former BCBA 1's return to Student's team after returning from maternity leave, however due to contracting issues, Former BCBA 1 did not return to Student's team. Testimony of Former BCBA 1, Tr.V1, 119:24-120:16, 121:6-124:25.²⁶
104. Former BCBA 1 was later contacted by Former BCBA 1's former company to see if Former BCBA 1 could work on Student's case, but Former BCBA 1 already had a full caseload and could not return to Student's case. Testimony of Former BCBA 1, Tr.V1, 149:15-21; Testimony of Previous School CC, Tr.V9, 962:14-16.
105. Former BCBA 2 worked with Student since about 2013-2014, first through the DOE, then through private insurance services, and then again through the DOE. Former BCBA 2 was the provider that set up and gave Petitioners access to the Catalyst data collection program. Testimony of Former BCBA 2, Tr.V2, 266:13-267:19, 295:21-297:21.
106. Former BCBA 2 stopped working with Student because Former BCBA 2's company's contract with the DOE ended and Former BCBA 2 declined to work through the new contracted company to continue work on Student's program. Testimony of Former BCBA

²⁶ While this Hearings Officer acknowledges that Petitioners are urging/requesting a finding that DES acted inappropriately by purposefully removing Former BCBA 1 from Student's case, this Hearings Officer declines to make a finding of who was at fault for Former BCBA 1's failure to return to Student's team. Former BCBA 1 testified that Former BCBA 1's company said that it was the DOE's decision, other evidence in the record suggests that it was not the DOE's decision. No one from Former BCBA 1's company testified to the discussions held regarding contracting and the email submitted as evidence in this case is vague as to the specific reasons why Former BCBA 1 did not return. Evidence also suggests that Former BCBA 1 intended to end Former BCBA 1's employment with the former company that was contracting with the DOE and that Former BCBA 1 had ethical concerns regarding Student's case. DES also testified as to why Student's team was unaware that Former BCBA 1 was not returning to Student's team until after the original return date. Testimony of DES, Tr.V13, 1551:6-11. See P-Ex.63, p.0303-0308; P-Ex.66, p.0329-0347; Testimony of Former BCBA 1, Tr.V1, 125:12-126:3, 148:1-3.

2, Tr.V2, 301:23-302:9.

107. On May 21, 2020, Former BCBA 2 sent an email that provided the DOE and other members of Student's team a date of May 28, 2020 by which to contact Former BCBA 2 if they needed Former BCBA 2 to assist with anything. Prior to that date on May 27, 2020, the DOE requested that Former BCBA 2 continue working to transition to the new board-certified behavior analyst to Student's team. Former BCBA 2 had already scheduled new clients by that time and declined to do the transition, despite the DOE contacting Former BCBA 2 prior to the date given in Former BCBA 2's email.²⁷ P-Ex.6, p.22-23.
108. Former BCBA 3 initially did not want to work on Student's case because Former BCBA 3 had no experience or training in working with children with [REDACTED] [REDACTED]. Former BCBA 3 took Student's case from February 2022 through September 2022 as a temporary assignment while Former BCBA 1 was out on maternity leave. Former BCBA 3 was able to get some guidance and training from a specialist in Former BCBA 3's company. Testimony of Former BCBA 3, Tr.V4, 424:4-425:6.
109. Former BCBA 3 did not get past the onboarding stage of Student's program, so Former BCBA 3 did not work with Student on any goals or objectives in Student's IEP. Testimony of Former BCBA 3, Tr.V4, 425:7-426:22, 431:9-22.
110. Former BCBA 3 left Former BCBA 3's company in May 2023, in part, due to feeling mistreated as an employee when Former BCBA 3 had taken the case temporarily but then later was told that Former BCBA 1 was not returning to the team. Testimony of Former

²⁷ While Former BCBA 2 took offense with the DOE saying that Former BCBA 2 'refused' to continue working on Student's case, Former BCBA 2 did say that by the time the DOE contacted Former BCBA 2 to do the transition, Former BCBA 2 already had a full scheduled and could not do so, so essentially refused to continue working on Student's program due to other work obligations. See P-Ex.3, p.10-11.

BCBA 3, Tr.V4, 436:22-438:11, 444:1-17.

111. Former BCBA 4 was assigned to Student's case in around August 2022, began providing services under Student's IEP in September 2022, and continued to provide services through March 2023. Testimony of Former BCBA 4, Tr.V10, 1097:19-24; R-Ex.3, p.1142-1221.
112. Between March and May 2023, Student declined meetings with Former BCBA 4, but Former BCBA 4 was still assigned to the team. Petitioners informed Home School about the [REDACTED] [REDACTED] that Student had to Former BCBA 4, the DOE IEP team members had discussions with Petitioners and Former BCBA 4 and they hoped to keep Former BCBA 4 on the team due to the lengthy onboarding process that was required for a provider to work with Student that Former BCBA 4 had already gone through. Testimony of Previous School CC, Tr.V9, 975:15-981:25, 1070:18-1072:4, 1076:8-21.
113. Former BCBA 4 was not immediately removed from Student's team when Petitioners initially raised concerns about Former BCBA 4 because Former BCBA 4 had seemed to be a good fit for Student, so Previous School wanted to wait to see if Former BCBA 4 and Student could continue to work together for continuity of service. Testimony of Previous School CC, Tr.V9, 1035:2-1039:4.
114. The removal of Former BCBA 4 was an issue of great contention between Petitioners and Respondents. Based on the testimony presented, this Hearings Officer finds that the DOE's determination of keeping Former BCBA 4 on the team until the IEP meeting in May 2023 was reasonable given the information that the IEP team from Former BCBA 4, despite the different information that Petitioners were providing to Home School. *See* Testimony of Former BCBA 4, Tr.V10, 1098:2-1104:8.
115. In May 2023, Student and Parents raised their specific concerns regarding Former BCBA 4

to the IEP team and requested that Former BCBA 4 be taken off Student's case. Former Principal informed Petitioners that Former Principal would reach out to the district to make the change and in May 2023, Former BCBA 5 was assigned to Student's team. Testimony of DES, Tr.V13, 1547:18-25; P-Ex.169; P-Ex.170.²⁸

116. Former BCBA 5 was asked to work on Student's case by DES and a prior district educational specialist due to Student's unique needs and Former BCBA 5's level of expertise. Former BCBA 5 was assigned to Student's case from May 2023 through October 2023. Testimony of Former BCBA 5, Tr.V11, 1476:20-1477:11, 1479:18-20.
117. Former BCBA 5's assignment to Student's team also became an issue of contention, and Petitioners tried several times to disqualify Former BCBA 5's testimony based on information that was not relevant to this proceeding. Testimony of Former BCBA 5, Tr.V11, 1341:5-1347:18.
118. The DOE then intended to hire another board-certified behavior analysts, who employed by Former BCBA 4's company. After objection by Petitioners to the hiring of the proposed board-certified behavior analyst, the DOE did not hire that individual. Testimony of DES, Tr.V13, 1581:16-1582:11; P-Ex.206, p.1073-1081.
119. After Former BCBA 5 was removed from Student's case at the request of Petitioners, the DOE hired Former Board-Certified Behavior Analyst 7 (hereinafter "Former BCBA 7") to work on Student's team. Former BCBA 7 worked on Student's case from September 1, 2023 through December 20, 2023²⁹ and did attend at least one IEP meeting in October

²⁸ This Hearings Officer notes that Petitioners' Exhibit 170 was inadvertently left off from the Amended List of Exhibits Received at Due Process Hearing but was admitted into evidence during the Hearing.

²⁹ This Hearings Officer notes that the DOE schools had winter break from December 22, 2023 through January 8, 2024. See <https://www.hawaiipublicschools.org/DOE%20Forms/2023->

2023.³⁰ Former BCBA 7 was hired to move to Hawai‘i to work on Student’s team and negotiations were in the works to have Former BCBA 7 live in Hawai‘i for longer than the initial contract period. After Former BCBA 7 was rejected by Petitioners due to their understanding that Former BCBA 7 would be moving from the State, the DOE worked on hiring Current BCBA for Student’s case.³¹ Testimony of DRT, Tr.V10, 1212:18-1213:1; R-Ex.6, p.1467.

120. On January 11, 2024, Current BCBA was assigned to the case and began working as the board-certified behavior analyst. Current BCBA was hired from Student’s private insurance services to provide DOE ABA services to Student. Current BCBA is still the board-certified behavior analyst on Student’s IEP team. Testimony of Current BCBA, Tr.V4, 542:4-543:12, Tr.V5, 594:9-595:12, Tr.V8, 798:15-799:17, 809:22-811:7; R-Ex.3, p.1223-1249; *see also* R-Ex.5, 2/9/24 IEP recording [1:43:55-1:44:10].
121. Student has paired well with Current BCBA, to the point where Student seeks Current BCBA out to discuss situations when Student is struggling and tolerates the questions and demands asked of Student by Current BCBA. Testimony of Current BCBA, Tr.V8, 805:13-21.

Other service providers

122. Former Occupational Therapist 1 (hereinafter “Former OT 1”) provided occupational therapy service for Student’s case from at least 2018 through March 2021. P-Ex.16, p.0042-0055; P-Ex.238, p.1203-1209.

[24calendar.pdf](#).

³⁰ The October 30, 2023 is the last IEP meeting recording submitted into the record of this case until February 8, 2024.

³¹ Former BCBA 7 attended Student’s IEP meeting on October 30, 2023. *See* P-Ex.247.

