



DEPARTMENT OF THE
ATTORNEY GENERAL
OFC OF DISPUTE RESOLUTION

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

In the Matter of STUDENT, by and through
the Legal Guardian¹,

Petitioners,

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAII,

Respondent.

DOE-SY2324-039

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:

July 16-18, 2024 (9:00 a.m.-4:00 p.m.)

July 19, 2024 (9:00 a.m.-12:30 p.m.)

August 5, 2024 (9:00 a.m.-4:30 p.m.)

August 6, 2024 (8:30 a.m.-4:30 p.m.)

Hearings Officer: Charlene S.P.T. Murata

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

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals with Disabilities
Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, et seq.; the federal

¹ Personal identifiable information is provided in the Legend.

regulations implementing IDEA, 34 C.F.R. Part 300; and the Hawaii Administrative Rules §§ 8-60-1, et seq.

II. INTRODUCTION

A Request for an Impartial Due Process Hearing Form, dated April 30, 2024 (“Due Process Hearing Complaint” or “Complaint”), was received by the Department of Education (“DOE” or “Respondent”) on May 2, 2024 from Petitioners Student, by and through Student’s Legal Guardian, Parent. The Due Process Hearing Complaint was filed by the Office of Dispute Resolution (“ODR”) on May 2, 2024.

On May 3, 2024, a Notice of Prehearing Conference; Subjects to be Considered; Hearing Process Guidelines was issued to the parties, setting a prehearing conference for May 7, 2024.

On May 7, 2024, a prehearing conference was held with Parent and Advocate-1 (family friend) present on behalf of Petitioners, and DES-1 and Resource Teacher present on behalf of Respondent. During the prehearing conference, deadlines regarding disciplinary and non-disciplinary cases were discussed because the Complaint alleges both disciplinary and non-disciplinary issues. Due to the Complaint being filed shortly before the summer break, the twenty (20) school days deadline by which the due process hearing for the disciplinary issues must be completed is August 8, 2024². The forty-five (45) day deadline by which the decision for the non-disciplinary issues must be issued is July 16, 2024.

On May 9, 2024, Respondent filed Department of Education, State of Hawaii, and Keith T. Hayashi’s Response to Petitioners’ Complaint and Resolution Proposal, dated May 8, 2024.

² Principal, Tr. Vol. III, pp. 405-406.

On May 23, 2024, a Notice of Further Prehearing Conference; Subjects to be Considered was issued to the parties, setting a further prehearing conference for June 6, 2024. After the June 6, 2024 prehearing conference, another Notice of Further Prehearing Conference; Subjects to be Considered was issued to the parties, setting a further prehearing conference for June 10, 2024³. During the June 6 and 10, 2024 prehearing conference, the issues for determination at the hearing were discussed in depth and the parties agreed to have the due process hearing on July 16-18, 2024 and August 6, 2024 using the Zoom video conferencing platform. Following the prehearing conference, a Prehearing Order was issued on June 13, 2024. The Prehearing Order contains, among other things, the precise issues that will be decided during the due process hearing and instructs the parties to advise the undersigned within three (3) business days if there were any omissions or misstatements in the Prehearing Order. Neither party raised any concerns about the issues prior to the due process hearing starting.

On June 10, 2024, Petitioners submitted a request to extend the decision deadline for the non-disciplinary issues from July 16, 2024 to August 30, 2024. Petitioners' request was granted on June 12, 2024. See Order Granting Petitioners' Request to Extend the 45-Day Decision Deadline for Non-Disciplinary Issues, Dated June 10, 2024.

On June 27, 2024, an Order Regarding Mandatory Procedures for the Due Process Hearing was issued to the parties, setting forth the procedures that would be implemented during the due process hearing using the Zoom video conferencing platform.

³ Present at the June 6, 2024 prehearing conference were Parent and Advocate-1 on behalf of Petitioners; and DES-1 and Resource Teacher on behalf of Respondent. Present at the June 10, 2024 prehearing conference were Parent and Advocate-2 on behalf of Petitioners; and DES-1 and Resource Teacher on behalf of Respondent.

Disclosures were due July 9, 2024. On July 9, 2024, the parties mutually agreed to extend the disclosure deadline to July 10, 2024 at 10:00 a.m. The parties memorialized their agreement through email. Both parties did not timely submit all their respective disclosures by the July 10, 2024, 10:00 a.m. deadline. Both parties waived their objections to the opposing side's late disclosures and waived their right to having the disclosures five (5) business days before the due process hearing. DOE, additionally, had no objection to Petitioners amending Petitioners' witness list to include Parent two (2) days after the disclosure deadline. DOE waived its right to receive notice that Parent would be testifying five (5) business days before the due process hearing. Tr. Vol. I, pp. 10-14.

The due process hearing took place on July 16-19, 2024 and August 5-6, 2024⁴, using the Zoom video conferencing platform. All participants in the due process hearing appeared remotely using both the video and audio functions on Zoom. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Parent, and Respondent was represented by DES-2. Resource Teacher was present for the entire proceeding. The due process hearing concluded on August 6, 2024. Based on the due process hearing concluding on August 6, 2024, the deadline by which a decision must be made for the disciplinary issue is August 21, 2024⁵.

Petitioners called Parent, Principal, SSC, GED Teacher-1, Advocate-2, Advocate-3, Private Psychologist, SPED Teacher-1, DES-1, and ILC Counselor as witnesses during the due process hearing. Respondent called Clinical Psychologist-1, SSC, SPED Teacher-2, DES-1, VP-2, Principal, and ILC Counselor as witnesses during the due process hearing.

⁴ Hearing dates July 19 and August 5, 2024, were added on July 10, 2024. See Order Adding Due Process Hearing Dates, issued on July 10, 2024.

⁵ August 16, 2024 is a state holiday for the State of Hawaii.

Both parties did not object to the opposing sides disclosures. Therefore, all of Petitioners and Respondent's exhibits were admitted into evidence without objections. Petitioners' exhibits did not have bate-stamps on all the pages. To provide clarity in the record, ODR bate-stamped Petitioners' exhibits⁶. Petitioners' exhibits consist of Exhibits 1 through 31⁷, bate-stamped ODR-001 to ODR-542. Petitioners' Exhibit 7 (PWN 3, dated 9/29/23)⁸, Exhibit 23 (BIP, dated 3/01/24) and Exhibit 24 (PWN, dated 9/06/23) do not have ODR bate-stamps because copies of these documents were provided by Petitioners on July 16, 2024 after the hearing had started. Respondent's exhibits consist of Exhibits 1 through 167⁹, bate-stamped DOE 1 to DOE 616.

On August 19, 2024, Respondent timely submitted its closing brief before the 12:00 p.m. deadline. Petitioners emailed their closing brief at 11:59 a.m., but due to technical issues, it was not received by ODR until 12:01 p.m. The undersigned reviewed and considered both parties' closing briefs.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision. While all the evidence was considered, only evidence relevant to the resolution of the issues are stated in the findings.

⁶ Petitioners' exhibits contain many blank pages. These blank pages were also given ODR bate-stamp numbers.

⁷ Petitioners' Exhibit 31 is a recording of a January 31, 2024 meeting; however, Petitioners' description of the recording in Petitioners' exhibit list provides a "2/1/24" date. Based on the evidence, there was no meeting on February 1, 2024. When Petitioners' exhibit 31 is cited in the findings of fact ("FOF"), it will be referred to as a "1/31/2024 video."

⁸ Petitioners' Exhibit List incorrectly states "9/27/23" and "PWN" for Exhibit 7.

⁹ Respondent's Exhibit 22 is a recording of a meeting held on January 10, 2024.

III. ISSUE PRESENTED

In their May 2, 2024 Request for an Impartial Due Process Hearing Form, Petitioners allege that Respondent denied Student a free and appropriate public education (“FAPE”) and violated the IDEA. Petitioners raise the following issues:

Issue 1 – Whether DOE continuously suspended Student for the purpose of changing Student’s placement to an intensive learning center (“ILC”) in October of 2023 and whether the placement in an ILC was appropriate.

Issue 2 – Whether the placement in a fully self-contained classroom (“FSC”) in September of 2023 was appropriate.

Issue 3 – Whether DOE failed to appropriately follow Student’s BIP (dated August 7, 2023) and IEP (dated July 12, 2023) or supervise Student in September of 2023 when Student was in a heightened state, which resulted in an increase in behavior that caused physical harm to another student, resulting in Student being suspended.

Issue 4 – Whether the manifestation determination on [REDACTED] was appropriate when DOE used incorrect information and/or did not go through mediation or due process after the manifestation determination was made.

Issue 5 – Whether the DOE delayed in transitioning Student back to the general education setting at Public [REDACTED] School from the ILC.

Issue 6¹⁰ – Whether DOE failed to provide services to Student from November 16, 2023 (when an initial Risk and Threat Assessment became necessary) to January 10, 2024.

Issue 7 – Whether the DOE gave Parent a copy of the March 31, 2024 forensic psychologist’s findings and reviewed the forensic psychologist’s findings with Parent at any IEP meetings.

Issue 8 – Whether Student was forced to stay home without appropriate educational services because the ILC did not have appropriate staffing from March 25, 2024 to May 30, 2024.

¹⁰ On the first day of the due process hearing, Petitioners requested that Issue 6 be amended to reflect “appropriate education services through the time [Student] was in the ILC,” which, according to Petitioners, was October 6, 2023 to March 25, 2024. DOE objected to the amendment as DOE had prepared to defend the allegation ranging from November 16, 2023 to January 10, 2024. Petitioners’ request was denied. Tr. Vol. I, pp. 7-9.

Issue 9 – Whether the delay in transitioning Student back to a general education setting has caused Student to regress.

1) Petitioners seek the following remedy:

Remedy 1 -- Order DOE to provide Student with compensatory education.

Remedy 2 – Order DOE to pay for private school.

Remedy 3 – Order school employees who are involved in Student’s educational needs be trained on how to implement Student’s IEP and BIP.

Remedy 4 – Order school employees who were involved in the events leading up to this due process complaint to acknowledge to Student how their conduct has affected Student.

Remedy 5 – Order that a copy of the findings and decision in this case be made a part of Student’s educational records.

IV. FINDINGS OF FACT

Witnesses

1. Principal is the principal at [REDACTED] School. Principal has a degree in [REDACTED] [REDACTED] and was a [REDACTED] before obtaining his/her certification and licensure and master’s degree in secondary education. Principal has held positions as a teacher, data coordinator, district educational specialist, vice principal, and principal. Principal has worked in the elementary, middle, and high school settings. DOE Ex. 118 at 419-422; Principal, Tr. Vol. I, pp. 96-101.
2. SSC is a student services coordinator at [REDACTED] School. SSC has a Bachelor of Arts in psychology and sociology, and a master’s degree in school counseling. DOE Ex. 121 at 427; SSC, Tr. Vol. II, p. 125.
3. GED Teacher-1 is a general education teacher at [REDACTED] School-1, has known Student since Student was in [REDACTED] at [REDACTED] School-1, and was

Student's [REDACTED] grade teacher. GED Teacher-1 has a bachelor's degree in education and a master's degree in [REDACTED] math. GED Teacher-1, Tr. Vol. II, pp. 182-183.

4. Advocate-2 was a parent consultant at Agency when Advocate-2 was assigned to assist Parent. Advocate-2 has a degree in psychology and a certificate in coaching. Advocate-2, Tr. Vol. II, pp. 212-213.
5. Advocate-3 is the executive director of Agency. Advocate-3 has a bachelor's degree in business and certification in business administration. Advocate-3 has been involved in special education since 1985. Advocate-3, Tr. Vol. III, pp. 410-411.
6. Private Psychologist has been a licensed clinical psychologist since 2015 and mainly works with children and adolescents. Private Psychologist does not go into the educational setting to work with children; children go into Private Psychologist's office to receive services. Private Psychologist first met Student in [REDACTED] when Private Psychologist conducted an initial evaluation of Student. For the past several years and currently, Private Psychologist meets with Student every other week. Private Psychologist, Tr. Vol. II, p. 243, Tr. Vol. III, pp. 315, 318.
7. SPED Teacher-1 was a special education teacher in the "special day classroom" at [REDACTED] [REDACTED] School-1. SPED Teacher-1 had a mixture of students, but all students had IEPs. Some students would go into SPED Teacher-1's special day classroom for part of the day to receive assistance with their courses and then return to their general education classroom, while other students would stay the whole day. Based on Student's IEP and behavioral needs, Student was in SPED Teacher-1's special day classroom all day. Student was in SPED Teacher-1's classroom from the [REDACTED] grade to the [REDACTED] grade. SPED Teacher-1, Tr. Vol. III, pp. 455, 477-478.

