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

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

Petitioner(s),

vs.

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

Respondents.

DOE-SY2425-020

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
January 22-24, 2025

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

Petitioners bring forth this case under the Individuals with Disabilities Education Act (hereinafter "IDEA") to allege procedural and substantive violations in the development of Student's Individualized Education Program (hereinafter "IEP") and procedural violations for the implementation thereof, for the 2024-2025 school year. Petitioners seek an order finding that

¹ Personal identifiable information is contained in the Legend.

Home School cannot provide a free appropriate public education (hereinafter “FAPE”) to Student and also ordering a revision of Student’s IEP to address the alleged denial of a 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 three issues in their Complaint and Resolution Proposal (hereinafter “Complaint”) to be addressed at the Hearing Regarding the development and offer of the 10/31/2024, 09/26/2024, 09/20/2024 IEP (hereinafter “IEP-10/31/2024”) and need for assessments to address a known unique need of Student’s.

1. Whether the IEP-10/31/2024 meeting discussions were legally sufficient with regard to a discussion of an alternative placement for Student to receive educational instruction.
2. Whether the IEP-10/31/2024 provides the supports the school believed were necessary to address Student’s safety and/or perception of safety.
3. Whether the IEP-10/31/2024 provides a program that enables Student to receive educational benefits in the least restrictive environment where Student refuses to attend the current public school the DOE offered

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

1. Find that Student needs to be placed at a school that Student is willing to attend.
2. Find that the DOE denied Student a FAPE for the violations asserted.
3. Order the DOE to reimburse and/or directly fund Parent for any privately funded programs and/or services related to a denial of FAPE.
4. Find that the DOE has violated Student’s rights and order that an IEP meeting be held to address these violations.

5. Order compensatory education if Parent was unable to provide all of the services Student required to ameliorate Student's losses.
6. Order such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

IV. BACKGROUND

On December 2, 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 December 12, 2024.

On January 3, 2025, a prehearing conference was held with Hearings Officer Chastity T. Imamura, Keith H.S. Peck, Esq. (hereinafter "Mr. Peck") on behalf Petitioners, and Amber P. Boll, Esq. (hereinafter "Ms. Boll") and Ronald D. Rodriguez (hereinafter "Mr. Rodriguez") and District Educational Specialist (hereinafter "DES") on behalf of Respondents. The due process hearing (hereinafter "Hearing") was scheduled for January 21-23, 2025. On January 6, 2025, Ms. Boll requested that the Hearing be pushed back to January 22-24, 2025 due to all DOE district educational specialists (including DES) being unavailable on January 21, 2025. On January 7, 2025, a status conference was held with Mr. Peck and Ms. Boll. Counsel agreed that the Hearing could proceed on January 22-24, 2025.

Prior to the start of the Hearing, the parties stipulated to the Hearing being conducted via video conferencing pursuant to Hawai'i Revised Statutes Section 91-9(c). Both parties agreed to the following: a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and witnesses and

parties would ensure confidentiality of the proceedings by participating in a private setting. An Order Regarding Video Conference Due Process Hearing was filed on January 3, 2025, which set forth the parameters of the video conference due process hearing.

The Due Process Hearing began on January 22, 2025. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; DES, Ms. Boll, and Mr. Rodriguez, on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Parent to testify and rested their case-in-chief. Respondents began their case on the same date and called DOE Clinical Psychologist (hereinafter “DOE CP”) to testify. The Hearing continued to January 23, 2025, where Respondents called Special Education Teacher (hereinafter “SPED Teacher”) and Special Education District Educational Specialist (hereinafter “SPED DES”) to testify. On January 24, 2025, Respondents called Principal to testify and rested their case-in-chief. Petitioners called Private Treating Psychologist (hereinafter “PTP”) to testify as a rebuttal witness regarding DOE CP’s testimony. The Hearing concluded on January 24, 2025.


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. Based on the nature of this case, the decision deadline was extended for a short (two week) period to allow for the transcripts and briefs to be submitted. The new decision deadline is February 28, 2025. The deadline for written closing briefs was February 19, 2025. Both parties submitted their respective closing briefs by the deadline.

