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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

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

Respondents.

DOE-SY2425-023

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
February 18-19, 2025

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

Petitioners bring forth this case under the Individuals with Disabilities Education Act (hereinafter "IDEA") to allege that Parents' ability to participate in the development of Student's Individualized Education Program (hereinafter "IEP") was significantly infringed, thereby denying Petitioners a free appropriate public education (hereinafter "FAPE"). Petitioners seek a

¹ Personal identifiable information is contained in the Legend.

finding of a denial of 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.

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 a single issue in their Complaint and Resolution Proposal (hereinafter "Complaint") to be addressed at the Hearing regarding the development of the November 26, 2024 IEP (hereinafter "IEP-11/26/2024").

1. Whether the DOE significantly impeded Parental Participation during the November 26, 2024 IEP meeting regarding Student's present levels of educational performance; [REDACTED] plan; goals and objectives; extended school year services; extended school [REDACTED] services; transportation; special education services; speech/language therapy services; occupational therapy services; supplemental aids and services, program modifications, and supports for school personnel; and/or least restrictive environment.

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 and/or directly fund Parent for any privately funded programs and/or services related to a 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. Order compensatory education if Parent was unable to provide all of the services Student required to ameliorate Student's losses.
5. Order such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

IV. BACKGROUND

On December 20, 2024, the Department of Education, State of Hawai'i (hereinafter "Respondents" or "DOE") received a Complaint under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the IDEA 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 27, 2024.

On January 15, 2025, a prehearing conference was held with Hearings Officer Chastity T. Imamura; Keith H.S. Peck, Esq. (hereinafter "Mr. Peck") on behalf Petitioners; and Ryan W. Roylo, Esq. (hereinafter "Mr. Roylo") on behalf of Respondents. The due process hearing (hereinafter "Hearing") was scheduled for February 18-20, 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 15, 2025, which set forth the parameters of the video conference due process hearing.

The Due Process Hearing began on February 18, 2025. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; District Educational Specialist (hereinafter "DES") and Mr. Roylo, on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Parent to testify. Petitioners also called Student Services Coordinator (hereinafter "SSC") to testify and by agreement, Respondents were also allowed to call SSC during Petitioners' case-in-chief for efficiency of the Hearing process. Both Petitioners and

Respondents through Mr. Peck and Mr. Roylo, respectively, presented direct and cross-examination testimony for SSC. Petitioners then called District Resource Teacher (hereinafter “DRT”). DRT’s testimony was completed on February 18, 2025, and Petitioners rested their case-in-chief. Respondents proceeded with the rest of their case on February 19, 2025 and called Special Education Teacher (hereinafter “SPED”) and Assistant Principal (hereinafter “AP”) to testify. Respondents rested their case-in-chief on February 19, 2025, Petitioners did not have any rebuttal evidence to present, and the Hearing concluded on February 19, 2025.

Both parties requested the ability to provide written closing arguments with the assistance of transcripts by the court reporter. Due to the timing of the conclusion of the Hearing and the anticipated date of the receipt of the prepared transcripts, Respondents requested another extension of the decision deadline to allow the transcripts to be completed and the parties to submit written closing briefs. Based on the nature of this case, the decision deadline was extended for a short (three week) period to allow for the transcripts and briefs to be submitted. The new decision deadline is March 28, 2025. The deadline for written closing briefs was March 14, 2025. Both parties submitted their respective closing briefs by the deadline.

Each party submitted their exhibits for the Hearing by the disclosure deadline of February 10, 2025. The parties reviewed the exhibit and witness lists provided by the opposing party and neither party had any objections to each other’s exhibits. Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case and that prior to the conclusion of the Hearing, this Hearings Officer would review the exhibits that had been received into evidence. On February 19, 2025, a List of Exhibits Received at Due Process Hearing was filed with the final list of

exhibits submitted and received by the parties for consideration in this Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-024; Exhibit 2, pages 043-050; and Exhibit 3, pages 051-172, and one audio recording dated November 26, 2024.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-021; Exhibit 2, pages 022-037; Exhibit 5, pages 043-063; Exhibit 6, pages 064-066; Exhibit 12, pages 101-102; Exhibits 15-25, pages 106-136; and Exhibits 27-28, pages 138-169.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding,² the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision.

