



DEPARTMENT OF THE
ATTORNEY GENERAL
OFC OF DISPUTE RESOLUTION

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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

In the Matter of PARENT, individually and
on behalf of STUDENT,¹

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAI'I, and KEITH T. HAYASHI,
Superintendent of the Hawai'i Public
Schools,

Respondents.

DOE-SY2425-016

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
December 10-13, 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 February 29, 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 six issues in their Complaint and Resolution Proposal (hereinafter “Complaint”) to be addressed at the Hearing regarding the development and offer of the February 29, 2024 IEP (hereinafter “IEP-02/29/2024”) and the actions taken by the DOE since the start of the 2024-2025 school year:

1. Whether the classroom environment the DOE has provided for Student since the start of the 2024-2025 school year has negatively affected Student’s ability to obtain a free appropriate public education (hereinafter “FAPE”).
2. Whether Student’s IEP-02/29/2024 sufficiently identifies Student’s [REDACTED] deficits, [REDACTED] deficits, and/or [REDACTED] deficits.
3. Whether Student has been sufficiently assessed to determine Student’s assistive technology needs, [REDACTED] deficits, [REDACTED] deficits, and/or [REDACTED] deficits.
4. Whether Student’s IEP-02/29/2024 sufficiently addresses Student’s [REDACTED] Planning.²
5. Whether Student’s IEP-02/29/2024 includes Objectives to address Student’s unique needs for [REDACTED] deficits, [REDACTED] deficits, and/or [REDACTED] deficits.
6. Whether Student’s IEP-02/29/2024 sufficiently addresses Student’s needs for supports to:

² [REDACTED] Planning includes [REDACTED] Assessments, Preferences, Interests, Needs & Strengths, [REDACTED] Goals and [REDACTED] Services, and/or [REDACTED].

- a. Maintain consistency with peers to promote positive peer interaction, individual growth;
- b. Encourage verbal engagement with peers without negative behavioral incidents and with communication and social skills;
- c. Increase independence to freely [REDACTED] with Student's [REDACTED] throughout school from class to class with accommodations and to leave class [REDACTED] minutes earlier to access the [REDACTED] before general education students are out for [REDACTED] break;
- d. Promote independence when out for [REDACTED]
[REDACTED]
[REDACTED];
- e. Provide restroom opportunities even if on [REDACTED] outing and not withhold fluids;
- f. Promote full sentence speech patterns;
- g. Use real life visuals instead of picture-drawings, i.e. real life-based picture cards for scenario sequencing or description of activities;
- h. Promote and continue handwriting with pencil and its positioning.

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 September 5, 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 and Section 504 of the Rehabilitation Act of 1973 (hereinafter “Section 504”), from Student, by and through Parent (hereinafter “Petitioners”). Respondents submitted a response to Petitioners’ Complaint on September 13, 2024.

On October 2, 2024, a prehearing conference was held with Hearings Officer Chastity T. Imamura, Keith H.S. Peck, Esq. (hereinafter “Mr. Peck”) on behalf Petitioners, and Anne T. Horiuchi, Esq. (hereinafter “Ms. Horiuchi”) on behalf of Respondents. The due process hearing (hereinafter “Hearing”) was scheduled for November 12-14, 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 October 2, 2024, which set forth the parameters of the video conference due process hearing. On October 11, 2024, Petitioners requested a status conference to address an issue with the Due Process Hearing dates. The status conference was held on October 16, 2024, during which Petitioners’ requested a continuance of the Hearing dates due to some additional testing that Petitioners wanted to do before the Hearing. Respondents did not object to Petitioners’ request and the Hearing dates were moved to December 10-13, 2024. The initial decision deadline was extended from November 19, 2024 to January 3, 2025.

The Due Process Hearing began on December 10, 2024. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; District Representative and Ms. Horiuchi on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Principal and Private Neuropsychologist (hereinafter “PN”) to testify. The Hearing continued to December 11, 2024, where Parent provided testimony and Petitioners rested their case-in-chief. On December 12, 2024, Respondents called Speech-Language Pathologist (hereinafter “SLP”), Educational Assistant (hereinafter “EA”), Special Education Teacher (hereinafter “SPED”), and DOE Clinical Psychologist (hereinafter “DOE CP”) to testify. The Hearing continued to December 13, 2024, where Student Services Coordinator (hereinafter “SSC”) provided testimony and Respondents rested their case-in-chief. Petitioners did not have any rebuttal witnesses to call and the Hearing was concluded.

Both parties requested the ability to provide written closing arguments with the assistance of transcripts by the court reporter. Due to the schedule of the court reporter, the transcripts were anticipated to take longer than the typical two-week period, so Respondents requested another extension of the decision deadline to allow the transcripts to be completed and the parties to submit written closing briefs. The deadline for written closing briefs was January 15, 2025. Both parties submitted their respective closing briefs by the deadline.