Each party submitted their exhibits for the Hearing by the disclosure deadline of January

14, 2025.² The parties reviewed the exhibit and witness lists provided by the opposing party and neither party had any objections to each other's exhibits. Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case and that prior to the conclusion of the Hearing, this Hearings Officer would review the exhibits that had been received into evidence. On January 28, 2025, a List of Exhibits Received at Due Process Hearing was filed with the final list of exhibits submitted and received by the parties for consideration in this Decision. An Amended List of Exhibits Received at Due Process Hearing was submitted on February 4, 2025 due to an omission of one of Petitioners' Exhibits.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-018; Exhibit 2, pages 051-067, 070-072, 086-088, 180-181; and Exhibit 3, pages 321, 335-341, 362-392, three video recordings dated September 15, 2023, January 16, 2024, September 10, 2024, and one audio recording dated October 31, 2024.³

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 15, pages 060-075; Exhibits 17-19, pages 079-088; Exhibit 21, pages 095-175; Exhibit 23, pages 177-179; Exhibits 34-35, pages 244-255; Exhibit 39, pages 263-269; Exhibit 42, page 276; Exhibit 53, pages 312-314; Exhibits 56-60, pages 320-338; Exhibit 62, pages 342-346; Exhibit 64, pages 350-352; Exhibits 67-68, pages 361-363; Exhibits 70-71, pages 366-373;



² Petitioners' email containing the exhibits were blocked by the State of Hawai'i IT restrictions due to the videos being attached. The videos and exhibits were later accessed on January 15, 2025, and Respondents did not object to the Petitioners' exhibits as they had been submitted by the deadline but were not received due to circumstances beyond Petitioners' control.

³ Petitioners submitted an audio recording (no video) that is a recording of the same IEP meeting for which Respondents submitted a video recording for the same meeting. For purposes of this Decision, this Hearings Officer will reference the video recording, as it is a clearer recording of the participants speaking at the meeting.

Exhibit 73, page 377; Exhibit 81, pages 400-403; Exhibit 85, pages 409-410; Exhibit 87, pages 413-418; Exhibits 91-94, pages 434-441; Exhibit 104, page 487; Exhibit 117, pages 543-547; Exhibits 119-120, pages 553-562; Exhibits 122-124, pages 567-579; Exhibit 130, pages 667-678; Exhibit 132, pages 684-685; and Exhibit 135, one video recording dated October 31, 2024.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding,⁴ the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision.

V. FINDINGS OF FACT

Witness background

1. DOE CP is a clinical psychologist in the State of Hawai'i and works for the DOE. DOE CP has a doctorate in clinical psychology and [REDACTED]. DOE CP's duties include conducting psychological assessments for DOE students who may need additional support to access their academic programming. Testimony of DOE CP, Tr.V1, 118:22-121:2, 159:8-20; R-Ex.130, p.667.

Student's background

2. Student is [REDACTED] years old and is eligible for special education and related services pursuant to the IDEA under the category of [REDACTED]. Testimony of Parent, Tr.V1, 12:13-18; Testimony of SPED, Tr.V2, 186:10-15; P-Ex.1, p.2; R-Ex.15, p.061.
3. Prior to July [REDACTED], Student had an accommodation plan pursuant to Section 504 of the

⁴ Although all testimony and evidence presented in this case were reviewed, only relevant information is included in this Decision.

Rehabilitation Act of 1973 (hereinafter “Section 504 Plan”). While Student previously had the plan, Parent had requested additional services or that the accommodations be implemented, but they were not, which lead to a previous complaint. Testimony of Parent, Tr.V1, 111:14-112:13.

4. An IEP was initially developed for Student in July [REDACTED]. Testimony of Principal, Tr.V3, 296:1-17.
5. Parent had previously requested a functional behavior assessment (hereinafter “FBA”) from the DOE due to complaints about Student’s behaviors in school, but the request for an FBA was denied. As of the present date, it does not appear that an FBA has ever been conducted with Student. Testimony of Parent, Tr.V1, 112:12-16; *see also* R-Ex.21, p.096 (no previous FBA contained in Student’s educational record reviewed by DOE CP).
6. [REDACTED]
[REDACTED].
Testimony of Parent, Tr.V1, 12;19-13:1, 104:19-105:6, 111:14-112:16.
7. Parent initially preferred that Student attend Home School due to the ability for Parent and Student’s family to provide Student with transportation to and from Home School. The school that Parent is requesting that Student be transferred to would be more difficult to drop Student off and pick Student up. Parent would request transportation if Student were transferred to the requested school. Testimony of Parent, Tr.V1, 32:18-33:17, 105:7-16, 109:18-110:1.

Behavioral/[REDACTED] incidents reported to/by school

8. On [REDACTED], Student was confronted by other students at least twice while at Home School. One of the incidents was recorded on video and a [REDACTED] student can be

seen approaching Student and talking with Student. Student began walking away and the other [REDACTED] student pushed Student on the shoulder as Student walked away. Testimony of Parent, Tr.V1, 20:1-7, 35:6-7; P-Ex3, video dated January 16, 2024.