8. DES-1 was a teacher from 2000 to 2006 before [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] DOE Ex. 116 at 410-411; DES-1, Tr. Vol. IV, p. 501.
9. ILC Counselor is a behavioral health specialist at the ILC. As a behavioral health specialist at the ILC, ILC Counselor conducts individual and group counseling, crisis intervention, creating behavioral support plans, and work with schools that have students with behavioral needs and concerns. With respect to Student, ILC Counselor provided Student with individual counseling once a week, crisis intervention as needed, and regular daily in-class support. ILC Counselor has a bachelor's degree in psychology and a master's degree in human services counseling with a [REDACTED]
[REDACTED]. DOE Ex. 35 at 117, Ex. 120 at 424-426; ILC Counselor, Tr. Vol. IV, pp. 519-521.
10. Clinical Psychologist-1 is a clinical psychologist for the DOE, and his/her responsibilities include conducting psychological and psychoeducational evaluations of students; providing psychological consultation with other health care providers, school teams, and parents; and providing supervision to school-based behavioral health ("SBBH") specialists. Clinical Psychologist-1 has a Doctor of Psychology degree and has been licensed with the State of Hawaii [REDACTED]. DOE Ex. 117 at 412-418.

11. SPED Teacher-2 is a special education teacher at [REDACTED] School and Student's care coordinator. DOE Ex. 122 at 428.

Student

12. Student is currently [REDACTED] years old and in the [REDACTED] grade for the 2024-2025 school year. Student has medical diagnoses of [REDACTED]

[REDACTED]

[REDACTED] Private Psychologist, Tr. Vol. II, p. 244.

13. Student is currently eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of [REDACTED]

[REDACTED]

14. In June of 2022, while Student was attending [REDACTED] School-1, Student was found to continue to be eligible for special education and related services under the [REDACTED]. According to a prior written notice, dated June 17, 2022 ("6/17/2022 PWN"), "[Student] is diagnosed with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The IEP team at [REDACTED] School-1 also considered [REDACTED]

and [REDACTED] Disability as possible eligibility categories but determined that

[REDACTED] to best fit Student's needs at that time. DOE Ex. 1 at 1.

15. Student was placed in a special education classroom from [REDACTED] grade to the [REDACTED] grade and transitioned to a general education classroom in the [REDACTED] grade. Student was in special education due to behavioral concerns, work avoidance, and the need for a structured classroom. While attending [REDACTED] School-1, Student would elope, make threats, and had incidents of physical aggression towards school staff, such as trying to stab a school staff with a pencil, throwing a chair at SPED Teacher-1, and shoving a teacher. GED Teacher-1, Tr. Vol. II, pp. 182-183, 188-190, 198; SPED Teacher-1, Tr. Vol. III, pp. 461, 464, 466.
16. Even though Student had incidents at [REDACTED] School-1, SPED Teacher-1 and GED Teacher-1 testified that Student had a good/big heart; was usually “reactive” and not an instigator in situations; and Student was successful in their respective classrooms because they were able to build trust and respect with Student. SPED Teacher-1 Tr. Vol. III, p. 466; GED Teacher-1 Tr. Vol. II, pp. 193, 206.

Facts of Case

17. On January 8, 2023, Private Psychologist issued a Psychological Evaluation for Student. Pet. Ex. 16 at ODR-210 to ODR-239.
18. On February 22, 2023, Student’s Behavior Intervention Plan (“BIP”) was revised by BCBA (“2/22/2023 BIP”). Pet. Ex. 3 at ODR-060 to ODR-077¹¹.
19. BCBA is a board-certified behavior analyst and Student’s licensed behavior analyst at [REDACTED] School-1. SSC, Tr. Vol. V, p. 746; SPED Teacher-2, Tr. Vol. V, p. 801.

¹¹ Petitioners’ Exhibit 3 only contains the odd pages of the document; the even pages are missing.

20. The 2023-2024 school year for the State of Hawaii runs from August 7, 2023, to May 30, 2024¹².
21. On July 12, 2023, a revision IEP meeting was held [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED], resulting in an IEP with the same date
("7/12/2023 IEP"). Parent, BCBA, VP-1, SSC, SPED Teacher-2, GED Teacher-1,
School Counselor, [REDACTED]
[REDACTED] at the 7/12/2023 IEP meeting. The IEP team
determined that [REDACTED]
[REDACTED]
[REDACTED] adversely impact [Student's] ability to participate and progress in a general
education setting." Pet. Ex. 1 at ODR-001 to ODR-019; DOE Ex. 2 at 2-20.
22. School Counselor is a behavioral health specialist at [REDACTED] [REDACTED] School.
23. According to the 7/12/2023 IEP, Student qualifies for special education services under
the IDEA eligibility [REDACTED] DOE Ex. 13 at 53-54.
24. Pursuant to the 7/12/2023 IEP, Student met the standard for extended school year
("ESY") "[d]ue to the nature and severity of [Student's] condition, [he/she] requires a
consistent and highly structured educational program with a break of no more than [REDACTED]
days. ESY is required to maintain skills related to English Language [Arts ("ELA")],
Math and behavior." Pet. Ex. 1 at ODR-016; DOE Ex. 2 at 17.
25. Pursuant to the 7/12/2023 IEP, for the 2023-2024 school year, Student would receive
specialized instructions in a resource setting for ELA, math, and social studies; and

¹² The undersigned takes judicial notice of the Hawaii State Department of Education 2023-2024 Official School Calendar. See <https://www.hawaiipublicschools.org/DOE%20Forms/2023-24calendar.pdf>.

receive additional support and classroom accommodations for science. Pet. Ex. 1 at ODR-017; DOE Ex. 2 at 18.

26. The 7/12/2023 IEP provides Student with the following Special Education and Related Services during the 2023-2024 school year: 750 minutes per week of special education (5/16/2023 to 3/09/2024) and 270 minutes per quarter of counseling (5/16/2023 to 3/09/2024). The 7/12/2023 IEP indicates that March 9, 2024 was Student's IEP Annual Review date. Pet. Ex. 1 at ODR-001, 016; DOE Ex. 2 at 2, 17.

27. The 7/12/2023 IEP provides Student with the following Supplementary Aids and Services, Program Modifications and Supports for School Personnel ("Supplementary Aids and Services"):

- (1) Preferential seating away from distractions.
- (2) Pair verbal instruction with visual aids as needed.
- (3) Allow movement opportunities in classroom to release energy.
- (4) Gain attention through eye contact and verbal confirmation prior to giving instruction.
- (5) Pair verbal instruction with visual aids as needed.
- (6) Check for understanding by having Student repeat instructions back.
- (7) Chunking of information for easier understanding.
- (8) Use of manipulatives and visual math charts for better understanding.
- (9) ABA Services.
- (10) Individual Instructional Support.
- (11) Behavior Intervention Plan ("BIP").

Pet. Ex. 1 at ODR-016; DOE Ex. 2 at 17.

28. Pursuant to the 7/12/2023 IEP, Student's least restrictive environment ("LRE") statement reads: "School Year 23-24: [Student] will not participate with [his/her] non-disabled peers for English, math, and social studies. [Student] will participate with [his/her] non-disabled peers for science, homeroom, electives, lunch, recess, field trips, and all school activities/functions." Pet. Ex. 1 at ODR-018; DOE Ex. 2 at 19.

29. [REDACTED]
[REDACTED]
[REDACTED]. SSC, Tr. Vol. II, pp. 125-126.
30. On August 7, 2023, Student's BIP was revised again by BCBA ("8/07/2023 BIP"). According to the 8/07/2023 BIP, "Based on [Student's] FBA [functional behavior assessment] completed in 2018 it is hypothesized that [Student] primarily **elopes** from [Student's] designated area to access an item or activity [Student] wants that is not available at the time or has been ended. It is hypothesized that [Student] primarily **engages in physical aggression** towards others, **property destruction**, and **verbal outbursts** when not able to access an item or activity [Student] wants, or to escape. A secondary function of attention was also identified." [bold in original]. Pet. Ex. 4 at ODR-078 to ODR-095; DOE Ex. 93 at 209-226.
31. According to the 8/07/2023 BIP, some interventions that can be used with Student are: redirect to simple directions; take note of check-in responses; prompt for calming strategies/replacement behaviors; increase adult proximity; call for help from adults nearby; if Student becomes aggressive towards other students, remove other students from class and decrease student attention to the incident; block responses whenever possible; and physical management. DOE Ex. 93 at 209-226.
32. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], Tr.

Vol. I, p. 102; GED Teacher-1, Tr. Vol. II, pp. 193-194; Private Psychologist, Tr. Vol. III, p. 327.

33. [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]. DOE Ex. 28
at 96-97, Ex. 29 at 98-104; SPED Teacher-2, Tr. Vol. V, pp. 801-802.

34. [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]. DOE Ex. 29 at 99; Parent, Tr. Vol. I, pp. 20-21; SSC, Tr. Vol. V, pp. 714-715.

35. On Student's first day of school at [REDACTED] [REDACTED] School on August [REDACTED], School Counselor met with Student and introduced Student to Student's assigned registered behavior technician ("RBT"). DOE Ex. 29 at 98, Ex. 30 at 105-106, Ex. 131 at 556.

36. On August [REDACTED] Parent was called because Student was calling other students [REDACTED] DOE Ex. 31 at 107, Ex. 94 at 227.

37. On August [REDACTED], during [REDACTED] practice after [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] As commentary between this student and Student continued, the [REDACTED] student turned around and told them, "If you have something to say, say it to my face." The [REDACTED] student pushed Student and Student pushed back. Two (2) individuals tried to stop the fight and one of the individuals was hit by Student. Student was suspended

for [REDACTED] for engaging in a fight (hereinafter “ [REDACTED] incident”). The other two (2) students also received consequences for their role in the fight. Pet. Ex. 12 at ODR-164 to ODR-165; DOE Ex. 95 at 228-233; Principal, Tr. Vol. VI, p. 1015.

38. On August 30, 2023, the IEP team, inclusive of Parent and Student, met to discuss Student’s placement and the need for an updated FBA. DOE proposed that Student remain in Student’s current setting and that an FBA be conducted. DOE’s proposal was based on “[Student] [] making appropriate decisions and progress at this time[,]” although there were behavioral concerns. The IEP team considered placing Student in a fully self-contained (“FSC”) setting but rejected this option. Pet. Ex. 8 at ODR-104 to ODR-107; DOE Ex. 3 at 21, Ex. 4 at 22-23.

39. On August [REDACTED], while in class, Student was disruptive and refused to listen to the teacher or Student’s RBT. When Student was brought into Principal’s office after school to discuss what had occurred in the classroom, Student became agitated. Principal called Parent and Parent asked to speak to Student to de-escalate Student. When Student became “antsy about getting [Student’s] things,” Principal asked VP-2 to retrieve Student’s belongings from [REDACTED] building. As VP-2 left, Student went out the back door after VP-2. Concerned that Student may hurt VP-2, Principal followed Student. Principal approached Student as Student yelled to get Student’s belongings. Student swatted and slapped Principal in the arm as Principal tried to redirect Student back into the building. Principal did not allow Student to retrieve Student’s belongings because there were other students in that area. School security responded to help contain Student. Student became violent and screamed, “[REDACTED] [REDACTED]” toward VP-1 while they were in front of the administration courtyard. Student’s

conduct attracted the attention of other students and teachers on campus. Police was called. When Student saw the police, Student calmed down immediately and complied. Student was suspended for [REDACTED] days for assault, disorderly conduct, and insubordination (hereinafter ‘[REDACTED] incident’). Pet. Ex. 12 at ODR-161 to ODR-164; DOE Ex. 96 at 234-241; Principal, Tr. Vol. VI, pp. 944-946.

