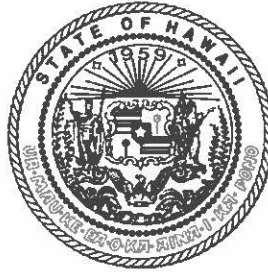


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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAI'I,

Respondents.

DOE-SY2425-024

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
March 24, 25, 27, 2025

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

Petitioners bring forth this case under the Individuals with Disabilities Education Act (hereinafter "IDEA") to allege that the DOE denied Student a free appropriate public education (hereinafter "FAPE") by not adequately evaluating Student, which resulted in Student being found not eligible for special education and related services and thereafter failing to prepare an Individualized Education Program (hereinafter "IEP") that adequately addresses all Student's

¹ Personal identifiable information is contained in the Legend.

needs. Petitioners seek the finding of a denial of FAPE to Student and reimbursement of costs for services that Student required as a result of the alleged denial of a FAPE by the Department of Education, State of Hawai'i.

II. JURISDICTION

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

III. ISSUES PRESENTED

Petitioners assert two issues in their Due Process Complaint (hereinafter "Complaint") to be addressed at the Hearing.

1. Whether the DOE denied Student a FAPE by not adequately evaluating Student, which resulted in Student being found not eligible for special education and related services under the IDEA in or around June 2023.
2. Whether the DOE denied Student a FAPE by failing to adequately address all Student's needs, including occupational therapy (sensory and fine motor) needs and speech-language needs, in the IEP that was developed in October 2024.

Petitioners also requested the following remedies if a denial of FAPE is found:

1. Repayment of all costs for the diagnoses, service providers, therapist consultant fees, and travel expenses associated with the denial of FAPE.²

IV. BACKGROUND

On December 20, 2024, the Department of Education, State of Hawai'i (hereinafter "Respondents" or "DOE") received a Complaint under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the IDEA, from Student, by and through Parent (hereinafter "Petitioners"), by and through their counsel. Respondents submitted a response to Petitioners'

² The Prehearing Order noted that Petitioners are also requesting repayment of attorneys' fees, but as was discussed with the parties during the Hearing, this Hearings Officer does not have authority to award attorneys' fees.

Complaint on January 2, 2025.

On February 6, 2025,³ a prehearing conference was held with Hearings Officer Chastity T. Imamura; Parent and Ann Otteman, Esq. (hereinafter “Ms. Otteman”) on behalf Petitioners; and Current District Educational Specialist (hereinafter “Current DES”) and Darien N. Chow, Esq. (hereinafter “Mr. Chow”) on behalf of Respondents. The due process hearing (hereinafter “Hearing”) was scheduled for March 24, 25, and 27, 2025. Jonathan N. Marchuk, Esq. (hereinafter “Mr. Marchuk”), was later assigned to take over this case from Mr. Chow on behalf of Respondents on March 10, 2025.

Prior to the start of the Hearing, the parties stipulated to the Hearing being conducted via video conferencing pursuant to Hawai‘i Revised Statutes Section 91-9(c). Both parties agreed to the following: a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting. An Order Regarding Video Conference Due Process Hearing was filed on February 6, 2025, which set forth the parameters of the video conference due process hearing.

The Due Process Hearing began on March 24, 2025. Present at the Hearing were Parent and Ms. Otteman, on behalf of Petitioners; Current DES, Former District Educational Specialist (hereinafter “Former DES”), District Resource Teacher, and Mr. Marchuk, on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Parent to testify on March 24, 2025, but Grandparent was unavailable until March 25, 2025. By

³ This prehearing conference took place later than usual, as this case was assigned to the undersigned Hearings Officer on January 29, 2025, after the initial Hearings Officer had an emergency and was unavailable to proceed with the case.

agreement of the parties, Respondents called their first witness. Former Student Services Coordinator (hereinafter “Former SSC”) to testify in the afternoon of March 24, 2025. On March 25, 2025, Petitioners called Grandparent to testify and rested their case-in-chief. Respondents proceeded with the rest of their case on March 25, 2025 and called Former Vice Principal (hereinafter “Former VP”), Speech-Language Pathologist (hereinafter “SLP”), Current Student Services Coordinator (hereinafter “Current SSC”), and Current Occupational Therapist (hereinafter “Current OT”). On March 27, 2025, Respondents called General Education Teacher (hereinafter “GE Teacher”) and Special Education Teacher (hereinafter “SPED”) and rested their case. Petitioners requested to recall Parent to address an issue that came up during Respondents’ case, and over Respondents’ objection, Petitioners were allowed to recall Parent. Respondents requested the opportunity to present sur-rebuttal, which was denied by this Hearings Officer. The Hearing concluded on March 27, 2025.

Both parties requested the ability to provide written closing arguments with the assistance of transcripts by the court reporter. Due to the timing of the conclusion of the Hearing and the anticipated date of the receipt of the prepared transcripts, Respondents requested another extension of the decision deadline to allow the transcripts to be completed and the parties to submit written closing briefs. Based on the nature of this case, the decision deadline was extended for a short (three and a half weeks) period to allow for the transcripts and briefs to be submitted. The new decision deadline is May 2, 2025. The deadline for written closing briefs was April 21, 2025. Both parties submitted their respective closing briefs by the deadline.

Each party submitted their exhibits for the Hearing by the disclosure deadline of March 17, 2025. The parties reviewed the exhibit and witness lists provided by the opposing party and

neither party had any objections to each other's exhibits. Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case and that prior to the conclusion of the Hearing, this Hearings Officer would review the exhibits that had been received into evidence. On March 27, 2025, a List of Exhibits Received at Due Process Hearing was filed with the final list of exhibits submitted and received by the parties for consideration in this Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-051; Exhibit 2, pages 052-054; Exhibit 3, pages 055-071; Exhibit 4, pages 072-074; Exhibit 5, pages 075-094; Exhibit 10, pages 102-121; Exhibit 11, pages 122-126; Exhibit 12, pages 128-137; Exhibit 13, pages 138-139; Exhibit 14, pages 140-174; and Exhibit 15, page 175.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 6, pages 0016-0020; Exhibits 8-9, pages 0036-0042; Exhibits 11-12, pages 0046-0052; Exhibits 17-19, pages 0061-0065; Exhibit 21, pages 0067-0074; Exhibits 24-32, pages 0078-0100; Exhibits 35-37, pages 0105-0143; Exhibit 40, pages 148-151; Exhibits 46-48, pages 0158-0164; Exhibit 50, pages 0166-0171; Exhibits 53-58, pages 0175-0228; Exhibit 63, pages 0235-0236; Exhibits 65-71, pages 0238-0255; Exhibits 83-84, pages 0296-0315; Exhibit 104, pages 0411-0416; Exhibit 140, pages 0534-580; Exhibits 176-177, pages 0675-0716; Exhibit 191, pages 0784-0785; Exhibits 549-550, pages 2217-2219; and Exhibit 556, a video recording dated October 21, 2024.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding,⁴ the undersigned Hearings Officer renders the following

⁴ Although all testimony and evidence presented in this case were reviewed, only relevant

findings of fact, conclusions of law and decision.