123. Former Occupational Therapist 2 (hereinafter “Former OT 2”) had been hired in the spring of Student’s [REDACTED] grade year. Due to concerns raised by Petitioners during Former OT 2’s onboarding, Former OT 2 was removed from Student’s team. Testimony of Previous School CC, 960:2-961:25.
124. Former Occupational Therapist 3 (hereinafter “Former OT 3”) started on Student’s case in the beginning of Student’s [REDACTED] grade school year and worked until the end of the school year. Testimony of Previous School CC, Tr.V9, 962:1-963:11, 1024:16-1025:15; *see* P-Ex.118, p.643.
125. Another occupational therapist was assigned to Student’s case for the 2022-2023 school year but did not continue working with Student after December 2022. *See* P-Ex.124, p.664-675.
126. OT began working with Student in around January 2023. OT was able to onboard with Student successfully and began working gradually to the full amount of occupational therapy services that was in Student’s IEP over this course of time. Testimony of OT, Tr.V2, 311:16-312:14; *see also* R-Ex.5, 3/30/23 IEP meeting recording [11:00-11:45].
127. Testimony from Student suggests that OT is still in the onboarding process, although OT is able to work on goals and objectives with Student, however that is in contrast to Parent 1’s statements to the IEP team at one of the IEP meetings. *Compare* Testimony of Student, Tr.V3, 403:21-405:1; R-Ex.5, 3/30/23 IEP meeting recording [11:00-11:45].
128. Tutor was originally hired to assist Student with reading and spelling skills by Petitioners at their own expense, and at some point, switched to being paid by the DOE for the services provided to Student. Testimony of Tutor, Tr.V3, 361:16-364:25.
129. Tutor was assigned to provide the direct special education minutes in Student’s IEP.

Previous School CC was the special education teacher that would consult with Tutor regarding the special education and also consult with Parent and Student for the consultation minutes. Testimony of Previous School CC, Tr.V9, 999:2-23.

130. SLP has been assigned to Student's case since September 2023 and has been attending IEP meetings and providing consultation with other service providers and with Parent 1.

Testimony of SLP, Tr.V14,1592:25-1594:20, 1597:8-16, 1602:2-15; R-Ex.3, p.1333-1337.

131. SLP has been extended on a separate contract with the DOE in order to remain on Student's case. Testimony of VP, Tr.V8, 874:2-14; Testimony of SLP, Tr.V14, 1596:15-1597:1, 1612:5-18.

132. Since Student began at Home School, OT, Tutor, and SLP have remained the same.

Former PSP changed at the end of October 2023 due to the Former PSP no longer being able to work on the case. Testimony of VP, Tr.V8, 868:21-870:7

133. Former CC retired from the DOE, so a new care coordinator/special education teacher was assigned to Student's case. Testimony of VP, Tr.V8, 868:21-870:7.

134. BHS was originally assigned to provide psychiatric services for Student's program, but that role was rejected by Petitioners, so BHS is currently the behavioral health specialist.

Testimony of BHS, Tr.V11, 1355:21-1357:16; R-Ex.3, p.1285-1320.

135. In February 2024, BHS left the case due to an emergency³² that BHS had not anticipated at the time BHS was assigned to Student's case. BHS returned to Student's case in July 2024 and a supervisor of BHS was temporarily assigned to Student's case. Testimony of BHS, Tr.V11, 1362:4-23.

³² While BHS testified as to the nature of the emergency, this Hearings Officer declines to include it in this Decision. Testimony of BHS, Tr.V11, 1364:24-1365:5.

136. BHS attempted to schedule [REDACTED] weekly meetings and consultation meetings with Petitioners prior to going on leave. Petitioners asked to hold off behavior health specialist consultation when BHS contacted them. Testimony of BHS, Tr.V11, 1365:6-1368:3, 1378L3-1379:21.
137. A “psychiatric service provider” has not been assigned to Student’s team since October 2023, when Former PSP resigned from the position. However, BHS was ready and is qualified to provide the psychiatric services of the [REDACTED] training meetings, consultation for the team and parents, and the development or revision of the transition plan for Student to return to a public-school campus. Testimony of VP, Tr.V8, 878:15-879:15; Testimony of SSC, Tr.V1423:16-25; Testimony of BHS, Tr.V11, 1407:19-1408:8.
138. PNP has been assigned to Student’s case to provide psychiatric consultative services to the school personnel on Student’s team. PNP has not provided one-on-one consultation with either Parents or Student because of limitation with PNP’s company regarding that service. Testimony of PNP, Tr.V15, 1655:24-1656:18, 1664:4-1665:9.
139. The DOE has made extraordinary efforts to secure qualified service providers to work on Student’s team and to work with Petitioners to resolve issues regarding changes in service providers. While the departure of the service providers from Student’s team was mostly out of the DOE’s control, the DOE did hire and/or assign a service provider to provide the services listed in Student’s IEP during the time period of this Complaint. Testimony of DES, Tr.V13, 1541:15-1543:6, 1547:18-1553:13; R-Ex.6, p.1458-1459, 1464-1469.
140. To address Petitioners’ concerns about having Student’s providers being familiar with the [REDACTED], the DOE started to make all Student’s providers undergo a three-day training recommended by Former PSP. Testimony of VP, Tr.V8,

874:15-21.

Edgenuity program

141. Edgenuity is the approved Hawai'i DOE curriculum that would allow Student to earn credits [REDACTED], [REDACTED], [REDACTED].

Testimony of VP, Tr.V6, 685:18-686:4; R-Ex.2, p.583, 585.

142. Student had concerns about Edgenuity, including the program itself and how it did not work for Student. Student testified that the program triggered Student a lot during the process but that Student made attempts to use the program but it was not functional.

Testimony of Student, Tr.V3, 407:22-408:5.

143. Student testified that worked on the Edgenuity program for about one and half weeks and got through maybe one chapter's worth of work before stopping work on the history course program and that Student tried a couple of classes for the geometry class before stopping work on the program. The log for the Edgenuity program showed that Student only worked on about 4.75 percent of the history course and less than 1 percent of the geometry course. Testimony of Student, Tr.V6, 668:24-670:23; Testimony of VP, Tr.V8, 890:7-891:7.

144. Student was provided with access to the Edgenuity program shortly before school started in August 2023³³ and Petitioners immediately notified Home School that the program was not working for Student. A meeting was held within a week to address Petitioners' concerns about the Edgenuity program. This issue was also later discussed at other meetings held between the DOE and Petitioners. Testimony of VP, Tr.V4, 531:21-535:10, Tr.V8,

33 [REDACTED]

[REDACTED] Testimony of VP, Tr.V8, 886:25-887:13.

887:19-889:18; Testimony of Former CC, Tr.V11,1277:1-18; R-Ex.2, p.585.

145. Student's primary concerns expressed regarding the program to Home School was that Student needed the ability to pause and rewatch the lessons. The Edgenuity program had the capability to pause and rewatch the lessons after the whole lesson had been played all the way through. Testimony of VP, Tr.V8, 889:19-890:6; Testimony of Former CC, Tr.V11, 1278:11-22; Testimony of Parent, P-Ex.373, p.10.
146. One of the other issues Student also mentioned about the Edgenuity program was that Student did not like the content and the way the content was presented, as it seemed to be telling Student what to think. Testimony of VP, Tr.V8, 916:10-917:1; Testimony of Former CC, Tr.V11, 1277:19-1278:10.
147. After discontinuing attempts with the Edgenuity program, Student worked through a difficult implementation of a Study.com online program with the use of an artificial intelligence (hereinafter "AI") tutor. Student managed to complete a course from Study.com using the assistance of the AI tutor, despite its difficulties. Student did not make further attempts to try to complete the Edgenuity program. Testimony of Student, Tr.V3, 410:9-413:5.
148. After some mediation meetings between Petitioners and Respondents, VP sent a list of vetted programs by the Hawai'i DOE to Petitioners. No response was provided to Petitioners' follow up inquiry about these vetted programs. Discussions were also had regarding the State Distance Learning program, but it was determined that the format of the program would not be conducive to Student's needs. Testimony of VP, Tr.V4, 532:6-535:6, Tr.V8, 888:15-892:25, 920:20-921:22.

Other factual findings³⁴

149. Despite the challenges with Student's IEP and program, Student has been making significant progress on Student's academic work with Tutor. For example, in reading, Student has been able to progress from reading a few passages in [REDACTED] grade to currently being able to read [REDACTED] Testimony of Tutor, Tr.V3, 363:6-365:15.
150. Throughout the Hearing, Parent 1 tended to focus specifically on one or two questions or issues related to certain witnesses, even after being told to move onto a different topic for various reasons or repeatedly raised issues or concerns regarding procedures that had already been discussed. On multiple occasions, Parent 1 also argued with or questioned this Hearings Officer or disregarded rulings made by this Hearings Officer. Some of Parent 1's requests for breaks or inability to locate exhibits or formulate questions took unnecessary time during the Hearing.³⁵ See e.g. Tr.V8, 937:14-939:15; Testimony of Former BCBA 4, Tr.V10, 1096:21-1097:7 (Parent reiterating concerns that are not relevant to the questions/issues at hand in the Hearing); Testimony of Former BCBA 4, Tr.V10, 1161:20-1162:19 (Parent questioning the HO); Testimony of BHS, Tr.V11, 1370:2-23 (Parent questioning/arguing with HO); Testimony of BHS, Tr.V11, 1382:7-1383:2 (Parent disregarding rulings made by HO); Testimony of BHS, Tr.V11, 1383:25-1385:16 (Parent arguing with witness and then further questioning HO ruling); Testimony of BHS, Tr.V11,

³⁴ Some of these factual findings are based on the information already contained in the previous findings of facts, so some findings do not have transcript or evidentiary citations, as they have already been provided above.

³⁵ While this Hearings Officer notes that Parent 1 is not an attorney and represented Petitioners *pro se*, Petitioners were given the opportunity to retain counsel and/or bring a parent advocate to the Hearing with them. Respondents were also represented *pro se* by DES. Further, this Hearings Officer only references this finding due to the allegations regarding the delay in the IEP development by the DOE.

