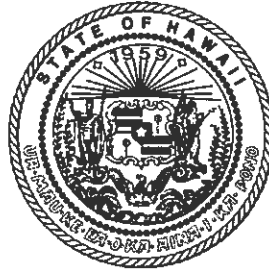


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OFFICE OF DISPUTE RESOLUTION

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, and KEITH T. HAYASHI,
Superintendent of the Hawai'i Public
Schools,

Respondents.

DOE-SY2425-008

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
September 18-20, 2024

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 procedural and substantive violations in the development of Student's Individualized Education Program (hereinafter "IEP") for the 2024-2025 school year. Petitioners seek a revision of Student's IEP dated August 19, 2024 to address the alleged denial

¹ Personal identifiable information is contained in the Legend.

of a free appropriate public education (hereinafter “FAPE”) by the Department of Education, State of Hawai’i (hereinafter “DOE”).

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 eight issues in their Complaint and Resolution Proposal (hereinafter “Complaint”) to be addressed at the Hearing regarding the development and offer of the individualized education program (hereinafter “IEP”) revision dated August 19, 2024 (hereinafter “IEP-08/19/2024”):

1. Whether the August 19, 2024 revision IEP meeting and/or written offer failed to sufficiently discuss and/or address Student’s special education classroom teacher’s effect on Student’s ability to receive appropriate educational benefits.
2. Whether the August 19, 2024 revision IEP meeting and/or written offer failed to sufficiently discuss and/or address Student’s behavior interventions and instead intended to revise the [REDACTED] outside of the IEP development process.
3. Whether the August 19, 2024 revision IEP meeting and/or written offer failed to sufficiently discuss and/or address Student’s need to self-manage Student’s frustrations in the classroom with Student’s aide, under certain circumstances where Student wants to be able to leave the classroom.
4. Whether the August 19, 2024 revision IEP meeting and/or written offer failed to sufficiently discuss and/or address Student’s need for modifications/accommodations to participate in field trips and other similar school-related functions
5. Whether the August 19, 2024 revision IEP meeting and/or written offer failed to sufficiently discuss and/or address Student’s need for extended school year services regarding [REDACTED] needs.
6. Whether the August 19, 2024 revision IEP meeting and/or written offer failed to sufficiently discuss and/or address Student’s [REDACTED] goals and objectives.

7. Whether the IEP-08/19/2024 provides Student a program that allows Student to make appropriate educational benefits.
8. Whether the August 19, 2024 revision IEP meeting and/or written offer failed to sufficiently discuss and/or address Student's placement/Least Restrictive Environment (hereinafter "LRE").

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

1. Find that the DOE denied Student a FAPE for the violations asserted.
2. Order the DOE to reimburse Parent and/or directly fund any privately-funded programs and/or services related to the denial of FAPE.
3. Order the DOE to directly fund any private services (including private related services, such as transportation and necessary expenses related to the provision of private services).
4. Provide compensatory education for lost educational and related skills due to the current breach of FAPE.
5. Order such other relief as appropriate and/or justified under equity and/or the law under the circumstances.

IV. BACKGROUND

On August 21, 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"). Respondents submitted a response to Petitioners' Complaint on August 30, 2024.

On September 3, 2024, a prehearing conference was held with Hearings Officer Chastity T. Imamura; Keith H.S. Peck, Esq. (hereinafter "Mr. Peck") on behalf Petitioners; and Darien N. Chow, Esq. (hereinafter "Mr. Chow") and Ronald Rodriguez, Esq. (hereinafter "Mr. Rodriguez") on behalf of Respondents. The due process hearing (hereinafter "Hearing") was scheduled for September 18-20, 2024.

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 September 4, 2024, which set forth the parameters of the video conference due process hearing.

The Due Process Hearing began on September 18, 2024. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; and Mr. Chow² on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Parent, Grandparent, and Relative to testify and rested their case-in-chief. On the same date, Respondents called DES to testify. Respondents continued their case on September 19, 2024 and called Care Coordinator (hereinafter “CC”), Former Special Education Teacher (hereinafter “Former SPED”), Board-Certified Behavior Analyst (hereinafter “BCBA”), Clinical Psychologist (hereinafter “CP”), and Principal. Principal’s testimony continued to September 20, 2024, and Respondents also called Counselor and General Education Teacher (hereinafter “GET”). Respondents concluded their case on September 20, 2024 and Petitioners did not present any rebuttal witnesses or evidence.

Each party submitted their exhibits for the Hearing by the disclosure deadline of September 11, 2024. The parties reviewed the exhibit and witness lists provided by the opposing party and neither party had any objections to the exhibits and/or witnesses listed in the disclosures. Both parties were informed that any exhibits that were discussed or mentioned

² Petitioners objected to the presence of DES due to Respondents identifying DES as a witness in their case-in-chief, so DES was not allowed to be in the Hearing until after DES’s testimony. Mr. Chow was allowed to have another district educational specialist sit through the earlier portions of the Hearing, but declined to do so.

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 September 20, 2024, 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 031-049, 050-051, 052-053; Exhibit 2, pages 054-071, 072-079; Exhibit 3, pages 080-083; Exhibit 4, pages 107-131, 132, 133, 134-143, 144, 145-150, 151, 152-153, one audio file dated 08/19/2024, and one video file dated 09/09/2024.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 6, pages 0020-0021; Exhibit 8, page 0023; Exhibit 29, pages 0068-0079; Exhibit 59, pages 0181-0213; Exhibits 65-66, pages 0223-0256; Exhibit 71, pages 0265-0297; Exhibit 85, pages 0412-0415; Exhibit 88, pages 0419-0446; Exhibit 95, pages 0464-0465; Exhibit 97, pages, 0484-0503; Exhibit 110, pages 0524-0535; Exhibit 136, page 0603; Exhibit 137, page 0604 and pages 0618-0619; Exhibit 144, pages 0739-0740; Exhibit 164, pages 0891-0894; Exhibit 165, pages 0903-0909; Exhibit 169, page 0993; Exhibits 180-182, pages 1318-1358; Exhibit 251, pages 1642-1643; Exhibit 254, pages 1648-1649; Exhibit 256, pages 1658-1659; Exhibit 260, pages 1666-1668; and Exhibit 269, pages 1791-1792.

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.³

³ Although all testimony and evidence presented in this case were reviewed, only relevant information is included in this Decision.