V. FINDINGS OF FACT

Student's background

1. When Student was [REDACTED] years old, Parent began to notice that Student was behind on certain milestones that children reach during their [REDACTED] development. Parent noticed that Student had difficulty with self-soothing, fine motor skills, and speech delays. Student's primary care physician also informed Parent that Student likely had speech delays when Student was around [REDACTED] months old and referred Parent to seek out [REDACTED] services. Testimony of Parent, Transcript of Proceedings, Volume 1, page 12, line 15, through page 27, line 18 (hereinafter referenced as "Tr.V1, 12:15-27:18").
2. When Student was [REDACTED], Grandparent noticed that Student had high activity levels, would run and crash into things, and would chew on things much more than other children. Grandparent also observed that Student had speech delays which would sometimes lead into frustration and tantrums due to Student's inability to communicate. Testimony of Grandparent, Tr.V2, 184:14-186:21.
3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Testimony of Parent, Tr.V1, 75:13-76:1; Testimony of Grandparent, Tr.V2, 182:17-183:22, 191:18-20.
4. When Student was [REDACTED] years old, Parent received a State of Hawai'i Department of

information is included in this Decision.

Health [REDACTED] evaluation (hereinafter “[REDACTED] Evaluation”). The [REDACTED] Evaluation noted that Student has difficulty with change in routines and a strong need to pinch or have oral input to calm down. The [REDACTED] Evaluation noted that Student would benefit from occupational therapy to support Student’s sensory processing needs to explore ways to calm or regulate. Testimony of Parent, Tr.V1, 30:6-18; R-Ex.6, p.0019.

5. Student was eligible for [REDACTED] services through the State of Hawai‘i, however due to COVID, the services offered were only going to be through telehealth. Parent instead opted to send Student to in-person services through a hospital program with Parent’s medical insurance. Testimony of Parent, Tr.V1, 30:25-32:14.
6. Parent also took Student for a psychological evaluation with 2022 Evaluator in June 2022. 2022 Evaluator prepared a report indicating that Student had signs of [REDACTED] [REDACTED] and [REDACTED] [REDACTED], but did not diagnose Student with either disability. Testimony of Parent, Tr.V1, 27:19-29:17, 32:16-34:14.
7. In July 2022, Student was taken to Health Center by Parent for concerns with defiant and physically aggressive behaviors and was seen by 2022 Evaluator. 2022 Evaluator noted that Student likely had an [REDACTED] disorder and was also monitoring Student for [REDACTED] and [REDACTED]. R-Ex.8, p.0036-0039; R-Ex.9, p.0040-0042; *see also* P-Ex.5, p.80, 88; R-Ex.21, p.0068; R-Ex.26, p.0083.
8. In October 2022, Student had begun occupational therapy regarding Student’s sensory processing needs. Treatment notes indicated that Student has high activity levels, seeks movement, and sensitivity in visual and auditory processing. R-Ex.11, p.0046-0047.
9. In January 2023, Parent took Student to Pediatrician due to Parent’s concerns with

Student's sensory processing issues and a possible diagnosis of [REDACTED] or [REDACTED].

Pediatrician noted that Student showed some signs of [REDACTED], although Pediatrician believed it was unlikely. Pediatrician diagnosed Student with [REDACTED]

[REDACTED] and also noted that Student showed signs of [REDACTED], but Pediatrician did not offer the [REDACTED] diagnosis due to the [REDACTED] age of Student. Pediatrician did recommend that Student return in one year to determine whether a diagnosis of [REDACTED] would be appropriate. Testimony of Parent, Tr.V1, 35:1-36:10; R-Ex.12, p.0051.

10. In April 2023, Parent requested an initial evaluation from the DOE to determine if Student would qualify for special education and related services under the IDEA.

Testimony of Parent, Tr.V1, 36:18-37:10; Testimony of Former SSC, Tr.V1 138:1-11.

Student's June 2023 evaluation

11. A student focused team (hereinafter "SFT") meeting was held on April 18, 2023 to determine how the initial evaluation for Student would be conducted. The SFT consisted of Parent, Former SSC, DOE Psychologist, Behavioral Health Specialist (hereinafter "BHS"), Former Occupational Therapist (hereinafter "Former OT"), a speech-language pathologist, a district resource teacher, a general education teacher, a special education teacher, and an [REDACTED] behavioral health specialist. R-Ex.17, p.0061.
12. The SFT discussed Parent's concerns with Student's sensory issues and potentially having [REDACTED] and [REDACTED] diagnoses. During the discussion, Parent provided the team with information from Pediatrician and informed the team about a report completed by 2022 Evaluator regarding the potential diagnoses. Parent also provided examples of concerns of Student's oral sensory seeking behaviors, behavior concerns relating to tantrums and emotional regulation, physical aggression with [REDACTED], frustration

intolerance, and other social concerns. Testimony of Parent, Tr.V1, 38:2-7; R-Ex.18, p.0062-0064.