9. Other incidents involving social media and rumors being spread at school involving Student occurred on [REDACTED] and [REDACTED]. These incidents do not appear to have been reported to Home School, but Parent filed a report with the [REDACTED] [REDACTED] Police Department. P-Ex.2, p.058.
10. The [REDACTED] incident did not appear to have been reported to Home School until another incident occurred with Student on [REDACTED]. In the [REDACTED] incident, [REDACTED] confronted Student and said “[REDACTED]” P-Ex.2, p.055-056.
11. In response to the report to the school regarding the [REDACTED] incident, the school attempted to set up a mediation session between Student and the [REDACTED] student that had been confronting Student to try to resolve their issues. Parent refused to allow Student to participate in the mediation sessions at that time and told Home School that Student would not be attending school [REDACTED]. Testimony of Parent, Tr.V1, 36:12-38:21; P-Ex.2, p.051-057.
12. On [REDACTED], another incident happened at Home School [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. Testimony of Parent, Tr.V1, 15:10-16:8;⁵
Testimony of Principal, Tr.V3, 289:19-291:18, 322:3-25; P-Ex.2, p.062.

13. Following the [REDACTED] incident, Home School attempted to arrange a meeting for Student to determine whether Student required a Section 504 plan or other supports to ensure Student's well-being at Home School. P-Ex.2, p.063-067.
14. Despite sending numerous emails to Home School inquiring about the supports and solutions that Home School would be providing to ensure Student's safety upon Student's return to school, Parent did not provide Home School with available dates for a meeting to discuss Student's needs and supports. *See* P-Ex.2, p.063-067, 070-072, 086-088.
15. In March 2024, following the incidents at Home School, a Student Safety Plan (hereinafter "SSP") was developed for Student with input from Parent, DOE CP, Principal, a counselor at Home School, and another person. This SSP was revised in March, April, July, August, and September 2024, again with input from Parent and other school personnel. R-Ex.17, p.079-082; R-Ex.34, p.244; R-Ex.35, p.253-255; R-Ex.39, p.263-269; R-Ex.71, p.370-373; R-Ex.73, p.377; R-Ex.81, p.400-403; R-Ex.87, p.413-418; R-Ex.120-124, p.559-579.
16. In [REDACTED], Student received a discipline report based on behaviors that Student was engaged in [REDACTED]
[REDACTED]
[REDACTED] P-Ex.2, p.088.
17. A student-focused team meeting was held in April 2024 and the team agreed to conduct a

⁵ Parent's testimony did not include the incident that happened between Student and the other student in the classroom [REDACTED]. Parent's testimony only focused on the mediation period and the subsequent [REDACTED].

psychological evaluation with Student. R-Ex.21, p.096.

18. The psychological evaluation was conducted by DOE CP in April 2024 and a report was generated on June 10, 2024 (hereinafter “PsyE-06/10/24”). The psychological evaluation contained a long list of recommendations for supporting Student in both academic and social goals at school and provided suggestions for family/private services for Student as well. R-Ex.21, p.095-175.⁶

19. On [REDACTED], another incident happened at Home School involving a [REDACTED] student.⁷ In the [REDACTED] incident, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] SPED observed Student’s behavior and gave silent physical cues to Student to calm Student down until SPED observed Student to stop engaging in that behavior. The other student did not appear to respond to Student’s [REDACTED] during the class [REDACTED]. Testimony of SPED, Tr.V2, 190:24-193:13, 223:3-226:13, 227:14-228:6, .

20. After the class [REDACTED], SPED provided an update to Principal, who was on the way to respond to a different emergency situation. Neither SPED nor Principal spoke with either

⁶ This exhibit was not introduced by either Petitioners or Respondents, however, based on the nature of the case, this Hearings Officer accepted this exhibit as evidence for the Decision.

⁷ [REDACTED]

⁸ [REDACTED]

Student or the other student to see if any intervention was necessary, but it appeared to SPED that both students had no longer been affected by the incident. Testimony of SPED, Tr.V2, 193:1-194:16; Testimony of Principal, Tr.V3, 300:21-301:22, 323:1-11.

21. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] P-Ex.3, video recording dated September 10, 2024 (hereinafter “9/10/24 video”).

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰ Testimony of Principal, Tr.V3, 313:14-317:11; P-Ex.3, p.362; R-Ex.104, p.487.

23. An investigation was conducted on the incident on [REDACTED] and a report was generated and provided to Parent. As a result of the investigation, Student was

⁹ [REDACTED]
[REDACTED] Testimony of Principal, Tr.V3, 299:19-25, 329:10-331:8.

¹⁰ [REDACTED] See Testimony of Principal, Tr.V3, 339:14-340:6; R-Ex.104, p.487.

reprimanded with a [REDACTED] and the other student was reprimanded with an [REDACTED] for longer than [REDACTED] days. Testimony of Principal, Tr.V3, 304:20-305:4, 307:19-6, 339:3-13.