V. FINDINGS OF FACT

Student's background

1. Student is currently [REDACTED] years old and lives in Home School's district. Student qualifies for special education and related services under the category of [REDACTED].
Testimony of Parent, Transcript of Proceedings, Volume 1, page 79, line 3, through line 11 (hereinafter referenced as "Tr.V1, 79:3-11"); Respondents' Exhibit 88, page 0420 (hereinafter referenced as "R-Ex.88, p.0420.").
2. Student has been diagnosed with [REDACTED]
[REDACTED]
[REDACTED]. R-Ex.88, p.0420.
3. Student tends to show [REDACTED] tendencies toward certain adults, [REDACTED]
[REDACTED]. Student also does not like when people speak in a scolding manner or speak close to Student's face. Testimony of Parent, Tr.V1, 25:16-22, 40:9-13; Testimony of Grandparent, Tr.V1, 91:17-94:5; Testimony of Relative, Tr.V1, 113:25-115:1.
4. Student's general tendency when Student is uncomfortable around certain adults or large groups of people is to hide or try to leave the area, although on occasion it has led to some behaviors. Testimony of Grandparent, Tr.V1, 91:17-94:5.
5. When Grandparent lived with Student and Student's family during Student's [REDACTED] grade year, Grandparent observed that Student would experience anxiety based on academic difficulties becoming overwhelming for Student, leading to Student engaging in behaviors such as shutting down, hiding under a desk, or leaving the classroom.
Testimony of Grandparent, Tr.V1, 95:7-97:2.
6. Student began displaying maladaptive behaviors in school that impeded Student's

learning as early as the [REDACTED] school year,⁴ including the inability to focus; being non-compliant with requests; inappropriate use of furniture, like [REDACTED]; making loud/grunting noises; vocal mimicking of an adult; eloping from the classroom; being physically aggressive; engaging in self-injurious behaviors; and [REDACTED]. *See e.g.*, P-Ex.1, p.035-036; R-Ex.29, p.0069; R-Ex.180-181, p.1318-1356.

7. Student's maladaptive behaviors appear when academic demands are placed on Student or when Student is asked to transition from a desired activity to a non-preferred activity. P-Ex.1, p.036; R-Ex.88, p.0420.
8. Student's behaviors became apparent after the winter break of the 2022-2023 school year but appeared to increase shortly after Parent returned to work in [REDACTED] and Student had to catch the school bus to get to school. P-Ex.1, p.036; R-Ex.95, p.0464.
9. On several occasions during [REDACTED] of the 2022-2023 school year, Student either missed school or was picked up early due to Student's behaviors. Testimony of Grandparent, Tr.V1, 95:21-96:20; P-Ex.1, p.036.
10. Student has been observed to have [REDACTED] both at school and with Parent and these [REDACTED] can often take around [REDACTED] for Student to deescalate. P-Ex.1, p.036.
11. A behavior support plan, dated April 11, 2023, was developed for Student due to Student's maladaptive behaviors including aggression toward others, self-harm, engaging in dangerous activities like [REDACTED], and eloping. P-Ex.1, p.047; R-Ex.95, p.0464-0465.

⁴ This is the earliest date based on the evidence presented in this case.

12. On April [REDACTED], 2023, Counselor observed Student elope from Student's class, [REDACTED]
[REDACTED], which were all near a [REDACTED]
[REDACTED]. Grandparent was called because the school could not reach Parent at the
time. Testimony of Counselor, Tr.V3, 340:11-342:4; R-Ex.180, p.1330-1332.
13. In May 2023, Counselor witnessed another incident where Student displayed aggressive
maladaptive behaviors, including [REDACTED]
[REDACTED]. Testimony of Counselor, Tr.V3, 342:17-344:3.
14. An initial mental health assessment was conducted with Student by the State of Hawai'i
Department of Health on May [REDACTED], 2023. R-Ex.110, p.0524-0533.
15. In the mental health assessment, Parent minimized Student's behaviors, claiming the
incidents that were reported to Parent regarding Student's behaviors were
'misunderstandings,' although they were reported by different adults who were present
during Student's behaviors.⁵ R-Ex.110, p.0524-0533.
16. In the mental health assessment, Parent did report that Student's mood abruptly changes,
and that Student often reacts disproportionately to an incident that may occur. Student
was reported by Parent to also engage in anxious behaviors and negative self-talk. R-
Ex.110, p.0525.
17. The mental health assessment diagnosed Student with [REDACTED]
[REDACTED] R-Ex.110, p.0531.
18. The mental health assessment recommended the following treatment areas for Student: 1)

⁵

[REDACTED]
[REDACTED]. R-Ex.110, p.0524-0526.

decrease problem behaviors at school, increase compliance and ability to express emotions appropriately; 2) increase use of positive coping strategies to manage distress and decrease anxiety symptoms; and 3) increase effective communication with family, teachers, peers, and others, to increase ability to verbally advocate for needs and wants, and to decrease avoidance. R-Ex.110, p.0531-0532.

19. An [REDACTED] assessment was conducted by CP with Student in October 2023. Testimony of CP, Tr.V2, 282:17-24; R-Ex.29, p.0068-0079.
20. CP observed as part of the assessment that Student seemed to be overwhelmed at times by noises and by the number of students that were in the classroom with Student during the observations. CP noted that when Student was working in a smaller group and getting more attention from the teacher, Student was more engaged in learning. Testimony of CP, Tr.V2, 287:5-291:18; R-Ex.29, p.0070-0071.
21. CP determined that no additional diagnoses were appropriate for Student besides the [REDACTED] diagnoses the had already been provided for Student. Testimony of CP, Tr.V2, 289:10-290:6; R-Ex.29, p.0075.
22. CP provided recommendations for areas to work with Student on Student's behaviors, such as focusing on what Student needs to self-regulate behaviors; having a smaller setting with a lower student-to-teacher ratio and close proximity to the teacher; having Student engage in a social-emotional learning program that teaches Student to be more aware of potential emotional reactivity and the consequences of it, including its impact on others; and continued counseling supports to build Student's coping skills and self-esteem. Testimony of CP, Tr.V2, 293:10-294:11; R-Ex.29, p.0075-0079.
23. A behavior intervention plan (hereinafter "BIP"), dated November 2023 (hereinafter