40. On September 6, 2023, an IEP meeting was held to revise Student’s IEP, resulting in an IEP with the same date (“9/06/2023 IEP”). Parent, Student, Principal, VP-2, SPED Teacher-2, School Counselor, a general education teacher, a counselor, a special education teacher, and a licensed behavior analyst were present at the 9/06/2023 IEP meeting. During the 9/06/2023 IEP meeting, the IEP team discussed and determined that Student’s needs could be better met by being in a smaller setting that had less transition than Student’s current setting. Based on the incidents that had occurred, behavioral data, and conversations with Student’s teachers, the IEP team agreed that an FSC setting would be best for Student so that Student could build the skills needed to be successful in an inclusion setting. Parent agreed that an FSC setting was appropriate at the time. DOE Ex. 5 at 24-42; VP-2, Tr. Vol. VI, p. 910; Principal, Tr. Vol. VI, pp. 940-941, 945.
41. According to the 9/06/2023 IEP, beginning on September 6, 2023, Student would receive specialized instructions in an FSC setting, which meant that “[Student] will not participate with [his/her] non disabled [sic] peers [in] ELA, math, science, social studies, electives, homeroom, recess, lunch and all school activities and functions.” DOE Ex. 5 at 39-41.
42. The 9/06/2023 IEP contains annual goals that address Student’s needs in reading and writing, math, and behavior. The annual goals that target Student’s behavioral needs

- address issues with elopement, physical aggression, inappropriate touching, and inappropriate language. DOE Ex. 5 at 29-38.
43. A Prior Written Notice, dated September 6, 2023 (“9/06/2023 PWN”), was issued by the DOE, proposing that Student receive 1782 minutes per week of specialized instruction in an FSC setting because Student “continue[d] to make inappropriate choices that adversely impacts [his/her] behavior and learning. A structured setting will provide [Student] with the skills and tools to make appropriate choices and/or decisions.” DOE’s proposal was based on the following: input from Parent, an administrator, a special education teacher, a general education teacher, a behavioral health specialist, and a board-certified behavior analyst; data; incident reports; and school records. Pet. Ex. 24; DOE Ex. 7 at 44-45.
44. The Supplementary Aids and Services in the 9/06/2023 IEP is the same as the 7/12/2023 IEP. DOE Ex. 5 at 39.
45. An FSC setting was appropriate because although Student was receiving support and interventions since starting [REDACTED] School, Student was still having behavioral difficulties. SPED Teacher-2, Tr. Vol. V, pp. 800-801.
46. On September 11, 2023, School Counselor checked-in with Student as this was Student’s first day in an FSC classroom. DOE Ex. 138 at 563.
47. On September 12, 2023, Student’s 8/07/2023 BIP was revised (“9/12/2023 BIP”). DOE Ex. 97 at 242-257.
48. On September 18, 2023, Student did not have an assigned RBT because the RBT resigned [REDACTED] School was in the process of looking for a new RBT and provided Student with adult support in

the meantime. On September 18, 2023, Student had an assigned educational assistant (“EA”) who was familiar with Student, had worked with Student in the past, and had training in safety-care. Principal, Tr. Vol. III, pp. 298-299; SSC, Tr. Vol. V, pp. 748-749; VP-2, Tr. Vol. VI, pp. 879-881, 886.

49. On September [REDACTED], Student was in an FSC classroom with [REDACTED] other special needs students and Student’s EA. One of the students was a nonverbal special needs child who communicates through sounds and gestures. Student became agitated by the nonverbal child’s sounds. Student was redirected and offered preferred activities, but Student became increasingly agitated and started to take apart a pencil sharpener, destroying property, and swearing. GED Teacher-2 asked Student what a good coping skill was to try to de-escalate, and Student replied, [REDACTED]. [REDACTED] Student then left Student’s classroom and entered another classroom, which prompted staff from that classroom to call school security. While GED Teacher-2 stepped outside to speak with school security, Student returned to Student’s classroom, approached the nonverbal child, and swore at the child. Student’s EA went closer to Student to provide support. Student then stomped on the child’s foot and kicked the child’s shin. Security and GED Teacher-2 escorted Student to the office. Student was suspended for [REDACTED] days for assault, disorderly conduct, and abusive language (hereinafter “[REDACTED] incident”). Pet. Ex. 12 at ODR-160 to ODR-161; DOE Ex. 31 at 111-112, Ex. 98 at 258, Ex. 99 at 259-265; Parent, Tr. Vol. I, p. 33; VP-2, Tr. Vol. VI, pp. 876-879.
50. During the [REDACTED] incident, upon Student’s return to Student’s own classroom, it was not feasible for [REDACTED] School to remove the other students because the other

students were also special needs children, and they were not able to cognitively and physically respond quickly. VP-2, Tr. Vol. VI, pp. 876, 899-901.

51. During the [REDACTED] incident, while [REDACTED] [REDACTED] School did not use the strategy of removing other children as stated in the 8/07/2023 BIP, the school did use other strategies from the 8/07/2023 BIP, such as redirection; offered preferred activity; tried to communicate with Student; check-ins; provided prompts for calming; call for help; and increase adult proximity to Student. The crisis plan was also implemented by teachers asking for help from school security and Student being escorted to VP-2's office and VP-2 speaking with Student. Principal, Tr. Vol. III, pp. 297-298; VP-2, Tr. Vol. VI, pp. 875-877.
52. On September [REDACTED], Student threw a basketball towards other students that came close to hitting them. Student told the other students, [REDACTED] When Student's substitute RBT told Student to stop, Student threw the basketball over a fence into a pool. As the RBT tried to redirect Student, Student called the RBT a [REDACTED] numerous times. Student tried to elope¹³ and the RBT got close to Student and asked Student, "Where are you going?" Student became upset, pushed the RBT and said, [REDACTED] [REDACTED] and called the RBT [REDACTED] again. Student ran to the office when Student couldn't find a security guard. VP-2 informed Parent that Student was suspended for [REDACTED] [REDACTED] days [REDACTED] and a "Peer Review" would be held for Student on [REDACTED] September [REDACTED] Student was suspended for assault, terroristic

¹³ According to Student's 8/07/2023 BIP, "Elopement" means "[l]eaving or attempting to leave the classroom or designated areas by 5 feet or more without obtaining permission, including during transition times such as returning from recess or lunch and passing between classes by running ahead." DOE Ex. 93 at 212.

- threatening, disorderly conduct, and abusive language (hereinafter “█████ incident”).
Pet. Ex. 12 at ODR-160; DOE Ex. 31 at 113, Ex. 100 at 266-272.
53. █████ █████ School determined that the █████ day suspension for the █████ incident triggered the need for a manifestation determination review (“MDR”) because the total number of suspensions by that point exceeded █████ school █████ days for the 2023-2024 school year. Principal, Tr. Vol. III, p. 312.
54. On September 27, 2023, an MDR meeting was held to determine whether Student’s misconduct on September █████ was caused by Student’s disability or had a direct and substantial relationship to Student’s disability or whether it was the school’s failure to implement Student’s IEP. Student, Parent, Principal, VP-2, SPED Teacher-2, GED Teacher-2, DES-1, School Counselor, and another counselor participated in the MDR meeting. Private Psychologist was not able to attend the MDR meeting and Parent did not feel it was necessary to continue the MDR so that Private Psychologist could attend. Parent, Tr. Vol. I, pp. 66-68, 85-89; DOE Ex. 10 at 49. The 9/27/2023 MDR meeting had the required IEP team members present.
55. During the 9/27/2023 MDR, the team took into consideration Student’s disability; how the disability presented itself at school; the misconduct in question; previous suspensions; observations by teachers, administrators, counselor; Parent’s input; situations where Student showed the ability to know right from wrong; Student’s ability to function appropriately when Student encountered things Student preferred to do and Student was not challenged with an unpreferred activity; and whether Student’s IEP was implemented appropriately. Principal, Tr. Vol. III, pp. 349-351, 355, 359; Principal, Tr. Vol. VI, pp. 933-938.

56. On September 27, 2023, the MDR team determined that Student's misconduct on September [REDACTED] was not caused by Student's disability and was not the direct result of the school's failure to implement Student's IEP. The MDR team's manifestation determination was based on information from Parent, an administrator, a district educational specialist, a behavioral health specialist, a counselor, a special education teacher, and a general education teacher; previous and current assessments; school records; and Student's IEP. Pet. Ex. 6 at ODR-100 to ODR-103, Ex. 17 at ODR-240 to ODR-243; DOE Ex. 8 at 46-47, Ex. 9 at 48, Ex. 10 at 49, Ex. 11 at 50-51, Ex. 13 at 53-54.
57. Immediately after the 9/27/2023 MDR meeting, an IEP meeting was held to revise Student's IEP "due to [Student's] recent aggressive behaviors and suspensions[,] and "[Student's] aggressive behaviors require[ing] an integrated therapeutic support within a structured behavior program." Parent, Principal, DES-1, DES-3, SPED Teacher-2, VP-2, GED Teacher-2, ILC Counselor, SSC, School Counselor, another counselor, and an [REDACTED] resource teacher participated in the 9/27/2023 IEP meeting. The 9/27/2023 IEP meeting was continued until Parent and Student could conduct an on-sight visit to the ILC, which was located on Public [REDACTED] School-2 campus. Pet. Ex. 7; DOE Ex. 12 at 52, Ex. 17 at 77, Ex. 18 at 79-80.
58. On September [REDACTED], Student and Parent visited the ILC for an orientation and completed the necessary forms for Student to attend the ILC. DOE Ex. 127 at 440-443.
59. After Student and Parent's visit to the ILC on September [REDACTED], the IEP meeting resumed on the same day. Parent, Private Psychologist, DES-1, DES-3, SPED Teacher-

2, GED Teacher-2, Principal, VP-2, SSC, ILC Counselor, and School Counselor were present at the 9/29/2023 IEP meeting. DOE Ex. 15 at 56, Ex. 17 at 78.

60. The IEP team went through the LRE continuum when considering placement at an ILC. The team discussed Student's aggressive behavior and how an FSC placement was not working, and that Student needed a more restrictive environment. DOE proposed that Student receive "integrated therapeutic support within a structured behavior program." The IEP team considered keeping Student in an FSC setting, but the DOE rejected this option. Parent did not believe that an ILC was an appropriate placement for Student, but reluctantly agreed to it. DOE's proposed action was based on the following information: input from Parent, a special education teacher, a general education teacher, an administrator, a district educational specialist, a school behavior health specialist, a behavior health specialist/ILC, a student services coordinator, and Student's therapist; STAR Diagnostic Assessments; current IEP; school records; incident/suspension data; BIP; previous assessment; and daily data sheets. Pet. Ex. 5 at ODR-096 to ODR-099¹⁴; DOE Ex. 16 at 57-58; Parent, Tr. Vol. I, pp. 40-41, 60; Principal, Tr. Vol. VI, pp. 946-948.
61. Student's placement at the ILC was not an interim alternative education setting or a crisis removal. DES-1, Tr. Vol. VI, pp. 1039-1040.
62. The IEP meetings on September 27 and 29, 2023 resulted in an IEP with the same dates ("9/29/2023 IEP"). According to the 9/29/2023 IEP, Student will receive 1440 minutes per week of special education services beginning on October 4, 2023 to March 9, 2024 at

¹⁴ Petitioners' version does not have a date on the upper left corner of the document and is missing paragraph 6. "Other relevant factors."

the ILC; continue to have counseling until March 9, 2024; and daily transportation to the ILC beginning on October 4, 2023 to March 9, 2024. According to the 9/29/2023 IEP, Student's IEP Annual Review date was March 9, 2024. Pet. Ex. at ODR-005, ODR-020 to ODR-059; DOE Ex. 17 at 59, 74-78.