24. Student has reportedly had [REDACTED] behavioral incidents at schools prior to Home School. *See e.g.* R-Ex.21, p.097 [REDACTED]

[REDACTED].

25. Student's [REDACTED] behavioral incidents that were documented and reported in this case appear to be at least, in part, due to Student's behavior that contributed to or provoked the incidents. *See e.g., FOF 12; FOF 19, 21-22.*

26. Parent appears to minimize or ignore Student's behavior(s) that could be contributing to the incidents occurring with Student. *See e.g.,* Testimony of Parent, Tr.V1, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. Based on the PsyE-06/10/24, Student has a long history of behavioral regulation

difficulties that appear to persist as Student has progressed in age. R-Ex.21, p.096-100.

IEP meetings after incident

28. After the [REDACTED] incident, the IEP team scheduled a meeting on September 20, 2024. The team did not conclude their discussions on that date and two additional meetings were held on September 26, 2024 and October 31, 2024. Testimony of Principal, Tr.V3, 308:14-310:1.
29. As a result of those meetings, a new IEP was developed for Student (hereinafter referenced as “IEP-10/31/2024”). P-Ex.1, p.001-017; R-Ex.15, p.060-075.
30. The first two meetings on September 20 and 26, 2024 were focused on the incident that occurred on [REDACTED], including questions about the incident by Parent and concerns about the [REDACTED] that resulted from the investigation by the school. Neither of these meetings were recorded. Although there was a video of the incident on [REDACTED], no one besides Principal was able to view the video. Testimony of SPED, 200:23-202:9, 229:25-231:16.
31. The IEP team meeting on October 31, 2024 focused on amending Student’s safety plan rather than examining whether there are any ways to address Student’s behaviors that may be affecting Student’s ability to access Student’s education. See P-Ex.3, audio of IEP dated October 31, 2024 (hereinafter “10/31/24 audio”).
32. Parent raised the question of getting a one-to-one aide for Student in school to prevent incidents like the [REDACTED]. The team noted that a functional behavior assessment would need to be done before the DOE could provide such an aide for Student, but that the team did not think that Student’s behaviors would qualify Student for such an aide either. Testimony of Parent, Tr.V1, 14:2-10, 73:24-74:6;

Testimony of SPED, Tr.V2, 206:15-207:25; R-Ex.135, 10/31/24 video.

33. The Home School IEP team members and DOE CP also informed Parent that they did not believe that Student would want the service of a one-to-one aide in school as a reason why they did not want to go through the process of assessing whether a one-to-one aide was needed for Student as a support. Testimony of DOE CP, Tr.V1, 149:25-151:1; R-Ex.135, 10/31/24 video.
34. At some point during the meeting, a teacher in the IEP meeting suggested that Student could come back to school and that teacher could take data to see if Student would likely qualify for a FBA. That same teacher later accused Parent of refusing to allow Student to come back to Home School to attend that teacher's class, so it is unclear whether that teacher would have earnestly tried to take data on Student's behaviors to see if an FBA was warranted. R-Ex.135, 10/31/24 video.
35. Parent also requested that Student be placed in a private school, saying that Parent did not think that Student could attend any public school without any safety concerns. Testimony of Parent, Tr.V1, 13:2-14:1; Testimony of SPED, Tr.V2, 211:5-24; R-Ex.135, 10/31/24 video.
36. The IEP team members from Home School indicated that they could not place Student at a private school and that if Parent wanted Student to attend a different public school, Parent could request a geographical exemption or just enroll Student at a different school. Parent declined that option. Testimony of SPED, Tr.V2, 211:25-212:7, 250:22-251:12; R-Ex.135, 10/31/24 video.
37. The Home School IEP team members suggested two alternative programs at Home School that the team could consider that could address Student's safety concerns,

however, both were determined not to be appropriate for Student. Testimony of Parent, Tr.V1, 77:6-78:2; Testimony of DOE CP, Tr.V1, 152:23-153:13; Testimony of SPED, Tr.V2, 212:11-213:25, 241:23-243:21; R-Ex.135, 10/31/24 video.