- “BIP-11/2023”), was developed for Student based on a functional behavior assessment (hereinafter “FBA”) conducted by a board-certified behavior analyst. P-Ex.2, p.054-070.
24. The BIP-11/2023 contained goals and objectives that were also included in Student’s IEPs dated December 7, 2023 (hereinafter “IEP-12/7/2023”) and March 8, 2024 (hereinafter “IEP-3/8/2024”). *See* P-Ex.2. p.054-071; R-Ex.65, p.0241-0251; R-Ex.71, p.0283-0293.
 25. The BIP notes specific behaviors that Student displays that the program wants to decrease or increase, and the registered behavior technician (hereinafter “RBT”) collects data on Student’s behaviors throughout the day. Testimony of BCBA, Tr.V2, 238:3-240:12; *see also* P-Ex.2, p.054-070; R-Ex.97, p.0484-0503.
 26. BCBA began working with Student in February 2024, both by supervising the RBT that works daily with Student and by going to observe Student in the classroom at least two times per week. Testimony of BCBA, Tr.V2, 241:22-242:16.
 27. In the beginning of [REDACTED], BCBA observed Student engaging in increased aggressive behaviors that had not occurred previously in school. BCBA also observed a decrease in Student’s communication in the beginning of the 2024-2025 school year. Testimony of BCBA, Tr.V2, 243:1-244:10.
 28. BCBA observed an incident where Student was refusing to participate in an activity in the special education classroom. Student was offered breaks and a walk outside, as well as other options according to Student’s BIP. Student began to escalate and [REDACTED]. [REDACTED]. When Student was given the opportunity to leave the classroom to deescalate or use Student’s words, Student began to escalate further. The other students in the classroom were then evacuated to a different area of the room on the

other side of a [REDACTED]. Student then started pacing and [REDACTED] and ran outside. Student's RBT and BCBA then followed Student until Student was able to safely deescalate. Testimony of BCBA, Tr.V2, 244:13-247:15; R-Ex.254, p.1648-1649.

29. Student's first day of school was August [REDACTED], 2024,⁶ but Student did not attend school due to Student refusing to get out of the car during drop off. On the [REDACTED] day of school, August [REDACTED], 2024, Student was sent home and suspended from school the next day due to Student's behaviors. Student also attended school on August 12, 13, and 14, 2024. Testimony of Parent, Tr.V1, 53:22-55:15.

30. On August 14, 2024, Counselor observed an incident where Student was dropped off at school and appeared angry when Student exited the vehicle after slamming the door shut and running away from the car. Later in class, Student [REDACTED]
[REDACTED]
[REDACTED]
During that incident, Student was aggressive, used profane language and actions directed at the teacher (SPED), and [REDACTED] Testimony of Counselor, Tr.V3, 349:20-351:16.

31. Student did not attend school during the week of August [REDACTED], 2024 due to the rest of Student's classes attending a [REDACTED] field trip that Student was not allowed to attend. Testimony of Parent, Tr.V1, 53:14-55:20.

32. On or about September 9, 2024, Parent recorded a video of Student of Student expressing concerns about Student not feeling safe in SPED's classroom based on an incident [REDACTED]
[REDACTED]. Testimony of

⁶ Based on Parent's testimony, Student's first day was August [REDACTED], 2024, however Counselor's notes has Student attending school on August [REDACTED], 2024, where the incident happened when Student was suspended. *See also* R-Ex.182, p.1357-1358.

Parent, Tr.V1, 37:14-40:21; *see* P-Ex.4, 9/9/24 video recording.

33. While Parent believes Student's statement about [REDACTED], no other evidence corroborates that the incident described by Student has even occurred. In the video, when asked to describe what SPED does to make Student feel uncomfortable, Student replies, "I don't know," and then only after being prompted twice by Parent, Student says that SPED's voice makes Student uncomfortable and that "he's stupid." Parent noticeably shakes Parent's head at Student in response to the last statement. P-Ex.4, 9/9/24 video approximate time stamp [00:20-01:15] (hereinafter referenced as "P-Ex.4, 9/9/24 video [00:20-01:15]").⁷

34. Parent further asks Student to describe what happened on the day that [REDACTED]
[REDACTED]. The description provided by Student sounds like Student's version of events that took place on the day that BCBA saw Student [REDACTED]
[REDACTED]. *See* P-Ex.4, 9/9/24 video [01:18-01:58].

35. Parent testified that Parent had already been informed of the incident [REDACTED]
[REDACTED]. Parent raised the issue with BCBA, who noted that it likely did not happen because Student's registered behavior technician (hereinafter "RBT") would have informed BCBA of the incident. Parent stated that Parent believed Student's version of events. Testimony of Parent, Tr.V1, 40:9-41:5.

⁷ Based on the substance of Parent's testimony, as well as the testimony of other witnesses, this Hearings Officer finds that Parent's version of incidents of Student's behaviors, triggers, or other information regarding Student in class are based on second-hand reports by either school personnel or by Student, and that Parent did not actually witness any events that took place with Student at Home School. *See generally* Testimony of Parent, Tr.V1, 19:11-85:18.

36. Parent also prompted Student through several parts of the video, asking Student how often SPED takes Student's desk away from Student and asking whether SPED makes Student feel uncomfortable by coming up close to Student in Student's personal space. P-Ex.4, 9/9/24 video [01:59-02:40].
37. Based on testimony of other school personnel who have witnessed SPED in school, SPED has not engaged in any behaviors that would reasonably cause Student to feel unsafe in the classroom. Testimony of BCBA, Tr.V2, 258:6-261:3, 263:17-264:13, Testimony of CP, Tr.V2, 292:5-296:6; Testimony of Counselor, Tr.V3, 338:15-339:2; Testimony of GET, Tr.V3, 380:3-381:2.

Student's IEP meetings in August 2024

38. Student had an IEP that was developed on September 12, 2023.⁸ Student's IEPs were also revised on November 14, 2023, December 7, 2023, and March 8, 2024. Parent was present at all the IEP meetings and revision meetings for the development of these IEPs. P-Ex.1, p.031-049; R-Ex.59, p.0181-0213; R-Ex.65, p.0223-0255; R-Ex.71, p.0265-0297.
39. Student's IEP team met on August 15, 2024 and August 19, 2024 to revise Student's IEP. Present at the IEP meetings in August 2024 were Principal, DES, another district educational specialist, a district school psychologist, a behavioral health specialist, BCBA, SPED, GET, Parent, and Counselor.⁹ Testimony of DES, Tr.V1, 129:16-24; R-Ex.88, p.0445-0446.
40. The focus of the IEP meetings were to address concerns about Student's more intense

⁸ Based on the annual review date listed in the September 12, 2023 IEP, it appears that Student's annual IEP was developed some time in July 2023, but that IEP was not included in the exhibits offered as evidence in this Hearing.

⁹ Counselor only attended the August 19, 2024 IEP meeting.

behaviors that occurred at the start of the 2024-2025 school year. Testimony of DES, Tr.V1, 129:4-131:4; Testimony of BCBA, Tr.V2, 243:1-254:13; Testimony of Principal, Tr.V2, 301:8-302:9.