63. The Supplementary Aids and Services in the 9/29/2023 IEP is the same as the 7/12/2023 IEP. DOE Ex. 17 at 74-75.

64. The LRE statement in the 9/29/2023 IEP reads: "[Student] will not participate with non-disabled peers due to [Student's] difficulties with assault, racial slurs, name calling and eloping. Student will receive specialized instruction in all 4 core classes (Language Arts/English, Math, Science, and Social Studies/History) in a special education setting for the whole school day and will not participate in the general education setting. Student will receive specialized instruction in a public separate facility." DOE Ex. 17 at 76.

65. The ILC is a public separate facility and has a therapeutic behavior focused program.

[REDACTED]

While at the ILC, Student would have to complete three (3) levels to finish the ILC program. To move from one level to the next, Student would have to accumulate a certain number of non-consecutive and consecutive days without any behavioral issues.

If Student is unable to go through a day without any behavioral issues, Student would have to restart accumulating days in Student's current level. Parent, Tr. Vol. I, p. 78; ILC Counselor, Tr. IV, pp. 565; DOE Ex. 146 at 581; Pet. Ex. 31, 1/31/2024 video at 00:26:00-00:28:02.

66. While the ILC will provide academic instruction to Student, the ILC will focus on Student's behavior first. DOE Ex. 103 at 302.

67. While Student attends the ILC, the ILC will have two (2) special education teachers, one (1) educational assistant, one (1) support staff, ILC Counselor, and Student's RBT. ILC Counselor, Tr. Vol. IV, pp. 552-553.
68. The ILC was an appropriate placement for Student. ILC Counselor, Tr. Vol. IV, p. 536; Principal, Tr. Vol. VI, pp. 947, 948.
69. Also on September 29, 2023, a licensed behavior analyst completed a "Functional Behavior Assessment Descriptive Report" for Student. Pet. Ex. 11 at ODR-128 to ODR-159; DOE Ex. 101 at 273-288.
70. On October 4, 2023, Student started going to the ILC. When Student started going to the ILC, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] DOE Ex. 17 at 75; Parent, Tr. Vol. I, pp. 59-60; ILC Counselor, Tr. Vol. IV, pp. 565-566.
71. On October 26, 2023, the following individuals participated in a Peer Review to discuss how Student was doing at the ILC: SSC, SPED Teacher-3, GED Teacher-2, School Counselor, a licensed behavior analyst, and a district resource teacher. Based on Student's progress at the ILC program at this point, it was projected that the earliest date Student would return to [REDACTED] [REDACTED] School was December 18, 2023. DOE Ex. 146 at 572-576.
72. SPED Teacher-3 is a teacher at Public [REDACTED] School-2/ILC. DOE Ex. 83 at 196, Ex. 123 at 429.
73. Before November 16, 2023, ILC Counselor began working on a transition plan to propose to [REDACTED] [REDACTED] School to begin the process of transitioning Student back to [REDACTED] [REDACTED] School. Parent, Tr. Vol. I, pp. 47-48; ILC Counselor, Tr. Vol IV, p. 537.

74. On November [REDACTED], during a weekly counseling session with ILC Counselor, Student stated that Student would not have to go back to [REDACTED] School for [REDACTED] grade if Student "[REDACTED]." [REDACTED]
- [REDACTED] ILC Counselor asked questions to ascertain whether Student was feeling bullied, to which Student indicated Student was not being bullied. When Student made this statement, Student was calm and not in a heightened state, there was no trigger, and Student was not prompted. (hereinafter "[REDACTED] incident"). DOE Ex. 36 at 118-119, Ex. 104 at 318-332; ILC Counselor, Tr. Vol. IV, pp. 541-542; DOE Ex. 22, 1/10/2024 video at 00:08:54-00:13:56, 00:22:29-00:24:22.
75. After the [REDACTED] incident, Private Psychologist temporarily increased Student's therapy sessions with Private Psychologist. Parent, Tr. Vol. I, p. 49; Private Psychologist, Tr. Vol. II, p. 275, Tr. Vol. III, p. 343; ILC Counselor, Tr. Vol. IV, pp. 539-540, 545.
76. On November 17, 2023, ILC Counselor and [REDACTED] Staff-1 took turns providing Student with academic support when SPED Teacher-3 was absent. DOE Ex. 37 at 120.
77. [REDACTED] Staff-1 is an [REDACTED] school teacher at the ILC. DOE Ex. 111 at 374.
78. On November [REDACTED], ILC Counselor informed Parent that Student was displaying a lot more verbal aggression towards ILC staff and was exhibiting anxiety that day about transitioning back to [REDACTED] School. Student shared with ILC Counselor that Student wanted to [REDACTED] so that Student would not have to go back to [REDACTED] School. DOE Ex. 41 at 125-126; ILC Counselor, Tr. Vol. IV, pp. 542-544.

79. Also on November 28, 2023, the following individuals participated in a Peer Review to discuss how Student was doing at the ILC: Principal, SPED Teacher-2, DES-1, GED Teacher-2, School Counselor, and a district resource teacher. Student's anticipated return date was still December [REDACTED]; however, due to that date being so close to winter break, the participants felt that it was best to begin the transition after the winter break. DOE Ex. 146 at 577-581, Ex. 43 at 131.
80. On November 29, 2023, DOE began working on a "Student Threat Assessment & Management System Level 1 Protocol" for the [REDACTED] incident. DOE Ex. 104 at 318-332.
81. On November [REDACTED], [REDACTED] Staff-1 helped to provide Student with academic services because SPED Teacher-3 had to go to [REDACTED]. On this day, Student had an increase in behaviors, especially property destruction and work avoidance. DOE Ex. 44 at 132.
82. On December [REDACTED], Student engaged in work avoidance, and received many warnings for property destruction and physically grabbing staff. DOE Ex. 45 at 137.
83. On December [REDACTED], Private Psychologist, Principal, VP-2, ILC Counselor, SSC, DES-1, Clinical Psychologist-1, a district representative, and a resource teacher participated in a meeting to discuss the results of the Level 1 Threat Assessment. Parent was not asked to participate in the meeting. During the meeting, it was determined that Student could not return to [REDACTED] School, as anticipated, due to threats made toward individuals at the school. Based on the results of the Level 1 Threat Assessment, a Level 2 Threat Assessment was deemed warranted and would be conducted by DES-3. It was also determined that in the meantime, CAS and [REDACTED] School would review the Risk Assessment data and explore placement options. They would also wait for an evaluation

from Private Psychologist, which could take up to five (5) weeks. Parent was informed the next day about what was discussed during this meeting. DOE Ex. 46 at 138; ILC Counselor, Tr. Vol. IV, p. 545.

84. On January 4, 2024, Principal informed Parent, Private Psychologist, and others that a meeting previously scheduled for January 10, 2024 to discuss Student's transition back to Public [REDACTED] School would be changed to an IEP meeting. Principal explained that "Following the Level 1 Risk Assessment results, the team has collectively decided to prioritize this meeting as an IEP meeting to discuss and determine the Least Restrictive Environment (LRE) for [Student], with a primary focus on ensuring the health and safety of everyone involved...The IEP meeting will allow us to collaboratively address [Student's] unique needs while considering the broader context of health and safety. Your insights and input are highly valued in this process...Although the meeting's agenda has shifted, the details remain unchanged...At this meeting, you are welcomed to invite others." DOE Ex. 47 at 139, Ex. 48 at 140, Ex. 50 at 142.
85. On January 5, 2024, the director of the Safety, Security, and Emergency Preparedness Branch of the Hawaii DOE sent an email to Clinical Psychologist-2 at Threat Team Hawaii ("TTH") Consult. The email reads: "On behalf of Principal..., I would like to request a TTH Consult for a complex and potentially dangerous incident involving a [REDACTED] grade [] student. Due to numerous disciplinary actions (Chapter 19), the student has been attending school at an Intensive Learning Center (ILC) which is located at [Public [REDACTED] School-2]. A teacher revealed that the student threatened to use the knife to stab [REDACTED] people at [REDACTED] School]. The student owns a knife and unfortunately, the [Parent] is unwilling to confiscate it. The student has grievances and

- has an ‘eye for an eye’ mentality. Although the student is currently targeting [REDACTED] [REDACTED] School], there is concern that the student may eventually have grievances against the ILC ([Public [REDACTED] School-2]) and endanger them as well. Please let me know when a TTH Consult could be scheduled...” DOE Ex. 49 at 141.
86. Clinical Psychologist-2 is a clinical psychologist at the [REDACTED] [REDACTED]. DOE Ex. 62 at 159.
87. TTH Consult consists of members from the following organizations: Department of Homeland Security; Federal Bureau of Investigation; Federal Protective Services; Hawaii Legislature; Hawaii Fusion Center; Judiciary; Hawaii DOE; Higher Education; Office of the Attorney General; United States Attorney’s Office; U.S. Department of Veterans Affairs; and Security and professionals who specialize in insider threat assessment and management. DOE Ex. 62 at 159, Ex. 154 at 595.
88. On January 10, 2024, an IEP meeting was held to discuss Student’s placement, review Student’s IEP and the risk assessment that was completed. Parent, Private Psychologist, Principal, VP-2, DES-3, ILC Counselor, SPED Teacher-2, Clinical Psychologist-1, GED Teacher-3, a district representative, a resource teacher, and a licensed behavior analyst were present at the 1/10/2024 IEP meeting. During the IEP meeting, it was confirmed that Student would not be transitioning back to [REDACTED] [REDACTED] School for the time being and would be staying at the ILC. Private Psychologist told the rest of the team that Private Psychologist’s updated evaluation of Student will be completed by the end of that week and that there was no change to Student’s diagnoses. DOE Ex. 22, 1/10/2024 video at 1:11:30-1:12:13. Private Psychologist informed the team that after seeing Student, Private Psychologist did not feel that Student posed a risk to [REDACTED] [REDACTED]

School. Student's licensed behavior analyst, however, recounted a statement Student made about a movie called [REDACTED]

[REDACTED] Student was not triggered or provoked when Student made this statement. It was confirmed that a Level 2 Threat Assessment would be done. The meeting lasted for two (2) hours and fifty-seven (57) minutes and was at times adversarial. DOE Ex. 19 at 81-82, Ex. 21 at 84, Ex. 58 at 154, Ex. 22, 1/10/2024 video at 00:18:12-00:20:07, 00:43:20-00:50:16, 00:58:32-00:59:27.

89. GED Teacher-3 is a general education teacher and curriculum coordinator at [REDACTED]

[REDACTED] School. DOE Ex. 21 at 84, Ex. 63 at 160.