Each party submitted their exhibits for the Hearing by the disclosure deadline of December 3, 2024. The parties reviewed the exhibit and witness lists provided by the opposing party and Respondents objected to Petitioners’ Exhibit 1, pages 001-021, due to the document missing a page. Respondents noted that their Exhibit 10, pages 063-084 was the same document containing all the pages. Petitioners agreed to use Respondents’ Exhibit 10 for the Hearing. 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 December 18, 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 2, pages 022-032; and Exhibit 3, pages 033-034, 039-045.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-008; Exhibits 4-15, pages 014-111; Exhibits 22-30, pages 118-145; Exhibits 34-38, pages 149-164; Exhibits 41-63, pages 167-236; Exhibits 65-66, pages 240-244; Exhibit 72, pages 267-271; Exhibits 74-75, pages 273-300; Exhibit 82, pages 310-311; Exhibits 85-87, pages 320-334; Exhibit 89, page 338; Exhibit 91, page 374; Exhibits 96-101, pages 381-413; Exhibits 103-105, pages 415-431; Exhibit 107, page 433; Exhibits 110-111, pages 437-521; Exhibit 116, page 528; Exhibits 120-121, pages 532-533; Exhibits 123-125, pages 535-537; Exhibit 127, page 539; Exhibit 132, pages 544-545; Exhibit 134, page 548; Exhibit 136, pages 551-552; Exhibit 138, page 554; Exhibits 144-145, pages 561-563; Exhibits 149-153, pages 582-589; Exhibits 163-174, pages 606-727; Exhibit 176, pages 734-736; Exhibit 183, pages 840-863; Exhibit 184, pages 864-886; Exhibit 189, pages 899-902.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding,³ the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision.

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

V. FINDINGS OF FACT

Witness background

1. PN is a licensed clinical psychologist in the State of Hawai'i. PN specializes in neuropsychology and working with individuals with learning disabilities, brain injuries, and cognitive impairments. PN has been qualified as an expert witness in psychology and neurodevelopmental child psychology. Testimony of PN, Transcript of Proceedings, Volume 1, page 34, line 17, through line 25 (hereinafter referenced as "Tr.V1, 34:17-25"); Petitioners' Exhibit 3, pages 039 through 044 (hereinafter referenced as "P-Ex.3, p.039-044").
2. DOE CP is a licensed clinical psychologist in the State of Hawai'i and works for the DOE. DOE CP has been qualified as an expert in the area of clinical psychology. Testimony of DOE CP, Tr.V3, 309:24-311:17.

Student's background

3. Student is [REDACTED] years old and is eligible for special education and related services pursuant to the IDEA under the category of [REDACTED] with delays in the areas of cognition, communication, academic skills, self-help skills, and fine motor and gross motor skills. Testimony of Parent, Tr.V2, 78:22-25; R-Ex.5, p.016; R-Ex.10, p.064; R-Ex.14, p.089.
4. [REDACTED].
Testimony of Parent, Tr.V2, 116:8-24.
5. Student attends Home School and has attended Home School since the summer of [REDACTED]. Student misses school occasionally for medical treatment and had missed a significant portion of Student's 2022-2023 school year due to medical treatment. Student also

missed over three weeks of school during the 2023-2024 school year. Testimony of SPED, Tr.V3, 265:12-267:8; Testimony of SSC, Tr.V2, 345:2-9; *see* R-Ex.165, p.634-650.

6. Student has difficulty with retention and communication and is not a candidate for an augmented device because Student does not currently possess the cognitive ability to be able to utilize it. Testimony of SLP, Tr.V3, 191:18-196:5.

2023-2024 school year

7. At the end of each school year, the special education department teachers discuss their students and provides input as to what classroom students should be assigned to for the next school year. The discussion/decisions usually involve comparing the relative abilities and special education needs and services for each student. Classrooms sometimes change due to some students leaving Home School and other students joining Home School. Testimony of Principal, Tr.V1, 10:17-11:7; Testimony of SPED, 300:11-301:8, 303:12-340:3; Testimony of SSC, Tr.V4, 345:17-347:10.
8. After the discussion the students are grouped into classrooms, however, teachers for the classrooms are not assigned until later when the principal assigns a special education teacher to each class. Testimony of SPED, Tr.V3, 301:9-18; Testimony of SSC, Tr.V4, 347:11-17.
9. All the fully self-contained special education (hereinafter “FSC”) classrooms at Home School are able to provide IEP special education and related services for the students that are assigned to the class.
10. Student’s appropriate educational placement is special education for the majority of Student’s day.

11. For the 2023-2024 school year, Student was assigned to SPED's classroom, which was a FSC special education classroom, meaning that only special education students were assigned to SPED. SPED taught Student during the times when Student was present in SPED's class and took data and information for Student's progress reports. Testimony of SPED, Tr.V3, 265:4-11; R-Ex.166, p.651-658; R-Ex.167, p.672-677; R-Ex.168, p.685-690; R-Ex.169, p.698-703.
12. Student had an IEP that was developed prior to October 2023, which was amended to clarify a portion of the extended school year speech-language services that Student would be receiving. This amendment was completed without a meeting with Parent's consent. Testimony of SPED, Tr.V3, 270:9-25; Testimony of SSC, Tr.V4, 348:17-349:2.
13. On November 16, 2023, the IEP team from Home School held a meeting to develop a new annual IEP for Student for the remainder of the 2023-2024 school year and to be in place for the 2024-2025 school year. Testimony of SPED, Tr.V3, 271:1-12; Testimony of SSC, Tr.V4, 349:3-22.
14. Prior to the IEP meeting, Parent was sent information from Student's new speech-language pathologist and Student's occupational therapist who were assigned to Student regarding Student's proposed therapy and proposed goals and objectives. Testimony of SPED, Tr.V3, 271:13-272:16; R-Ex.25, P.121-124; R-Ex.26, p.125-128; R-Ex.27, p.129-133; R-Ex.28, p.134-139; R-Ex.29, p.140-143; R-Ex.30, p.144-145.
15. The IEP team did not complete the new IEP at the meeting, as Parent wanted to discuss many of the present levels of educational performance (hereinafter "PLEPs"), goals and objectives, and supplementary aids and supports with the various service providers since many of them were new to Student's team. Testimony of Parent, Tr.V2, 160:9-163:2;

Testimony of SSC, Tr.V4, 349:19-350:3.