V. FINDINGS OF FACT

Student's background

1. Student is [REDACTED] years old and is eligible for special education and related services pursuant to the IDEA under the category of [REDACTED]. [REDACTED]
[REDACTED].

Testimony of Parent, Transcript of Proceedings, Volume 1, page 15, line 17, to page 17, line 22 (hereinafter referenced as "Tr.V1, 15:17-17:22"); P-Ex.1, p.002; R-Ex.1, p.002; R-Ex.2, p.023; R-Ex.5, p.044.

2. Student had previous IEPs developed by Home School, dated February 10, 2023 (hereinafter "IEP-02/10/2023") and February 7, 2024 (hereinafter "IEP-02/07/2024").

² Although all testimony and evidence presented in this case were reviewed, only relevant information is included in this Decision.

These IEPs contained appropriate information to provide an appropriate educational program for Student, including a [REDACTED] school plan and [REDACTED] services. The annual review date for the IEP-02/07/2024 IEP was February 7, 2025. R-Ex.1, p.001-021; R-Ex.2, p.022-037.

3. Between the development of the IEP-02/10/2023 and the IEP 02/07/2024, Student had a [REDACTED] procedure that affected Student's ability to participate in the least restrictive environment (hereinafter "LRE") that was contained in the IEP-02/10/2023. Based on Student's medical needs, Student was placed into the [REDACTED] [REDACTED] [REDACTED] [REDACTED] special education classroom for the IEP-02/07/2024. Testimony of Parent, Tr.V1, 39:18-40:4; Testimony of SSC, Tr.V1, 96:22-97:6; Testimony of SPED, Tr.V2, 137:138:25; *see* R-Ex.2, p.036.
4. The [REDACTED]-[REDACTED] [REDACTED] [REDACTED] classroom that SPED teaches at Home School focuses on working on [REDACTED] skills, and academic goals. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Testimony of SPED, Tr.V2, 140:15-147:16.
5. Prior to March 2023, Parents had retained the services of an attorney for Student's special education and informed Home School at every opportunity that the family was preparing for legal procedures. *See* Testimony of Parent, Tr.V1, 55:4-56:6; R-Ex.12, p.101; R-Ex.15, p.106,
6. Other than informing Home School that Parents had retained the services of an attorney

for Student, Parents did not indicate in any way that they were frustrated by the way that Home School was treating Parents in the development of Student's IEPs or any other concerns regarding Student.³

7. Beginning in March 2023, Parent informed Home School that Student would not be attending school on [REDACTED], due to a recommendation from Student's psychiatrist that Student have a break during the week to prevent mental exhaustion. Based on Parents' request, Student does not attend school on [REDACTED]. Testimony of Parent, Tr.V1, 63:24-65:8; R-Ex.12, p.101-102.
8. In November 2023, Parent requested an informal, "off-campus" meeting with two representatives from Home School to discuss Student's IEP. Home School did not agree to the meeting. Testimony of Parent, Tr.V1, 56:8-20; R-Ex.15, p.107.
9. After that communication, Parent insisted that attorneys get involved and Parents' communications were not indicative of a willingness on Parents behalf to collaborate with the DOE, but rather Parents attempted to dictate the terms and conditions of Student's school attendance, team meetings, and IEP development process. See Testimony of Parent, Tr.V1, 56:21-59:1; R-Ex.15, p.106, R-Ex.17, p.110, R-Ex.18, p.112, R-Ex.19, p.114,

³ Parent testified that Parent chose not to participate in the November 26, 2024 IEP meeting and instead have an advocate present because Parent was frustrated with the way that Home School was treating Parent, but Petitioners provided no evidence to support this claim by Parent. Testimony of Parent, Tr.V1, 19:15-20:4, 66:3-19, 67:8-68:15. Parent also characterized many of the strongly worded emails to Home School where Parent made demands of Home School regarding meetings and Student's attendance as basically emotionally reactive emails to Parents' frustrations, however, Petitioners have not provide any evidence that Parent had expressed to the DOE or anyone else that Parents were frustrated at the way they were being treated. In fact, the evidence presented is that Home School complied with nearly all demands made by Parents in the exhibits presented at the Hearing.