13. The SFT determined that Student's initial evaluation would consist of an observation by BHS, a fine motor assessment, a developmental/cognitive "interview," and a pre-academic assessment. Testimony of Former SSC, Tr.V1 141:1-9; R-Ex.18, p.0064; *see also* R-Ex.19, p.0065.
14. Student's developmental/cognitive assessment was completed by DOE Psychologist on May 20, 2023. DOE Psychologist's entire assessment consisted of a brief review of Student's [REDACTED] services records, reports by 2022 Evaluator,⁵ and a single telephone interview using an assessment tool with Parent on May 11, 2023. Testimony of Parent, Tr.V1, 38:11-19; R-Ex.21, p.0067-0074.
15. DOE Psychologist's assessment with Parent did not include the checklist/assessment with Student's other parent [REDACTED], despite [REDACTED] being heavily involved in Student's care. Testimony of Grandparent, Tr.V2, 189:21-190:7; R-Ex.21, p.0069.
16. DOE Psychologist did not meet or observe Student as part of the developmental/cognitive assessment conducted in May 2023. Testimony of Parent, Tr.V1, 40:20-41:1R-Ex.21, p.0067-0074.
17. DOE Psychologist's assessment determined that Student scored in the below average range for social-emotional and cognitive parts of the assessment. DOE Psychologist also noted that Student has challenges with attention, pre-academic skills, social-emotional

⁵ It does not appear that Home School received a copy of 2022 Evaluator's 2022 report regarding Student's possible [REDACTED] and [REDACTED] concerns, but Home School received copies of 2022 Evaluator's behavioral intake reports that diagnosed Student with [REDACTED] with monitoring of [REDACTED] and [REDACTED]. *See* Testimony of Parent, Tr.V1, 111:4-11; Testimony of Former SSC, Tr.V1, 139:14-140:6, 155:20-25; R-Ex.8, p.0036-0039.

skills, and may possibly have [REDACTED]. R-Ex.21, p.0069-0072.

18. Student's fine motor assessment conducted by Former OT consisted of a records review, information from the SFT meeting on April 18, 2023, a developmental assessment for fine motor skills, and an observation of Student's fine motor skills on May 23, 2023. R-Ex.24, p.0078.
19. While Student's history demonstrated concerns with social-emotional development and adaptive behavior, Former OT chose to only conduct the fine motor subdomain portion of the physical development assessment. It is unclear why Former OT did not conduct any other portions of the assessment that were available, such as social-emotional development or adaptive behavior. R-Ex.24, p.007; *see also* Testimony of Current OT, Tr.V2, 286:4-25.
20. Former OT's report did not include an in-depth review of the tests/activities that were done with Student or the scores Student received for each portion of the test, but did provide a total score of [REDACTED], which was noted to be an average score. Former OT did provide notes on the informal observation of Student's fine motor skills, which provided information on how Student was able to perform different fine motor activities. R-Ex.24, p.0078-0079.
21. Student's scores for the fine motor assessment reflected that Student's performance was average and that Student demonstrated functional fine motor skills to access the classroom environment. Suggestions were made for Student to receive sensory or movement breaks or something to address Student's oral sensory input needs. R-Ex.24, p.0079.
22. Student's observation was conducted by BHS over a [REDACTED] minute period using an

interval technique, where only three seconds of each thirty second period was observed to determine Student's behaviors. No other students were in the room at the time of the observation and the observation was done while Student's academic assessment was being conducted. No maladaptive behaviors were observed during Student's observation and Student was determined to display appropriate behavior for 100% of the time that Student's behaviors were being recorded. R-Ex.25, p.0080.

23. Student displayed a need for movement or sensory breaks during the observation session, but BHS noted that Student had appropriate responses to the assessor and appropriate transition movement behaviors. R-Ex.25, p.0080-0081.
24. Student's academic assessment was conducted by Former SSC using a review of Student's records and an assessment tool. Former SSC noted that Student had occasionally provided rapid, nonsensical answers to questions and when offered movement breaks, Student was able to perform better on the task. R-Ex.26, p.0082-0089.
25. Student's scores for the academic assessment reflected that Student had average skills for school readiness and expressive skills. The school-readiness scores reflected Student's familiarity and/or knowledge of colors, letters, numbers/counting, size/comparisons, and shapes. The expressive skills score reflected Student's familiarity and/or knowledge of direction/position, self/social awareness, texture/material, quantity, and time/sequence. R-Ex.26, p.0085-0088.
26. On June 19, 2023, the SFT met again to discuss the results of the assessment and determine Student's eligibility for special education and related services. The SFT reviewed the categories of [REDACTED] (hereinafter "[REDACTED]") and [REDACTED] (hereinafter "[REDACTED]"). The team did not review the

eligibility criteria for [REDACTED] for Student. Testimony of Former SSC, Tr.VI, 161:13-162:12; R-Ex.28, p.0091-0092; R-Ex.29, p.0093-0094.

27. Student did not meet any of the criteria for [REDACTED]. Testimony of Former SSC, Tr.VI, 145:3-13; R-Ex.29, p.0093-0094.
28. For the [REDACTED] eligibility, the SFT partially completed the eligibility form, noting that Student did meet the criteria of having a [REDACTED], or a [REDACTED] [REDACTED]. The SFT then determined that Student did not show evidence [REDACTED]. The portion of the worksheet completed by the SFT that also questioned whether Student showed [REDACTED] [REDACTED] [REDACTED] [REDACTED] was not completed. R-Ex.28, p.0091-0092.
29. Despite Student's notable sensory concerns and noted signs of inattentiveness in Student's history, the SFT determined that Student was not eligible for special education and related services under the IDEA under [REDACTED] or [REDACTED]. R-Ex.30, p.0095-0096; R-Ex.31, p.0097.
30. At no time after the SFT determined that Student was not eligible for special education and related services, did anyone tell Parent that Parent could request an independent educational evaluation (hereinafter "IEE") from the DOE. Testimony of Parent, Tr.VI, 41:12-42:17, 89:15-19, 121:18-122:21.
31. Parent did receive the forty-three page Procedural Safeguards Notice from the DOE which does describe a parent's right to request an IEE from the DOE on pages 5-6. Testimony of Parent, Tr.VI, 89:24-91:12; R-Ex.140, p.0537-0580.

32. The standard practice of the DOE regarding the Procedural Safeguards Notice is to provide the copy of the booklet to parents prior to meetings and/or subsequent to meetings and at the start of a meeting, the administrator will ask the parents if they have any questions or need them to go over any portions of the Procedural Safeguards Notice. Explanations are only provided to parents when they ask for something about the Procedural Safeguards Notice. Testimony of Former SSC, Tr.VI, 171:2-9; Testimony of Former VP, Tr.V2, 203:21-206:12.
33. Parent did not request an IEE from the DOE at any point after the June 2023 eligibility meeting prior to May 2, 2024. Parent verbally expressed dissatisfaction with the team's evaluation and decision regarding Student's ineligibility for special education and related services, but did not do so in writing until that date. Testimony of Parent, Tr.VI, 112:4-113:9.