90. While Student was at the ILC between November 16, 2023 and January 10, 2024, ILC and [REDACTED] [REDACTED] School communicated on getting appropriate schoolwork for Student, and ILC provided Student with the appropriate curriculum to meet Student's educational needs. Student was provided with specifically-designed instruction, and the work was differentiated in the presentation and level. The work given to Student was adjusted based on test scores and what Student could do. Student received individualized instruction for every subject and received support in various ways. Anything that involved reading, staff at the ILC took turns reading with Student or isolating lines of text or offering an audiobook or text-to-speech option to Student. Math worksheets that targeted Student's IEP goals in math were given. While a computer provided by [REDACTED] [REDACTED] School did not work properly at the ILC due to connectivity issues, assignments that involved the use of the internet were printed out and provided to Student in paper format. Student was given schoolwork at school and homework to do at home. ILC

- Counselor, Tr. Vol. IV, pp. 546-550, 564-565; SSC, Tr. Vol. II, pp.173-175; DOE Ex. 35 at 117, Ex. 38 at 121, Ex. 44 at 132-136, Ex. 103 at 301-317; Pet. Ex. 31, 1/31/2024 video at 2:40:30-3:00:19.
91. While Student was at the ILC between November 16, 2023 and January 10, 2024, Student was provided with more counseling services than what was stated in Student's IEP. Student received from ILC Counselor every day in-class support for a couple of hours a day; one (1) hour a week of individual counseling; and behavior support as needed. In total, Student received approximately twenty (20) hours a week in support for Student's behavior; however, beginning in early/mid-January of 2024, Student started to decline counseling. As a result, Student's behavior regressed. ILC Counselor, Tr. Vol. IV, pp. 550, 553; DOE Ex. 54 at 149, Ex. 151 at 588; Pet. Ex. 31, 1/31/2024 video at 00:26:00-00:28:02, 2:40:30-3:00:19.
92. On or about January 12, 2024, Student completed the ILC program but could not transition back to [REDACTED] School due to the ongoing threat assessment into the [REDACTED] incident. The ILC program adapted to Student's needs and Student continued to receive educational instruction and counseling to meet Student's needs. ILC Counselor, Tr. Vol. IV, p. 554; Pet. Ex. 18 at ODR-246, ODR-248; DOE Ex. 63 at 160, Ex. 64 at 161, Ex. 68 at 172-178, Ex. 72 at 182, Ex. 74 at 185, Ex. 75 at 186, Ex. 79 at 192, Ex. 80 at 193, Ex. 83 at 196, Ex. 156 at 602, Ex. 157 at 603, Ex. 158 at 604, Ex. 160 at 606, Ex. 162 at 608; Pet. Ex. 31, 1/31/2024 video at 1:03:45-1:04:37, 1:24:45-1:25:44, 1:43:10-1:44:11.
93. On January 12, 2024 and March 5, 2024, a safety plan was revised as a result of the risk assessment and in anticipation of Student staying at the ILC. DOE Ex. 150 at 586-587.

94. On January [REDACTED], [REDACTED] Staff-1 substituted for SPED Teacher-3, who was out sick. On this day, Student was aggressive towards ILC staff: shoved [REDACTED] Staff to the ground; body checked [REDACTED] Staff and knocked [REDACTED] Staff to the ground when Student was denied access to a basketball during recess; and when a staff took Student's work to grade, Student climbed on a table to take it back and screamed repeatedly in the staff's face, "[REDACTED]" DOE Ex. 73 at 183-184.
95. [REDACTED] Staff is an RBT. DOE Ex. 106 at 344.
96. On January [REDACTED], Student engaged in the following inappropriate behaviors at the ILC: three (3) episodes of aggression made to the substitute RBT that ended with Student locking him/herself in the closet; threatened another student by stating that Student was going to punch him/her in the face and continued to make the threat to beat up the other student if the other student didn't leave the classroom; and watched school shooting videos on Student's school computer instead of doing Student's schoolwork. DOE Ex. 102 at 299.
97. On January 22, 2024, Principal, DES-3, and other members from DOE met with TTH Consult for a consultation. DOE Ex. 62 at 159; Pet. Ex. 31, 1/31/2024 video at 00:33:23-00:33:44, 00:43:32-00:44:13.
98. On January 23 to 26, 2024, Student was absent from the ILC. Pet. Ex. 31, 1/31/2024 video at 00:06:02.
99. On January 23, 2024, Clinical Psychologist-2 sent Principal the following email message to confirm what members from DOE and TTH Consult had discussed on January 22, 2024: "Here are some of the things that were discussed during our meeting: 1. The case that was discussed included a range of concerning behaviors and behavioral management

issues. Your school had used the Salem-Keizer system as a level 1 assessment. Based on what you shared, your school appropriately employed this model and had identified relevant risk and protective factors. 2. Possible CPS involvement and a discussion about the benefits and negative consequences of this resource... 4. Given the concerns that were discussed, a forensic assessment or neutral/objective psychological evaluation might provide helpful risk and management information. Such an assessment is probably most appropriately performed by someone outside of the student's treatment team... 6. Prior to re-entry to the school, it might be helpful to establish and review a safety plan with the student... 9. Your school had expressed reasonable concerns regarding the student's potential threat to self and others and your decision to request a consultation was appropriate.... [T]hank you for implementing a level 1 behavioral intervention team on your campus and for using a recognized model to manage threats...." DOE Ex. 62 at 159.

100. On January 31, 2024, a Level 2 Threat Assessment meeting was held with the following people in attendance: Parent, Private Psychologist, Advocate-2, Advocate-3, Principal, VP-2, ILC Counselor, DES-3, GED Teacher-3, CAS, a district representative, and a vice principal. During the Level 2 Threat Assessment meeting, the team discussed TTH Consult's recommendation that a forensic psychological assessment be conducted. The team also discussed not conducting a forensic psychological assessment, but rejected this option because not conducting a forensic psychological assessment would mean that the Child Welfare Services and/or HPD would need to get involved. Parent agreed to a forensic psychological assessment. The team also discussed: (1) providing a new laptop to ILC for Student's use; (2) providing more appropriate schoolwork; and (3) a meeting

with the ILC staff and Parent will be conducted. The meeting lasted over three (3) hours and was at times intense and adversarial. Pet. Ex. 31, 1/31/2024 video; DOE Ex. 23 at 87, Ex. 152 at 589, Ex. 153 at 590.

101. CAS is the complex area superintendent to which [REDACTED] School belongs. It is rare for a complex area superintendent to attend an IEP meeting. CAS attended the 1/31/2024 meeting because it was the first time a risk assessment using the protocols was conducted. CAS was also there to provide answers to questions Parent may have, and to convey the gravity and seriousness of the situation. Principal, Tr. Vol. VI, pp. 962-963.
102. On February 2, 2024, a new laptop was given to the ILC for Student's use. The new laptop worked much better, and all Google classrooms were accessible and [REDACTED] School provided more appropriate academics and projects for Student. Pet. Ex. 18 at ODR-246.
103. On February [REDACTED], Student engaged in the following inappropriate behaviors at the ILC: told a staff member to "[REDACTED]"; refused to do any school work; when talking to SPED Teacher-3, who is [REDACTED], Student kept saying, "[REDACTED]"; dug into a wall to collect powder from the drywall; chewed post-it notes and tried to put them on people; eloped twice outside; shoved RBT when RBT tried to block a door; tried to intentionally give [REDACTED] Staff-2 a paper cut; slammed the classroom door open on an RBT; and stepped on [REDACTED] Staff-2 and [REDACTED] Staff's feet with the intent to cause harm. DOE Ex. 66 at 163-170, Ex. 102 at 300, Ex. 106 at 344-347.
104. [REDACTED] Staff-2 is a support staff at the ILC. [REDACTED] Staff-2 is an RBT awaiting recertification. DOE Ex. 41 at 125-128

105. On February 6, 2024, Parent, Advocate-2, ILC Counselor, SPED Teacher-3, and a licensed behavior analyst had a meeting. Following the meeting, Advocate-2 wrote the following letter to ILC staff: “[Student], over all has been doing really well in the ILC and reached [Student’s] levels quickly as [Student] was very motivated to get back to [Student’s] home school....Up until the last few days [Student] did not have appropriate instruction from [Student’s] homeschool so there was a lot of repetitive work and no differentiated instruction provided. [SPED Teacher-3] has done [his/her] best with the material received to make the work accessible and the ILC has given a lot of one-on-one support...” Advocate-2 also listed the information ILC would share with the forensic psychologist who was conducting the forensic psychological assessment so that a complete picture of Student and how well Student was doing in the ILC can be conveyed to the forensic psychologist. Pet. Ex. 18 at ODR-244.
106. On February 7, 2024, Principal informed Parent that Forensic Psychologist will be conducting the forensic psychological assessment and would need to meet with Parent on February 22, 2024 and Student on February 21 and 26, 2024. DOE Ex. 67 at 171.
107. Forensic Psychologist is a Clinical and Forensic Psychologist and Human Resources consultant. DOE Ex. 67 at 171.
108. On February [REDACTED], Student displayed the following inappropriate behaviors at the ILC: did not eat the school food, and only ate Student’s snacks; disrespectful to staff; did not want to do schoolwork; played on the computer; and ate post-it notes when Student couldn’t do any of the science worksheets on his/her own. ILC staff also attempted to work with Student on the same social studies project they had been doing for the last week using prompting, but Student wouldn’t start it each day. DOE Ex. 68 at 172-178.

109. Also on [REDACTED], SSC sent the following email to Parent: “I want to acknowledge your email was received and thank you for providing your availability for the IEP meeting. As soon as I can confirm the team’s availability, I will get back to you....” DOE Ex. 69 at 179.
110. On February 15, 2024, SSC informed Parent, Advocate-2, Advocate-3, Private Psychologist, and others that Student’s annual IEP meeting was scheduled for March 6, 2024. DOE Ex. 70 at 180, Ex. 71 at 181.
111. On February 16, 2024, Parent requested that Student’s annual IEP meeting not be conducted at this time. DOE Ex. 159 at 605.
112. On February [REDACTED] Student engaged in the following inappropriate behaviors at the ILC: threw a football at [REDACTED] Staff-2 with the intent of hitting him; ignored prompts; took [REDACTED] Staff-2’s personal bag and [REDACTED] Staff’s sunglasses; took [REDACTED] Staff-2’s phone and refused to return it because staff took away a soda can tab that Student was putting in Student’s mouth; locked [REDACTED] Staff-2’s phone for one hour; kicked/kneed [REDACTED] Staff-2 repeatedly; broke a pencil into shards with teeth, spitting pieces of pencil at staff’s face (shrapnel), causing scratches from impact on skin; eloped five (5) times; during elopements Student told [REDACTED] Staff and [REDACTED] Staff-2, [REDACTED]; made a weapon out of rolled paper (pointed cone shape), and mimed stabbing [REDACTED] Staff-2 in the chest and said, “[REDACTED].” Student was not upset but was laughing and “messaging” with staff. Police was called but no charges were filed (hereinafter “[REDACTED] incident”). Parent was asked to keep Student home for the rest of the week, from [REDACTED], due to

Student's threatening behavior, but Parent refused and sent Student to the ILC. DOE Ex. 76 at 187-189, Ex. 107 at 348-349, Ex. 108 at 350.

113. On February [REDACTED], Student engaged in the following inappropriate behaviors at the ILC: talked about [REDACTED]; asked SPED Teacher-3 what SPED Teacher-3 would do if he/she were on fire; and refused to return to the classroom after losing recess privilege and stayed outside even though recess was over. On this day, Student went into a classroom and held the door shut so staff could not get inside. SPED Teacher-3 followed Student to maintain line of sight supervision from another classroom. Student got Student's bag then went back outside. Student then ran back into the classroom and forcefully tried to close the door. SPED Teacher-3 caught the door and held it open. Student pulled the door closed on SPED Teacher-3's leg. Student repeatedly slammed the door on SPED Teacher-3's knee, pulling the door closed despite observable injury to SPED Teacher-3. Police was called. As police tried to talk to Student, Student walked away. Student was arrested for assault and suspended from school from [REDACTED] [REDACTED] (hereinafter "[REDACTED] incident"). DOE Ex. 108 at 350-351, Ex. 109 at 356; ILC Counselor, Tr. Vol. IV, pp. 532-534.

114. On March 1, 2024, SSC asked Parent if Parent had the proper equipment for Student to access Google classroom during the suspension, and if not, [REDACTED] [REDACTED] School could help. SSC also informed Parent that [REDACTED] [REDACTED] School was developing a virtual tutoring schedule for Student. DOE Ex. 77 at 190, Ex. 161 at 607.