16. After the IEP meeting, Student's related service providers and Home School personnel continued to communicate with Parent regarding changes and proposals for Student's IEP. This included emails from Parent with proposed changes to the PLEPs and goals and objectives in the draft IEP, as well as information provided to Parent regarding what they had proposed for the IEP. Testimony of SPED, Tr.V3, 272:24-273:16; Testimony of SSC, Tr.V4, 370:12-23; R-Ex.31, p.149-153; R-Ex.35, p.154-155; R-Ex.36, p.156-157; R-Ex.37, p.158; R-Ex.38, p.159-164; R-Ex.41, p.167-170; R-Ex.42, p.171-181; R-Ex.43, p.182-185; R-Ex.44, p.186-191; R-Ex.46, p.193-197; R-Ex.47, p.198-199; R-Ex.48, p.200-201; R-Ex.49, p.202; R-Ex.50, p.203; R-Ex.51, p.204-205; R-Ex.52, p.206-208; R-Ex.53, p.209-213; R-Ex.54, p.214-216; R-Ex.55, p.217-221; R-Ex.56, p.222; R-Ex.65, p.240-241; R-Ex.66, p.242-244; R-Ex.72, p.267-271; R-Ex.74, p.273-297;
17. On February 29, 2024, Parent requested that Home School include transportation for Student in Student's IEP due to Parent maybe needing to return to work. SSC communicated with Parent that since Student's new IEP has not been completed, they could revise the IEP-10/06/2023 that was still in effect for Student to include transportation. Parent agreed to amend Student's IEP-10/06/2023 to include transportation without the need for a meeting and signed the necessary consent forms. Testimony of SSC, Tr.V4, 350:8-19; R-Ex.9, p.062; R-Ex.57, p.223; R-Ex.58, p.224; R-Ex.59, p.225-226; R-Ex.59, p.225-226; R-Ex.60, p.227-228; R-Ex.61, p.229-230; R-Ex.62, p.231-233; R-Ex.63, p.234-236.
18. Student's IEP was amended, and a prior written notice (hereinafter "PWN") was issued on February 29, 2024 (hereinafter "IEP-02/29/2024" and "PWN-02/29/2024"). R-Ex.10,

p.063-084; R-Ex.11, p.085.

19. Another IEP meeting was held on April 15, 2024 to complete Student's IEP that the team had started in November 2023. A draft of the full IEP was sent to Parent on April 12, 2024 for Parent's review prior to the meeting. Testimony of SSC, Tr.V4, 1-352:18; R-Ex.74, p.273-297; *see also* R-Ex.75, p.298-300.
20. After the IEP meeting on April 15, 2024, Parent communicated with SSC regarding an incident that Parent alleged with Student's substitute educational assistant and noted that Parent "now question[s] many things at school because there is reason to question, iep directives....unclear goals with [REDACTED] and [REDACTED] in my opinion." R-Ex.82, p.310-311.
21. A copy of the revised draft IEP that was completed after the April 15, 2024 meeting was sent to Parent through Student after the meeting (hereinafter "Draft IEP-04/15/2024"). Testimony of SPED, Tr.V3, 276:9-11; R-Ex.82, p.310-311.
22. On April 26, 2024, SSC provided Parent with the information Parent requested and resolved an issue with Student's speech services that Parent had raised. SSC also inquired with Parent about approving the IEP so that Home School could "activate it" so they could start working with Student on new goals and objectives. Testimony of SSC, Tr.V4, 353:3-354; R-Ex.85, p.320-325.
23. Thereafter Parent continued to communicate concerns, requests, and complaints with Home School through SSC, but did not respond to SSC's inquiries about activating the Draft IEP-04/15/2024, despite SSC diligently responding to Parent's concerns, requests, and complaints raised in the email communications. Testimony of SSC, Tr.V4, 354:25-8, 370:24-371:4; R-Ex.86, p.326-329; R-Ex.87, p.330-334; R-Ex.89, p.338; R-Ex.91, p.374; R-Ex.97, p.382; R-Ex.98, p.384-385; R-Ex.99, p.386-387; R-Ex.100, p.388-389.

24. Rather than providing Parent's approval or disapproval of the Draft IEP-04/15/2024, Parent instead claimed that Parent "received several drafts so not sure which one is the final and the teacher never follow up as [teacher] was silent throughout the last months of [Student's] schooling." R-Ex.97, p.382.
25. On June 26, 2024, Parent was emailed a copy of the Draft IEP-04/15/2024 by SSC who also requested that Parent provide Home School with approval to 'activate' for the 2024-2025 school year. Testimony of SSC, Tr.V4, 355:9-16; R-Ex.101, p.390-413.
26. One month later, on July 26, 2024, Parent responded to SSC's email about the Draft IEP-04/15/2024 and sent additional comments/corrections for the IEP. Parent again did not respond to SSC's inquiry about activating the Draft IEP-04/15/2024 but noted Parent could discuss it with SSC the following week. R-Ex.103, p.415-418; R-Ex.104, p.419-429.
27. As of the start of the 2024-2025 school year on August 6, 2024, Parent had not "approved" of the Draft IEP-04/15/2024 so Home School did not begin implementing the goals and objectives for Student in the new school year. Testimony of SPED, Tr.V3, 278:1-3;

2024-2025 school year

28. For the 2024-2025 school year, Student was assigned to a classroom with lower functioning students, which was a change from being assigned to a classroom with higher functioning students. SPED and the other special education teachers determined that this was an appropriate assignment for Student based on Student's relative abilities and needs. See Testimony of Parent, Tr.V2, 106:6-111:11, 114:6-22, 115:14-116:7; Testimony of SPED, Tr.V3, 278:5-279:14, 303:1-4.