Student's private services

34. In July 2023, Parent referred Student to Private Therapy Company for occupational therapy treatment based on Student's fine motor delays and challenges with sensory processing. R-Ex.32, p.0098-0100.
35. The Private Therapy Company's report noted that Student presents with differences in the way Student processes and responds to sensation, which in turn affects Student's attention, regulation and activity levels. Student was also observed to have difficulty with transitions, and daily routines are easily affected by Student's difficulty with processing sensory input. Student was also observed to have difficulty with attention and regulation, which affect Student's ability to participate in age-appropriate fine and visual motor activities. R-Ex.32, p.0098.

36. Student's insurance provider does not provide coverage for Student to receive treatment for sensory processing difficulties, so Parent contracted with Private Therapy Company to provide occupational therapy for Student. Student received [REDACTED] occupational therapy sessions per week initially, and then increased to [REDACTED] occupational therapy sessions per week from Private Therapy Company at One Hundred Forty-Four Dollars (\$144.00) per session from September 15, 2023 through October 31, 2024. Private Therapy Company also conducted assessments and evaluations as part of Student's program, which were included in the payments by Parent to Private Therapy Company. Testimony of Parent, Tr.V1, 45:14-47:16, 55:17-18; P-Ex.1, p.001-048.
37. From 2023 to 2024, Private Therapy Company worked with Student on goals for daily living skills, such as toileting, feeding, dressing, and hygiene; fine motor skills, such as completing tabletop activities with peers; play skills, such as independently engaging with peers; and regulation, such as transitioning between activities and remaining emotionally regulated. R-Ex.32, p.0098-0100.
38. Currently, Private Therapy Company works with Student on speech-language and feeding therapy to encourage Student to eat a variety of foods or regulate Student's behaviors when presented with foods that Student does not like. R-Ex.35, p.0105-0106.
39. Student has met or mastered most occupational therapy goals that were outlined by Private Therapy Company during Student's participation in services there. Testimony of Parent, Tr.V1, 55:9-16; R-Ex.40, p.0148-0150.
40. In September 2023, Parent enrolled Student in a part-time private preschool program. Testimony of Parent, Tr.V1, 53:4-9, 93:16-94:2; R-Ex.47, p.0159.
41. In January 2024, Student was taken to [REDACTED] for a private evaluation to determine

whether Student could be diagnosed with [REDACTED] or [REDACTED]. Parent was referred to Private Evaluation Center by a friend. Testimony of Parent, Tr.V1, 42:23-44:11; P-Ex.2-4, p.052-074.

42. Parent did not investigate finding a company or a specialist in Hawai'i to do a full evaluation of Student because Parent had been told that Pediatrician was "the person" to see for this type of evaluation and since Pediatrician did not diagnose Student, Parent felt that no other specialists in Hawai'i would be successful. Testimony of Parent, Tr.V1, 44:12-21, 88:4-17.
43. Private Evaluation Center conducted a week-long comprehensive evaluation with Student in January 2024, which consisted of Student's records review; interviews with Parent, Student's other parent, and Grandparent; an in-office play observation; and several commonly used assessment tools in evaluating children.⁶ Testimony of Parent, Tr.V1, 48:23-49:22; P-Ex.14, p.140-174; R-Ex.36, p.0107-0141.
44. Private Evaluation Center charged Two Thousand Eight Hundred Dollars (\$2800.00) for the multi-day testing sessions with Student for the comprehensive evaluation. Testimony of Parent, Tr.V1, 49:25-50:10; P-Ex.15, p.175.

Student's August 2024 evaluation

45. In May 2024, an SFT meeting was held to determine whether another initial evaluation would be conducted with Student to determine Student's eligibility for special education and related services under the IDEA. Parent had retained the services of Ms. Otteman

⁶ These included the Kaufman Brief Intelligence Test, Second Edition; the Vineland Adaptive Behavior Scale, Third Edition; the Kaufman Test of Educational Achievement, Third Edition; the Behavior Assessment System for Children-Third Edition; the [REDACTED] Rating Scales; and the [REDACTED] Observation Schedule, Second Edition.

and an advocate to accompany Parent to the SFT meeting. Testimony of Parent, Tr.V1, 50:11-51:24; R-Ex.46, p.0158.

46. Parent expressed many of the same concerns about Student's sensory processing and behaviors, as well as speech-language and occupational therapy concerns.⁷ R-Ex.47, p.0159-0163.
47. The SFT determined that an initial evaluation would be conducted with Student, consisting of a cognitive assessment, a speech-language assessment, an observation, an academic assessment, a fine motor assessment, an emotional/behavioral assessment, and an adaptive assessment. R-Ex.48, p.0164.
48. The assessments conducted as part of the initial evaluation of Student in 2024 were, as a whole, much more comprehensive than the assessments conducted in 2023, despite Parent noting that Student's behaviors have improved, but Student still having concerns with Student's sensory processing and Student's behaviors.⁸ Compare R-Ex.18, p.0062-0064; R-Ex.21, p.0067-0074; R-Ex.24, p.0078-0079; R-Ex.25, p.0080-0081; with R-Ex.47, p.0159-0163; R-Ex.50, p.0166-0171; R-Ex.53, p.0175-0182; R-Ex.54, p.0183-0191; R-Ex. 55, p.0192-0197; R-Ex.56, p.0198-0213; R-Ex.57, p.0214-0255; R-Ex.58, p.0226-0228.
49. For example, the developmental/cognitive assessment performed by DOE Psychologist in

⁷ Parent also provided the team with concerns regarding Student's [REDACTED] behaviors regarding [REDACTED] and [REDACTED] therapy concerns, but this Hearings Officer finds that these concerns are not necessarily educationally-relevant concerns for purposes of this decision. R-Ex.47, p.0161.

⁸ This Hearings Officer notes that the pre-academic and academic assessments conducted in 2023 and 2024 by Former SSC were comparably thorough, but the number of assessments and the depth of the assessments conducted in 2024, especially the developmental/cognitive assessment, were substantially more thorough than the ones conducted in 2023.

2024 consisted of an in-person assessment of Student instead a telephone interview with Parent; the fine motor assessment included a sensory processing assessment; and the observation of Student consisted of a [REDACTED] minute observation with specific notes and observations about Student's behaviors throughout the observation, rather than a [REDACTED] minute interval-based observation. R-Ex.21, p0067-0074; R-Ex.25, p.0080-0081; R-Ex.57, p.0214-0225; R-Ex.58, p.0226-0228.