115. Also on March 1, 2024, Student's BIP was revised to address Student's current behaviors and current educational setting, the ILC, since Student's time at the ILC was extended. Pet. Ex. 23; DOE Ex. 110 at 363-373; ILC Counselor, Tr. Vol. IV, pp. 534-535.
116. On March 6, 2024, an MDR was conducted for the [REDACTED] incident and it was determined that Student's behavior was a manifestation of Student's disability. Pet. Ex. 14 at ODR-170 to ODR-181; DOE Ex. 109 at 352-362.
117. On March 13, 2024, an annual IEP meeting was held to review Student's IEP. Parent, Advocate-2, Advocate-3, Principal, VP-2, DES-1, GED Teacher-3, SPED Teacher-2, SPED Teacher-3, ILC Counselor, SSC, a licensed behavior analyst, and others were present at the 3/13/2024 annual IEP meeting. The IEP was not completed this day. DOE Ex. 24 at 88-89, Ex. 25 at 90-91.
118. Also on March 13, 2024, an MDR was conducted for an incident that occurred on February [REDACTED] [REDACTED]¹⁵. Parent, Advocate-2, Advocate-3, Principal, VP-2, GED Teacher-3, ILC Counselor, SPED Teacher-3, a licensed behavior analyst, and others were present at the MDR. It was determined that Student's conduct was the direct result of the department's failure to implement Student's IEP. Pet. Ex. 21 at ODR-266, Ex. 22 at ODR-268 to ODR-271.
119. On March 14, 2024, Parent and Student missed an appointment with Forensic Psychologist for preliminary feedback for the forensic psychological assessment. The appointment was rescheduled to March 18, 2024. DOE Ex. 81 at 194.

¹⁵ It is unclear from the record if an incident occurred on February [REDACTED], or if the Manifestation Determination Review record has the wrong date and the MDR was for the [REDACTED] incident.

120. On March 27, 2024, another annual IEP meeting was held to review Student's IEP and determine educational placement. Parent, Advocate-2, Advocate-3, Principal, VP-2, ILC Counselor, SSC, SPED Teacher-2, DES-1, a licensed behavior analyst, a school counselor, a general education teacher, and others were present for the IEP meeting. The IEP was not completed on this day. DOE Ex. 26 at 92-93, Ex. 27 at 94-95.
121. On March [REDACTED], Student engaged in the following inappropriate behaviors at the ILC: left a classroom without permission; prevented staff from leaving a classroom from the outside by putting a chair in front of the door and sitting on the chair to prevent the door from being able to open; and tried to eavesdrop on a conversation through a door while staff was talking outside of a classroom, and when an RBT attempted to block the door, Student grabbed the RBT and pulled the RBT away from the door. DOE Ex. 111 at 374-376.
122. On March 31, 2024, Forensic Psychologist completed a "Forensic Risk Assessment – Threat Assessment" ("Forensic Risk Assessment"). For the Forensic Risk Assessment, Forensic Psychologist conducted a cumulative file review and interviewed various staff members on February 5, 2024; conducted an interview and psychological testing with Student on February 21 and 26, 2024 and March 5, 2024; interviewed Parent on February 22 and 27, 2024; and had a preliminary feedback meeting with Parent on March 18, 2024. During the interview, Student denied saying that Student wanted to stab [REDACTED] people or kill [REDACTED] staff members, and stated that Student never pushed, kicked, spat shards of pencil, or purposefully tried to hurt staff. Forensic Psychologist noted in his/her report that Parent "frequently interrupted me when I was talking and at times seemed argumentative. During [Parent's] interview with me [Parent] minimized [Student's]

history of aggressive behavior. [Parent's] report of [Student's] aggressive behavior doesn't match what is documented in [Student's] educational file and psychological evaluations." Forensic Psychologist opined that "[r]eturning to [REDACTED] School does not seem like a good fit at this point, given the level of mistrust that [Student] has...[and] [Private Psychologist] also reported concerns about [Student] returning to [REDACTED] School." DOE Ex. 112 at 377-382.

123. Once DOE received the Forensic Risk Assessment, DOE attempted to schedule an IEP meeting with Parent to go over the Forensic Risk Assessment. Principal, Tr. Vol. VI, pp. 964-965.
124. On or about April [REDACTED], Parent stopped sending Student to the ILC because Parent was concerned about Student's safety and well-being due to the [REDACTED] incident involving SPED Teacher-3. Once Student stopped going to the ILC, Student stayed at home. Parent, Tr. Vol. I, pp. 81-83; DOE Ex. 82 at 195, Ex. 85 at 198, Ex. 86 at 199.
125. When Parent expressed concern about SPED Teacher-3 teaching Student after the [REDACTED] incident, DOE attempted to address Parent's concern by having SPED Teacher-2 and a district resource teacher teach Student; offering to have [REDACTED] Staff-1 and an educational assistant, who was capable of substitute teaching, teach Student; and offering to have SPED Teacher-3 teach Student virtually over the computer. Although SPED Teacher-3 was willing to teach Student in person or online, to address Parent's concerns, SPED Teacher-3 moved to the [REDACTED] school side where Student was not a student. Parent, Tr. Vol. I, p. 44; ILC Counselor, Tr. Vol. IV, pp. 552-553, 596-598.
126. On or about April [REDACTED] to the end of the school year in May [REDACTED], while Student was at home, [REDACTED] School provided schoolwork to Student in hard copy format

and electronically through Google Classroom. Parent was also able to and did contact SPED Teacher-2 about assignments when Parent had any questions. [REDACTED] [REDACTED]

School also provided Student with a laptop and hotspot to use at home. Parent, Tr. Vol. I, pp. 83-84; DES-1, Tr. Vol. VI, pp. 1026-1028; SSC, Tr. Vol. V, p. 777; SPED Teacher-2, Tr. Vol. V, pp. 806-807; DOE Ex. 163 at 609.

127. On April 2, 2024, SSC asked Parent to confirm the IEP continuation meeting scheduled for April 10, 2024. DOE Ex. 84 at 197.
128. On April 5, 2024, SSC sent the following email to Parent, Advocate-2, Advocate-3, Private Psychologist, and others: "Aloha [Parent], Upon your request, the IEP continuation meeting for [Student] scheduled for Wednesday, April 10, 2024 at 10 am will be cancelled until further notice. You will get back to the school with suggested dates." DOE Ex. 87 at 200.
129. On April 12, 2024, Student's progress on Student's academic goals in the 9/29/2023 IEP were assessed, and based on work that was completed and returned by Student, it was noted that Student was making progress. DOE Ex. 113 at 383-392.
130. On April 15, 2024, SSC email to Parent Student's report card and progress report. SSC also asked Parent for Parent's availability for an IEP continuation meeting to complete the IEP. DOE Ex. 89 at 202.
131. On April 21, 2024, SSC informed Parent that the Forensic Risk Assessment would need to be picked up by Parent, personally, at the school. SSC also asked Parent for Parent's availability to have an IEP meeting. DOE Ex. 90 at 203.
132. On May 2, 2024, DOE received the instant Request for an Impartial Due Process Hearing Form from Petitioners.

133. On May 8, 2024, Parent picked up the following documents: a draft IEP; the Forensic Risk Assessment; Threat Assessment Process and Support 1/31/2024; and Student Threat Assessment & Management System – Level 1 Protocol. DOE Ex. 164 at 610.
134. On May 14, 2024, Parent was informed that Student was offered ESY services at the ILC from June 14, 2024 to July 23, 2024. DOE Ex. 165 at 611, Ex. 166 at 612.
135. From June 11, 2024 to July 12, 2024, Student attended summer school at a private school. Parent, Tr. Vol. I, pp. 84-85.
136. On June 18 and 24, 2024, an IEP meeting was held where the Forensic Risk Assessment was referenced but not discussed in detail as Parent and the school members of the IEP team did not agree with the information that was presented in the assessment. Principal, Tr. Vol. pp. 966-967; DES-1, Tr. Vol. VI, pp. 1043-1044.
137. On July 1, 2024, SSC sent the following email to Parent, Advocate-1, Advocate-2, Private Psychologist, and others: “Aloha [Parent], Since we did not receive confirmation for today’s IEP continuation meeting, we assume we will not be meeting today. We are wondering if you are available to meet on Wednesday, July 3....” DOE Ex. 91 at 204.

V. CONCLUSIONS OF LAW

A. BURDEN OF PROOF

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

The Supreme Court held in Schaffer that “[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005). The Court “conclude[d] that the burden of persuasion lies where it usually falls, upon the party seeking relief.” Id. at 535. Neither Schaffer nor the text of the IDEA supports imposing a different burden in IEP implementation cases than in formulation cases. The “party objecting to the IEP’s implementation...[has] the burden of proof at the administrative hearing.” Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 820 (9th Cir.2007).

B. IDEA REQUIREMENTS

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

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

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

Procedural violations do not necessarily constitute a denial of FAPE. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001). If procedural violations are found, a further inquiry must be made to determine whether the violations: (1) resulted in a loss of educational opportunity for the 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 the student a deprivation of educational benefits. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001).

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

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

C. ISSUE FOR DETERMINATION

- 1. Whether DOE continuously suspended Student for the purpose of changing Student’s placement to an intensive learning center (“ILC”) in October [REDACTED] and whether the placement in an ILC was appropriate.**

In this allegation, Petitioners are alleging two (2) issues: (a) DOE repeatedly suspended Student to justify changing Student’s placement to an ILC; and (b) placement in an ILC was not appropriate. Based on the evidence, Petitioners fail to meet their burden of proof in showing that the DOE repeatedly suspended Student for the purpose of changing Student’s placement to an ILC, and that placement in an ILC was not appropriate.

(a) DOE Did Not Repeatedly Suspend Student for the Purpose of Changing Student's Placement to an ILC in October [REDACTED].

In preparation for [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED], [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] resource setting was
the appropriate placement for Student [REDACTED] [REDACTED] [REDACTED]. (FOF 21, 25, 28).

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] discussed Student's [REDACTED]
[REDACTED] [REDACTED] School [REDACTED]. (FOF 29). [REDACTED] [REDACTED] School had another meeting

[REDACTED]
[REDACTED]
[REDACTED] (FOF 23).

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] (FOF 35).

[REDACTED] [REDACTED] [REDACTED] Student was placed in a resource
setting for English, math, and social studies, and received additional support and classroom
accommodations for science. (FOF 25, 28). On August [REDACTED], about a week after school
started, Parent was contacted because Student called other students [REDACTED] (FOF 36). About
a week later, on August [REDACTED], Student got into a fight with another student after school and
was suspended for [REDACTED] day. The other student also received consequences. (FOF 37).

On August 30, 2023, an IEP meeting was held to discuss Student's placement in a
resource setting and the need for an updated FBA. The IEP team at that time decided to keep
Student in Student's current educational setting and to conduct an updated FBA. (FOF 38).

On August [REDACTED], while in class, Student was disruptive and refused to listen to the teacher or Student's RBT. While talking to Principal after school about what occurred in the classroom, Student continued to be noncompliant and escalated into violence. Student swatted and slapped Principal's arm; screamed and cursed at Principal; and threatened to punch VP-1 in the face. (FOF 39). Police was called and Student was suspended for [REDACTED] days. (FOF 39).

On September 6, 2023, the IEP team met again to discuss Student's placement and to revise Student's IEP. The IEP team changed Student's resource setting to an FSC setting. (FOF 40). After the September 6, 2023 IEP meeting, Student's 8/07/2023 BIP was revised on September 12, 2023. (FOF 47).

On September [REDACTED], while in an FSC setting with [REDACTED] other special needs students, Student became agitated by the noise a nonverbal special needs child was making and started to destroy property and swear. Although strategies from the 8/07/2023 BIP¹⁶ was employed by an EA and others to de-escalate Student, Student's behavior became increasingly violent, culminating in Student swearing at the nonverbal child, stomping the nonverbal child's foot, and kicking the nonverbal child in the shin. Student was suspended for [REDACTED] days for this incident. (FOF 49).

Upon returning from suspension on September 25, 2023, Student told other students that Student would kill them; called Student's RBT [REDACTED] numerous times; and pushed Student's RBT when RBT tried to stop Student from eloping. Student was suspended for [REDACTED] days. (FOF 52).

¹⁶ It is unclear from the record why the 8/07/2023 BIP was used instead of the 9/12/2023 BIP; however, Petitioners' allegation implicates the 8/07/2023 BIP and Petitioners and Respondent's evidence address the 8/07/2023 BIP.