29. Student was assigned to an FSC classroom with [REDACTED] other students. Current Teacher was the teacher assigned to Student's class. Testimony of ; R-Ex.105, p.430-431.
30. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Testimony of SPED, Tr.V3, 278:5-279:14.
31. Student does not currently have the background knowledge or skills to complete most of the tasks that the students in SPED's class are working on. Testimony of SPED, Tr.V3, 280:6-11.
32. Current Teacher sent a letter with an introduction of Current Teacher to Parent, along with a printed schedule that they would be following for the school year in that classroom. SSC provided Parent with the names of all Student's related service providers for the 2024-2025 school year. R-Ex.105, p.430-431; R-Ex.107, p.433.
33. Parent continued to request documents, provide input and corrections to the draft IEP, and delay responding to Home School's inquiries about activating the Draft IEP-04/15/2024 for Student so the team could begin working on the new goals and objectives developed by the IEP team. R-Ex.110, p.437.
34. Despite Parent's repeated delays and inquiries into the Draft IEP-04/15/2024, Parent sent an email to SSC "requesting that [Student's] overdue iep be finalized soon." In the same email, Parent complained about Student being placed into a different FSC classroom for

- the 2024-2025 school year and accused SSC and Home School of not doing their duties in providing Student's education. R-Ex.111, p.438-439.
35. On August 15, 2024, Home School made corrections to the Draft IEP-04/15/2024 based on Parent's request and again sent it to Parent for approval to implement the new IEP (hereinafter "Draft IEP-08/15/2024"). Testimony of SSC, Tr.V4, 355:18-356:6; R-Ex.111, p.438, 454-475, 476-498, 499-520; R-Ex.183, p.840-863.
36. Parent sent several email communications to Home School through Principal and SSC expressing Parent's unhappiness with Student's new classroom assignment and accusing the school of affecting Student's ability to attend school and Parent's work. To try to alleviate Parent's concerns, Home School allowed Student to attend classes in the library instead of Current Teacher's class on September 9, 2024. P-Ex.2, p.027-028; R-Ex.116, p.528; R-Ex.123, p.535; R-Ex.124, p.536; R-Ex.132, p.544-545; R-Ex.136, p.551-552; R-Ex.138, p.554; R-Ex.144, p.561-562.
37. Parent noticed that Student's behavior problems regarding attending school began after Student heard Parent and Student's other parent discussing the new classroom setting, which Parent was unsatisfied and unhappy since Parent had not been given notice of the change in teachers/classrooms. It was after the conversation that Student witnessed between Parent and Student's other parent that Student began to refuse going to school. Testimony of Parent, Tr.V2, 118:2-119:6.
38. On August 21, 2024, Parent requested that Student's IEP be completed in the next week or two. R-Ex.116, p.528.
39. Petitioners submitted the instant Complaint, which was signed on September 5, 2024. R-Ex.1, p.007.

40. Student missed school for almost the entire month of [REDACTED] due to the dissatisfaction Parent had with Student's new classroom assignment. Student also did not attend school for several days due to illness. *See* Testimony of EA, Tr.V3, 249:23-25, 259:2-4; R-Ex.125, p.537; R-Ex.127, p.539.
41. The IEP team attempted to schedule an IEP meeting to complete Student's IEP after Parent's request, but Parent was unable to attend the proposed meeting dates due to Parent wanting Parent's attorney to be present at the meeting. No correspondence regarding scheduling an IEP meeting was had after this exchange in communication. Testimony of Parent, Tr.V2, 93:4-94:10; R-Ex.134, p.548.
42. Parent pulled Student out of school from [REDACTED] until some time before [REDACTED]. Parent returned Student to school to complete an evaluation of Student by PN, and Home School only allowed PN to do an observation at Home School while Student was present and had been attending classes for some time. Testimony of Principal, Tr.V1, 12:20-13:11; Testimony of Parent, Tr.V2, 100:5-101:6; R-Ex.145, p.563; R-Ex.149, p.582.
43. PN completed an observation of Student at Home School from around 11:00 a.m. for approximately one hour. SSC and DOE CP were also present during the observation. The observation took place during a [REDACTED] (non-academic) session of the school day and during a portion of the lunch period. Testimony of PN, Tr.V1, P-Ex.3, p.034; Testimony of SSC, Tr.V4, 357:6-360:13.
44. PN concluded at the end of the observation, having not observed any other session of Student's school day at Home School, that Student's current classroom assignment was inappropriate for Student due to the lack of access to higher functioning peers and

nondisabled peers from whom Student could grow socially and emotionally. Testimony of PN, Tr.V1, 37:1-40:11; P-Ex.3, p.034.

45. DOE CP did not make any conclusions about the appropriateness of Student's classroom setting due to the lack of information that was gained from the single observation that involved a [REDACTED] class and lunch period. DOE CP did observe that of the students in the classroom, Student and [REDACTED] were engaged in the activity and were able to answer questions posed to them by the teacher. DOE CP also noticed that Student was in a happy and cheery mood with a positive affect. Testimony of DOE CP, Tr.V3, 315:1-317:9, 323:1-325:19.
46. Student has been attending school at Home School in Current Teacher's classroom since returning to school for PN's observation. Student has been working on IEP goals and objectives from the IEP-02/29/2024, as that is the current "active" IEP for Student. Testimony of SLP, Tr.V2, 202:3-17, Testimony of SPED, Tr.V3, 275:6-16, 292:15-297:19, 299:8-300:5, 304:7-305:7; Testimony of SSC, Tr.V4, 354:11-24.
47. Since Student has returned to school, Parent has only observed one incident regarding Student [REDACTED]
[REDACTED] Other than that, Student has not had other notable behavioral incidents regarding attending school. Testimony of Parent, Tr.V2, 120:14-122:2.
48. Student has not had any noticeable change in behaviors at school and still actively participates in class and works diligently on IEP goals and objectives. Testimony of SLP, Tr.V3, 191:8-13; Testimony of EA, Tr.V3, 225:1-5, 233:21-235:22, 241:18-20, 255:6-20; Testimony of SSC, Tr.V4, 362:17-25.