1388:14-1390:6 (Parent focused on consults between BHS/SLP without having met with Parents or Student before doing so).

151. Difficulties arose after Student's SFT determined that a reevaluation should be completed with Student due to Petitioners refusing to sign the consent form from the DOE.

Petitioners' refusal was unreasonable since the team determined that Current BCBA would perform the assessments and Current BCBA had agreed to conduct a PFA with Student.

Petitioners had recommended and praised the services of Current BCBA, so it was not logical that Current BCBA would use a different assessment than what was agreed upon.

152. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *See e.g.* Testimony of VP, Tr.V4, 485:18-23; Tr.V11, 1341:5-1345:21; Testimony of Former BCBA 5, Tr.V12, 1475:22-25.

153. This Hearings Officer finds that based on the evidence presented at the Hearing, the information on the extent to which Student's [REDACTED] diagnoses affect Student related to school and academics is not sufficient to develop an appropriate IEP that is designed to meet Student's unique needs and allow Student access to a FAPE.

154. While Student's IEP contained information from when Student was in [REDACTED] school regarding a psychiatric evaluation, no psychiatric professional working with Student testified, nor did Petitioners provide any updated medical evaluation, treatment plan, or other information regarding Student's current [REDACTED] [REDACTED].

155. For example, Petitioners actions in taking Student to the open house event at Home School

were unreasonable and illogical and that [REDACTED] [REDACTED] [REDACTED] may have set Student back in Student's progress almost as much as not having current service providers working with Student. *See e.g.*, P-Ex.101, p.0509-0520.

156. Student's IEP and transition plans all lay out that Student must go through [REDACTED] [REDACTED] to transition to a public-school campus. Student's transition plan to the school campus [REDACTED] [REDACTED] [REDACTED] [REDACTED] Testimony of Student, Tr.V6, 675:19-677:1; P-Ex.244, p.1230-1235.
157. Even the members of the IEP team were instructed to blur their backgrounds in the videoconferences that they held for IEP meetings and [REDACTED] meetings, and to adjust their voices to not use a [REDACTED], ' so as to not 'trigger' Student's [REDACTED] [REDACTED] [REDACTED] [REDACTED].
158. Petitioners went to a DOE public school campus with no notice to Home School personnel on an evening when Petitioners knew or should have known that other people (students and adults) would be present. Parent 1 and Parent 2 both saw signs of Student having a [REDACTED] [REDACTED] and continued to remain on campus for another twenty to thirty minutes after Student began showing signs of a [REDACTED] [REDACTED]. Parent 1 also noted that only Parent 1 and Parent 2 would have observed these signs [REDACTED].
159. Parent noted in the IEP meeting and during testimony that Student "absolutely" had a [REDACTED] [REDACTED] as a result of Student attending the open house at Home School, which was entirely the decision of Petitioners.
160. On the other hand, Student testified that Student is able to [REDACTED] [REDACTED] triggers

occasionally. For example, Student was asked during direct examination whether Student had any [REDACTED] [REDACTED] at the [REDACTED] building and Student testified ‘[REDACTED]

[REDACTED]

[REDACTED] – [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” Testimony of Student, Tr.V6, 662:24-663:10.

161. Parent 1, [REDACTED] and Student testified that Student was triggered by the Edgenuity program, but the focus of the discussions at the Hearing with Student was that the program did not run properly and did not allow for Student to move between subjects or go back to parts of the lesson that Student wanted to review. While the witnesses testified that the program’s telling Student how to think was raised, no examples were provided by any of Petitioners’ witnesses. On the contrary, Former CC, who was a certified special education teacher, testified that the program was asking the learner to analyze a certain passage or presentation about history, which is a normal part of the general education history curriculum.

162. Petitioners have paid a total of Four Hundred Seventy-One Dollars and Eighty-Four Cents (\$471.84) for the payments from April 2022 through July 2024 for the Acellus, Study.com, and Kahn Academy online access. P-Ex.318, p.1528.

163. This Hearings Officer declines to find that DES interfered or attempted to interfere with the testimony of witnesses and/or instructed witness(es) to fabricate their testimony.

164. The text messages presented in Petitioners’ Closing brief do not demonstrate an attempt to

influence a witness to testify falsely or fabricate testimony. The exchange presents as a communication by the DES directing a potential witness to what they will be asked to testify regarding at the Hearing, which is allowable witness preparation. Petitioners' Closing Brief, filed October 11, 2024, page 2.

165. The influence alleged by Petitioners that the DES is the reason that two witnesses had attorneys present during their testimony is also unsupported by the evidence. Both Petitioners and Respondents had witnesses that requested to have attorneys present at the Hearing. Petitioners objected to one witness, Former BCBA 4, having an attorney present due to confidentiality issues, so the attorney was prevented from attending the Hearing. Petitioners' Closing Brief, filed October 11, 2024, page 2; *see* Tr.V8, 937:4-19; Testimony of PNP, Tr.V15, 1650:15-25.

166. Petitioners do not currently have an alternate non-DOE program planned for Student but is asking this Hearings Officer to allow Petitioners to design and create a program with their own contracted service providers and have the cover the expenses for the program. Petitioners' Closing Brief, filed October 11, 2024, page 11.

V. CONCLUSIONS OF LAW

IDEA framework

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

§1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

Special education means “specially designed instruction to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a student to benefit from their special education. *Id.* To provide a FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.” *Dep’t of Educ. of Hawai’i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai’i 2016).

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

In deciding if a student was provided a FAPE, the two-prong inquiry is limited to (a) whether the DOE complied with the procedures set forth in IDEA; and (b) whether the student’s IEP is reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051. “A state must meet both requirements to comply with the obligations of the IDEA.” *Doug C. v. Hawai’i Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013); *see also, Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

Procedural violations do not necessarily constitute a denial of FAPE. *Amanda J.*, 267

F.3d at 892. If procedural violations are found, a further inquiry must be made to determine whether the violations: 1) resulted in a loss of educational opportunity for Student; 2) significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or 3) caused Student a deprivation of educational benefits. *Id.*

Questions of personnel and/or staffing or educational policy examine whether the school districts provide appropriate training for its personnel in the implementation of IEPs, but "the IDEA does not require that parental preferences be implemented, so long as the IEP is reasonably calculated to provide some educational benefit." *Bradley ex rel. Bradley v. Arkansas Dept. of Educ.*, 443 F.3d 965, 975 (8th Cir. 2006). The primary responsibility for formulating the education to be afforded an eligible child under the IDEA and for choosing the educational method most suitable to the child's needs fall to the state and local educational agencies in cooperation with the parents or guardians of the child. *Rowley*, 458 U.S. at 207, 102 S.Ct. at 3051. Courts around the country have repeatedly stated that courts lack the specialized knowledge and expertise necessary to resolve persistent and difficult questions of educational policy, and that the IDEA did not intend for courts to overturn a state or local educational agency's choice of appropriate educational theories in a due process proceeding. *Id.* at 208, 102 S.Ct. at 3051; *see also Bradley*, 443 F.3d at 975; *Amanda J.*, 267 F.3d at 887.

Burden of Proof

Pursuant to H.A.R. Section 8-60-66(a)(2)(A), "the party initiating the due process complaint has the burden of proof." The H.A.R. also states 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 to prove, by a preponderance of the evidence, the allegations of the

complaint. H.A.R. §8-60-66(a)(2)(B).

This burden was confirmed in *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 58, 126 S.Ct. 528, 535, 163, L.Ed.2d 387 (2005), where the Court concluded that the burden of persuasion in an IDEA case lies “where it usually falls, upon the party seeking relief.”

A. Respondents denied Student a FAPE by failing to develop and updated IEP for Student by the start of the 2024-2025 school year

Due Process Hearings under the IDEA examine questions of whether a student is denied a FAPE based on four areas of concern: identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the student. H.A.R. 8-60-2; H.A.R. 8-60-61(a)(1); 20 U.S.C. 1415(b)(6)(A); 34 C.F.R. §300.507. This Hearings Officer notes that while Petitioners’ individual issues will be addressed below, in this case, some of Petitioners’ issues fall under these categories while some do not and are not within this Hearings Officer’s jurisdiction to decide. As a whole, however, this Hearings Officer finds that Student was denied a FAPE by the DOE for failure to complete an updated annual IEP for Student for the 2024-2025 school year, which resulted in a loss of educational opportunity for Student.

Allegations of errors by a school in the development of a student’s IEP are reviewed as procedural violations under the IDEA, which further requires determination of whether the violation resulted in a loss of educational opportunity to the student, a significant infringement of parental participation, or a deprivation of educational benefits to the student, in order to be considered a denial of FAPE. *E.R. by E.R. v. Spring Branch Independent School District*, 909 F.3d 754, 766 (5th Cir.), *citations and quotations omitted*.

The record in this case is unusual in that the IEP team has not fully developed an IEP for Student for the 2024-2025 school year, despite making attempts to start the development of such an IEP in 2023. *Findings of Fact (hereinafter “FOF”)* 83-84. Between the spring and fall of

2023, the IEP team held many IEP meetings to develop a new IEP for Student, but they were unable to go through the entire IEP and make an offer of FAPE for Student. *FOF 83-85*. The parties went through mediation and other collateral matters, but none of those proceedings resulted in a completed IEP or offer of FAPE. One of the collateral matters, was a state complaint filed by Petitioners. The decision for the state complaint was that the IEP team must revise Student's IEP in certain respects. The IEP team met once again in February 2024 to address the specific orders made in the state complaint decision. The team did not continue discussing any other aspects of Student's IEP at that meeting. *FOF 91-93*. Additional IEP meetings were held in April and May 2024, but no new IEP has been completed for Student as of the start date of the Hearing in this case. *FOF 84*.