38. The IEP team members suggested that they provide Student a security escort from class to class during unstructured times and the teachers in the classrooms could ensure Student's safety within the class. Parent rejected that idea and the IEP team ended the discussion on it. Testimony of Parent, Tr.V1, 14:11-19; Testimony of DOE CP, Tr.V1, 149:14-22; Testimony of SPED, Tr.V2, 208:1-10; R-Ex.135, 10/31/24 video.
39. At the time of the IEP meeting on October 31, 2024, Student had not attended school regularly since the [REDACTED] incident. Testimony of Parent, Tr.V1, 26:5-16; Testimony of Principal, Tr.V3, 311:13-21.
40. During the October 31, 2024 meeting, the school briefly discussed plans for bringing Student back to school, but due primarily to Parent's insistence that Student could not attend Home School, no details of any plan to bring Student back to school were discussed. R-Ex.135, 10/31/24 video.
41. At the IEP meeting, the team introduced Parent to the idea of home-hospital instruction for Student based on Student's refusal to attend school due to safety concerns. The IEP team made it clear that Parent would have to apply for the home-hospital and then the team would decide if it is appropriate for Student. Testimony of Parent, Tr.V1, 78:3-22; Testimony of SPED, Tr.V2, 214:1-215:18; R-Ex.135, 10/31/24 video.

IEP-10/31/2024

42. The IEP-10/31/2024 notably does not contain any references to a discussion regarding the psychological evaluation done by DOE CP in the present levels of educational

performance¹¹ (hereinafter “PLEPs”) section. *See* P-Ex.1, p.002-004.

43. The IEP-10/31/2024 contains one language arts goal, math goal, and two health goals addressing behaviors. The first goal is for Student to improve productive school behavior (coping with academic work demands, on-task behavior, being prepared, turning in work, work completion, and appropriate participation, etc) to at least 80% of the time in 4 out of 5 intervals. The second behavior goal is for Student to engage in multiple pro-social skills with teachers and peers to develop more positive relationships (initiation conversations, having two or more conversational turns on preferred topics with peers/teachers/staff/counselors, having two or more conversational turns on nonpreferred topics with peers/teachers/staff/counselors, demonstrating appropriate body language when speaking and listening with others, etc.) at least 80% of the time in 4 out of 5 intervals. P-Ex.1, p.009-010.
44. In both behavioral goals, the objectives note that Student would accomplish these goals with counseling sessions or counseling support. P-Ex.1, p.009-010.
45. Student’s services and supplementary aids and supports listed in the IEP-10/31/2024 does not contain any counseling sessions or counseling support services. This service was removed due to Parent wanting counseling to be optional for Student instead of requiring Student to be pulled out of class or required to attend counseling sessions. Testimony of DOE CP, Tr.V1, 131:1-132:17; P-Ex.1, p.011-012.
46. The proposed security escort that was briefly discussed in the meeting is not in the IEP-10/31/2024. The prior written notice (hereinafter “PWN”) dated November 4, 2024

¹¹ This Hearings Officer recognizes that the appropriate term for this section is Present Levels of Academic Achievement and Functional Performance, however the DOE’s form and IEP discussions use the older term of PLEPs, so that will be used in this Decision.

(hereinafter “PWN-11/04/2024”) notes that the security escort was proposed but was refused by Parent. P-Ex.1, p.011-012, p.018.

47. Student’s safety plan is not included in Student’s IEP-10/31/2024 because the IEP team members indicated that the program that the school uses to store and develop the IEP does not allow for that document to be included in the IEP. It was also explained that it was not included so that the IEP did not need to meet every time a change needed to be made to Student’s IEP. *See* Testimony of SPED, Tr.V2, 237:8-20; P-Ex.3, 10/31/2024 audio.
48. Student’s educational placement in the IEP-10/31/2024 is in the general education setting where Student will participate with nondisabled peers for all academic courses with additional support in reading and math. Student will also participate with nondisabled peers for nonacademic and extracurricular activities. P-Ex.1, p.013.

Student’s psychological assessment

49. Student’s PsyE-06/10/24 involved various assessment data collection sheets given to different people (teachers and Parent), observations of Student at school, a school records review, interviews with Student and Parent, and assessments conducted with Student. R-Ex.21, p.095-175.

50. The PsyE-06/10/24 noted that between [REDACTED] and [REDACTED] grade, Student had [REDACTED] documented behavioral incidents, [REDACTED] of which were reported to have a combination of suspected or confirmed inappropriate behaviors by Student. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] R-Ex.21,

p.139.

51. Student was assessed in [REDACTED] grade and provided a Section 504 plan due to Student displaying inattentive and impulsive behaviors across settings in school, such as difficulty remaining on task or following classroom expectations, and difficulty with social interaction, including acting out physically in disagreements with peers or in response to peers challenging behaviors. It was noted that Student's behavioral challenges were most significant during transition and unstructured times. R-Ex.21, p.139.

52. Student was described as [REDACTED]
[REDACTED]
[REDACTED] R-Ex.21, p.140.

53. Student displayed defiant behavior to DOE CP during [REDACTED] of the testing days where
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] R-Ex.21, p.142.