On September 27, 2023, an MDR was conducted to determine whether Student's misconduct during the [REDACTED] incident was caused by Student's disability or had a direct and substantial relationship to Student's disability or whether it was the direct result of the school's failure to implement Student's IEP. (FOF 54). The MDR team determined that Student's misconduct during the [REDACTED] incident was not a manifestation of Student's disability, nor was it the school's failure to implement Student's IEP. (FOF 56). Immediately after the MDR meeting, an IEP meeting was held on September 27, 2023 to revise Student's IEP. (FOF 57). During the 9/27/2023 IEP meeting, the IEP team discussed Student's need for integrated therapeutic support within a structured behavior program. (FOF 57). The IEP meeting was continued to another day to provide Parent and Student the opportunity to visit the ILC. (FOF 57). On September 29, 2023, Parent and Student visited the ILC for an orientation and completed the necessary forms for Student to attend the ILC. (FOF 58). After the visit to the ILC, the IEP meeting resumed, and Student's placement was changed to a public separate facility. (FOF 59, 60).

There is insufficient evidence to establish that the suspensions were not warranted or that [REDACTED] School suspended Student for other reasons besides giving consequences to Student to address Student's misconducts. The undersigned will not second-guess the school's handling of the investigations or their professional opinion regarding the appropriateness of the consequences when there is no contradictory professional opinion. Parent's disagreement with the consequences is not sufficient. N.S. v. Hawaii, Dept. of Educ., Civil No. 09-00343 SOM/KSC, 2010 WL 2348664, *5 (D.Haw. June 9, 2010) ("The mother's conclusion, without more, does not counter the testimony of the experts who reviewed the reports and determined that services were not necessary.")

Furthermore, Petitioners' argument that "there is no data on [Student] having a 1-1 RBT support," is unpersuasive. Pet. Closing Brief, p. 2, Issue #1. Although Petitioners believe that DOE's reporting of incidents involving Student is incomplete or unsatisfactory, the undersigned is not aware of, and Petitioners have not shown, that there is a legal standard as to how much detail reports must contain. As for the incidents that resulted in suspensions, Student had either and EA or RBT with Student or the incidents occurred after school, during which Student does not have RBT services pursuant to Student's IEP.

Based on the history of Student's numerous misconduct and [REDACTED] School's efforts to address Student's behavior, [REDACTED] School did not repeatedly suspend Student to justify changing Student's setting to an ILC.

(b) Placement in an ILC was Appropriate.

When determining a child's placement, each public agency must ensure that –

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.114(a)(2). See also H.A.R. § 8-60-15. To ensure that a disabled child is educated, to the maximum extent appropriate, with children who are nondisabled, the Ninth Circuit Court of Appeals established the following four-factor balancing test to determine whether a school district has complied with the IDEA's LRE requirement:

- (1) The educational benefits of placement full-time in a regular class;
- (2) The non-academic benefits of such placement;
- (3) The effect the disabled child had on the teacher and children in the regular class; and

(4) The costs of mainstreaming the disabled child.

Sacramento City Unified Sch. Dist. v. Rachel H., 14 F.3d 1398, 1404 (9th Cir.1994). In the State of Hawaii, the continuum of alternative placements include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. H.A.R. § 8-60-16(b)(1); DOE Ex. 126 at 439. In addition, provisions for supplementary services (such as resource room or itinerant instruction) must be provided in conjunction with regular class placement. H.A.R. § 8-60-16(b)(2).

In the instant case, Student was initially placed in a resource setting where Student participated with non-disabled peers in science, homeroom, unstructured activities, and school functions, from August 8, 2023, to September 5, 2023. Student was later moved to a more restrictive environment in a FSC setting, where Student could not participate with non-disabled peers. (FOF 28, 35, 41). Student was moved to a FSC setting after Student was suspended twice, and police was called during the incident that resulted in the second suspension. (FOF 37, 39). Student was placed in an FSC setting from September 6, 2023, to October 3, 2023, when Student was moved to a more restrictive setting in the ILC. (FOF 41, 62). Student was moved to the ILC after Student was again suspended twice. (FOF 49, 52). Student was moved to an ILC setting because “[Student’s] aggressive behaviors require[d] an integrated therapeutic support within a structured program.” (FOF 57, 60, 61). Parent also testified that [REDACTED] School went through the continuum of LRE in placing Student at the ILC, although Parent disagreed that the school looked at Student’s needs:

Q: [...] Did [REDACTED] School go straight from the resource class to the separate public facility, which was the ILC, or was there a placement that happened in between?

A: No, they did not go directly to ILC. As I had mentioned, that [Student] was in the FSC classroom as well.

Q. So the school did go through the LRE continuum then when looking at [Student's] needs?

A. They went through the LRE continuum, not necessarily looking at [Student's] needs according to [Student's] IEP and BIP. [Parent, Tr. Vol. I, p. 60].

Furthermore, Parent signed the consent forms for Student to attend the ILC and agreed to the placement, albeit reluctantly, because Parent felt that Student "was either going to be in school with no education or [Student] be at a facility and get some form, hopefully get some form of education." Parent, Tr. Vol. I, p. 41. (FOF 58). Parent's disagreement with the placement does not mean that the ILC placement was not appropriate because "the mere existence of a difference in opinion between a parent and the rest of the IEP team is not sufficient to show that the parent was denied full participation in the process, nor that the DOE's determination was incorrect."

Laddie C. ex rel. Joshua C. v. Dept. of Educ., 2009 WL 855966 at *4 (D.Haw. Mar. 27, 2009).

Based on the foregoing, Petitioners fail to meet their burden of proof that placement at the ILC was not appropriate.

2. Whether the placement in a fully self-contained classroom ("FSC") in September [REDACTED] was appropriate.

Student's placement in an FSC setting in September [REDACTED] was appropriate. While Student was in a resource setting, Student's inappropriate behaviors needed to be addressed with increasing sternness because Student's misconduct increased in severity. Shortly after Student started school at [REDACTED] School, Student's Parent was contacted because Student called other students [REDACTED] (FOF 36). A week later, Student got into a fight with another student, which resulted in a [REDACTED] day suspension. (FOF 37). After the [REDACTED] day suspension, on August [REDACTED], the IEP team, inclusive of Student, met to discuss Student's placement and decided to keep Student in a resource setting while the school updated Student's FBA. (FOF

38).

The next day, on August [REDACTED], Student was disruptive and noncompliant in class; swatted a teacher's hand; swatted and slapped Principal's arm; threatened to punch a vice principal in the face; and screamed and swore in a courtyard in front of other students and teachers. Student's aggressive behavior was such that the police had to be called. Student was suspended for [REDACTED] days for this incident. (FOF 39).

When Student returned to school, an IEP meeting was held on September 6, 2023, and Student's placement was changed to an FSC setting so that Student could have a "structured setting," which would "provide [Student] with the skills and tools to make appropriate choices and/or decisions." (FOF 40, 43). Parent agreed when Student's placement was changed from a resource setting to an FSC setting that it was appropriate at that time. (FOF 40). Based on the evidence, it was reasonable for [REDACTED] School to move Student to an FSC setting. Moving Student to a FSC setting was appropriate because although Student was receiving support and interventions since starting [REDACTED] School, Student was still having behavioral difficulties. (FOF 45).

3. Whether DOE failed to appropriately follow Student's BIP (dated August 7, 2023) and IEP (dated July 12, 2023) or supervise Student in September [REDACTED] when Student was in a heightened state, which resulted in an increase in behavior that caused physical harm to another student, resulting in Student being suspended.

In September [REDACTED], there was one (1) incident involving harm to another student that resulted in Student being suspended—the [REDACTED] incident. (FOF 49). As stated in this issue, Petitioners are alleging that Student injured a nonverbal special needs child because [REDACTED] School failed to implement Student's 8/07/2023 BIP and 7/12/2023 IEP or failed to supervise Student when Student was in a heightened state. Based on the evidence, Petitioners fail to meet their burden in showing that during the [REDACTED] incident [REDACTED] School

failed to implement or follow Student's 8/07/2023 BIP and 7/12/2023 IEP, or that [REDACTED] [REDACTED] School failed to supervise Student during the [REDACTED] incident.

The Ninth Circuit Court in Van Duyn v. Baker School Dist. 5J held that "when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 815 (9th Cir.2007). "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." Van Duyn, 502 F.3d at 822.

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

During the [REDACTED] incident, [REDACTED] [REDACTED] School did not fail to follow Student's 8/07/2023 BIP. Although the strategy of removing students from the classroom was not followed, school officials present at the [REDACTED] incident were tasked with making quick decisions on how to handle an evolving and unpredictable situation. The undersigned will not second-guess the school officials handling of the situation when there is no credible evidence that their actions were inappropriate. Although the other special needs students were not removed from the classroom, the following strategies from the 8/07/2023 BIP were used:

redirection; offered preferred item; tried to communicate with Student; provided prompts for calming; and increase adult proximity to Student. (FOF 50, 51). Based on the foregoing, [REDACTED] School did not fail to implement Student's 8/07/2023 BIP during the [REDACTED] incident. [REDACTED] School also did not fail to implement Student's 7/12/2023 IEP during the [REDACTED] incident. At the time of the [REDACTED] incident, Student's assigned RBT had resigned, and [REDACTED] School was in the process of looking for a replacement RBT. In the meantime, [REDACTED] School assigned an EA who was familiar with Student to be Student's one-to-one on September [REDACTED]. (FOF 48, 49). Student not having an RBT on September [REDACTED] was a minor discrepancy that did not amount to a material failure to implement Student's 7/12/2023 IEP. Therefore, DOE did not fail to appropriately follow Student's 8/07/2023 BIP and 7/12/2023 IEP. DOE also did not fail to supervise Student during the [REDACTED] incident because Student had a one-to-one EA on that day, and GED Teacher-2 was also present to supervise Student. (FOF 49).

4. Whether the manifestation determination on September 27, 2023 was appropriate when DOE used incorrect information and/or did not go through mediation or due process after the manifestation determination was made.

In this allegation, Petitioners are alleging two (2) issues: (a) the manifestation determination review on September 27, 2023 ("9/27/2023 MDR") was not appropriate because DOE used incorrect information; and (b) the 9/27/2023 MDR was not appropriate because DOE did not go through mediation or due process after the manifestation determination was made. Based on the evidence, Petitioners fail to meet their burden of proof for both issues.

(a) The 9/27/2023 Manifestation Determination Review was Appropriate

The manifestation determination review on September 27, 2023 was appropriate and DOE did not use incorrect information in making its decision. Pursuant to H.A.R. § 8-60-

75(e)(1), when a school holds an MDR to determine if a student's conduct was a manifestation of the student's disability or the department's failure to implement the student's IEP, "the department, the parent, and relevant members of the student's IEP team (as determined by the parent and the department) shall review all relevant information in the student's file, including the student's IEP, any teacher observation, and any relevant information provided by the parents...." In the present case, the following people were present at the 9/27/2023 MDR: Student, Parent, Principal, VP-2, SPED Teacher-2, GED Teacher-2, DES-1, School Counselor, and another counselor. (FOF 54). The relevant members of Student's IEP team were present.

During the 9/27/2023 MDR, DOE reviewed the following information: how Student's disability presented itself at the school; observations by teachers, administrators, counselor; input from Parent and those present at the MDR; Student's ability to know right from wrong; whether Student's IEP was implemented; Student's previous and current assessments; and Student's school records. (FOF 55). [REDACTED] School reviewed the necessary information needed to make an MDR decision.

Although Parent testified during the due process hearing that during the 9/27/2023 MDR meeting, Parent and the school members of the MDR team disagreed about what Student's "disability" was. Parent testified that during the MDR meeting, Parent insisted that Student's disability was [REDACTED] but the other members of the meeting [REDACTED]. Parent, Tr. Vol. I, pp. 39-40. No DOE employee disputes [REDACTED]

[REDACTED] ¹⁷. Student was found eligible for special education and related

¹⁷ [REDACTED]

through a mediation process...[and] [t]he department shall ensure the mediation process [] [i]s voluntary on the part of the parties[.]” H.A.R. § 8-60-60(a) and (b). Although Parent alleges that Parent asked █████ █████ School to engage in mediation, mediation is a voluntary process that █████ █████ School was not required to go through¹⁸. DOE cannot force █████ █████ School to participate in the mediation process. Therefore, there was no violation when mediation was not done after the 9/27/2023 MDR.