49. Student's school week consists of related services of occupational therapy, speech-language therapy, physical therapy, special education for goals and objectives, physical education with students from other special education classes, [REDACTED], and occasionally, activities with a partnered club with nondisabled students. Testimony of EA, Tr.V2, 211:1-212:18, 220:9-24, 243:12-248:21; Testimony of SPED, Tr.V3, 281:14-282:13.
50. Student has had a noticeable drop in progress on goals and objectives from the IEP-02/29/2024 according to the October 2024 progress report, but the evaluators note that it was due to Student's lengthy absence from school since the start of the 2024-2025 school year. Given Student's need for extended school year services, the drop in progress would be likely explained by Student not receiving services for a lengthy period. Student is also working with several new related service providers in the 2024-2025 school year. *See* Testimony of SLP, Tr.V2, 203-1-11; R-Ex.174, p.715-727.
51. Student's IEP-02/29/2024 has a reevaluation date of October 19, 2024. No attempts have been made by the DOE to schedule any student-focused team meetings to determine if a reevaluation is necessary for Student and what, if any, assessments would be done as part of a reevaluation. Testimony of Parent, Tr.V2, 83:12-84:3.
52. Parent informed Home School that Parent wanted PN's complete evaluation for the completion of Student's IEP. The IEP team is waiting until PN completes Student's evaluation before proceeding with "activating" or implementing the Draft IEP-8/15/2024, or having a meeting to discuss providing the Draft IEP-08/15/2024 as an offer of FAPE for Student. Testimony of Parent, Tr.V2, 154:20-24, 155:6-18; Testimony of SSC, Tr.V4, 368:6-15.

Student's IEP-02/29/2024 and Draft IEP-04/15/2024

53. Student's IEP-02/29/2024 has eleven goals and objectives for language arts, mathematics, [REDACTED], physical education, and health. R-Ex.10, p.070-080.
54. One of the goals for language arts involves typing to complete writing tasks. Individual objectives for typing involve typing Student's name, Student's Parents' names, Parents' telephone numbers, Student's home address, all with visual and verbal prompts. Testimony of Parent, Tr.V2, 91:2-12; R-Ex.10, p.071.
55. Parent bought and sent a special keyboard to school for Student to work on these goals and objectives, however SPED observed that typing was not working for Student due to some behavioral concerns that were raised in Student's work on this goal. Based on that, Student has not been working on typing since the 2023-2024 school year. Testimony of Parent, Tr.V2, 91:13-92:17; Testimony of SPED, Tr.V3, 273:23-274:19.
56. By April 2024, Student had mastered several IEP objectives from the IEP-02/29/2024 in the areas of physical education and health (interpersonal communication). R-Ex.168, p.691-693, 696-697.
57. As of June and October 2024,⁴ Student had received progress reports of Student having mastered several goals and objectives from the IEP-02/29/2024, most of which had been mastered since April 2024. R-Ex.169, p.706, 709-710; R-Ex.174, p.726.
58. The goals and objectives for language arts and mathematics for Student in the IEP-02/29/2024 are not as challenging for Student as the goals and objectives for Student in the Draft IEP-04/15/2024. Compare R-Ex.10, p.070, R-Ex.74, p.283; R-Ex.10, p.071, R-

⁴ Student's progress reports from October 2024 had many instances where either data had not been taken or Student had regressed (going from Mastered to Progressing) due to Student's lengthy absence from school. See R-Ex.174, p.715-727.

Ex.74, p.284; R-Ex.10, p.072, R-Ex.74, p.285; R-Ex.10, p.074, R-Ex.74, p.287; R-Ex.10, p.075; R-Ex.74, p.288; R-Ex.10, p.077, R-Ex.74, p.289; R-Ex.10, p.076; R-Ex.74, p.291; R-Ex.10, p.079, R-Ex.74, p.292.

59. The IEP-02/29/2024 does not contain any information regarding [REDACTED] [REDACTED] for Student, which is required to be discussed by the IEP team when Student reaches the age of [REDACTED]. R-Ex.10, p.021.
60. The Draft IEP-04/15/2024 contains information about [REDACTED] planning and goals for Student's [REDACTED] goals. The information contained in the [REDACTED] planning that was obtained from Parent influenced some of the goals and objectives that were included in the Draft IEP-04/15/2024. *See* R-Ex.74, p.281-282, 286, 287, 291, 292.
61. The Draft IEP-04/15/2024 contains ten goals and objectives, which are more appropriate for Student based on Student's progress from the 2023-2024 school year [REDACTED] [REDACTED]. *See* R-Ex.74, p.275-297; R-Ex.167, p.672-684; R-Ex.168, p.685-697; R-Ex.169, p.698-710.