50. The fine motor assessment results were similar to the results obtained in the 2023 assessment, but contained a more in-depth analysis of Student's sensory processing concerns and noted that Student has functional self-regulation skills to allow Student to perform in a familiar environment but may have difficulty in new environments or unpredictable settings, at which time Student may become easily overwhelmed or be more distracted. R-Ex.53, p.0176-0182.
51. Student's 2024 pre-academic assessment reflected that Student continued to have average skills to be able to access Student's education in the classroom environment. R-Ex.54, p.0183-0191.
52. Student's adaptive behavior assessment reflected that Student scored in the 'below average' range for areas of Interpersonal Relationships; Play and Leisure; Coping Skills; Receptive/Expressive/Written Communication; Personal/Domestic/Community Daily Living skills; and Fine/Gross Motor skills. BHS noted that Student's significant delays in these areas may affect Student's ability to focus and attend during classes and complete assignments. R-Ex.55, p.0192-0197.
53. Student's emotional/behavior assessment reflected that while Student continued to struggle in some areas, Student has demonstrated the ability to function and perform well

on transitions and non-preferred activities in a structured setting, and can follow classroom routines independently, participate in class activities, and socialize with peers. R-Ex.56, p.0198-0213.

54. Student's speech-language assessment conducted on June 12, 2024 determined that Student scored in the average or above-average range for most speech-language skills; however, the report also noted that Student has difficulty with maintaining conversation in a socially acceptable manner, as well as the pragmatic use of language and inconsistent intelligibility at the word and phrase level. R-Ex.60, p.166-171.
55. Another SFT meeting was held on August 5, 2024 to review the evaluation results and determine Student's eligibility for special education and related services. At the August 5, 2024 meeting, the team reviewed the eligibility categories of [REDACTED], [REDACTED] [REDACTED]. R-Ex.65, p.0238-0239; R-Ex.66, p.0240-0241; R-Ex.67, p.0242-0243; R-Ex.68, p.0244-0245; R-Ex.69, p.0246-0248.
56. The team determined that Student was eligible for special education and related services under the category of [REDACTED] because Student displayed the behaviors associated with the [REDACTED] diagnosis before the age of [REDACTED], such as having [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. R-Ex.65, p.0238-0239.
57. The team also determined that Student was eligible for special education and related services under the category of [REDACTED] because Student had [REDACTED] and Student

demonstrated behaviors including having [REDACTED]

[REDACTED]. R-Ex.68, p.0244-0245.

58. The criteria for the [REDACTED] eligibility category that was used to determine Student's eligibility was the same criteria that was also raised as concerns by Parent and the evaluation when the IEP team failed to complete the eligibility worksheet during the June 2023 determination that Student was not eligible for services. R-Ex.28, p.0091-0092; R-Ex.68, p.0244-0245.

Student's IEP development

59. In August, September, and October 2024, the IEP team met to develop an IEP for Student (hereinafter referred to as "IEP-10/31/2024"). At the time that the IEP was developed, Student had enrolled in Current Home School. R-Ex.83, p.0296.
60. During the IEP-10/31/2024 development process, Current Home School had received a draft IEP from Former Home School. Based on some discussions at the September 2024 meeting, the team decided to have a speech-language pathologist and occupational therapist conduct observations of Student to determine whether any additional services or supports would be necessary for Student. Testimony of Current SSC, Tr.V2, 213:10-215:6.
61. SLP conducted the speech-language observation for Student and reviewed the speech-language assessment conducted with Student in June 2024. SLP observed that Student was verbal, could self-advocate, could ask and answer questions, and conversed normally with other children in the classroom. SLP determined that Student did not need speech-language services because Student had functional communication in the school setting.

Testimony of Current SSC, Tr.V2, 220:17-18; Testimony of SLP, Tr.V2, 238:7-24.

62. Current OT conducted an occupational therapy observation of Student during the development of the IEP-10/31/2024. Current OT concluded that based on the previous assessments and observations of Student, as well as Current OT's observation of Student, Student did not require occupational therapy services to access Student's education.

Testimony of Current OT, Tr.V2, 268:2-269:18.

63. The IEP-10/31/2024 used the results of the initial evaluation in 2024 to ascertain Student's strengths and needs for Student's education. R-Ex.83, p.0305-0307.
64. Student's IEP team determined that Student did not require speech-language or fine motor occupational therapy through Student's IEP since Student's abilities in those areas are comparable to the abilities of Student's nondisabled peers. R-Ex.83, p.0298-0301; R-Ex.84, p.0314.
65. Student's IEP-10/31/2024 addresses Student's needs for emotional regulation and social needs through three health goals that address Student's needs in positive interpersonal relationships, emotional regulation, and maintaining focus and attention. Student was also placed in the general education setting so that Student can benefit from access to and modeling from nondisabled peers. R-Ex.83, p.0305-0307.
66. The IEP-10/31/2024 addresses Student's needs for sensory processing by providing a number of appropriate supplemental aids and supports for Student to access if Student is having difficulty while in school. These include: body movements while completing tasks, flexible seating options, visual/verbal priming for pending transitions, visuals for self-calming strategies, access to a calming area, social stories to teach appropriate interactions/behaviors, movement breaks when sitting or working for longer periods of

time, and sensory input accommodations. R-Ex.83, p.0303, 0308; R-Ex.84, p.0314.

67. The IEP-10/31/2024 provides Student with special education and related services for one hundred eighty minutes per week. R-Ex.83, p.0308.

Student's progress at Current Home School

68. Student is [REDACTED] years old and has attended Current Home School since August [REDACTED].

Testimony of Parent, Tr.V1, 124:1-9; Testimony of GE Teacher, Tr.V3, 312:1-2.

69. Both GE Teacher and SPED have Student in their class at Current Home School when Student attends school. Testimony of GE Teacher, Tr.V3, 311:22-

70. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Testimony of Parent, Tr.V1, 124:10-20, 125:13-126:21; Testimony of GE Teacher, Tr.V3, 312:7-22; Testimony of SPED, Tr.V3, 327:20-328:3.

71. [REDACTED]
[REDACTED] Student also attends occupational therapy at Private Therapy Center [REDACTED]
[REDACTED]. Testimony of Parent, Tr.V1, 124:13-125:9.

72. Student is in the general education setting at Current Home School and there are no other students in GE Teacher's class that have IEPs. Student receives Student's IEP-10/31/2024 special education minutes from SPED in GE Teacher's classroom, but SPED is not in GE Teacher's classroom every day that Student attends. Testimony of GE Teacher, Tr.V3, 320:15-19, 321:19-322:5; Testimony of SPED, Tr.V3, 326:10-327:13.