The allegations of Petitioners, that the IEP team refused or failed to remove sensitive medical data/information or non-current data from Student's IEP are premature since the IEP team has not developed a new, updated IEP for Student for the 2024-2025 school year or thereafter.

Respondents, however, are responsible for updating and/or revising a student's IEP appropriately, not less than annually, and must have an IEP in effect for each eligible child at the start of the school year. H.A.R. 8-60-48(b)(1)(A); 34 C.F.R. §300.323(a); 34 C.F.R. §300.324(b)(1). Despite their best efforts, the IEP team has not finalized an updated IEP with current information regarding Student's PLEPs or current goals and objectives. The undisputed evidence is that the IEP-02/08/2024 still contains information from 2022 and does not contain updated information from Student's current providers. *FOF 70-73*. This Hearing Officer notes that it is clear that some of the difficulties for the team in developing the IEP are Parent's insistence on reviewing and discussing, sometimes multiple times, certain aspects, wording, and

other parts of the IEP, as well as long periods of time wasted on back-and-forth discussions on unrelated or collateral matters. *FOF* 86-87. However, the responsibility for ensuring that Student's IEP is accurate and developed to meet and address Student's current needs falls upon the DOE. The Ninth Circuit Court of Appeals has repeatedly held that educational agencies have an affirmative duty to review and revise, at least annually, an eligible child's IEP and nothing in the statutory framework of the IDEA makes that responsibility contingent upon parental cooperation with, or acquiescence in, the educational agencies' preferred course of action. *Anchorage*, 689 F.3d at 1055. Further, educational agencies cannot excuse their failure to satisfy the IDEA's procedural requirements by blaming the parents.

In *Anchorage*, the parents of the student had been zealous advocates for their child, filing numerous administrative complaints and requesting extensive revisions to be made to the IEP draft. Nonetheless, the Court laid out that the educational agency had two choices before them: "(1) to continue working with [the student's] parents in order to develop a mutually acceptable IEP, or (2) unilaterally revise the IEP and then file an administrative complaint to obtain approval of the proposed IEP." 689 F.3d 1056, *citing* 20 U.S.C. §1415(b)(6); 34 C.F.R. §300.507(a).

This Hearings Officer acknowledges that the DOE and Petitioners tried repeatedly to develop Student's IEP despite the challenges of having a very large IEP team, cancellations of meetings, numerous interruptions or insistence on repeatedly discussing previously addressed topics, and other challenges in this case. *FOF* 84. The IEP meeting recordings themselves demonstrate that while the IEP team, with the help of a neutral facilitator, tried to keep the team to the outlined agenda and move the process forward, Parents' insistence on repeatedly discussing their concerns, arguing with the team members or facilitator, as well as the failure of

the service providers to timely give information to Home School for the draft IEP, prevented the team from finalizing an IEP for Student. *See e.g., FOF 86-88.*

Nonetheless, Respondents needed to complete the annual IEP review for Student, with or without the agreement of Petitioners, in order to make an offer of FAPE to Student for the 2024-2025 school year. Failure to do so resulted in a loss of educational opportunity for Student and a denial of FAPE. A school district or educational agency “has the duty to formulate the plan to the best of its ability in accordance with information developed at the prior IEP meetings but must afford the parents a due process hearing in regard to that plan.” *Doe by Gonzales v. Maher*, 793 F.2d 1470, 1490 (9th Cir. 1986). The IDEA does not “vest within parents a power to veto any proposal or determination made by the school district or IEP team regarding a change in the student’s placement.” *B.B. ex rel. J.B. v. Hawaii, Dept. of Educ.*, 483 F.Supp.2d 1042, 1050 (citing *Doe v. Maher*, 793 F.2d 1470, 1490 (9th Cir. 1986)).

B. Petitioners have failed to prove the remaining allegations in the complaint

While this Hearings Officer has determined that the DOE has denied Student a FAPE by failing to update and/or develop an accurate IEP for Student for the 2024-2025 school year, Petitioners have raised several allegations in the Complaint. As such, this Hearings Officer will address each of Petitioners’ allegations below.

1. The DOE’s chronic mismanagement has not been addressing and/or meeting Student’s needs and/or has not been in compliance with Student’s individualized education program (hereinafter “IEP”) requirements, resulting in a denial of a free appropriate public education (hereinafter “FAPE”)

Petitioners have not proven that DOE has mismanaged Student’s program regarding personnel and staffing changes. Moreover, the DOE has obtained, retained, and/or contracted necessary personnel to provide services to Student to the best of their ability, with the exception of the position of “psychiatric provider.”

Student's special education and related services program is extremely complex due to Student's [REDACTED] diagnoses. The simple fact that the onboarding of providers before they can begin work with Student takes three to six months is one part of the difficulties that the DOE has been having in obtaining and retaining services providers that are willing and able to provide services to Student. The DOE has hired providers that are qualified to provide the services in Student's IEP for the time periods included in this Complaint. *FOF 139.* BHS is qualified to provide the psychiatric consultation, training and education services in Student's IEP. *FOF 137-137.* The extensive changes in personnel since 2022 is a result of either requests by Petitioners to remove the provider, rejection of provision of services from the provider by Petitioners, or the provider's decision or inability to continue work on Student's case. *See 102-138.* The DOE has been accommodating Petitioners in changing the assignment of service providers at their request.³⁶ The DOE does not have control over contractors who either terminate their contracts with the DOE or work for companies who terminate their contracts with the DOE, or vice versa. The fact that the service providers did not provide direct services to Student during these times are a result of Student's IEP's onboarding process, rather than the DOE's mismanagement of Student's program.³⁷ Petitioners have not met their burden

³⁶ This Hearings Officer acknowledges that Petitioners do not believe that pairing failures, such as the removal of Former OT 2 from Student's team, should be considered "at the request of Petitioners," however, based on the evidence presented at the Hearing, it was Petitioners that refused to continue working with such providers, so this Hearings Officer considers those changes as being caused by Petitioners.

³⁷ This Hearings Officer acknowledges that based on the evidence presented by Petitioners, there may have been issues regarding service providers prior to April 2022 being assigned to Student's case, but the IDEA provides for a two-year lookback time under which the evidence should be considered. Petitioners have not put forth any evidence or argument that the lookback time should be extended because Petitioners were unaware of the actions by the DOE. In fact, the evidence presented is that Petitioners knew about all the changes in personnel on Student's case and have taken action accordingly, so this Hearings Officer limits the time period under this complaint to April 2022.

of proof on this issue.

2. The DOE's creating of delays has prevented progress in Student's placement, resulting in a denial of FAPE

Petitioners have not specified what delays have been created by the DOE that would have affected or prevented progress in Student's placement. While the transitions in service providers have made it more difficult for Student to work on goals and objectives, it is a combination of employment/personnel issues and the general onboarding time that has affected Student's ability to work on goals and objectives with new service providers. Despite the changes in service providers, Student has continued to make progress on Student's IEP goals and objectives where the service provider has been able to onboard with Student successfully and work with Student on the goals and objectives. *See FOF 64-69*. Petitioners have not proven that the DOE intentionally caused delays that have resulted in Student's failure to make progress, therefore Petitioners have not met their burden of proof on this issue.

This Hearings Officer notes that Petitioners argue that Student's progress on transitioning to a less restrictive environment is what resulted in the creation of delays, however, Petitioners have not provided any specific evidence on the delays in question. If the delay in updating or developing a new IEP is the delay in question, then this Hearings Officer has already found that it resulted in a denial of FAPE in Section A of this Decision. Otherwise, this Hearings Officer finds that no delays have been created by the DOE that have prevented progress in Student's placement.³⁸

3. The DOE has not been providing the qualified psychiatric provider to provide services and conducting weekly training meetings per Student's IEP since

³⁸ This Hearings Officer notes that two potential delays in Student's progress to transitioning to a less restrictive environment were caused by Petitioners: 1) taking Student to an open house event on Home School's campus [REDACTED]; and 2) Parents' refusal to sign the DOE's consent form for the assessments agreed upon at the SFT.

October 30, 2023, resulting in a denial of FAPE

Petitioners have argued that the DOE has failed to provide psychiatric services as required in Student's IEP-02/08/2024. Respondents have offered the services of BHS to provide the psychiatric consultation services as provided in the IEP; however BHS has not been conducting the weekly [REDACTED] meetings for Student's team, in part, due to Petitioners disagreement that BHS is qualified to provide the service. *FOF 134*. Respondents have also been trying to acquire the services of a psychiatric nurse practitioner or other provider to provide psychiatric consultative services in the meantime and was able to hire PNP to provide the service for Student's case. *FOF 138*. This Hearings Officer concludes that BHS is qualified to provide the psychiatric consultative services provided in Student's IEP-02/08/2024, so the DOE has not failed to provide such services since October 2023. *FOF 134, 137*. Further, even if the services of BHS were not accepted or fully completed during this time, this Hearings Officer concludes that the failure to provide such services was not a denial of FAPE to Student.