Student's evaluation with PN

62. Student first met with PN around September 2024. Parent contacted PN to do an evaluation with Student to help Student's family determine what Student's future steps would be. Testimony of PN, Tr.V1, 23:22-24:18, 42:13-43:9, 63:4-17.
63. PN conducted an intellectual assessment, receptive and expressive language assessments, an academic assessment, a social and emotional assessment, and a fine motor control assessment as part of Student's evaluation. These assessments took place at PN's office. Testimony of PN, Tr.V1, 24:21-29:10.
64. PN had not completed the report for Student's evaluation by the time of the Hearing, so

the report, any assessment results, or background information contained in the report was based solely on PN's memory. Testimony of PN, Tr.V1, 25:25-26:6, 29:11-30:21.

65. PN conducted one observation of Student at Home School. This observation took place on November 4, 2024 from 11:00 a.m. until the beginning of the students' lunch period, which is at 11:45 a.m. Testimony of PN, Tr.V1, 50:10-58:17, 60:4-12, 62:3-7; P-Ex.3, p.034; R-Ex.105, p.431.
66. During the observation, PN saw [REDACTED] students and [REDACTED] adults in the classroom. Current Teacher was reading a book to the students and Student was very attentive. Student was also engaged with the activity, which involved Current Teacher reading the book and asking questions about the book to the students. Student [REDACTED] participated in answering questions. [REDACTED].
[REDACTED].
[REDACTED].
Testimony of PN, Tr.V1, 35:4-36:19; Testimony of Parent, Tr.V2, 110:14-111:4; P-Ex.3, p.034.
67. Student did not have any behavioral issues in the class that was observed by PN. PN observed that Student and EA worked together well but noted that EA did not appear to challenge Student or ask Student to perform more. P-Ex.3, p.034.
68. PN observed Student and the class go to the cafeteria together and sit at a table designated for Student's class. This is the table that Student and the other students from Current Teacher's class sit during lunch; however other students may sit at the table with Student's class. Testimony of PN, Tr.V1, 37:16-38:8; Testimony of EA, Tr.V3, 220:2-8.
69. PN did not observe Student during any other time at Home School, but another observation was being scheduled as of the time of the Hearing. Testimony of PN, Tr.V1,

60:13-61:19, 65:12-66:5; Testimony of Parent, Tr.V2, 151:22-153:6.

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 have not proven the classroom environment that the DOE has provided for Student since the start of the 2024-2025 school year has negatively impacted Student’s ability to obtain a free appropriate public education.

Petitioners’ primary argument is that by changing the classroom and teacher to which Student was assigned, the DOE negatively impacted Student’s ability to obtain a FAPE. This Hearings Officer finds that Petitioners have failed to meet their burden of proof on this issue.

Petitioners primarily allege that since Home School assigned Student to a classroom with lower-functioning students than where Student was assigned in the previous year, it has impacted the provision of FAPE to Student. Petitioners rely upon the expertise of PN to support this allegation.⁵ While this Hearings Officer finds that PN, as an expert witness, has the credentials

⁵ Petitioners also provided a letter from Student’s pediatrician, however, based on the letter itself and the testimony of Parent, it appears that all the information that the pediatrician had about the situation at the time the pediatrician wrote the letter came solely from Parent and not from any observations that the pediatrician may have made. *See* Testimony of Parent, Tr.V2, 130:1-131:13, 135:1-4; P-Ex.3, p.33. Additionally, as Student’s pediatrician did not testify at the Hearing and the letter itself did not appear to be based on observations made by pediatrician, this Hearings Officer gave the letter very little, if any, weight in the determination of this issue.

and expertise to provide such an opinion, the limited information upon which PN based PN's opinion in the matter does not support the finding of a denial of FAPE.

PN acknowledged, and the remaining witness testimony corroborates that PN observed Student's class during a non-academic period and during a short portion of their lunch period. *FOF 65.* Prior to the Hearing, PN did not observe Student in a school setting for academic periods, [REDACTED] periods, elective periods with students from other special education classrooms, or at any other time. *FOF 69.* PN's experiences with Student were confined to PN's office and the one-hour non-academic class period during which PN conducted the observation of Student. *FOF 62-65.* PN's opinion that was formed during observations made in a very limited time does not demonstrate that the classroom environment to which Student is currently assigned is impacting Student's ability to obtain a FAPE.

In contrast, SPED had daily interaction with Student during the 2023-2024 school year when Student was present. *FOF 11.* SPED testified that Student was grouped in the class where Student's abilities were similar to the other students in Student's current classroom and that Student more appropriately belonged in the current classroom. *FOF 28.* Student's behavior and performance when in the current classroom does not appear to be very different from Student's behavior in the prior classroom. *FOF 47-48.* Student continues to have opportunities that were available to Student in the prior classroom that involve nondisabled or less disabled students, like the partner club with nondisabled students or adaptive physical education with other disabled peers. *FOF 49.* Student's teachers and service providers, such as SLP, have noted that Student would not necessarily benefit from being in a different classroom with more verbal students primarily because Student has not demonstrated the ability to generalize the techniques that they

work on in speech-therapy to the point where Student could speak with more verbal students.

FOF 6, 30-31.

The educational placement of a student is what the IDEA requires the IEP team to determine, not the specific location of where the services will be provided. The Office of Special Education Programs (OSEP) has explained that “if a public agency ... has two or more equally appropriate locations that meet the child’s special education and related services needs, the assignment of a particular school ... may be an administrative determination, provided that the determination is consistent with the placement team’s decision.” *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373, 382 (5th Cir. 2003) (quoting *Letter from Office of Special Education Programs to Paul Veazey* (26 Nov. 2001); see also *Letter to Fisher*, 21 IDELR 992 (OSEP 1994); *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); *Deer Valley Unified School Dist. v. L.P. ex rel. Schripsema*, 942 F.Supp.2d 880, 887 (D.Arizona 2013).