73. Student has adjusted to Current Home School's schedule and routines and has not had any emotional outbursts or behavioral incidents for the 2024-2025 school year. *See generally*, Testimony of GE Teacher, Tr.V3, 312:23-321:9; Testimony of SPED, Tr.V3, 326:10-348:5.
74. Student is excelling in Current Home School and has demonstrated no difficulties in speech-language or occupational therapy that would warrant any concerns or that are not being addressed for Student to continue accessing Student's education. Testimony of GE Teacher, Tr.V3, 312:23-315:8; Testimony of SPED, Tr.V3, 328:4-332:9, 336:1-343:25.

VI. CONCLUSIONS OF LAW

Burden of Proof

As the party seeking relief in an administrative hearing challenging an IEP under IDEA, Petitioners have the burden of proving the allegations of a denial of FAPE. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 819-820 (9th Cir. 2007). The IDEA's procedural safeguards have addressed the DOE's natural advantage in information and expertise in IDEA cases and, as such, do not require a burden-shifting provision in administrative proceedings for the school districts to prove that the IEPs designed for students are appropriate. *Schaffer*, 546 U.S. at 60-61, 126 S.Ct. at 536-537, 163 L.Ed.2d 387.

IDEA framework

The purpose of the IDEA is to "ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs." *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91, 102 S.Ct. 3034, 3037-3043 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F.Supp.2d 89, 98 (D. D.C.

2008) (citing 20 U.S.C. §1400(d)(1)(A)). A FAPE includes both special education and related services. H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

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

Only children with at least one qualifying disability are entitled to services under the IDEA, which lists ten categories of disability. *Miller v. Charlotte-Mecklenburg Schools Board of Education*, 64 F.4th 569, 572 (4th Cir. 2023); 20 U.S.C. §1401(3)(A). Parents have several procedural protections under the IDEA, such as initiating a request for an initial evaluation to determine whether their child has a qualifying disability and requesting an independent educational evaluation at public expense if they disagree with an evaluation obtained by the school district. *Id.*

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

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

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

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

A. Petitioners have proven that the DOE denied Student a FAPE by failing to adequately evaluate Student and/or determine Student's eligibility for special education and related services

Petitioners' first argument is that the DOE failed to properly evaluate Student in June 2023, which resulted in the IEP team determining that Student was not eligible for special education and related services under the IDEA. Based on the evidence presented at the Hearing, this Hearings Officer concludes that Petitioners have proven that the June 2023 evaluation and eligibility determination of Student was not completed adequately, resulting in a denial of FAPE to Student.

Under the IDEA, a school district is required to conduct a full and individual initial evaluation that ensures that the child is assessed for "all areas of suspected disability." *Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1109-1110 (9th Cir. 2016); 20 U.S.C. §1414(a)(1), (b)(3). A disability is suspected when the district has notice that the child has displayed symptoms of that disability or may be triggered by the informed suspicions of outside experts. *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir 1996); *N.B. v. Hellgate Elementary School District*, 541 F.3d 1202 (9th Cir. 2008). In conducting the initial evaluation of a child, a school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine both whether the child is a child with a disability and the content of the child's IEP if the child is found eligible. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9th Cir 2014); 34 C.F.R. §300.306. The IDEA provides that the IEP team and other qualified professionals, as appropriate, shall review existing data on the child including current classroom-based, local, or State assessments to identify what additional data, if any, are needed to determine eligibility or other needs. *Id.* at 853.

The Ninth Circuit Court of Appeals, in *Timothy O.*, emphasized the importance of testing children with suspected [REDACTED] in [REDACTED] development because studies have shown that [REDACTED] diagnosis and intervention is critical for the education of children with [REDACTED]. 822 F.3d at 1108. In *Timothy O.*, the parents of the student requested an initial evaluation of their child after noticing that their child had displayed symptoms of a [REDACTED] disorder [REDACTED]. Under the IDEA, school districts have been required to provide services to children with a broad category of disabilities, including those with [REDACTED] behavior, regardless of whether they had been formally diagnosed with [REDACTED]. *Id.* at 1113. In that case, the Court noted that during the student's initial evaluation, the school district ordered assessments in the areas of speech-language, academic/pre-academic, sensory-motor development, communication development and health issues. The student was not given any assessments under the category of [REDACTED], which is the category that covered disorders on the [REDACTED]. *Id.* at 1114. The school district did not take any additional steps to assess the student for [REDACTED], despite seeing [REDACTED] types of behaviors. The Ninth Circuit found that the school district failed to assess the student in "all areas of suspected disability" by not conducting any assessments that would look at [REDACTED] as a possible disabling condition. *Id.* at 1119.

In this case, after Parent requested that Student be evaluated for IDEA eligibility, the IEP team met on April 23, 2023 to discuss conducting an initial evaluation of Student. *FOF 11*. The team looked at Student's [REDACTED] intervention reports, behavioral/psychological intake reports from 2022 Evaluator, insurance-based occupational therapy notes, and progress notes from Pediatrician to determine that an initial evaluation would consist of a fine motor assessment, a developmental assessment, a pre-academic assessment, and an observation of Student. *FOF 13*. All the reports that the team examined noted that Student had sensory issues and behavioral

issues that are commonly associated with having [REDACTED]. *FOF 4, 6, 7, 8, 9.* The notes from the meeting also noted that at doctors that assessed Student saw behaviors that are also commonly associated with [REDACTED], although Student did not have an [REDACTED] diagnosis. *FOF 12.* Previous assessments of Student also noted that Student had sensory processing concerns and emotional regulation. *FOF 4, 8, 9.*

The April 2023 SFT determined that Student would receive a developmental/cognitive assessment done via interview, a fine motor assessment, a pre-academic assessment, and an observation. *FOF 13.* None of the assessments described addressed Parent's suspected diagnoses of either [REDACTED] or [REDACTED]. The fine motor assessment did not include a separate sensory processing assessment to determine whether Student's sensory processing concerns would affect Student's ability to participate in school. *FOF 18-20.* No adaptive behavioral assessment or emotional/behavioral assessments were done to determine whether Student could have additional [REDACTED] behaviors of concern that needed to be addressed.