Questions of implementation of a student's IEP are procedural in nature and a minor or slight omission of implementation of an IEP will not result in a denial of FAPE. The Ninth Circuit Court of Appeals has reviewed IDEA cases in relation to implementation failures alleged against school districts. In *Van Duyn ex rel. Van Duyn v. Baker School Dist.*, the Court reviewed the IDEA's definition of a free appropriate public education as "special education and related services that ... are provided in conformity with the [child's] individualized education program," and determined that "[t]here 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." 502 F.3d 811, 821 (9th Cir. 2007). The Ninth Circuit also explored the analysis done by the Fifth Circuit in *Houston Indep. Sch. Dist. v. Bobby R.*, 200

F.3d 341 (5th Cir. 2000), and recognized the court's conclusion that implementation failures did not violate the IDEA because "the significant provisions of [the child's] IEP were followed, and, as a result, he received an educational benefit." *Van Duyn*, 502 F.3d at 821. Courts hesitate to put forth a standard test to determine implementation because "every child, and every IEP, is different; whether an implementation failure is material will therefore depend on the relevant provision's place and purpose in the IEP, as well as the overall educational context that the IEP was designed for and the extent and duration of any difference between practice and plan." *L.J. by N.N.J. v. School Board of Broward County*, 927 F.3d 1203, 1214 (11th Cir. 2019) (citing *Endrew F.*, 137 S.Ct. at 998). In determining a failure to implement an IEP case, courts must consider implementation failures both quantitatively and qualitatively to determine how much was withheld and how important the withheld services were in view of the IEP as a whole. *Id.* at 1214.

In this case, the evidence has demonstrated that the psychiatric services provided for Student's case was training and information sessions for Student's providers to provide further information on how to understand and address Student's unique needs for Student's [REDACTED]. *FOF 137*. The psychiatric service provider did not provide direct services to Student per the IEP, but did participate in weekly meetings with the service provider team, where the psychiatric service provider conducted trainings on how to manage and address Student's [REDACTED] and other diagnoses. *FOF 78*. Many of these meetings were recorded and can be viewed by future service providers assigned to Student's team. *See e.g.*, P-Ex.336-372. Psychiatric consultation minutes were to be used for training meetings, analyzing data, email communications, tele-conference calls or virtual meetings. A transition plan for Student to move toward a less restrictive environment, new provider protocols, and video trainings on the [REDACTED]

and [REDACTED] models, were created with consultation from the previous psychiatric service provider and are still appropriate for Student's case at this time, based on Student's last IEP. *FOF 78, 80.*

Petitioners have not demonstrated that a failure for the DOE to provide a psychiatric services provider to consult with the IEP team has resulted in any significant or material failure to provide services for Student's IEP team. While it is imperative that the DOE work on getting the services of a psychiatric provider to continue to guide the IEP team on how to best meet Student's unique needs going forward,³⁹ the evidence has not supported the idea that not having the consultant was a significant impediment to Student's progress. The evidence presented is that the service providers who began working with Student from the time the previous psychiatric provider had left the team were still in the lengthy onboarding process and could not yet begin placing demands on Student. *See FOF 120, 126-127.* They were not actively working with Student on IEP goals or transition goals and no evidence was presented that they required or sought out psychiatric consultative services at this time. The rest of the team could still have conducted weekly meetings under the guidance of BHS, who is qualified to conduct such trainings and meetings, to expose Student indirectly to new providers, had training conducted by BHS, and/or reviewed old training videos where the previous psychiatric provider gave training on how to understand and address Student's issues surrounding Student's [REDACTED] and other diagnoses. The DOE also began having Student's service providers and other DOE personnel undergo the [REDACTED] training recommended by Former PSP, to save time in the weekly team meetings. *FOF 140.*

Petitioners suggest that Parent's inability to consult with the psychiatric provider resulted

³⁹ Or, alternatively, Respondents should assign another BHS to Student's case to provide the BHS services noted in Student's IEP.

in a denial of FAPE due to their inability to continue working on Student's program and learning how to address concerns related to Student. Petitioners have not met their burden of proof on this issue, Petitioners have not presented evidence of instances when Petitioners needed psychiatric consultation specific to Student's learning and was denied such service. BHS reached out to Petitioners to set up weekly meetings and consultation meetings and Petitioners declined to utilize the service offered. *FOF 136.*

Petitioners have failed to prove that the failure to have psychiatric consultative services from the period of October 2023 through the date of this Hearing resulted in a denial of FAPE to Student.

4. DOE administration creating anguish and regression for Student by forcing known [REDACTED] triggers and intentional time delays of progress upon Student, and not observing IEP need such as needing transitions ahead of time, only one major change at a time, needing accommodations to access general education, needing trusted providers to progress in goals, etc, which resulted in a denial of FAPE

In this issue, Petitioners appear to be raising several implementation issues regarding Student's IEP surrounding the requirements that service providers remain consistent, that only one major change surrounding the IEP occur at a time, and/or having advance notice of a change in service provider, as well as multiple other, unspecified issues. As noted above, issues of implementation must also be proven to have resulted in a loss of educational opportunity, significant infringement of parental participation, or a deprivation of educational opportunity.

While it is clear from the record that some of the IEP requirements were not strictly adhered to, such as only one major change at a time, needing trusted providers to progress in goals, and needing transitions ahead of time, most of the changes that occurred during the timer period of this Hearing were not in compliance with the IEP were out of the control of the DOE. *FOF 100-139.* The ability for Student to work with and begin to trust a provider is certainly not

determined by the DOE, and flexibility has been built into the new provider protocol to allow for whatever length of time is necessary for Student to begin working on goals with a new provider.

See FOF 81.

This Hearings Officer notes that many of the delays in finding a new board-certified behavior analyst to onboard and work on the case were due primarily to Petitioners rejection of the proposed new service provider or the service provider or their company's decision not to work on the case. *FOF 102-120.* The DOE did their best to try to find a suitable service provider to onboard and provide ABA services for Student as soon as practicable. This is demonstrated by the fact that the DOE hired an outside service provider who initially was Student's insurance-based ABA provider to contract with the DOE to provide educational services, despite the difficulties in doing so. *FOF 120.*

This Hearings Officer finds that Petitioners have not met their burden of proving that the DOE denied Student a FAPE by failing to strictly comply with the requirements of the IEP due to matters outside their control, such as service providers being rejected by Petitioners, service providers or their company ending their contracts with the DOE, and/or other changes being made at the same time.

Lastly, Petitioners raise the issue of Student not being provided accommodations to access general education. Since Petitioners also raise this issue in issues 5 and 6, this topic will be further discussed in those sections.

5. Student has had a lack of accessible general education and access to subject-specific [REDACTED] teachers, resulting in a denial of FAPE.
6. Student has not received appropriate education and/or support per Student's IEP, resulting in a denial of FAPE

Issues 5 and 6 raised by Petitioners both address Student's lack of access to Student's general education as provided in the IEP. Student's educational placement is in the homebound

setting, which by its nature, means that Student must participate in online learning programs to receive Student's education. Petitioners' primary argument for these issues is that Student's previous online program was removed as a result of the DOE's determination that the program was not an acceptable, accredited source of online learning, but that Student liked and could work with that program. Student was provided a new online learning program that had been vetted and was accredited to allow Student [REDACTED] [REDACTED] [REDACTED] [REDACTED]. *FOF 141*. After minimal attempts to access the new online program provided to Student, Student stopped working with the program and Petitioners claimed that it triggered a [REDACTED] [REDACTED] from Student. *FOF 143*. While the evidence is certainly questionable regarding Student's [REDACTED] [REDACTED], Petitioners argued that the DOE should have immediately attempted to find a new, accredited program for Student to engage in for Student's education. *FOF 145-147*.

A free appropriate public education "entails an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. It is not synonymous with the best possible education. *G.M. by E.P. v. Barnes*, 114 F.4th 323, 342. (4th Cir. 2024) (citations and quotations omitted). Progress through the system is generally what society means by an education, and "access to an 'education' is what the IDEA promises – no more, no less." *Id.* Finally, "the IDEA is not a vehicle for securing a potential-maximizing education." *Id.*, quoting *M.L. by Leiman v. Smith*, 867 F.3d 487, 495 (4th Cir. 2017).

Special education is defined under the IDEA as specially designed instruction which includes "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or deliver of instruction – (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so

that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” *G.M.*, 114 F.4th at 341, *citing* 34 C.F.R. §300.39(b)(3). The IDEA does not define special education to include only education by certified special education teachers, but rather encompasses a broader range of instruction. *Id.*, *quoting* *Q.C-C. v. District of Columbia*, 164 F.Supp.3d 35, 51 (D.D.C. 2016).

In this case, the evidence presented shows that Student is academically capable of completing online programs and making academic progress using such programs. *FOF 46, 147*. The special education support provided by the DOE tutor is also helping Student with memory and processing skills to incorporate Student’s learning. *FOF 129*. The primary concern at issue in this case is that because Student entered [REDACTED] and required [REDACTED] to [REDACTED] from the State of Hawai’i, the DOE switched Student to a different and unfamiliar online program. *FOF 141*. The evidence in this case is that after a few brief attempts to use the program, Student discovered that Student did not like the format of the program, was triggered by the program, and stopped using it.

The IDEA provides that a school district must provide supports to a student with a disability for the student to be able to access the student’s education. School districts are not responsible for providing the best possible education for students, but education access that nondisabled peers have. In a general education setting, students generally do not get to pick their textbooks, teachers, assignments, or method of grading just because they do not like or agree with them. Students are given lessons and assignments by their assigned teachers and are expected to complete the assignments for a grade. Student in this case was given access to the online learning platform that would allow Student to earn the credits Student needed for a [REDACTED]. Petitioners have not presented credible evidence that Student *reasonably* had a

██████████ to the program and was unable to access the program to do the work required to earn ██████████ credits. Student tried working on the program for a minimal amount of lessons and decided to find alternative programs. The alternative programs that Student found also required Student to ██████████' triggers and difficulties that Student encountered, but Student was able to complete the classes. This Hearings Officer concludes that the DOE, in providing Student access to Edgenuity and also providing a list of vetted programs through which Student could alternatively earn credit, provided Student access to the general education available to Student's nondisabled peers.

Respondents also provided the services of Tutor and consultation for Parent with a special education teacher to further allow Student to access Student's education. *FOF 77-78, 129.* This Hearings Officer finds that Respondents materially implemented Student's IEP regarding access to the general education curriculum.