41. At the IEP meetings, the team discussed Student's increased aggressive behaviors and decreased communication skills, particularly when demands were being placed on Student. Testimony of BCBA, Tr.V2, 243:1-249:12; Testimony of Counselor, Tr.V3, 346:24-350:20, 352:3-353:2.
42. Parent asserts that the IEP team did not have a discussion about what could be causing Student's triggers in SPED's classroom and how the school can support, modify, and accommodate things to give Student access to Student's education. Parent's focus was specifically on Student's being in SPED's classroom. Testimony of Parent, Tr.V1, 75:20-76:8.
43. DES testified that at the August 15, 2024 IEP meeting, the focus of the discussion was Student's new behaviors, the implementation of the behavior intervention plan (hereinafter "BIP") that was provided for Student, Student's preference for certain places over others, and building rapport with new staff, such as teachers and support staff. Testimony of DES, Tr.V1, 142:7-143:22.
44. At the August 19, 2024 IEP meeting, the IEP team discussed Student's escalated behaviors and attempted to look at the underlying causes of Student's escalated behaviors. The team discussed how Student appeared to be having difficulty communicating with others and self-advocating, as well as managing Student's emotions. Testimony of BCBA, Tr.V2, 251:22-252:7; P-Ex.4, 8/19/24 audio; P-Ex.4, p.108-111.
45. BCBA expressed that Student's first goal needs to be to have a safe place to express

Student's emotions and work on self-regulation and self-advocacy skills without other peers being around the area to see. Testimony of BCBA, Tr.V2, 251:22-252:7; P-Ex.4, 8/19/24 audio; P-Ex.4, p.108-111.

46. The IEP team discussed the need for Student to learn and practice strategies to use coping and calming skills in a safe space to regulate Student's emotions outside of the presence of peers. They also discussed Student's need to self-advocate through communication and to choose the correct responses to social scenarios so that Student becomes more self-aware of Student's effect on others. P-Ex.4, 8/19/2024 audio; P-Ex.4, 108-115.
47. BCBA recommended an increase in ABA service minutes to allow BCBA to work more with Student and Student's RBT on Student's functional communication in the safe space and to work on Student's self-regulation and self-advocacy goals. Testimony of BCBA, Tr.V2, 253:21-254:13; P-Ex.4, 8/19/24 audio; P-Ex.4, p.108-111.
48. Parent raised a concern about Student not being able to exit the classroom when Student needs to take a break, and the IEP team discussed that Student is allowed to leave per the BIP when Student is regulated, but if Student is in crisis mode, then Student should not be allowed to leave due to Student's state of dysregulation being a safety issue. Testimony of DES, Tr.V1, 133:10-24; P-Ex.4, 8/19/24 audio; P-Ex.4, p.112-113.
49. During the meeting, Parent also expressed concerns that appeared to be based on Student's version of what occurred in the classroom, such as Student saying that
[REDACTED]
[REDACTED]
[REDACTED]. P-Ex.4, 8/19/24 audio; P-Ex.4, p.114.
50. The IEP team nonetheless addressed Parent's concerns by suggesting procedures that

they could follow for Student's BIP to allow Student to self-regulate, like setting a timer, to show Student and the teacher that Student has a definite amount of time to self-regulate and/or communicate with the adult in the classroom. P-Ex.4, 8/19/24 audio; P-Ex.4, p.114-115.

51. Parent expressed concern to the IEP team that Student was displaying maladaptive behaviors due to being in SPED's classroom and requested that Student be moved to a different class. However the evidence in this case shows that the history of Student's behaviors has been emerging in increasing fashion since the 2022-2023 and 2023-2024 school years, even when Student had a different special education teacher. *See e.g.* Testimony of BCBA, Tr.V2, 258:6-261:3, 263:17-264:13, Testimony of CP, Tr.V2, 292:5-296:6; Testimony of Counselor, Tr.V3, 338:15-339:2; Testimony of GET, Tr.V3, 380:3-381:2; R-Ex.180-181, p.1318-1356.
52. Parent testified that Parent did not inform the IEP team at the August 2024 meetings of the incident where Student claimed that [REDACTED]. However, DES testified that at the unrecorded August 15, 2024 meeting, Parent did raise the allegation that [REDACTED], and that BCBA informed Parent that Student's restatement of events was inaccurate. Testimony of Parent, Tr.V1, 40:22-42:10; Testimony of DES, Tr.V1, 142:7-22.
53. The IEP team discussed Student's educational placement at the August 19, 2024 IEP revision meeting. Testimony of BCBA, Tr.V2, 249:13-251:21; P-Ex.4, 8/19/24 audio; P-Ex.4, p.116-122.
54. The IEP team also discussed and addressed Parent's concerns that Student did not feel safe in SPED's classroom and that Parent requested that Student be assigned to a

- different special education teacher. Testimony of Parent, Tr.V1, 25:1-28:3; Testimony of BCBA, Tr.V2, 248:14-251:20, 257:17-261:3; P-Ex.4, 8/19/24 audio; P-Ex.4, p.123-124.
55. The IEP team, after an extensive discussion including Parent, determined that an ideal placement would be for Student to attend Student's [REDACTED] morning check in session, where no academic demands are placed on Student and where Student had been having success at the beginning of the school year. Then Student would go to the safe space area designated just for Student and Student's RBT or whoever was working with Student would ask Student if Student wanted to attend Student's next class. If Student chose not to attend the class, the RBT or BCBA or others would work with Student on building functional communication, emotional regulation, and self-advocacy skills in the safe space. For each class period, as well as lunch and recess, Student would be given the option of staying in the safe space or going to class. Testimony of DES, Tr.V1, 133:25-136:17; Testimony of BCBA, Tr.V2, 269:23-274:7; Testimony of GET, Tr.V3, 372:8-374:9; P-Ex.4, 8/19/24 audio; P-Ex.4, 121-122; R-Ex.88, p.0444.
56. Parent disagreed with the educational placement since Student would not be receiving academic lessons while in the safe space, but would have been satisfied if Student had been provided with academic tasks while in the safe space or if Student had been placed into a different special education classroom for math and ELA. Testimony of Parent, Tr.V1, 26:8-28:3.
57. The IEP team discussed Student's eligibility for extended school year (hereinafter "ESY") services at the IEP meeting. At the outset, Parent indicated that Student does not need ESY so it can be taken off the table. P-Ex.4, 8/19/24 audio; P-Ex.4, p.124-125.
58. The team continued to further discuss ESY but determined that since Student's behaviors

are escalating and since they were about to begin a new and different program with Student in the safe space at school, the school would collect data for Student after breaks and make a determination later about Student's eligibility for ESY for summer at a later time. Testimony of DES, Tr.V1, 138:1-139:8; P-Ex.4, 8/19/24 audio; P-Ex.4, p.124-126.