Student's initial evaluation assessments and eligibility determination in June 2023 were clearly done less thoroughly than Student's second initial evaluation assessments and eligibility determination in August 2024. *FOF 48.* The number of assessments conducted and the depth of the 2024 assessments is far better than the evaluation done with Student in 2023. *See e.g. FOF 14-23, FOF 49-54.* It is unclear whether this was due to Student's [REDACTED] age and the non-diagnosis of Student's potential [REDACTED] and [REDACTED] disabilities or the determinations of the individual assessors to conduct their assessments in that manner. This Hearings Officer notes in particular that while all the previous reports had mentioned Student's tantrums, aggressive behaviors, and attention issues, the developmental/cognitive assessment was conducted solely

over the telephone with only one of Student's parents and no other parent or caregiver. *FOF 14-16.*

As a result of the 2023 evaluation conducted by the DOE, Student was not determined to be eligible for special education and related services. *FOF 29.* The team did not even consider Student's eligibility under the [REDACTED] category and the team did not complete the analysis of Student's eligibility under [REDACTED]. *FOF 26, 28.* The results of Student's individual assessment scores in 2024 showed that Student basically demonstrated the same performance and behaviors, but now that Student had received formal diagnoses of [REDACTED] and [REDACTED], the team now found that Student was eligible for special education and related services. *FOF 58.* Notably, the eligibility worksheets that had been completed in 2024 noted that Student had demonstrated the behaviors for which Student's eligibility was based on when Student was [REDACTED] years old. *FOF 56, 57.*

This Hearings Officer finds that Petitioners have proven that the DOE committed a procedural violation by not properly assessing Student in Student's initial evaluation conducted in 2023. The determination of a denial of FAPE then centers on whether this procedural violation resulted in a loss of educational opportunity, a significant infringement on parental participation, or a deprivation of educational benefits. *Amanda J.*, 267 F.3d at 892. This Hearings Officer finds that the failure of the DOE to assess Student for all suspected areas of disability in 2023 and/or the failure of the team to properly determine Student's eligibility for special education and related services based on the evaluation that was done resulted in a loss of educational opportunity for Student. Student did not receive any educational services from 2023 through 2024 from the DOE based on the IEP team's finding that Student was not eligible for services and Parent was required to seek out private services to address Student's needs.

B. Petitioners have not proven that the IEP-10/31/2024 does not address all Student's needs

Petitioners' next argument is that the DOE failed to adequately address all Student's needs, specifically in the areas of occupational therapy and speech-language therapy in Student's IEP-10/31/2024. Petitioners focus on the private occupational therapy services that Student receives from Private Therapy Company as being services that should be addressed by the DOE. This Hearings Officer concludes that the DOE is required to provide Student with services that allow Student to access Student's education and the IEP-10/31/2024 does provide the appropriate services for Student. The private services that Student currently receives from Private Therapy Company are not necessary for Student to access Student's education.

An IEP must be reasonably calculated to enable a child to make progress in school appropriate in light of the child's unique circumstances. *Endrew*, 137 S.Ct. 988, 197 L.Ed.2d 335 (2017); *C.D. by and through M.D. v. Natick Public School District*, 924 F.3d 621, 624 (1st Cir. 2019); *M.L. by Leiman v. Smith*, 867 F.3d 487, 499 (4th Cir. 2017); *Los Angeles Unified School District v. A.O., by and through Owens*, 92 F.4th 1159, 1165 (9th Cir. 2024).

Both the 2023 and 2024 evaluations reflected that Student scored in average ranges in most school-based areas, such as language arts, mathematics, fine motor skills, and communication. *FOF 17, 21, 22, 25, 50, 51, 53, 54*. Student's primary needs were in the areas of [REDACTED]. *FOF 52, 7, 8, 9*. The IEP-10/31/2024 contains goals and objectives, as well as supplementary aids and supports that address Student's needs in those areas to allow Student to make appropriate progress in school. *FOF 63-66*. Further, the supplementary aids and supports allow Student to be educated alongside Student's nondisabled peers. The evidence presented at the Hearing reflects that Student is thriving at Current Home School and making excellent progress in all areas of educational performance.

FOF 73-74. Student is social at school, gets along with peers, participates in classroom activities, works independently, and self-advocates by taking breaks when necessary. While it is Parent's choice to continue Student's education in Current Home School's [REDACTED] setting, nothing presented in the evidence in this case demonstrates that Student's needs would not be addressed by IEP-10/31/2024 [REDACTED]. Petitioners have the burden of proof to demonstrate that the IEP-10/31/2024 does not address Student's needs to allow Student to make progress appropriate in light of Student's unique circumstances and they have failed to do so in this case.

C. Equitable considerations

Petitioners are requesting that Petitioners be reimbursed for all expenses related to the diagnoses, service providers, therapist consultant fees, travel expenses, and attorneys' fees as a result of the denial of FAPE by Respondents. Respondents note that Petitioners did not take advantage of Petitioners' right to request an independent educational evaluation from the DOE after Student was determined not to be eligible for special education in June 2023 and as a result, Petitioners are not entitled to reimbursement. Respondents also argue that since cases seeking tuition reimbursement are required by statute to be filed within one hundred eighty days of the placement of the student in a private institution, Petitioners are not entitled to reimbursement for treatment at Private Therapy Center.

When a child with a disability is deprived of a FAPE in violation of the IDEA, a court and/or hearing officer fashioning appropriate relief may order compensatory education. *See 20 Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 103 LRP 37667 (1985); *see also R.P. ex rel. C.P. v. Prescott Unified School Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011) (*citing Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522-523 (D.C.Cir. 2005); U.S.C.

1415(i)(2)(C)(iii); 34 C.F.R. 300.516(c)(3). Compensatory education is an equitable remedy that attempts to account for the educational deficit caused by a deprivation of educational services that a student should have received in the first place. *Department of Educ., Hawaii v. R.H. ex rel. K.R.*, 2013 WL 3338581 *7 (D. Hawai'i 2013) (citing *R.P.*, 631 F.3d at 1125). The goal of compensatory education is to “place disabled children in the same position they would have occupied but for the school district’s violation of the IDEA.” *R.P.*, 631 F.3d at 1125. An award of compensatory education “must be reasonably calculated to provide the educational benefits that likely would have accrued.” *Reid*, 401 F.3d at 524. “This standard ‘carries a qualitative rather than quantitative focus,’ and must be applied with ‘[f]lexibility rather than rigidity.’” *Mary McLeod Bethune Day Academy Pub. Charter Sch. v. Bland*, 555 F. Supp. 2d 130, 135, 50 IDELR 134 (D.D.C. 2008) (quoting *Reid*, 401 F.3d at 524). In crafting the remedy, the court or hearing officer is charged with the responsibility of engaging in “a fact-intensive analysis that includes individualized assessments of the student so that the ultimate award is tailored to the student’s unique needs.” *Mary McLeod*, 555 F. Supp. 2d at 135 (citing *Reid*, 401 F.3d at 524). For some students, the compensatory education services can be short, and others may require extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE. *Id.*

Compensatory education can come in many forms and both hearing officers and courts have fashioned varying awards of services to compensate for denials of FAPE. Awards have included, but are not limited to, prospective tuition award, reimbursement for out-of-pocket educational expenses, and private placement. *Draper v. Atlanta Indep. Sch. System*, 518 F.3d 1275, 49 IDELR 211 (11th Cir. 2008, *cert. denied*, 131 S. Ct. 342, 110 LRP 57266 (2010)); *Foster v. Bd. of Educ. of the City of Chicago*, 611 F. App’x 874, 65 IDELR 161 (7th Cir. 2015) (unpublished).