Petitioners have not met their burden of proving that the DOE failed to provide Student access to necessary educational programs that would meet the state educational standards for Student to ██████████, as determined by the IEP team.

7. Barriers are in place that prevents Parents from being able to participate as needed in Student's highly individualized homebound program, which relies heavily on Parents (for example, Petitioners' request for email record access was not met, request to be included on emails in order to participate was not answered, and access to data collection and reporting was severed, etc.), resulting in a denial of FAPE

Petitioners next argument is that Parents have been denied access to many aspects of Student's program that they had requested, as Student is in a homebound setting. The complaint specifies that Parents requested email access and data collection and reporting access but were not provided such access, which resulted in a denial of FAPE. The evidence in the record presented shows that Parents were provided necessary access to programs such as the ABA data

collection program, Catalyst, that allowed for Petitioners to be involved in Student's program. *FOF 106.* Petitioners' argument that they needed to be included in all email, consultations, and/or data recording/analysis programming is not supported by the evidence. Parents in this case are not educators or professionals in the areas of related services that are provided to Student in the IEP. *FOF 5.* While Parent 1 is the primary data person who can collect behavioral data in the home, all the board-certified behavior analysts who were questioned about this issue noted that the information that Parent 1 collected and inputted was anecdotal or other types of information and not ABA data that an RBT would have collected. *See e.g.,* Testimony of Former BCBA 1, Tr.V1, 128:20-131:15; Testimony of Former BCBA 2, Tr.V2, 295:21-297:11. Parent 1 does not need access to anything further in the Catalyst program beside the ability to input information, to which Parent currently has access. Testimony of DRT, Tr.V10, 1209:7-1210:20.

Parents' assertion that they are the primary providers of services to Student in the homebound setting is inaccurate, at best. While Parents certainly are the most familiar with and have the most access to Student, they are not service professionals or educators. Student receives a multitude of professional services in the IEP. *FOF 77-81.* The record has shown that Student requires the services of professionals in the fields of occupational therapy, behavioral analysis, counseling and/or mental health services, and special education. These professionals may use their best judgment based on their training and experience in determining whether to include Parents on emails or consultations with other service providers.

Petitioners have failed to meet their burden of proof as to this issue of whether the barriers that Parents have experienced in their involvement with other members of the IEP team or service providers for Student has resulted in a denial of FAPE.

8. The DOE failed to implement and/or adhere to Student's IEP, to include but not limited to: BCBA direct services and consultative parent education services were not provided to Student and Parents between 3/9/2023 to 1/11/24⁴⁰, not providing access to monthly data, not notifying parents of personnel and other changes, etc

Petitioners argue that the DOE has failed to implement Student's IEP, which has already been discussed extensively above. This Hearings Officer does note that Petitioners' argument regarding board-certified behavior analyst services from October 23, 2023 and January 11, 2024 is that compensatory minutes were not awarded for that time. The parties have agreed that the compensatory minutes that were provided through the PWN-02/15/2024 were the result of the decision by the reviewing body of the State complaint filed by Petitioners. This Hearings Officer notes that the State complaint decision was resolved prior to the Complaint in this case being filed. This Hearings Officer also notes that neither Petitioners nor Respondents submitted a copy of the decision for the State complaint into the record for this case. This Hearings Officer cannot determine the basis for the award of compensatory minutes to Petitioners.

Petitioners have presented evidence that the IEP team declined to discuss compensatory minutes from the time the State complaint was filed in October 2023 until the time when Current BCBA started working on Student's case in January 2024. Petitioners, however, have failed to present evidence that Student did not have a board-certified behavior analyst assigned to Student's case as a result of the DOE failing to provide such an individual. The evidence is that from the time that Former BCBA 4 was removed from the case, the DOE made many attempts to hire and assign board-certified behavior analysts to Student's case, only to have Petitioners object to the assignment of that individual. *FOF 116-119*. The evidence in the record shows that a board-certified behavior analyst was assigned to and worked on Student's case from

⁴⁰ A previous state complaint decision addressed the period between 3/26/23 to 10/23/23-the date the initial state complaint was filed.

October 2023 through December 2023, this Hearings Officer finds that Petitioners have not met their burden of proof on this issue.

9. Parents, at the request of Student, have requested and been denied to have detailed sensitive medical data and/or non-current data removed from the IEP. As the IEP will eventually be widely distributed between multiple teachers in the [REDACTED] setting with access being easily breached, Parents felt that was a reasonable and necessary request that would not impact Student's programming. Failure to remove and/or update such information and/or relying on non-current information in the PLEP for programming resulted in a denial of FAPE

Petitioners argue that sensitive medical data and/or non-current data should be removed from Student's IEP. As addressed in the first section of this Decision, this Hearings Officer has concluded that Student's IEP has not been appropriately updated by the DOE, which resulted in a denial of FAPE. As the issue of the non-updated information is contained within that section, this Hearings Officer will not address.

Regarding sensitive medical information contained within the IEP, the IDEA requires that the IEP team include in the present levels of performance an accurate statement of the child's present levels of academic achievement and functional performance pursuant to 34 C.F.R. §300.320(a)(1). *See Marc M. ex rel. Aidan M. v. Department of Educ., Hawaii*, 762 F.Supp.2d 1235, 1245 (D.Hawai'i 2011). If the medical information of Student is important for the IEP team, teachers, staff, and service providers working with Student to understand Student's strengths, needs, and supports, then the information must be included. It is unclear based on the record what Petitioners are seeking to have removed, as there was discussion of the diagnosis of [REDACTED] versus the codes for such diagnoses being removed from Student's IEP. *See e.g.* Testimony of Former CC, Tr.V11, 1295:5-1299:10; Testimony of Previous School CC, Tr.V9, 966:1-967:23; P-Ex.237, 10/19/23 IEP meeting recording; P-Ex.247, 10/30/23 IEP meeting recording; R-Ex.3, p.926.

Notwithstanding the lack of clarity to this specific information disputed in this issue, this Hearings Officer concludes that in a case as complex as Student, where many diagnoses need to be considered to appropriately address Student's needs, the need for the IEP team to have that information in the IEP outweighs the concerns of Petitioners that the information may be distributed inappropriately. This Student's accurate medical and historical information is required to understand the picture of Student and the treatment that Student needs. This Hearings Officer first finds that Petitioners' argument is premature, as a new IEP for Student has not been developed. Even assuming *arguendo* that this issue is relevant, this Hearings Officer finds that Petitioners have not proven that the IEP team denied Parent's request to have sensitive medical information removed from Student's PLEPs resulted in a denial of FAPE. This Hearings Officer does caution the IEP team to determine what medical information of Student is necessary for Student to appropriately receive services to address Student's needs in drafting the new IEP for Student.

10. Consultative services providers (including the behavioral health specialist, speech-language pathologist, and multiple board-certified behavior analysts) have not been providing consultation services in compliance with Student's IEP, resulting in a denial of FAPE

Petitioners' next issue is that the consultative service providers have not been providing services in compliance with Student's IEP. As noted above, questions of implementation are examined through a materiality standard, and this Hearings Officer reviews this issue under that standard.

Petitioners' primary argument is that none of the consultative services have been providing any consultation directly to Parent 1, who is the primary provider of Student's services in the home setting. The evidence presented at the Hearing is that the consultative service providers have been attending IEP meetings and providing input when necessary for their

respective areas. See P-Ex.72, 5/26/22 IEP meeting recording; P-Ex.77, 6/3/22 IEP meeting recording; P-Ex.79, 6/22/22 IEP meeting recording; P-Ex.80, 6/30/22 IEP meeting recording; P-Ex.150/R-Ex.5, 3/30/23 IEP meeting recording;⁴¹ P-Ex.170/R-Ex.5, 5/15/23 IEP meeting recording; P-Ex.173, 5/18/23 IEP meeting recording; P-Ex.177/R-Ex.5, 5/24/23 IEP meeting recording; P-Ex.184/R-Ex.5, 6/13/23 IEP meeting recording; P-Ex.187, 6/14/23 IEP meeting recording; P-Ex.192/R-Ex.5, 6/22/23 IEP meeting recording; P-Ex.195, 6/29/23 IEP meeting recording; P-Ex.197/R-Ex.5, 7/7/23 IEP meeting recording; P-Ex.199/R-Ex.5, 7/31/23 IEP meeting recording; P-Ex.210-211/R-Ex.5, 9/11/23 IEP meeting recording; P-Ex.228, 9/29/23 IEP meeting recording; P-Ex.237/R-Ex.5, 10/19/23 IEP meeting recording; P-Ex.241, 10/27/23 IEP meeting recording; P-Ex.247, 10/30/23 IEP meeting recording. The evidence also demonstrates that the providers have been consulting among themselves in determining how to provide services to Student. See e.g., Testimony of BHS, Tr.V11, 1360:18-1361:25; . Testimony of SLP, Tr.V14, 1593:13-1594:12.

While it would be helpful for the consultative service providers to meet with Parents to get additional information, the record shows that attempts were made by some of the providers to meet with Parents. *FOF 130, 136*. The only consultative provider who noted that they did not intend to meet with Parents explained that it was not part of their practice for services provided in this case. *FOF 138*.

Even if Petitioners have demonstrated that some service providers chose not to meet with Parents for consultative services, Petitioners have not proven that this failure to provide consultation resulted in a denial of FAPE to Student. The service providers have attended

⁴¹ Where Petitioners and Respondents submitted the same IEP meeting recordings, this Hearings Officer used Respondents' copy for ease of reference.

multiple hours of IEP meetings for Student to provide their professional insight into Student's IEP development. *See, supra*, list of IEP meeting recordings. Since the providers were not direct service providers, Petitioners have not shown how Student has lost an educational opportunity or was deprived of an educational benefit as a result of the failure of the consultants to consult with Parents. While this consultation may have affected Parents' participation in the IEP development for Student, the record shows that Parents have had ample opportunity to both provide significant input into Student's IEP development and to ask questions or raise concerns with the consultative providers at the IEP meetings. *FOF 85*. This Hearings Officer concludes that Petitioners have failed to meet their burden of proof on this issue.