10. The DOE attempted to accommodate Parents' demands regarding Student's meetings, by first holding an annual IEP meeting on February 7, 2024 and then a Parent Concerns Letter meeting on August 22, 2024.⁴ R-Ex.16, p.109; R-Ex.19, p.114.
11. The DOE also accommodated Parents' demands not to discuss the Parent Concerns Letter (hereinafter "PCL") items during the IEP-02/07/2024 development meeting or Student's IEP during the August 22, 2024 meeting.⁵ See Testimony of AP, Tr.V2, 171:21-172:15, 174:13-175:17; R-Ex.16, p.109, R-Ex.19, p.114.
12. Parent provided the PCL with four attachments Exhibit A through Exhibit D⁶ to the IEP team shortly after the start of the August 22, 2024 team meeting.⁷ Testimony of Parent, Tr.V1, 32:3-19, 33:6-14; R-Ex.20, p.117-123.

⁴ Parent informed the DOE multiple times that Parents had concerns about Student's education and was preparing a "PCL" that would outline the concerns. Parent did not provide such a letter to Home School until several minutes after the start of the August 22, 2024 meeting that was being held specifically at Parents' request to discuss the PCL. P-Ex.2, p.109, p.114.

⁵ This Hearings Officer notes that Parent claimed that in the August 22, 2024 meeting Parent was not heard because Parent answered all their questions but "it wasn't even an IEP meeting. They had changed it at the last minute without telling me." Testimony of Parent, Tr.V1, 19:4-14, 32:20-33:5. This Hearings Officer finds Parent's statement NOT credible based on the email sent from Parent to Home School insisting that "we will *NOT* be discussing [Student's] current IEP and/or [Student's] PLEP in this meeting." R-Ex.16, p.109.

⁶ This Hearings Officer notes that this Hearings Officer tried multiple times to get clarification from both Parent and Mr. Peck regarding what documents were provided to the DOE on August 22, 2024. Testimony of Parent, Tr.V1, 70:20-74:25. The only evidence of when the documents were produced to the DOE are contained in Respondents' exhibits, which includes a different letter than what is included in Petitioners' exhibits with additional attachments referenced. Based on this discrepancy in the evidence and the fact that Parent testified that Parent could not remember what was sent to the DOE, this Hearings Officer is finding that the credible evidence is that the letter contained in Respondents' exhibits is the actual letter provided to the DOE.

⁷ While Parent claimed that the letter was sent to Home School before the meeting, the exhibit email that was received shows that the email was sent to the DOE after the 9:00 a.m. start time of the August 22, 2024 meeting. When confronted with the actual time stamp of the email sent by Parent, Parent backtracked and claimed that Parent had computer problems in the preparation of it. Based on this testimony, and other examples in the record, this Hearings Officer lends less credibility to Parent's testimony on contested issues. Compare Testimony of Parent, Tr.V1, 33:6-14, 37:7-20; R-Ex.20, p.117.

13. Besides a copy of the DOE functional living skills assessment, none of the documents referenced in the PCL sent to the DOE described any information that would be useful or pertinent to the development of Student's IEP. *See e.g.*, P-Ex.3, p.73-94, 109-172.
14. Representatives from After-School Program were invited to the August 22, 2024 meeting by Parents. Representatives attended the meeting and provided information about After-School Program. Testimony of Parent, Tr.V1, 41:19-43:18, 75:12-18; Testimony of SSC, Tr.V1, 99:21-100:12.
15. After-School Program informed the IEP team that their program was an after-school program and was not able to implement an IEP program. After-School Program later followed up with a letter to Parents informing them that After-School Program could not implement Student's IEP. Parents later provided a copy of the letter to Home School. Testimony of Parent, Tr.V1, 59:7-60:13;⁸ Testimony of SSC, Tr.V1, 106:4-107:17, 109:21-110:12, 112:4-113:16, 115:8-116:12; Testimony of AP, Tr.V2, 189:12-190:14.
16. Based on the letter from After-School Program, the Home School IEP team members reasonably believed that After-School Program was not willing to be listed as a [REDACTED] [REDACTED] in Student's IEP. *See* Testimony of SSC, Tr.V1, 104:8-107:17; Testimony of AP, Tr.V2, 190:12-191:13.
17. Home School made many attempts to contact Parent to set up a meeting to discuss possible changes to Student's IEP based on the discussions at the August 22, 2024