Based on the record, this Hearings Officer concludes the special education department personnel collaboratively determined which specific classroom was the most appropriate class for all the students and grouped them accordingly. SPED, SSC, and other special education teachers at Home School grouped the students in the classes based on their relative skills and needs, as well as the services they receive, which is a reasonable procedure to determine which class a student is placed in. *FOF 7*. Student’s special education and related services are all available to Student in the current classroom to which Student is assigned, and Student has been receiving Student’s IEP special education and related services in that classroom when Student attends school. *FOF 46, 48-49*. PN’s limited observation of Student in the classroom setting

does not support the conclusion that the specific classroom setting where Student is currently assigned is impeding or affecting Student's ability to receive a FAPE. Petitioners have failed to meet their burden of proof on this issue.

B. Petitioners have proven that the DOE has denied Student a FAPE by not appropriately updating Student's IEP in a timely manner to address Student's needs.

Petitioners argue that the IEP-02/29/2024 fails to identify and/or address Student's [REDACTED] deficits, [REDACTED] deficits, and/or [REDACTED] deficits; Student's [REDACTED] planning; and Student's need for supports that address Student's unique needs. Because the IEP team had reviewed Student's current PLEPs and developed a new IEP but did not provide that IEP as an offer of FAPE prior to the start of the 2024-2025 school year, this Hearings Officer agrees that Student's IEP-02/29/2024 does not adequately address Student's unique needs in order to allow Student to make appropriate educational progress.

The IDEA requires that an IEP team review a student's IEP annually and revise, as appropriate, the IEP to address various circumstances, such as a lack of expected progress toward annual goals, results of a reevaluation, information provided to or by the student's parents, and *the child's anticipated needs*. *R.F. by and through E.F. v. Cecil County Public Schools*, 919 F.3d 237, 241 (4th Cir. 2019); 20 U.S.C. §1414(d)(4)(A); H.A.R. §8-60-48(b). The duty to issue an IEP is with the educational agency and a parent's right of participation is not a right to 'veto' the agency's proposed IEP. *Doe v. East Lyme Bd. of Educ.*, 790 F.3d 440, 449 (2nd Cir. 2015); *T.Y. v. New York City Dept. of Educ.*, 584 F.3d 412, 420 (2nd Cir. 2009); *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373, 380 (5th Cir. 2003).

At the outset, this Hearings Officer notes that this case is unusual in that Student's IEP-02/29/2024 is a revision of an older IEP that is in effect for Student, by agreement, because the IEP team is still working on completing the new IEP for Student that the team had been working

on since November 16, 2023. *FOF 13*. The IEP team in this case chose to separate the IEP review/revision process from the development of a new IEP for Student, apparently to allow Student to continue to have a working program for service providers and teachers to use while the team completed the development of an entirely new IEP. *FOF 12, 13, 17*.

The evidence in this case is that Parent actively participated in the development of Student's IEP and was provided with the draft(s) of the IEP to review and provide input or any changes to the document before the IEP was finalized. *FOF 14, 16, 21*. In this case, each service provider met with Parent and provided draft PLEPs, goals and objectives, services, and supplementary aids and supports to get Parent's input and to provide Parent with any information requested about their respective services for Student. *FOF 16*. The full draft IEP was completed in April 2024 and was sent to Parent for approval. *FOF 19-21*. Despite numerous inquiries made by SSC regarding Parent's approval of the draft IEP, Parent did not respond to SSC's inquiries until June 3, 2024 when Parent claimed that Parent did not know which draft IEP SSC was referring to, as Parent "received several drafts." *FOF 24*. After Parent's response, SSC again emailed Parent a draft IEP to review so that Home School could 'activate' the IEP for Student's 2024-2025 school year. *FOF 25*. Parent continued to delay Parent's response regarding activating the IEP for Student until well after the 2024-2025 school year started and instead focused on Parent's complaint regarding Student's classroom setting and asking Home School for additional documents to be resent to Parent. *FOF 26, 33, 34*.

Respondents, rather than insisting on a response from Parent and calling a meeting to inform Parent that they would be 'activating' the draft IEP prior to the start of the school year, failed to provide a timely offer of FAPE to Student for the 2024-2025 school year. As a result, Student's draft IEP, which appropriately addresses Student's current PLEPs, [REDACTED] planning,

goals and objectives, services, and supplementary aids and supports, has still not been activated as of the Hearing in this case in December 2024, after an entire semester of Student's school year had passed. *FOF 52.*

While this Hearings Officer acknowledges that Home School was trying to address all Parent's concerns for Student's IEP by proceeding in this manner and waiting for Parent's approval to activate the IEP, the result of the failure of the draft IEP to be implemented was that Student continued to work on outdated goals and objectives from an old IEP that had only been minimally revised. *FOF 55-58.* The IEP-02/29/2024 is similar in many respects to the draft IEP that was developed for Student, however there are some goals and objectives that Student has already mastered and other goals and objectives that more appropriately address Student's need for additional [REDACTED] skills. *FOF 59-61.* Testimony of the witnesses note that the service providers for Student are still working on older goals and objectives under the IEP-02/29/2024 since the draft IEP with the appropriate goals and objectives for Student is not yet in effect. *FOF 46.* As a result of this delay, Student suffered from a loss of educational opportunity, namely, to work on new goals and objectives as outlined in the draft IEP.

Because this Hearings Officer has found that the IEP-02/29/2024 does not appropriately address Student's needs, but the draft IEP that was developed by close collaboration with Parent and Student's teachers and service providers does appropriately address Student's needs, this Hearings Officer will not be separately addressing Petitioners' Issues 4-6.