54. DOE CP noted in the PsyE-06/10/24 that Student has persistently struggled with social and behavioral challenges but that since entering [REDACTED] [REDACTED], it is clearer that the social demands required of Student exceed Student's current ability to adapt to them. R-Ex.21, p.110-111.

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 that the DOE failed to have legally sufficient discussions regarding an alternative placement for Student to receive educational instruction

Petitioners' primary argument is that the IEP team failed to sufficiently discuss alternative placements for Student's educational instruction. Petitioners conveniently attempt to conflate two arguments into one issue, specifically whether a discussion on Student's educational placement (the amount that children with disabilities are educated with nondisabled peers) was legally sufficient versus whether the team had a discussion on alternative physical locations in which Student could receive classroom instruction.¹² This Hearings Officer finds that the IEP team's determination that Student's educational placement would continue to be alongside nondisabled students for the majority of the day (general education setting) was sufficient under the IDEA. As the DOE is not required to discuss alternative physical locations with Parent regarding where Student would receive instruction, Petitioners have not proven that the DOE failed to sufficiently discuss alternative physical locations for Student to receive instruction.

The IDEA requires school districts to provide FAPE to students in the least restrictive environment. This principle is commonly referred to as a student's educational placement. The discussions regarding educational placement centers around the IDEA's legacy that disabled

¹² Petitioners' Closing Brief, filed February 19, 2025, notes in Issue #1 that the legal precedent is whether a student is being educated in the least restrictive environment, but centers most of their argument on whether alternative (physical) locations for Student to receive instruction were discussed.

students should be educated with nondisabled students “to the maximum extent appropriate” and school districts must have meaningful discussions when determining if a more restrictive environment is being considered by the team. 20 U.S.C. §1412(a)(5); 34 C.F.R. §300.114(a)(2); H.A.R. §8-60-17. The teams must consider the potential harmful effect on the student or on the quality of service the student needs in determining a student’s educational placement. H.A.R. §8-60-17(4). In *Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. by and through Holland*, 14 F.3d 1398, 1403, (9th Cir. 1994), the Ninth Circuit Court of Appeals reiterated the IDEA’s preference to educate children with disabilities with nondisabled children. The test that the Court sets forth in determining an appropriate educational placement for a student applies primarily when the school district is attempting to take a child with a disability out of the general education setting.

The evidence presented in this case is that Student is currently in the general education setting at Home School and continues to be educated in the general education setting per Student’s IEP-10/31/2024. *FOF 48*. At no time during the IEP meeting on October 31, 2024, did the team discuss taking Student out of the general education setting to put Student into a more restrictive setting. *See R-Ex.135, 10/31/24 video*. The only instance of that possibility being raised was in email communications between Parent and SPED, where SPED proposed that Student attend SPED’s new pull-out special education class for additional instruction. Parent immediately rejected that idea and Student’s placement remained in the general education setting. *See R-Ex.60, p.331-338*.

Petitioners argue that the failure of the IEP team to discuss possible alternative schools as part of Student’s IEP discussion is not persuasive. Parent entered the October 31, 2024 meeting and told the IEP team that Student would be better served by attending a private school and

insisted that [REDACTED] was preventing Student from attending Home School. *FOF 35-36*. The IEP team did not have productive discussions about different programs or locations at Home School where Student could receive instruction, and Parent seemed unwilling to consider any continued education at Home School or any other DOE public school. *See e.g. FOF 38*. The IEP team did discuss alternatives at Home School, such as an alternative classroom or afterschool class sessions, but determined that they would not work for Student based on Student's current educational placement and the availability of the programs. *FOF 37*.

Nonetheless, the IEP team was not required to discuss with Parent the physical location of where Student would receive instruction, as that is an administrative decision once the team determines the educational placement for Student.¹³ In this case, the IEP team determined that Student would continue to remain in the general education setting.

Petitioners have failed to prove that the IEP team failed to have legally sufficient discussions regarding alternative placements for Student, as Student's educational placement was not being changed from the general education setting and Student's placement was in conformance with the IDEA's preference to education children with disabilities alongside nondisabled students to the maximum extent appropriate.

B. Petitioners have proven that the IEP-10/31/2024 does not provide the supports that are necessary to address Student's safety and/or perception of safety

¹³ The determination as to the physical location of a student's instruction is typically left to the school administration. 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).