⁸ Parent testified that Parent's understanding was that After-School Program only told the team that they could not be listed as a [REDACTED] services participant under the IDEA; however the more credible evidence provided by the DOE witnesses is that After-School Program informed the team, including Parents, that they are not equipped to provide IEP services, nor could they be listed on a student's IEP as a service provider. *See* Testimony of Parent, Tr.V1, 59:7-60:13; Testimony of SSC, Tr.V1, 106:4-107:17, 109:21-110:12, 112:4-113:16, 115:8-116:12; Testimony of AP, Tr.V2, 189:12-190:14.

meeting between September 10, 2024 and October 23, 2024. Testimony of Parent, Tr.V1, 49:6-51:19; P-Ex.2, p.043; P-Ex.2. p.045-046; R-Ex.22, p.126-127.

18. After several attempts, eventually Parents responded to Home School's attempts to schedule an IEP meeting to review the IEP and address the concerns in the PCL, and a meeting was scheduled for November 26, 2024 after accommodating Parents' insistence that their attorney be present at the meeting. R-Ex.24, p.129.
19. No evidence has been presented that at any point prior to the November 26, 2024 IEP meeting did Parents request any additional assessments or a reevaluation be conducted with Student.
20. Prior to the November 26, 2024 IEP team meeting, the IEP team sent Parents a copy of a proposed agenda for the November 26, 2024 meeting, proposed updates to Student's present levels of educational performance (hereinafter "PLEPs"), and proposed goals and objectives to address concerns in the PCL. R-Ex.25, p.130-136.
21. Advocate informed Home School that Advocate would be attending the meeting to speak for Parents. Advocate noted that Parents did not want to attend the meeting but Advocate told them to attend but agreed to speak on their behalf during the meeting. Testimony of Parent, Tr.V1, 51:20-52:1; P-Ex.2, p.047; R-Ex.25, p.130.
22. At the November 26, 2024 IEP team meeting, Advocate provided a statement noting that Advocate discussed with Parents what Parents want and that Advocate would be speaking on Parents' behalf. P-Ex.3, audio recording dated November 26, 2024, approximate time stamp [01:56-02:45] (hereinafter referenced as "P-Ex.3, 11/26/24 audio [01:56-02:45]").
23. Advocate read out a list of things that Parents wanted to discuss at the November 26, 2024 meeting: Student's present levels of educational performance (hereinafter

“PLEPs”); [REDACTED] [REDACTED] plan, extended school year services, and Student’s placement in item number 23 of the IEP. P-Ex.3, 11/26/24 audio [2:58-3:12].

24. Despite Parents’ demands that Student be placed at After-School Program, Parent knew very little about the program, including the days that After-School Program is open for [REDACTED] the programs they provide for students, and the types of [REDACTED] participation and [REDACTED] training they provide. Testimony of Parent, Tr.V1, 44:2-48:25, 76:1-18.
25. Throughout the November 26, 2024 meeting, the Home School IEP team members attempted to discuss each of the concerns that Parents wrote in the PCL and the concerns that Advocate raised at the start of the meeting. When the Home School team members asked for further information from Parents and/or Advocate, Advocate refused to provide additional information and simply repeated the statement and list of things that Parents wanted to discuss.⁹ Testimony of SSC, Tr.V1, 101:9-104:7, Testimony of AP, Tr.V2, 176:17-179:15; *see e.g.* P-Ex.3, 11/26/24 audio [29:38-30:05], [42:57-43:13], [57:23-58:00], [57:11-57:25].
26. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁹ This Hearings Officer notes that Petitioners argue that Parents ‘participated’ through Advocate, however Advocate did not actually participate on behalf of Parents during the meeting. Advocate simply repeated the demands of Parent and refused to provide additional information that was requested by the team in response to Parents’ demands. So while Advocate ‘spoke’ on behalf of Parent, Advocate’s presence and actions at the IEP meeting on November 26, 2024 did not amount to ‘participation’ in the meeting. *See generally* P-Ex.3, 11/26/24 audio.