- C. Petitioners have failed to prove that Student has not been sufficiently assessed to determine Student's assistive technology needs

Petitioners argue that Student has not been sufficiently assessed to determine whether Student would benefit from assistive technology.⁶ While Petitioners have presented some evidence through cross-examination that Student may benefit from using pictures in Student's special education, Petitioners have not proven that Respondents have failed to sufficiently assess Student's assistive technology needs.

Respondents were not required to assess Student for assistive technology needs because Petitioners have failed to prove that Student has the foundational behavioral, cognitive, and communicative skills necessary to use assistive technology successfully. *E.F. by and through Fulsang v. Newport Mesa Unified School District*, 726 Fed.Appx. 535, 537 (9th Cir. 2018). Here, the evidence presented is that Student is mostly non-verbal and has not demonstrated the ability to retain information that Student has learned from speech-language therapy. *FOF 6*. PN has not presented any report that provides information that would suggest that Student could benefit from an assistive technology device. Petitioners have failed to meet their burden of proof on this issue.

D. Equitable considerations

This Hearings Officer notes that while it is admirable that Home School attempted to secure Parent's approval and satisfaction with the draft IEP before turning into their offer of FAPE for Student, it did cause unnecessary delays in Student's progress and also provided Parent with opportunities to prolong the process of developing the new IEP and then file a due process complaint alleging the issues above. It is also clear to this Hearings Officer that Parent's

⁶ Petitioners Closing Brief, filed January 15, 2025, narrows the focus of Issue 3 to whether Student has been sufficiently assessed to determine assistive technology needs. As the evidence in this case also did not address a failure to [REDACTED] deficits and/or [REDACTED] deficits, this Decision will focus on assistive technology as well. See Petitioners' Closing Brief, page 9-12.

issues with Student's IEP-02/29/2024 and the Draft IEP-04/15/2024 came along after Parent realized that Student had been placed in a different classroom. Parent's main focus and concern during the entirety of the proceeding was Student's placement in Current Teacher's classroom, and Parent had to be reminded of the various issues listed in the Complaint about Student's IEP-02/29/2024. *See* Testimony of Parent, Tr.V2, 79:6-81:15, 169:3-170:16.

Parents must be given the opportunity to meaningfully participate in the development of a student's IEP, but the school district is responsible for providing the offer of FAPE. Simply because a parent disagrees with some or all of the IEP does not mean the parent did not meaningfully participate, nor does it mean that the IEP team must revise the IEP until the parent agrees. *See C.B. v. Garden Grove Unified School District*, 2012 WL 12887773 (U.S.D.C. California 2012); *Fuhrmann v. East Hanover Bd of Educ.*, 993 F.2d 1031, 1036 (3rd Cir. 1993). It was ultimately Respondents' obligation to provide an accurate and updated IEP for Student to use for the 2024-2025 school year, and they should have presented their offer of FAPE to Parent and the basis for their decision in a prior written notice after Parent unreasonably delayed their ability to active an appropriate IEP that the rest of the IEP team had agreed upon.

No evidence was presented regarding any reimbursement that Petitioners are requesting as a result of any denial of FAPE in this case, but this Hearings Officer would note that any such reimbursement would likely have been denied in light of Parent's refusal to provide Respondents with a timely response for the activation of the draft IEP.

VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have failed to prove that the classroom environment Student has been placed in for the 2024-2025 school year has negatively affected Student's

ability to obtain a FAPE or that Student had not been sufficiently assessed for assistive technology needs. This Hearings Officer finds that Petitioners have proven that the IEP-02/29/2024 does not sufficiently address Student's current needs and the failure of Respondents to timely activate a more appropriate IEP that the IEP team had agreed upon resulted in a denial of FAPE.

To remedy the violation committed by Respondents in this case, IT IS HEREBY ORDERED –

1. The IEP team shall, within fifteen (15) school⁷ days of this Decision, hold an IEP meeting to review and revise the Draft IEP-08/15/2024 with the purpose of finalizing a new IEP for Student.
2. The IEP team shall have thirty (30) calendar days from the meeting noted above to appropriately develop the new IEP based on the Draft IEP-08/15/2024 and the meeting discussions above, and provide an offer of FAPE to Parent of a new IEP for Student. This new IEP shall not be another revision of the IEP-02/29/2024, as that is an outdated version. The IEP administrator shall issue a prior written notice outlining the IEP team's discussion and decision as to the offer of FAPE.
3. Any delay in the scheduling of a meeting caused by Petitioners, or anyone acting on their behalf (including their attorney/counsel), will result in the extension of the time within which Respondents must comply with this Decision.
4. Respondents shall carefully document any communications with Petitioners in attempting to comply with this Decision.

⁷ School day means any day, including a partial day that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without disabilities. H.A.R. §8-60-2.

5. Under no circumstances, however, shall the offer of FAPE for a new IEP for Student as noted in paragraph 2 of this Decision be made after March 31, 2025.
6. Within thirty (30) calendar days of making an offer of FAPE to Petitioners, Respondents shall schedule a team meeting to begin the process of determining whether a reevaluation will be done for Student and what, if any, assessments will be done as part of the reevaluation.⁸

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, January 27, 2025.



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⁸ This Hearings Officer notes that while this Decision finds that Draft IEP-08/15/2024 is appropriate for Student, Student's IEPs all indicate that Student was due for a reevaluation in October 2024, so this Hearings Officer is trying to ensure that a new IEP is implemented and Student is able to work on updated goals and objectives that are more appropriate for Student before the IEP team embarks on the process of doing a reevaluation and developing another new IEP for Student.