Petitioners’ allegation that DOE did not go through due process after the manifestation determination decision was made is without merit. We are currently engaged in due process. When there is an issue with discipline, a parent can file an appeal regarding placement or a manifestation determination. DOE can also file an appeal if it “believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others.” H.A.R. § 8-60-77(a). Filing for due process is discretionary. Petitioners elected to exercise this right by filing the instant due process complaint; and DOE elected not to file for due process. Therefore, the 9/27/2023 MDR was not inappropriate when DOE did not file for due process.

5. Whether the DOE delayed in transitioning Student back to the general education setting at █████ █████ School from the ILC.

DOE did not delay in transitioning Student back to the general education setting at █████ █████ School from the ILC. Initially, Student could have transitioned back to █████ █████ School once Student completed the ILC program. (FOF 65, 92). However, when Student completed the ILC program on or about January █████, Student was not allowed to transition back to █████ █████ School due to the ongoing investigation into the █████ incident. (FOF 88).

¹⁸ SSC and DES-1 do not recall Parent asking for mediation. SSC, Tr. Vol. II, p. 164; DES-1, Tr. Vol. VI, p. 1041.

After the [REDACTED] incident, a Level 1 Threat Assessment was started on November 29, 2023 and was completed on or about December 6, 2023. (FOF 80, 83). On December 6, 2023, Private Psychologist, Principal, VP-2, SSC, DES-1, ILC Counselor, Clinical Psychologist-1, and others met to discuss the Level 1 Threat Assessment. (FOF 83). Based on the results of the Level 1 Threat Assessment, a Level 2 Threat Assessment was warranted, and it was determined that Student could not return to [REDACTED] School due to the threats made toward individuals at [REDACTED] School. (FOF 83).

On January 5, 2024, the director of DOE's Safety, Security, and Emergency Preparedness Branch requested the assistance of TTH Consult. (FOF 85).

On January 10, 2024, an IEP meeting was held to discuss Student's placement, review Student's IEP and the Level 1 Threat Assessment. During the two (2) hour and fifty-seven (57) minute meeting, the team discussed many things, including Student's continued stay at the ILC, whether Student was an imminent danger, and a Level 2 Threat Assessment being done. During the meeting, Private Psychologist, informed the participants that Private Psychologist would be completing his/her updated evaluation of Student in the next few days. (FOF 83, 88).

On January 22, 2024, school officials had a meeting with TTH Consult. (FOF 97, 99). Based on their discussion, TTH Consult opined that [REDACTED] School appropriately employed the Level 1 Threat Assessment and that [REDACTED] School expressed reasonable concerns regarding Student's potential threat; suggested that a forensic assessment or neutral/objective psychological evaluation be conducted; and recommended that a safety plan be established and reviewed before Student returned to [REDACTED] School. (FOF 99).

On January 31, 2024, a Level 2 Threat Assessment meeting was held. During this meeting, the participants, which included Parent, agreed that a forensic psychological assessment

should be done. (FOF 100). On February 7, 2024, Principal informed Parent that Forensic Psychologist would have to meet with Parent on February 22, 2024, and Student on February 21 and 26, 2024 for the forensic psychological assessment. (FOF 106). Forensic Psychologist met with Parent on February 22 and 27, 2024, and met with Student on February 21 and 26, 2024. (FOF 122).

On February [REDACTED], Student threatened to kill [REDACTED] ILC staff workers. (FOF 112). ILC asked Parent to keep Student home from [REDACTED], but Parent refused and sent Student to school on February [REDACTED]. (FOF 112, 113). On February [REDACTED], Student injured SPED Teacher-3's knee and was suspended from [REDACTED] [REDACTED] (FOF 113).

During Student's suspension, Student's BIP was revised on March 1 (FOF 115); Student met with Forensic Psychologist for a third interview/psychological testing on March 5 (FOF 122); and an MDR was conducted for the [REDACTED] incident on March 6. (FOF 116).

On March 13, 2024, an annual IEP meeting was held to review and revise Student's IEP and an MDR meeting was conducted for the [REDACTED] incident. (FOF 117, 118).

On March 14, 2024, Parent and Student missed an appointment with Forensic Psychologist for preliminary feedback and the appointment was rescheduled to March 18, 2024. (FOF 119).

On March 27, 2024, another annual IEP meeting was held to review Student's IEP and determine educational placement. The IEP was not completed on this day and was still not completed as of July of 2024. (FOF 120, 137).

On March 31, 2024, Forensic Psychologist completed the Forensic Risk Assessment. According to the Forensic Risk Assessment, returning Student to [REDACTED] [REDACTED] School was not

recommended at this point. (FOF 122).

On or about April [REDACTED], Student stopped going to the ILC and did not go back to school for the rest of the school 2023-2024 school year. (FOF 124, 125, 126).

Although Student met the criteria to transition back to [REDACTED] School on or about January 12, 2024, DOE's handling of the [REDACTED] incident was reasonable. The investigation into the [REDACTED] incident involved [REDACTED] School, ILC, DOE, Forensic Psychologist, and TTH Consult. The complexity and extremely serious nature of the [REDACTED] incident warranted extending Student's attendance at the ILC and DOE did not delay in transitioning Student back to the general education setting at [REDACTED] School from the ILC.

6. Whether DOE failed to provide services to Student from November 16, 2023 (when an initial Risk and Threat Assessment became necessary) to January 10, 2024.

DOE did not fail to provide services to Student between November 16, 2023, and January 10, 2024. The period between November 16, 2023 (when Student stated during counseling that Student would not have to go back to school if Student stabbed [REDACTED] people) and January 10, 2023 (when an IEP meeting was held to discuss Student's placement and the Level 1 Threat Assessment), there was approximately twenty-seven (27) school days due to the Thanksgiving holiday and Christmas break¹⁹. During this period, Student was provided with appropriate schoolwork that met Student's education needs. (FOF 90). Student also received counseling once a week, daily in-class support, and behavior support as needed from ILC Counselor. (FOF 91).

7. Whether the DOE gave Parent a copy of the March 31, 2024 forensic psychologist's findings and reviewed the forensic psychologist's findings with Parent at any IEP meetings.

¹⁹ See Hawaii State Department of Education 2023-2024 Official School Calendar at <https://www.hawaiipublicschools.org/DOE%20Forms/2023-24calendar.pdf>.

DOE did not fail to give Parent a copy of the Forensic Risk Assessment, which was completed on March 31, 2024. Once DOE received the Forensic Risk Assessment, DOE attempted to schedule an IEP meeting with Parent to go over the Forensic Risk Assessment. (FOF 123). An IEP meeting scheduled for April 10, 2024 was cancelled at the request of Parent and Parent was supposed to get back to the school with suggested dates to reschedule the IEP meeting. (FOF 128). On April 15, 2024, SSC reached out to Parent to reschedule the IEP meeting. (FOF 130). In late April, Parent requested a copy of the Forensic Risk Assessment. See Pet. Closing Brief, Issue #7. On April 21, 2024, SSC informed Parent that Parent had to personally pick up the Forensic Risk Assessment at the school and again asked Parent for Parent's availability to reschedule the IEP meeting. (FOF 131). Petitioners filed the instant due process complaint on May 2, 2024. On May 8, 2024, Parent picked up a copy of the Forensic Risk Assessment. (FOF 132, 133).

On June 18 and 24, 2024, an IEP meeting was held where the Forensic Risk Assessment was referenced but not discussed in detail as Parent and the school members of the IEP team did not agree with the information that was presented in the assessment. (FOF 136). On July 1, 2024, an IEP meeting that was scheduled for that day was canceled because the school did not receive a confirmation from Parent that Parent would be attending the IEP meeting. (FOF 137).

Based on the evidence [REDACTED] [REDACTED] School attempted to schedule an IEP meeting with Parent to go over the Forensic Risk Assessment when [REDACTED] [REDACTED] School received a copy from Forensic Psychologist. When Parent asked for a copy of the assessment in late April, it was immediately made available to Parent for pick up. In addition, Petitioners fail to show how not receiving a copy of the Forensic Risk Assessment before April 21, 2024 amounted to a substantive violation where Parent's participation rights were significantly infringed upon or

there was a loss of educational opportunity for Student. Therefore, Petitioners fail to meet their burden of proof with respect to this issue.

8. Whether Student was forced to stay home without appropriate educational services because the ILC did not have appropriate staffing from March 25, 2024 to May 30, 2024.

Petitioners fail to meet their burden of proof in showing that Student was forced to stay home without appropriate educational services because the ILC did not have appropriate staffing between March 25, 2024 and May 30, 2024. In order for Petitioners to prevail on this issue, Petitioners must show that (1) ILC did not have appropriate staffing between March 25, 2024 and May 30, 2024, and (2) Student did not have appropriate educational services between March 25, 2024 to May 30, 2024 while at home.

When Student was attending the ILC, the ILC had two (2) special education teachers, one (1) educational assistant, one (1) support staff, ILC Counselor, and Student's RBT. (FOF 67). On March 27, 2024, Student attended the ILC. (FOF 121). On or about April [REDACTED], Parent stopped sending Student to the ILC because Parent was concerned about Student's safety due to the [REDACTED] incident involving SPED Teacher-3. (FOF 124). When Parent expressed concerns about Student returning to the ILC, DOE attempted to address Parent's concerns by having SPED Teacher-2 and a district resource teacher teach Student; offered to have [REDACTED] Staff-1 and an educational assistant teach Student; and offered to have SPED Teacher-3 teach Student virtually. (FOF 125). Although SPED Teacher-3 was willing to teach Student in person or virtually, SPED Teacher-3 was transferred to the [REDACTED] school side where Student was not attending. (FOF 125). ILC had the appropriate staffing.

Although Parent testified that Student was kept home after the [REDACTED] incident due to safety concerns for Student, this was Parent's decision; Student was not forced to stay home.

However, while Student was at home, [REDACTED] School continued to provide educational services to Student [REDACTED] School provided Student with a laptop and hotspot to use at home and provided schoolwork to Student in hard copy format as well as electronically through Google Classroom. Parent was also able to contact SPED Teacher-2 if Parent had any questions regarding the schoolwork. (FOF 126). Therefore, Petitioners fail to meet their burden of proof that Student was forced to stay home without appropriate educational services because the ILC did not have appropriate staffing from March 25, 2024 to May 30, 2024.

9. Whether the delay in transitioning Student back to a general education setting has caused Student to regress.

Petitioners fail to meet their burden of proof with respect to this issue. As discussed in Issue 5, DOE did not delay in transitioning Student back to the general education setting in [REDACTED] School. However, even assuming that Petitioners had met their burden of proof in showing that there was a delay in transitioning Student back to a general education setting, there is insufficient evidence to establish that Student suffered regression in Student's behavior and/or academics due to not being able to go back to the general education setting.

When Student completed the ILC program on or about January [REDACTED], but couldn't transition back to [REDACTED] School, the ILC program adapted to Student's needs and continued to provide Student with counseling and educational instruction. (FOF 92). When Student started to decline counseling services in early/mid-January [REDACTED], Student's behavior started to regress. (FOF 91). There is insufficient evidence to show that Student's regression in behavior was due to Student not transitioning back to a general education setting and not because Student stopped attending counseling. Also, based on work that was completed and returned by Student, Student had made progress in Student's academic goals when Student was assessed on April 12, 2024. (FOF 129). Furthermore, as explained in Issue 8, Student was not forced to stay

home without appropriate educational services after April [REDACTED]. When Student stopped going to the ILC, Student was no longer able to receive in-person educational instruction and counseling. If Student regressed in Student's academics, there is insufficient evidence to show whether the cause of the regression was from Student not being in a general education setting or from Student not attending school at all. Based on the foregoing, Petitioners fail to meet their burden of proof in showing that Student regressed because Student's transition back to a general education setting was allegedly delayed.

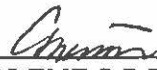
VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not met their burden by preponderance of the evidence that Student was denied a FAPE. As Petitioners have failed to prove their claims, Petitioners' requested remedy is denied.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawaii, August 21, 2024.



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