59. The last discussion at the IEP meeting was specifically for a [REDACTED] field trip to a [REDACTED]. The discussion was whether Student would be allowed to attend the field trip based on Student's escalating behaviors. The school administrator at the IEP meeting determined that because [REDACTED], as well as members of the general public in a crowded setting, Student would not be allowed to attend the field trip. The decision was made based on Student's aggressive behaviors, property damage behaviors, and the distance of the field trip from Home School. Testimony of DES, Tr.V1, 131:10-133:4; Testimony of Principal, Tr.V2, 302:10-17, 307:7-308:7; P-Ex.4, 8/19/24 audio; P-Ex.4, p.126-127.
60. The IEP team did not discuss whether Student would be allowed to access or not access other field trips that Student's classes went to. It appeared the discussion was isolated to the field trip that was happening shortly after the IEP meeting on August 19, 2024, and the decision by the administrator was that Student would not be allowed to participate on that field trip due to Student's escalating behaviors. P-Ex.4, 8/19/24 audio; P-Ex.4, p.126-127.
61. Parent disagreed with the IEP team administrator's decision not to allow Student on the field trip because Parent noted that Student had not had any incidents on previous field trips in prior school years. The IEP team noted that Student's behaviors have also escalated since previous school years, so the information on past field trips would not

provide useful information for this school year. Testimony of Parent, Tr.V1, 28:8-29:4; P-Ex.4, 8/19/2024 audio, P-Ex.4, p.126-127.

62. Parent informed the school that Student would not be attending school until Student's placement was changed. The Home School administrator at the IEP meeting informed Parent that the IEP-08/19/2024 would be Student's offer of FAPE and that if Student did not attend school for unexcused reasons, the school would need to proceed with compulsory education procedures. Testimony of Parent, Tr.V1, 45:21-47:18; P-Ex.4, 8/19/24 audio; P-Ex.4, p.127-128.
63. Home School was prepared to provide Student with the new IEP-08/19/2024 services in the safe space that the team had discussed at the August 2024 meetings when Student attended school on the days of the field trip. Testimony of Principal, Tr.V2, 308:8-309:10.
64. A written IEP-08/19/2024 and prior written notice from the August 19, 2024 IEP meeting, dated August 23, 2024 (hereinafter "PWN-08/23/2024") were developed and provided to Petitioners. *See* R-Ex.88, p.0419-0446; P-Ex.1, p.052-053.

Student's IEP-08/19/2024 and BIP

65. Student's IEP-08/19/2024 provides Student with twelve behavior reduction, functional communication, skill acquisition, and emotional regulation goals, as well as three academic goals. The behavior reduction, functional communication, and skill acquisition goals mirror the goals and targets in Student's BIP, which was revised on August 19, 2024 (hereinafter "BIP-08/19/2024"). R-Ex.88, p.0427-0441; R-Ex.97, p.0485-0487.
66. Student's IEP-08/19/2024 behavior and functional communication goals in Student's BIP were also goals that were written in Student's previous IEP, dated December 7, 2023, and

March 8, 2024 (hereinafter “IEP-12/07/2023” and “IEP-03/08/2024”). *See* R-Ex.65, p.0243-0251; R-Ex.71, p.0286-0292; R-Ex.88, p.0427-0434.

67. Student’s IEP-08/19/2024 also included four additional goals regarding modes of communication and providing Student with different ways to communicate, as well as teaching Student coping and calming strategies that align with the discussion held at the IEP meetings in August 2024. *See* R-Ex.88, p.0438-0441.
68. Student’s IEP-08/19/2024 provides Student with one hundred twenty minutes per week of special education for reading, writing, and math; counseling for five hundred forty minutes per quarter by a behavioral health specialist through direct services, such as in-class support, individual counseling, and parent training; occupational therapy teacher consultation twice per quarter; individual instructional support by an RBT for the purpose of implementing Student’s BIP; the BIP; ABA services for seven hundred twenty minutes per month to design, monitor, and update the BIP, supervise the RBT implementing the BIP, monitoring data collection and analyzing data, providing reports and other documents, and attending meetings; teacher consultation by the board-certified behavior analyst for both general and special education teachers. R-Ex.88, p.0442-0443.
69. Student’s IEP-08/19/2024 also includes classroom management strategies in the supplementary aids and supports that were discussed in the IEP meeting or included in the BIP, such as chunking assignments, breaks for drawing, individualized written schedule, flexible seating, access to fidgets and sensory items, movement or learning breaks, extended time to complete assignments, use of timers, and small group testing. R-Ex.88, p.0442.
70. Student’s IEP-08/19/2024 clarified that Student would go to a special education setting

for check in /check out after Student’s general education advisory period and would also receive specifically designed instruction on functional communication, self-advocacy, self-regulation, and self-awareness communication goals in the special education setting. R-Ex.88, p.0443.

71. Several designated safe spaces were assigned for Student to access in the IEP-08/19/2024. R-Ex.88, p.0443.
72. Student’s BIP was updated based on discussions at the August 19, 2024 IEP meeting (hereinafter “BIP-08/19/2024”) to provide additional information for when presenting demands to Student; to additional classroom management information, such as using a timer to notify Student that Student has time to comply with any requests or demands; providing information on when Student may be in crisis and what to do when crisis procedures should be followed. Testimony of BCBA, Tr.V2, 249:3-12, 252:11-254:13; *see* P-Ex.4, 8/19/24 audio; P-Ex.4, p.108-116; *compare* P-Ex.2, p.059-064; R-Ex.97, p.0489-0494.
73. The BIP-08/19/2024 continues to provide classroom management strategies that allow Student to leave the environment when Student needs to self-regulate but clarifies that if Student is in crisis mode, the crisis plan protocols must be followed. R-Ex.97, p.0488-0494.¹⁰

Student’s progress since returning to school

¹⁰ Specifically, the BIP-08/19/2024 includes the following language in classroom management strategies “follow [Student’s] lead to the extent possible allowing [Student] to wander and explore within non-dangerous boundaries outside of structured planned activities.” R-Ex.97, p.0488, 0489. The BIP-8/19/2024 also states: “if you think that the environment could be escalating the behavior, let [Student] know that it’s okay to move to a different space and support [Student] in making that transition.” R-Ex.97, p.0492.

74. Student has been attending morning [REDACTED] class in GET's classroom and proceeding to the safe space. Student has also been attending GET's classes for a social emotional learning class, social studies, and science. Testimony of GET, Tr.V3, 374:10-378:12.
75. GET has observed that Student has been communicating more with GET in class than when Student first began school in August 2024. Testimony of GET, Tr.V3, 374:24-375:16, 385:6-9.
76. Since Student began the program where Student checks into the safe space first, Student has been attending GET's classes around sixty to seventy-five percent of the time when provided the option. Testimony of GET, Tr.V3, 379:9-14.
77. Student receives academic work in science and social studies in GET's classes, which include reading and highlighting a short passage as a class, and then working in small groups to complete a worksheet. Testimony of Parent, Tr.V1, 65:19-23; Testimony of GET, Tr.V3, 383:5-383:22.
78. Student began communicating more with RBT and peers at school since the implementation of the IEP-08/19/2024. See P-Ex.2, p.072-079.