Petitioners' next argument is that the IEP-10/31/2024 does not provide the support that the school believed were necessary to address Student's safety and/or perception of safety. This Hearings Officer concludes that Petitioners have met their burden of proof on the issue of whether the IEP-10/31/2024 does not provide the appropriate support for Student to access Student's education.¹⁴

The IDEA requires that the school districts provide children with disabilities the supplementary aids and services that would allow the students to be educated with nondisabled children. This can include, but is not limited to, behavioral supports, pull-out special education services, and other services that would address the student's needs. *See Department of Education v. L.S. by and through C.S.*, 2019 WL 1421752, *8 (D. Hawai'i 2019); *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, 995 F.2d 1204, 1216 (3rd Cir. 1993); *P. ex rel. Mr. and Mrs. P v. Newington Bd. of Ed.*, 546 F.3d 111, 121 (2nd Cir. 2008).

The record in this case confirms that Student has behavioral and/or social-emotional concerns that have not been adequately addressed to prevent Student from engaging in behaviors that lend themselves to concerns about Student's safety. *FOF 8-9, 12, 16, 18-22, 24-25, 27, 50, 53-54.* While the IEP team has done a notably good job of attempting to address safety concerns of Student in a safety plan, this is merely a band-aid solution to the underlying problem of Student's [REDACTED]. DOE

¹⁴ While this Hearings Officer recognizes that the issue being decided is different from how the issue was worded in the Complaint and the prehearing order, it is similar enough based on the fact that it examines what Student needs substantively to access Student's education, that Respondents were on notice to present a defense to the issue. The determination of the issue as written in this Decision is pursuant to the Court's ruling in *Fry v. Napoleon Community Schools*, 580 U.S. 154, 169-170, 137 S.Ct. 743, 755, 197 L.Ed.2d 46 (2017) (finding that the inquiry of whether an issue may be determined under a complaint should be made on the substance of the issue versus the specific language used in the complaint) *see also L.S.*, 2019 WL 1421752 at *6.

CP's June 10, 2024 psychological evaluation of Student notes that Student has [REDACTED] documented behavioral incidents from [REDACTED] to [REDACTED] grade where Student was suspected or confirmed to engage in inappropriate behavior. *FOF 50*. While some of these incidents appear to be minor [REDACTED], some of the incidents appear to be of the type that could be contributing to Student's incidents [REDACTED] [REDACTED]. It is unclear from the record whether any of these behaviors had been assessed and addressed prior to Student entering [REDACTED] [REDACTED], but they do not appear to have been addressed in the IEP that was submitted in this case. *See e.g. FOF 42-43, 45-46*.

In this case, Student has had known instances of [REDACTED] [REDACTED] [REDACTED]. *FOF 12*. The most recent incident, on [REDACTED], involved Student again engaging in behaviors that are inappropriate [REDACTED] [REDACTED] but again, nothing has been suggested by the IEP team to address Student's behaviors in a way to prevent incidents like these from occurring. *FOF 19, 21-22*. The IEP team seems focused on just addressing 'safety' concerns for Student, but in light of the acknowledgement of the school that Student has a disability, it is the IEP team's responsibility to address any behaviors of Student that is affecting Student's performance in school. This does not include simply behaviors that affect her class work, but also behaviors that could affect or contribute to Student provoking or instigating events that lead to physical violence.

The IEP team began to address the topic in the October 31, 2024 IEP meeting by indicating that Student's behaviors in school could be monitored and data collected to determine

if an FBA was warranted and a one-to-one aide is necessary for Student, but instead seem determined to convince Parent that Student would not like the supplemental aid so therefore it would not work for Student. *FOF 32-34.*

The IEP team also did not address concerns of Parent that Student is suffering from [REDACTED] due to having been absent from school for so long and having to transition back to the school campus. The IEP team, prior to October 31, 2024, had determined that Student would benefit from counseling as a related service, but later determined that since Parent did not want the service and counseling was removed from Student's plan. *FOF 45.* Things that were discussed during the meeting that were suggested by the IEP team members to help Student in school also did not make its way into the IEP-10/31/2024, as it appeared the discussions simply did not progress based on Parent's resistance to engaging in the conversations. *See FOF 37-38.* Ultimately, however, it is the DOE's responsibility to provide the most appropriate IEP for Student that would allow Student to make reasonable progress in light of Student's unique circumstances. 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).

Some of these services that could have been included were individual counseling sessions with DOE CP for Student upon returning to school, placement in SPED's smaller class where Student could get more individualized instruction, and a security escort during all non-classroom times. The IEP team should have earnestly discussed different options for addressing Student's

behaviors, rather than focusing on Student's safety plan to determine what would be an appropriate IEP for Student.