11. Student has been receiving services on a non-current IEP and outdated plans attached to the IEP and Parents' consent for evaluations have been refused, resulting in a denial of FAPE

Petitioners' next argument is that Student has been receiving services on a non-current IEP and outdated plans attached to the IEP. The content of this issue has been addressed in Section A of this Decision, *supra*. The second part of Petitioners' issue is whether Parents' consent for the evaluation have been inappropriately refused.⁴² This Hearings Officer finds that Petitioners have failed to meet their burden on this issue.

Under the IDEA, parental consent is required for a reevaluation of a student to determine whether the student remains eligible for IDEA special education and related services. "Consent" is defined as: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought...; (b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes the activity and lists

⁴² This Hearings Officer notes that this issue is moot, as Petitioners did eventually sign off on the necessary consent forms and both the academic and functional behavior assessments were completed by the conclusion of the Hearing in this case.

the records (if any) that will be released and to whom; and (c)(1) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.” *G.J. v. Muscogee County School Dist.*, 668 F.3d 1258, 1263 (11th Cir. 2012); 34 C.F.R. §300.9. Here, the issue in dispute between the parties is the language used on the consent form for the functional behavior assessment to be conducted with Student. The PWN issued after the April 2024 meeting, specified that Student would undergo a functional behavior assessment, which is the general type of assessment that would be conducted with Student. The instrument or type of assessment to be done was to be determined by the professional who would be conducting the assessment based on their expertise in the matter. In this case, Current BCBA determined that a PFA would be completed with Student to determine the functions of Student’s behaviors. *FOF 99, 151*. While there is clearly differing opinions on whether this is the appropriate assessment to be used with Student, given Student’s diagnoses,⁴³ it was to be left to the professionals to conduct the assessment. Parents refused to sign the consent form until the PWN was revised to specify that the PFA would be conducted for the functional behavior assessment. Parents’ insistence on a specific type of test to be used was instrumental in the delays caused in conducting the assessment itself. Indicating the specific language of the assessment to be used ties the hands of the professional who would be conducting the assessment, and Parent’s lack of expertise in both behavior analysis and the types of assessments, the pros and cons of each assessment, and the nature of the testing to be done with Student could ultimately do more harm than good, as it did in this case because of the lengthy delays it caused in the completion of what could have been expedited assessments. *See e.g.* P-Ex.295, p.1445-1459; P-Ex.296, p.1460-

⁴³ *See e.g.* Testimony of DRT, Testimony of DRT, Tr.V10,1219:16-1220:17; Testimony of DES, Tr.V14, 1618:3-1620:13.

1464; P-Ex.297, p.1465-1468.

12. Parents do not have access to decision makers in IEP meetings, which is impacting Parents' ability to address and/or discuss Student's programming and progress deficits, resulting in a failure to implement Student's IEP, resulting in a denial of FAPE⁴⁴

As an initial matter, this Hearings Officer informed Petitioners that this issue is not one that appears under the jurisdiction of this Hearings Officer in this Due Process Hearing. As a precautionary measure, the issue was left in for Petitioners to attempt to prove during the course of the Hearing. After having reviewed the evidence presented at the Hearing regarding this issue, this Hearings Officer finds that this issue is not within the jurisdiction of this Hearings Officer under an IDEA Due Process Hearing.

Petitioners' main argument in this case is that Parent's do not have the attendance of the DES at the IEP meetings, or that the Parents do not have direct contact with the DES to influence the hiring and contracting practices of the DOE. The hiring and contracting of service providers to provide the services as required in Student's IEP is wholly within the purview of the DOE. This Hearings Officer may not require, guide, or order the DOE as to whom they hire or contract with to provide services to Student. The parents of students receiving services under the IDEA are not entitled to examine, question, or approve of the credentials of the providers that are hired or contracted by the DOE. The DOE has the ultimate decision making authority to determine how they will provide necessary services to students pursuant to their IEPs. Parent's remedy if as service is not sufficiently provided is to request a change from the IEP team or to file a due process complaint regarding failure to implement a student's IEP.

Petitioners have not provided any legal or other authority suggesting that the rights of the

⁴⁴ Respondents have objected to this issue as presented due to a lack of jurisdiction and this issue is being included in this Prehearing Order over their objection.

parents in IDEA cases extend to the personnel decisions by a school district, such as deciding whether a DES is supposed to attend IEP meetings, and this Hearings Officer declines to create any such rights that are not provided by the IDEA to parents.

C. Equitable and other considerations

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

It is clear from the record that Petitioners are zealous advocates for Student’s education within the DOE. Petitioners have had significant participation in Student’s IEP development meetings and have collaborated closely with many of Student’s service providers. Petitioners just want the best education to address Student’s needs and are requesting the ability to contract their own providers and tailor a special education program to best fit the needs of Student. Unfortunately, this is not what the IDEA requires the DOE to provide, nor would it be an appropriate remedy for the denial of FAPE in this case.

What is necessary, however, is updated information on Student, including a review of Student’s current [REDACTED] diagnoses. The evidence shows that there were at least some

confusion/discrepancies in the most recent report completed by Former PSP, such as whether the diagnosis of [REDACTED] should be included in Student's IEP or assessment report. No one who testified in the Hearing had completed a psychiatric evaluation of Student, and no updated evaluation was submitted as evidence. While it is noted that Student needs to have rapport with a provider to complete a valid assessment, this Hearings Officer believes that a psychiatric professional is in the best position to determine whether that is necessarily true or whether an evaluation can be completed that takes into account the history of Student's diagnoses.

Student's current academic abilities also must be updated for the IEP team to make an appropriate determination about Student's educational program at [REDACTED]. [REDACTED]. Petitioners expressed concern about Student's falling behind in the [REDACTED] curriculum, so it is imperative for an updated academic to be done to determine how to best address Student's academic needs.

As Student's active IEP contains information that is outdated and not necessarily helpful to Student's program, a complete revision of Student's IEP must be done. The results of the assessments done by the appropriate professionals should drive the PLEPs section of Student's IEP. This Hearings Officer is ordering that the DOE complete an evaluation summary report so that the IEP team, including Petitioners, can review the summaries and recommendations from the assessment reports, so there are no discrepancies or arguments about what should be noted in the IEP PLEPs section and so that the summaries and recommendations may be used for the draft IEP. All service providers working on Student's case must provide the DOE with updated language for their PLEP section, if any, that are different from the evaluation summary report, as well as any proposed goals and objectives for Student's IEP. This will enable Home School to

accurately prepare a draft of the IEP from which Petitioners can make comments, concerns, or proposed revisions to the PLEP section of the IEP and goals and objectives.

This Hearings Officer notes that Student's IEP has historically taken many hours of meetings to complete, but time is of the essence for Student's updated IEP to be developed, so this Hearings Officer is putting strict time limitations on the procedures to be followed pursuant to this Decision. The DOE, as the offeror of FAPE must take charge of the process of the IEP development to ensure that the IEP is completed by or near the start of the second semester of the 2024-2025 school year, so that Student may begin working on goals and objectives with the providers that have now been on Student's team for many months now.

This Hearings Officer notes that the IDEA does require that Petitioners have the ability to participate in Student's IEP development. *See Doug C. v. Hawaii Dept. of Educ.*, 720 F.3d 1038 (9th Cir. 2013). However, the record is clear that Petitioners have had, and continue to have, multiple representatives that can attend Student's IEP meetings in order to voice their concerns about Student's proposed IEP. This Hearings Officer is also ordering the DOE to provide Petitioners with the draft IEP to provide any written comments or concerns regarding the PLEPs and goals and objectives for Student's IEP. Petitioners are encouraged to attend the IEP meetings or have representatives attend IEP meetings to express their concerns, provide comments to the draft IEP, and/or submit written comments by other means, such as emails, to the IEP team for their concerns to be reviewed. Respondents may, upon reviewing the written concerns by Petitioners, choose to allow Petitioners with a limited time during which they may verbally address their concerns. Otherwise, the DOE is responsible for moving the meeting along. Petitioners' refusal or interruptions, if any, to the progression of the meeting should be carefully documented for any subsequent due process hearings that may result from the final IEP

offer. This Hearings Officer notes that this specific order applies only to the development of the IEP as ordered by this Decision and is not to be used or considered as a guideline in Student's or any other subsequent IEP development process, and it is being ordered in this fashion due to the belatedness of Student having a current, updated IEP offer.

The IDEA provides that if Petitioners are unhappy with the offer of FAPE from the DOE, then one of their primary recourses is mediation, a state complaint, or a request for due process hearing.⁴⁵ The Petitioners' expectation for the DOE to act immediately on every request by Petitioners or for the DOE to have the ability to predict the future with the providers it hires is unrealistic. If Petitioners believe that Student is not receiving a FAPE from the DOE, then an expeditious request for one of the three available options under the IDEA would be the best course of action.