[REDACTED]. When Advocate engaged in the discussion, Advocate simply stated that they did not agree but did not provide any useful information to the team about what the Parents wanted regarding "[REDACTED]." P-Ex.3, 11/26/24 audio [30:17-35:05].

27. For example, the Home School team members asked Parents if they had any information to share with them to support their suggestion to shorten Student's break before ESY from [REDACTED] to [REDACTED] days. Neither Advocate nor Parents provided any information to the Home School team. Testimony of SSC, Tr.V1, 108:4-13; P-Ex.3, 11/26/24 audio [54:26-1:00:34].
28. The Home School team members discussed the proposed goals and objectives that they had developed for Student based on the concerns listed in the PCL, specifically including additional [REDACTED] skills and [REDACTED] skills that Parents had requested. See P-Ex.3, 11/26/24 audio [19:04-53:57].
29. The Home School IEP team members also discussed moving Student from the [REDACTED] class to the [REDACTED] class that Student had previously been in so Student would be able to participate in more [REDACTED] lessons and experiences. The Home School team members explained how Student's access to activities [REDACTED] would provide learning opportunities that would address Parents' concerns in the PCL, such as [REDACTED]. Testimony of SSC, Tr.V1, 97:7-98:18; P-Ex.3, 11/26/24 audio [35:17-42:05].
30. Throughout the meeting, only Advocate spoke and Parents did not say anything when asked questions by the Home School team members. Advocate repeatedly told the IEP team members that Advocate had already stated what Parents wanted, and they would not

discuss anything else. *See generally* P-Ex.3, 11/26/24 audio.

31. The IEP team members discussed Student's PLEPs, such as Student's strengths and needs as they regarded Student's [REDACTED] and [REDACTED] skills. They also discussed Student's ESY services and the break of [REDACTED] days versus [REDACTED] days, the request to list After-School Program as the placement for Student, and Student's location of services being delivered in the standard [REDACTED] classroom instead of the [REDACTED] [REDACTED] [REDACTED] classroom. Testimony of Parent, Tr.V1, 62:15-63:9.
32. At the end of the November 26, 2024 meeting, the Home School IEP team members informed Parents and Advocate that they would provide the completed IEP offer to Parents. A written IEP dated November 26, 2024 (hereinafter "IEP-11/26/2024") was finalized and provided to Parents with a prior written notice, dated November 27, 2024 (hereinafter "PWN-11/27/2024"). P-Ex.1, p.001-021; P-Ex.1, p.022-024; R-Ex.5, p.043-063; R-Ex.6, p.064-066.
33. The IEP-11/26/2024 contained updated PLEPs and goals and objectives based on the discussions at the November 26, 2024 meeting. The IEP-11/26/2024 also placed Student in the [REDACTED]-[REDACTED] [REDACTED] [REDACTED] classroom for Student's least restrictive environment. P-Ex.1, p.001-021; R-Ex.5, p.043-063.
34. Though Parents attended the IEP meeting virtually, they chose not to speak or turn on their cameras throughout the meeting. No one prevented them from speaking or providing input regarding questions that the team members had regarding their requests or concerns. Testimony of Parent, Tr.V1, 52:2-55:3, 78:18-25; Testimony of AP, Tr.V2, 176:17-24.
35. Petitioners have not specified any particular problem(s) that Parents have with the IEP-

11/26/2024, and when asked during examination if there are any parts of the IEP that Parent was unhappy with, both Petitioners' and Respondents' counsel objected to the line of questioning by this Hearings Officer. Testimony of Parent, Tr.V1, 76:19-78:11.