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).

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 not proven that Respondents failed to sufficiently discuss appropriate IDEA topics at the August 2024 IEP meetings

Petitioners argue that Student's Home School IEP team did not sufficiently discuss multiple topics at the August 2024 IEP meetings including whether Student's special education teacher affected Student's ability to receive educational benefits; Student's behavior intervention plan; Student's ability to self-manage frustration and leave the classroom; Student's need for modifications/accommodations for field trips and other school-related functions; Student's eligibility for ESY services; Student's emotional/behavior goals and objectives; and Student's LRE. Based on the evidence presented at the Hearing, this Hearings Officer concludes that the IEP team did have sufficient discussions to develop an educational program for Student that suitably addressed Student's needs in light of Student's unique circumstances. Each topic of discussion in question will be addressed individually.

1. The effect of Student's special education classroom teacher

Petitioners' first argument is that the IEP team did not consider the effect that SPED had on Student's ability to access Student's education at the IEP meeting on August 15 and 19, 2024 and did not address the same issue in Student's IEP-08/19/2024. Petitioners have presented evidence that Student has, in the past, had poor reactions to certain adults with loud, stern voices, which Petitioners suggest that SPED has. *FOF 3-4*. Petitioners have also presented questionably reliable evidence suggesting that SPED has acted inappropriately regarding Student, making Student uncomfortable in class, despite only having attended school for four days prior to the IEP meeting on August 15 and 19, 2024. *FOF 32*. Notwithstanding Petitioners' attempts to place the blame for Student's behaviors on SPED, this Hearings Officer finds that the evidence in this case supports the conclusion that Student's behaviors had been escalating even before

Student began SPED's class and that SPED's presence in the classroom was not the cause or a contributing cause of Student's maladaptive behaviors. *See FOF 5-10, 12-16.*

Petitioners' evidence suggests that Student reacts evasively to certain adults in Student's family and family friends circle that have loud voices or speak sternly when disciplining children. *FOF 3-4.* Petitioners also suggest that topics that SPED may have discussed in class was a contributing factor to Student's dislike for SPED. *See Testimony of GET, Tr.V3, 380:13-18.* None of the allegations against SPED have been supported by the evidence presented in this case. Additionally, the evidence presented suggests that when Student is uncomfortable with the loud and stern voices used by certain adults in Student's presence, Student's tendency is to elope or leave the area where the person is located. *See FOF 3-4.* The behaviors in this case are not simple elopements when Student hears SPED's alleged loud voice, but they are active aggressive behaviors that often resulted in injury to others and/or property damages.

Based on the observations of Counselor and BCBA in this case, it appears that Student's behaviors occurred when Student was either bored or frustrated by being in the classroom and not in response to SPED doing or saying anything. *FOF 12-13, 20.* Even prior to the 2024-2025 school year when Student entered SPED's class, Student had already begun engaging in some of the behaviors that the IEP team discussed, such as [REDACTED], and being defiant with adult figures. *FOF 6-10.* For Petitioners to suggest that the behaviors of Student are based solely on SPED's supposed loud voice and [REDACTED] is not reasonable based on the evidence presented and escalation of behaviors that Student demonstrated even when Student was in Prior SPED's classroom.

Further, the IEP team did acknowledge and discuss Parent's concern with having Student in SPED's classroom but looked deeper into Student's [REDACTED] concerns based

on the [REDACTED] assessment and [REDACTED] assessments conducted with Student in 2023 and determined that there are several underlying factors that were more of a contributor to Student's behaviors. *FOF 40-41, 43-46*. The team noted that Student's communication skills had regressed and Student appeared to be expressing frustration as behaviors, rather than being able to feel, understand, and/or express Student's emotions. The IEP team reviewed goals and objectives to address these underlying concerns to provide Student the skills that Student could use to manage Student's emotion and self-advocate. *FOF 50*. Student's IEP-08/19/2024 provides those behavior reducing and skill acquisition goals and objectives that would and that has allowed Student to make progress in those areas. *FOF 64-66*. Petitioners have failed to meet their burden of proof that the IEP team failed to discuss the effect of SPED on Student's ability to access Student's education in the IEP meeting and failed to address it in Student's IEP-08/19/2024.

2. Student's behavioral intervention plan

Petitioners assert that the IEP team did not appropriately develop Student's BIP as a part of the IEP development process or discuss the BIP during the IEP meeting. As an initial matter, the Ninth Circuit Court of Appeals has recently affirmed a decision made in an IDEA case wherein the District Court determined that having a BIP developed separately from the IEP development is not a denial of FAPE. *EW v. Hawai'i Dep't of Educ.*, 2024 WL 3102040 (9th Cir. 2024).

Petitioners argue, however, that the development of the BIP in this case denied Parent participation in the critical portion of Student's educational program. This Hearings Officer points out that both Student's IEP-12/7/2023 and IEP-3/8/2024 contained IEP goals and objectives that were contained in the BIP-11/2023. *FOF 65*. These goals and objectives are not

at issue in this case, but they are similar to the goals and objectives included in the IEP-08/19/2024 that mirror the goals and objectives in the BIP-08/19/2024. The IEP-08/19/2024 also contains supplementary aids and supports that were discussed by the IEP team to manage Student's behaviors, teach Student self-regulation, self-advocacy, and self-awareness skills, and to address Student's functional communication. These supplementary aids and supports were included based on the discussion held at the IEP team meeting on August 19, 2024 and made its way into the resulting IEP-08/19/2024. *FOF 67-70*. The goals and objectives that Petitioners claim were not discussed at the IEP meeting in the August 2024 meetings are the same goals and objectives that were contained in the BIP-11/2023 and Student's previous IEPs.

While it would have been advisable for the IEP team to review the goals and objectives that had been in Student's previous IEPs and would have been included in the IEP-08/19/2024, the team meeting on August 19, 2024 reflects that the IEP team needed to complete the revised IEP and address Parent's concerns as soon as possible with time constraints. Even if the team had reviewed the goals and objectives, they were already included in IEPs that were developed for Student at other meetings and not in dispute in this case.

Petitioners argue this issue as if Parent had never had the opportunity to review or discuss the goals and objectives that were included in the IEP that were taken from the BIP, but this is simply not corroborated by the evidence presented in this case. Petitioners had not been excluded from participation in the development of goals and objectives in Student's IEP-08/19/2024, since Parent had been included in previous meetings where the same goals and objectives were discussed by the team. *FOF 38*. Petitioners have not met their burden of proving that the IEP team denied Student a FAPE by developing the BIP-08/19/2024 outside of

the IEP development process and/or not providing the necessary supports for Student to make meaningful progress.