Finally, the IEP team had a several minute discussion on the inability of the IEP team to put Student's safety and behavioral support plans into the IEP due to the program that the team uses to create the document. *FOF 47*. While this Hearings Officer agrees that safety and behavioral support plans *may* be kept as separate documents due to the nature of needing to change the plans to support a student's needs, the fact that the computer program does not provide a 'space' for the plans to be included in the IEP is not a sufficient reason for not including it. The IDEA requires that the IEP team spell out behavioral supports and services that the school is obligated to provide to a student to ensure that the student may access the student's education in light of the student's disabilities, whether or not the computer system allows it to. Supports that the IEP team knows will be provided regardless of any possible changes in the safety or behavioral support plan, such as providing a safe place for Student (but not naming the place in case changes need to be made), or chunking assignments, or monitoring Student's behavior in class, or having preferential seating for Student in class, should be listed in the IEP, regardless of whether they are also listed in the safety or behavioral support plans. *L.S., 2019 WL 1421752 at *11-12*.

Petitioners have proven that the IEP-10/31/2024 does not adequately provide support required to address Student's safety in school. The DOE in this case concentrated their special education and related services solely on Student's academic performance while trying to find band-aid solutions for the underlying behavioral and/or social/emotional concerns that are also affecting Student's ability to access Student's education. This type of analysis should include examining Student's psychological evaluation performed by the DOE and considering the

recommendations provided by DOE CP in the psychological evaluation. This Hearings Officer notes that it is of concern that the recommendations in the DOE's own psychological evaluation was only included in the IEP-10/31/2024 under the "Parent Concerns" section and did not seem to be taken seriously or discussed thoroughly by the IEP team. *FOF 42*. Items such as involving Student in creating a support plan; checking in with Student at the beginning of class to see how Student is doing; integrating a positive reinforcement system with Student; maintaining good communication (i.e. communication log); ensuring that all team members implement the same tools with Student (i.e. parent training and education); providing Student with a clean, quiet, individual workspace for Student to concentrate; and exploring group programs. *See R-Ex.21, p.156-158*. While some of these supplemental supports require cooperation from Parent and Student, it is certainly worth discussing at an IEP team meeting that is dedicated to fixing the underlying behavioral problems that may have led to the situation that Student is currently in. The IEP team needs to focus on using supports and services or changing Student's educational placement to provide appropriate behavioral supports for Student to stop engaging in inappropriate behaviors which lead to incidents like on [REDACTED] and [REDACTED] [REDACTED].

- C. Petitioners' argument that the IEP-10/31/2024 fails to provide a program for Student in the least restrictive environment where Student refuses to attend the current public school is moot based on the failure of the IEP team to appropriately address Student's needs in the IEP-10/31/2024

Petitioners' final argument is that the IEP-10/31/2024 fails to provide a program for Student in the least restrictive environment because Student refuses to attend the current public school. This Hearings Officer concludes that this issue is moot since the IEP-10/31/2024 does not currently address Student's needs appropriately, so the placement that is included in the IEP-10/31/2024 will need to be reevaluated by the IEP team.

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 October 31, 2024 IEP meeting discussions were legally insufficient regarding a discussion of an alternative placement for Student to receive educational instruction. This Hearings Officer finds that Petitioners have proven that the IEP-10/31/2024 does not appropriately address Student's current needs.

To remedy the denial of FAPE by Respondents in this case, IT IS HEREBY ORDERED:

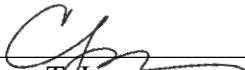
1. The IEP team shall, within fifteen school days of this order, hold a student-team meeting to determine which, if any, additional assessments or evaluations should be conducted with Student as part of a reevaluation to gain information in accordance with the finding in this case that Student's behavioral needs should be addressed in Student's IEP. These assessments and/or evaluations are not required unless the team determines that they are necessary, and may include, but are not limited to, a functional behavior assessment or a psycho-educational assessment.
2. Pursuant to 34 C.F.R. §300.300(c)(1)(ii) and this Decision, parental consent is not necessary for the DOE to complete the reevaluation of Student pursuant to this Decision. Parent shall make Student available for the assessments, including sending Student to school if necessary, for observations and data collection.
3. If Student is required to attend school for the assessment(s), Home School will provide a security and/or adult escort for Student on the days that Student attends school for the assessments. This escort will accompany Student to all classes and stay with Student at a reasonable distance during any unstructured times, including recess and lunch.

4. Within thirty calendar days of either the team's determination that no additional assessments or data are necessary or the completion of the assessments and/or evaluations, the IEP team shall meet and develop a new IEP for Student, which shall include supplemental aids and supports to support Student's return from home to Home School, behavioral supports, and/or a safety plan to support Student when Student attends Home School.
5. 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.
6. The DOE shall carefully document any refusals by Petitioners to allow Student to participate in any part of the reevaluation process. This would include, but are not limited to, documentation of refusals to cooperate with the assessors and/or cancellation of assessment/meeting dates.

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, February 26, 2025.



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