36. Parent did not identify any specific information that Parent wanted to discuss, other than what was stated by Advocate at the IEP meeting, either at the meeting or at the Hearing. Parent simply stated that Advocate was speaking on Parents' behalf but was not being heard. At this time, it is unclear what Parent wanted to discuss at the IEP meeting that the IEP team did not discuss. See Testimony of Parent, Tr.V1, 69:13-70:2.

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 significantly impeded Parents' participation during the November 26, 2024 IEP meeting

Petitioners' sole issue in this case is that the IEP team significantly impeded Parents' participation in the November 26, 2024 IEP meeting. Petitioners rely upon the argument that an IEP must be developed in a certain order according to the procedures set forth by the IDEA but fail to provide any statutory or case law basis to support their argument.¹⁰ This Hearings Officer

¹⁰ *See e.g.*, Petitioners First Amended Closing Brief, dated March 14, 2025, page 13 ("This approach violates the IDEA's requirement for a sequential, collaborative process"), page 14

concludes that based on the specific facts of this case, Petitioners have failed to meet their burden of proving this issue.

The IDEA does require that an IEP be developed to include a statement of the child's present levels of academic achievement and functional performance (hereinafter "PLAAFPs"), a statement of measurable annual goals, including academic and functional goals, a description of how the child's progress toward meeting the annual goals will be measured, a statement of special education and related services and supplementary aids and services that will be provided to the child, and an explanation to the extent, if any, to which the child will not participate with nondisabled children in the regular class (least restrictive environment), a projected date for the beginning of services and modifications to be provided, and a post-secondary plan with transition services as necessary for a student sixteen years or older. *Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1111 (2016); 20 U.S.C. §1414(d), 34 C.F.R. §300.320(a), H.A.R. §8-60-44(a).

In this case, Student had IEP-02/07/2024, which had been developed by the IEP team in February 2024 and contained information about Student's PLAAFPs, goals and objectives with descriptions of how the goals will be measured, a statement of special education, related services, and supplementary aids that will be provided to Student, and a statement regarding Student's least restrictive environment. *FOF 2*. The IEP-02/07/2024 also contained a [REDACTED] plan and [REDACTED] services to be provided for Student, as well as a projected beginning and end date for the services under the IEP-02/07/2024, with an annual review date of February 7, 2025. *FOF 2*. The meeting on November 26, 2024 was held as a follow up to a

("The IDEA and its implementing regulations establish a clear sequential process for IEP development").

meeting on August 22, 2024, which was called for the specific purpose of addressing concerns that Parents had raised regarding Student's IEP. *FOF 17*. Parents did not provide any specific information that they wanted to discuss regarding Student's IEP PLEPs/PLAAFPs, besides asking that additional information on Student's [REDACTED] and [REDACTED] needs be included. *FOF 21-23*. The IEP team discussed additional [REDACTED] and [REDACTED] that Parents' wanted included in the IEP and subsequently included them in the IEP-11/26/2024. *FOF 25, 28-29*. The IEP-11/26/2024 contained goals and objectives that were developed to address Parents' concerns in the PCL that Student was not receiving enough education for [REDACTED] and [REDACTED] skills, as well as placing Student in the traditional [REDACTED] class instead of the [REDACTED] classroom. *FOF 33*. Home School did not discuss Parents' request for After-School Program to be included in the various portions of the IEP requested by Parents due to After-School Program informing both Parents and Home School that After-School Program could not be an IEP service provider. *FOF 15-16*.

The IDEA does envision that the school IEP team members will collaborate with parents to develop a Student's IEP, however this does not give parents the right to dictate the terms of the IEP process, or the final decision on the IEP itself. *Timothy O.*, 822 F.3d at 1112; *Ventura de Paulino v. New York City Department of Education*, 959 F.3d 519, 533-534 (2nd Cir. 2020) (holding that the school district, not parents, had authority to decide how child's agreed upon educational program was provided pending resolution of an IEP dispute); *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373, 380 (5th Cir. 2003) (holding that even assuming parents had a right to provide input as to the location where services would be provided, it does not grant parents 'veto' power over the IEP team's site selection decisions).