3. Student's ability to leave the classroom and manage Student's frustrations

Petitioners' next argument is that the IEP team failed to address or clarify Student's ability to leave the classroom to manage Student's frustrations, which was raised as a concern of Parent at the IEP meetings in August 2024. This argument is not supported by the evidence in this case. The IEP team did discuss and include amendments to the BIP-08/19/2024 that specifically addressed Student's ability to leave the classroom when Student was still in a calm and regulated state, but that if Student was in crisis mode, Student could not be allowed to leave based on Student's safety. *FOF 71-72*. Both the BIP-11/2023 and BIP-08/19/2024 address the ways to address Student when Student has escalated into crisis mode, which include having the room where Student is located evacuated and the school staff maintaining Student in the area until Student is able to deescalate from crisis. Despite Petitioners' assertions, the BIP-08/19/2024 contains language that continues to allow Student to leave the classroom as part of Student's BIP-08/19/2024.

Additionally, both the IEP-08/19/2024 and the BIP-08/19/2024 contain other self-regulation strategies, goals and objectives to try to teach Student to recognize and regulate Student's emotions, as well as communicate Student's needs, wants, and/or feelings with others. *FOF 71*. Petitioners focus on the failure of the DOE's discussion regarding Student's ability to leave the classroom to self-regulate is unsupported by the evidence in this case. Petitioners have failed to meet their burden of proof on this issue.

4. Student's need for modifications/accommodations for participation in field trips and other school-related activities

Petitioners argue that the IEP team failed to discuss Student's needs for modifications/accommodations for Student to participate in field trips and other school-related activities. Petitioners have identified a single field trip that Student was not allowed to attend due to Student's severe escalation in behaviors as a denial of FAPE by Respondents.

The evidence has demonstrated that in this case, just days before the field trip was scheduled, Student's behaviors had escalated to the point where Student was physically aggressive with multiple adults in the classroom and engaged in property damage to school equipment. *FOF 59*. The IEP team's solution to this concern was to address the cause of Student's increasing behaviors by teaching Student skills to identify and express emotions, self-regulate, and be self-aware of the effect Student's behaviors had on others. *FOF 44-46*. The IEP team discussed goals and objectives, behavioral goals, objectives, and most importantly, supports that Student would have to work on these skills, which would hopefully address Student's behaviors. By doing so, the IEP team and the resulting IEP-08/19/2024 did adequately address modifications, accommodations, and supports that would allow Student to attend field trips and other school activities.

Petitioners argue that Student should have been allowed to go on a field trip where a large number of people would be present and multiple items of [REDACTED] equipment could be damaged because Student had been fine on field trips in the past. *See FOF 59*. Petitioners did not present any evidence of prior field trips that Student attended and/or the circumstances of the prior field trips; however, the evidence in this case is clear that Student's behaviors in the start of the 2024-2025 school year had escalated to behaviors that were not previously seen in intensity as the behaviors Student was displaying just before the field trip in question. Petitioners argue that the IEP team suggested that the IEP-08/19/2024 reflect that

Student would not be allowed to attend field trips until Student is able to better communicate and has more manageable behaviors, but that information was not included in the IEP-08/19/2024. There is no evidence to support Petitioners argument that this decision on the field trip was a broad policy decision, but rather a decision based on Student's current behaviors at the time of the field trip.

Finally, Petitioners argument that Student was denied a FAPE by not being provided an alternative educational experience to the field trip is unsupported by the law. Student was not being discriminated against due to Student's disabilities and was offered Student's IEP-08/19/2024 program when Student would have attended school during the days of the field trip. *FOF 60-61, 63*. Petitioners have presented no legal authority that requires the DOE to provide an educational experience that aligned with the academic goals of the field trip rather than provide Student with the IEP-08/19/2024 that would address Student's unique needs. Student's IEP-08/19/2024 focused on the needs of Student and provided an educational program that would allow to access Student's education. Petitioners have failed to meet their burden of proof on this issue.

5. Student's need for ESY services

Petitioners argue that Respondents failed to determine Student's eligibility for ESY services resulted in a denial of FAPE. This Hearings Officer concludes that the IEP team's decision to reserve the discussion on Student's eligibility for ESY services until after the team was able to collect data based on Student's new program was an appropriate decision based on the discussion at the IEP meetings in August 2024.

A school must provide ESY services only if the child's IEP team determines that the services are necessary 'for the provision of FAPE to the child.' *N.B. v. Hellgate Elementary*

School Dist., ex rel. Bd. of Directors, Missoula County Mont., 541 F.3d 1202, 1211 (9th Cir. 2008). To qualify for extended school year services, “a claimant seeking an ESY must satisfy an even stricter test, because ‘providing an ESY is an exception and not the rule under the regulatory scheme.’” *N.B.*, 541 F.3d at 1211, *quoting Bd. of Educ. of Fayette County v. L.M.*, 478 F.3d 307, 315 (6th Cir. 2007) *quoting Cordrey v. Euckert*, 917 F.2d 1460, 1473 (6th Cir. 1990), *cert. denied*, 552 U.S. 1042, 128 S.Ct. 693, 169 L.Ed.2d. 513 (2007); *see also Dep’t of Educ. v. L.S. by C.S.*, 74 IDELR 71, 2019 WL 1421752 *7 (D. Hawai’i 2019) (holding that ESY is “educational instruction beyond the normal academic year provided to students who need the additional instruction to retain information during a break in regularly scheduled classes, such as during the summer.”). The standard for ESY is higher than the standard for the provision of special education and related services due to the requirement to show that the benefits the student gains during the regular school year will be significantly jeopardized if he or she is not provided with an educational program during school breaks. *Id.*, *quoting MM ex rel. DM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537-538 (4th Cir. 2002); *see also K.K. ex rel. K.S.K. v. Hawai’i*, 66 IDELR 12, 2015 WL 4611947; *Kenton County Sch. Dist. v. Hunt*, 384 F.3d 269, 279 (6th Cir. 2004) (confirming that “it is the proponent of ESY that bears the burden of proof either through the use of data or the use of expert testimony.”).

As noted in the extensive caselaw regarding ESY services, Petitioners have the burden of proving that Student should qualify for ESY services, since ESY is the exception and not the rule. Here, while there was some brief evidence presented by Parent that Student began to feel more anxious when Student began school in the 2024-2025 school year, it was also Parent that told the IEP team that Student does not need ESY and that they can take the discussion off the table. *FOF 57*. Nonetheless, the IEP team continued to discuss Student’s eligibility for ESY

services, particularly due to Student's reported increased anxiety about attending school after the summer. The IEP team further noted that based on Student's new, increased behaviors, the team is starting a new program with Student to work on Student's communication, self-regulation, and self-awareness skills in a safe space provided to Student. The team determined that they would continue to collect data based on Student's new program and determine whether Student would qualify for ESY services in the future. *FOF 58.*

Petitioners have the specific burden of presenting evidence that Student would suffer regression with a failure to recoup the skills that Student has learned in school after an extended break to qualify for ESY services. Petitioners have failed to present any evidence to meet their burden of proof on this issue.