Although this Hearings Officer has found that Petitioners have failed to prove the issue regarding the Edgenuity program, this Decision is requiring that the DOE work with Petitioners to find a more suitable program for Student if the IEP team determines that Student [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

Finally, this Hearings Officer acknowledges that both parties have strong feelings and emotions involved with the processes, setbacks, and delays in Student's IEP program. This Hearings Officer finds that neither Petitioners nor Respondents have acted maliciously, even

⁴⁵ If parents are dissatisfied with the services offered in an IEP or implementation of an IEP, the IDEA envisions that a due process hearing would result to adjudicate the case appropriately and expeditiously, rather than having DOE personnel being mandated to attend meetings to address staffing concerns.

though Petitioners have made multiple allegations against certain persons that work for or with the DOE. Respondents have been trying everything in their power to find long-term, appropriate providers to work on Student's team and Petitioners have been just zealously advocating for Student. This Hearings Officer encourages the parties to set aside past incidents and try to work together in updating and developing a new IEP for Student.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have met their burden of proving the allegation in the Complaint by a preponderance of the evidence. Specifically, this Hearings Officer finds that the IEP team's failure to develop a new IEP for Student for the 2024-2025 school year has resulted in a lost educational opportunity for Student and a denial of FAPE.

This Hearings Officer finds that the appropriate remedy in this case is for the IEP team to reconvene and address the concerns specified in this Decision as outlined below.

For the reasons stated above, IT IS ORDERED –

1. Within sixty (60) calendar days of this Decision,⁴⁶ Home School shall complete a reevaluation of Student to ascertain Student's current levels of academic achievement and functional performance.
2. The reevaluation for Student must include the following: psychiatric and/or neuropsychological assessment, psychoeducational assessment, occupational therapy

⁴⁶ This Hearings Officer acknowledges that Petitioners allege that assessments cannot be conducted with Student without a provider that has successfully onboarded with Student; however, the delay of an updated reevaluation and IEP in this case requires that the reevaluation be conducted expeditiously. A reevaluation under these circumstances would normally be ordered to be completed in a shorter period of time, however in light of Student's needs, an extended time is being allowed/provided.

assessment, speech-language assessment, functional behavior assessment, academic assessment, and an observation of Student working with Student's tutor. Student's team may conduct other assessments as deemed appropriate by the team.

3. Any assessments completed within the past six (6) months of this Decision may be used for purposes of this reevaluation and do not need to be re-done if agreed upon by the team.⁴⁷
4. The DOE may assign DOE personnel to conduct the assessments or may hire or contract outside professionals to conduct the assessments. The determination of who will conduct the assessments will be left entirely up to the DOE, except that the DOE may not assign or hire Former BCBA 4 or Former BCBA 5 to conduct any assessments. The DOE may assign Student's current providers or assign independent outside providers who would not be part of Student's case other than conducting these assessments.⁴⁸
5. The individual assessors are responsible for determining the best way to conduct their respective assessment with Student. The assessors should be advised to include the reasons for conducting the assessments that they conduct with Student in their final assessment report.

⁴⁷ This Hearings Officer notes that there was evidence presented during the Hearing that Current BCBA has completed or is about to complete an academic assessment and an FBA using a PFA for Student. The team may use these completed assessments in Student's reevaluation since they are current and contain updated information.

⁴⁸ This Hearings Officer notes that some providers have been working with Student long enough to perhaps be able to successfully conduct the assessments with Student without interfering with their direct services being provided to Student as part of Student's IEP. If the providers do not feel comfortable conducting the assessment without it affecting their working relationship with Student, then outside providers may be assigned to Student's case just for the purposes of conducting the assessment.

6. The assessments shall be conducted at location(s) other than school setting(s).
7. Pursuant to 34 C.F.R. §300.300(c)(1)(ii) and this Decision, parental consent is not necessary for the DOE to complete the reevaluation of Student pursuant to this Decision, so the DOE must make arrangements for the reevaluation as soon as practicable.
8. The DOE shall carefully document any refusals by Petitioners to allow Student to participate in any part of the reevaluation process.⁴⁹ This would include, but are not limited to, documentation of refusals to cooperate with the assessors and/or cancellation of assessment/meeting dates. This information may be used at a later due process hearing if Parents and/or Student do not cooperate with the reevaluation process ordered in this Decision.
9. Upon completion of the assessors' reports for their respective assessments, the reports shall be forwarded to Parents. Within ten (10) school days⁵⁰ of the completion of the final assessment, an evaluation summary report shall be prepared by Home School and sent to Petitioners. This evaluation summary report shall include summaries of all Student's assessments and recommendations by the assessors for Student's supports, which will later be included in the PLEPs for Student's IEP.

⁴⁹ This Hearings Officer anticipates that Petitioners may refuse to participate in assessments/observations as part of the reevaluation due to Student's disabilities, the issues raised in the Complaint (such as too many changes placed on Student), and the IEP requirements (such as onboarding). This Hearings Officer believes that based on the evidence presented in this case, reports and perspectives from objective, outside evaluators are necessary to clarify for both Home School and Petitioners the extent of Student's current needs that need to be supported by the school to access Student's education.

⁵⁰ School day means any day, including a partial day that children are in attendance at school for instructional purposes and has the same meaning for all children in school, including children with and without disabilities. 34 C.F.R. §300.11(c).

10. Within ten (10) school days of the completion of the evaluation summary report, Home School will complete a draft IEP PLEP with goals and objectives submitted by each direct service provider (such as the board-certified behavior analyst, occupational therapist, and/or tutor), and proposed supplementary aids and supports by the services providers and send the draft IEP to Petitioners. The draft IEP sent to Petitioners shall be formatted in a way to allow Petitioners to the draft IEP itself.
11. No later than three (3) business days⁵¹ before the first scheduled IEP meeting, Parent shall provide Home School, in writing, any proposed changes, corrections, and/or concerns to the draft IEP.
12. Home School, at its discretion, may update the draft IEP with proposed changes, corrections, and/or concerns in the written document submitted by Parents. All proposed changes, corrections, and/or concerns not used by the IEP team shall be noted as “Parent concerns” in the final IEP document.
13. Within ten (10) school days of the draft IEP being completed, the IEP team must develop a new annual IEP for Student and present it, along with a PWN, to Petitioners as the offer of FAPE for Student.⁵²
14. The administrator or facilitator of the IEP meetings shall ensure that the IEP team follows the agenda and moves the meeting along to complete the development of Student’s IEP.

⁵¹ This Hearings Officer does not expect Petitioners to know what days students at Home School are in school, so this Hearings Officer is using the business day term to set deadlines for Petitioners.

⁵² This Hearings Officer recognizes that the sixty (60) days given for the completion of the reevaluation will end around winter break, and given the holiday season, this Hearings Officer is allowing for *school days* so as to not interfere with the holidays for both parties but expedites the development of the IEP for the remainder of the 2024-2025 school year.

15. Parents may submit, in writing, any additional concerns that they are not able to express during the meeting to Home School within two (2) business days of receipt of the IEP document. These concerns shall be documented in a PWN by Home School.⁵³
16. The DOE shall carefully document attempts to schedule and attend meetings by all IEP team members. The DOE shall make every effort to have Parent(s) and/or Student or a representative of Student present at the meeting; however, if that is not possible due to unavailability during the period outlined above, illness, or other reason, the DOE at its discretion may add one (1) additional meeting date to accommodate Petitioners no later than fifteen (15) school days of the deadline noted above. In any event, the written IEP and PWN as the offer of FAPE to Student shall be provided to Petitioners no later than January 31, 2025.⁵⁴
17. In conducting the IEP meeting(s), the DOE will be responsible for moving the meeting along and completing the IEP with the information obtained from the reevaluation. Parents' and Student's concerns contained in their draft IEP before the IEP meeting, may be discussed during the meeting and/or documented in the IEP as determined by the DOE administrator/facilitator of the meeting.
18. The IEP team shall consider the full spectrum of educational placements,⁵⁵ which include but are not limited to, a private facility that could address both Student's

⁵³ This PWN may be a separate document sent after the PWN that provides Home School's offer of FAPE to Petitioners.

⁵⁴ This Hearings Officer recognizes that the IEP meetings for Student historically has taken a double-digit number of meetings to complete, however the need for Student to have an updated IEP is of pressing importance, so the priority will be for Home School to make a clear offer of FAPE to Petitioners as soon as practicable.

⁵⁵ See H.A.R. 8-60-16.

mental health concerns and academic concerns, to determine the best situation for Student that will meet Student's social/emotional and academic needs and determine the least restrictive environment for Student.

19. If Student is placed in the home instruction, the IEP team shall consider the services of a registered behavior technician to support Student's behavior program to relieve Parent 1 of the stressors of acting as Student's primary service provider and parent/advocate for Student.⁵⁶

20. The IEP team will discuss [REDACTED] Student's education, [REDACTED] [REDACTED], at the IEP meeting and include [REDACTED] in the written IEP document.

21. If Student is placed in the home instruction setting by the IEP team, the DOE shall also provide Petitioners with an educational program that provides the curriculum [REDACTED] [REDACTED] determined by the IEP team. If the team [REDACTED] [REDACTED] [REDACTED], the DOE shall provide Student with an [REDACTED] program or learning platform, that would allow Student to earn [REDACTED] credits [REDACTED] [REDACTED].⁵⁷

22. Student's curriculum shall be overseen by a DOE special education and/or general education teacher to review Student's academic needs and progress on the program provided to Student.

⁵⁶ Both Parent 1 and Parent 2 have noted that Parent 1's role as the primary provider for Student in the home setting has resulted in additional stressors to Parent 1's physical and mental health.

⁵⁷ This options may include, *but are not limited to*, vetted online programs that provide curriculum necessary for Student to earn [REDACTED] credits; a form of asynchronous learning videos and corresponding assignments, through which Student can learn the materials and submit homework, tests, or other measures of understanding to earn [REDACTED] credits; and/or provide Student with a special education teacher to teach Student the materials necessary.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawai'i, October 22, 2024.



CHASTITY T. IMAMURA
Hearings Officer
Richards Building
707 Richards Street, Suite 520
Honolulu, Hawai'i 96813
Phone: (808) 587-7680
Fax: (808) 587-7682
atg.odr@hawaii.gov