In this case, Parent continually took the stance of having the ability to dictate the terms and conditions of meetings and agendas throughout the development of the IEP-11/26/2024. *FOF 7, 9.* To their credit, Home School made their best attempts to accommodate Parents' demands, first by proceeding with an annual IEP meeting at Parents' direction to complete the IEP before Parents provided their concerns to Home School; by holding a meeting specifically to discuss the PCL and not discussing Student's IEP at that meeting based on Parents' insistence; and by holding another IEP meeting in November at the scheduling demands of Parents to have Parents' attorney and/or Advocate present at the meeting. *FOF 10, 11, 18.* Even during the meeting on November 26, 2024, the Home School IEP team members tried to discuss the requests and concerns of Parents, both laid out in the PCL and by Advocate, but were met with a refusal to participate by Parents at the meeting. *FOF 25-27, 30.*

Petitioners' reference to *Doug C. v. Hawaii Dept. of Educ.*, 720 F.3d 1038 (9th Cir. 2013) is not applicable in this case. The facts specific to *Doug C.* very specifically found that the school district's failure to accommodate a parent's desire to reschedule an IEP meeting due to illness was a denial of FAPE. *Id.* at 1044. In that case, the Court held that the school district placed the importance of the school district's personnel's schedules over the parent's right to be present at the meeting, which resulted in a significant infringement on the parent's right to participate. *Id.* at 1045-1046. Here, Home School accommodated Parents' request to schedule multiple meetings, including the November 26, 2024 meeting, based on their, their attorney's and/or Advocate's schedules, ensured that the meeting date and time were agreeable with Parents, and provided the ability for Parents to participate through videoconferencing for their convenience. Further, the concerns by the Court in *Doug C.* regarding whether Parents could have provided additional information at the meeting that may have changed the outcome of the

meeting is not present in this case. Home School had the PCL, information from Student's IEP-02/07/2024 IEP meeting, and the August 22, 2024 meeting to consider for the revision of Student's IEP to address Parents' concerns. Parents, as well as representatives from After-School Program had already provided information to Home School regarding their program, including the fact that as an after-school program, they were unable to implement Student's IEP provisions. *FOF 15-16*. Advocate provided Home School with a list of things that Parents wanted to discuss, but little information, if any, to support Parents' requests, or any new information upon which the IEP team could rely to make appropriate changes in the IEP. *FOF 25-27, 30*.

Petitioners' argument that the IEP team's decision to conduct the meeting according to the agenda that had been sent to Parents prior to the meeting does not demonstrate any procedural violations. Petitioners do not cite to any supporting authority that requires an IEP team to conduct meetings in a sequential order. The IEP team in this case had updated information from Student's IEP-02/10/2024, Parents' PCL, and an update from Student's current teacher to use in making appropriate revisions to Student's IEP. Petitioners have not proven that Parents' refusal to participate¹¹ or provide information to the IEP team to discuss their requests, demands, and/or concerns for the IEP development was a procedural violation. Even assuming, *arguendo*, that failing to review all sections of Student's IEP in the November 26, 2024 IEP revision meeting was a procedural violation, Petitioners have not proven that it rose to a denial of

¹¹ While Petitioners correctly note that Parents are entitled to be represented by an advocate to speak on their behalf at meetings, this Hearings Officer interprets the minimal participation and/or engagement in the discussions, the apparent unwillingness or inability of the Advocate to provide basic information requested by the Home School IEP team members, and the simple repeating that Parents disagree without any explanation to the team as a refusal of Parents to participate either themselves or through Advocate.

FAPE by significantly impeding parental participation. *Sanchez v. District of Columbia*, 815 Fed.Appx 559, 561 (D.C.Cir. 2020) (holding that a parent must demonstrate that procedural missteps by the educational agency must be shown to significantly impede the opportunity for parental participation).

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 Respondents significantly impeded or infringed upon Parents' participation in the November 26, 2024 IEP meeting and development of Student's IEP-11/26/2024. Petitioners' request for the finding of a denial of FAPE and remedies under the law is respectfully denied.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawai'i, March 28, 2025.



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