6. Student's emotional/behavioral goals and objectives

Petitioners' next argument is that the IEP team did not discuss and/or address Student's emotional/behavioral goals and objectives in the August 2024 IEP meetings. In making this argument, Petitioner conveniently ignore the fact that the August 2024 IEP meetings were intended to discuss possible revisions to Student's IEP based on the new behaviors that had occurred at the start of the 2024-2025 school year. Student's two previous IEPs, IEP-12/07/2023 and IEP-03/08/2024, both contained the same emotional/behavioral goals and objectives that are contained in the IEP-08/19/2024, all of which were taken directly from Student's BIPs. *FOF 66.* Petitioners' suggestion that Parent was not aware of these goals and objectives to participate in the development of the same is not supported by the evidence in this case.

The IEP-08/19/2024 also contains two emotional goals and two functional communication goals that address Student's needs for calming strategies and identifying appropriate responses to social scenarios that were discussed at the IEP meeting. *FOF 67.* Parent

was welcomed to participate in the discussion at the IEP meetings and did so when Parent felt it was appropriate. *See FOF 38-62*. Parent did not have any objections or concerns raised at the IEP meeting regarding these additional goals and objectives to address Student's behavioral and emotional goals, and the goals themselves appropriately address Student's needs in those areas. Petitioners have failed to meet their burden of proof on this issue.

7. Student's educational placement

Petitioners' final area of issue is the LRE that was written in Student's IEP-08/19/2024. Petitioners specifically argue that the IEP-08/19/2024 places Student in a segregated environment during math and ELA where Student is only allowed to work on functional communication goals. This argument is not supported by the evidence presented in this case. Student's LRE in the IEP-08/19/2024 places Student in a special education class for math and ELA, so that Student may get individualized attention for academic tasks that are more demanding for Student. *FOF 65; see also FOF 5*. While Student works on Student's functional communication and behavioral goals, Student is allowed to choose whether to attend the special education classroom or stay in Student's designated safe space to work on behavioral goals. The evidence in this case is clear that Student's primary difficulties in school is managing behaviors to access Student's education. The record demonstrates that Student was at or near grade level with academics in math and ELA, when Student participated in class and completed assignments prior to Student's behaviors getting in the way, but Student needs to learn to communicate, participate, and complete the assigned work in those subjects to make progress. *See R-Ex., p.0266-268*. The LRE and safe space placement for Student allows Student to develop the skills necessary to manage Student's frustration and behaviors to begin working on academics.

Further, Petitioners are not actually objecting to the placement that was decided by the IEP team. Parent, both at the IEP meeting and at the Hearing in this case, stated that Parent wanted Student to get pull out special education services for math and ELA, just in a different classroom. *FOF 56*. Petitioners' issue in this case is that Petitioners do not want Student in SPED's classroom. The IDEA does not require a consensus of the IEP team regarding specific location where the IEP services that will be provided, just the educational setting in which students will receive their services. *Carrie I. ex rel. Greg I. v. Department of Educ., Hawaii*, 869 F.Supp.2d 1225, 1239 (D.Hawaii 2012); *AW ex rel. Wilson v. Fairfax County School Bd.*, 372 F.3d 674, 682 (4th Cir. 2004); *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373, 381 (5th Cir. 2003); *Deer Valley Unified School Dist. v. L.P. ex rel. Schripsema*, 942 F.Supp.2d 880, 887 (D.Arizona 2013). It is long established that the educational placement of the student is educational setting where the student is to receive special education and related services, and not the specific location, school, or classroom. *Id.* In this case, while Petitioners have strongly asserted that Student has been 'triggered' in SPED's classroom by SPED, the record does not support Petitioners' argument that SPED's classroom is not a safe place for Student such that Student would not be able to receive special education and services in that setting. Contrary to Parent's assertions, this Hearings Officer believes the assertions by the adults who work with Student that SPED has not acted inappropriately or engaged in any behaviors that would trigger Student's behaviors in the classroom. The video evidence submitted by Petitioners in preparation for this Hearing of Student being 'interviewed' by Parent, with prompts, to discuss why Student does not feel comfortable in SPED's class is unpersuasive.

Petitioners have failed to meet their burden of proving that the LRE in Student's IEP-08/19/2024 is not an appropriate educational placement for Student.

B. Petitioners have not proven that the IEP-08/19/2024 does not provide an educational plan for Student that reasonably addresses Student's needs under Student's unique circumstances

Petitioners argue that the IEP-08/19/2024 fails to sufficiently address Student's needs to allow Student to access Student's education. Specifically, Petitioners argue that the IEP-08/19/2024 does not provide Student with a program that addresses the same issues as outlined above in the discussion section. Based on the discussions regarding each topic raised by Petitioners, *supra*, this Hearings Officer concludes that Petitioners have failed to meet their burden of proof on this issue and that the IEP-08/19/2024 is an appropriate educational program for Student that would reasonably allow Student to make progress in light of Student's unique circumstances.

Student's IEP-08/19/2024 provides Student with a program that will increase Student's skills in self-regulation, self-advocacy, self-awareness, and functional communication to manage Student's maladaptive behaviors, while still allowing Student to attend general education classes with peers to access Student's education. While Student's academic progress in math and ELA may be put on hold to allow Student to manage Student's behaviors better to return to the classroom, Student's primary concerns regarding Student's disability is currently Student's behaviors, such as aggression, property damage, and refusal to participate in class. The IEP-08/19/2024 provides Student with the BIP-08/19/2024 to provide classroom management and [REDACTED] techniques to increase Student's skill acquisition, reduce problem behaviors, and provides Student with multiple accommodations to allow Student to access Student's education. Student received an increased number of [REDACTED] services in the IEP-08/19/2024 due to the increase in Student's behaviors and the IEP team and Home School provided the necessary space and

support for Student to work on the skills Student needs to manage behaviors and communicate appropriately in the school setting.

Petitioners have not proven that the IEP-08/19/2024 does not provide Student with special education and related services that are designed to allow Student to make reasonable progress in light of Student's unique needs. This Hearings Officer concludes that the IEP-08/19/2024 is an appropriate educational program for Student.

VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not proven the allegations contained in the Complaint. Petitioners' request for the finding of a denial of FAPE and remedies under the law is respectfully 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 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, November 18, 2024.



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