In this case, Parent did not take advantage of Parent's right to request an IEE from the DOE when Student was denied IDEA eligibility in June 2023. *FOF 33*. However, it does not appear that Parent was aware of Parent's right to request the IEE. *FOF 30-32*. The evidence presented at the case is that Parent was offered the Procedural Safeguards Notice at the meetings that were held. The evidence also shows that parents are usually provided with either a paper or electronic copy of the booklet and at the meetings, the administrator asks, do you have any questions or need any explanations about the safeguards. *FOF 32*. Parent did not have any questions or need any explanations, so no further discussion was had regarding the rights of Parent. *FOF 30*. However, a determination that a student is denied eligibility for special education and related services based on an evaluation done by the school district is so rare an event that a school should be informing the parents that they are entitled to request an IEE. Informing a parent of that basic right does not harm the school district because if the school district believes that their evaluation is appropriate, they may initiate their own due process hearing to confirm their position. Because Parent was not aware that Parent could request an IEE from the DOE at the time that Student was denied eligibility for special education in June 2023, this Hearings Officer does not find that Parent waived any ability to request or obtain such an IEE and seek reimbursement therefrom.

Petitioners in this case were very proactive in addressing Petitioners' concerns with Student's development and behaviors. It is commendable that when Student did not receive any services from the DOE, Petitioners obtained additional assessments and out-of-pocket treatment for Student to address Student's needs even without the promise of reimbursement. *FOF 34-44*. Through the private services provided by Private Therapy Center, Student has been able to make progress on Student's occupational therapy, emotional regulation, social, behavioral, and sensory

concerns. *FOF 37, 39.* This Hearings Officer finds that Petitioners' request for reimbursement of Student's occupational therapy services at Private Therapy Center from September 2023 through October 2024⁹ is a reasonable compensatory education award for the denial of FAPE by the DOE since Student's opportunity to receive those services from the DOE was lost as a result of the failure to adequately evaluate Student in 2023.

Petitioners also sought an additional evaluation for Student to obtain a diagnosis for Student with which Petitioners could return to the DOE and request special education and services for Student. *FOF 41, 43, 44.* The evaluation by Private Evaluation Center proved to be useful in that it appeared to prompt the DOE to conduct a more thorough evaluation of Student and find Student eligible for special education and related services. *FOF 46-47.* Petitioners, however, did not attempt to seek out any locally-based private evaluators to conduct the assessment and went straight to an out-of-state provider. *FOF 42.* Petitioners have not proven that there were no qualified evaluators in the State of Hawai'i that could have provided an equally thorough evaluation of Student that would have yielded the same results. An argument that Petitioners needed to seek an out-of-state provider because no in-state provider would have diagnosed Student with [REDACTED] or [REDACTED] would lend itself to the argument that Petitioners were forum shopping to seek out a specific diagnosis, even if it was not appropriate for Student. Therefore, this Hearings Officer finds that reimbursement of the cost of the independent evaluation conducted by Private Evaluation Center is an appropriate remedy for Petitioners, but not the travel-related expenses associated with the evaluation.

⁹ The October end date is based upon the start date of the IEP-10/31/2024 services, since this compensatory education reimbursement award is based on the denial of services to Student based on Student's ineligibility for special education and related services from the June 2023 evaluation. Once the DOE began providing IEP-10/31/2024 services to Student on October [REDACTED], 2024, the reimbursement for the Private Therapy Company services would end.

Finally, Petitioners contracted the services of Ms. Otteman and a student advocate to accompany Parent to the meetings with the DOE in 2024. *FOF 45*. The IDEA does not provide the administrative hearings officers with the authority to order attorneys fees as a remedy for a denial of FAPE, therefore reimbursement of Ms. Otteman's fees is not being ordered in this decision.¹⁰ 20 U.S.C. § 1415(i)(3)(B). Petitioners have also failed to prove the necessity of having both Ms. Otteman and a student advocate being present at the meetings, so the request for reimbursement of the advocate's fees is denied.

VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have proven that Respondents denied Student a FAPE by failing to appropriately evaluate Student in June 2023, which resulted in Student being denied eligibility for services under the IDEA. This Hearings Officer also finds that Petitioners have failed to prove that the IEP-10/31/2024 does not appropriately address Student's needs to allow Student to make appropriate progress in light of Student's unique needs.

This Hearings Officer finds that the equitable considerations in this case allow for an award of some of the remedies requested by Petitioners.

For the reasons stated above, IT IS ORDERED –

¹⁰ This does not prevent Petitioners from recovering attorneys' fees under the IDEA fee-shifting provisions.

1. Within thirty calendar days, Respondents shall directly reimburse¹¹ Petitioners for payments made to Private Therapy Center in the amount of Fourteen Thousand Six Hundred Fifty Dollars (\$14,650.00).¹²
2. Within thirty calendar days, Respondents shall directly reimburse Petitioners the amount of Two Thousand Eight Hundred Dollars (\$2,800.00) for the cost of the evaluation done by Private Evaluation Center.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawai'i, May 1, 2025.



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¹¹ This Hearings Officer finds that the invoices provided by Petitioners evidence Petitioners' previously-made payments to Private Therapy Center and Private Evaluation Center and is not requiring Petitioners to provide those invoices again to Respondents for reimbursement.

¹² This total amount is based on the invoices submitted by Petitioners in P-Ex.1, p.001-048. This Hearings Officer notes that some of the fees included a late fee due to Student attending the session late, but as an equitable remedy, this Hearings Officer is ordering the total amount that is normally charged for the services and not penalizing Petitioners for the late attendance at the sessions.