



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 CHRISTINA
KISHIMOTO, Superintendent of the Hawai'i
Public Schools,

Respondents.

DOE-SY2021-002

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing: September 15-16, 2020
October 1-2, 2020
December 21, 2020

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On July 10, 2020, the Department of Education, State of Hawai'i and Christina Kishimoto, Superintendent of the Hawai'i Public Schools (hereinafter "Respondents" or "DOE") received a request for a due process hearing (hereinafter "Complaint") under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities

Education Act, from Student, by and through Parent (hereinafter “Petitioners”). Respondents submitted a response to Petitioners’ Complaint on July 20, 2020.

A prehearing conference was held on August 10, 2020, before Hearings Officer Chastity T. Imamura, with Keith H.S. Peck, Esq. (hereinafter “Mr. Peck”), representing Petitioners, and Ryan W. Roylo, Esq. (hereinafter “Mr. Roylo”), representing Respondents. At the prehearing conference, the Due Process Hearing (hereinafter “Hearing”) was scheduled for September 15-16, 2020.

Petitioners requested leave to file pre-hearing motions, and a deadline was given of August 20, 2020. Petitioners filed a Motion for Partial Summary Judgment (hereinafter “Motion”) on August 19, 2020. Respondents timely filed their Opposition to Petitioners’ Motion for Partial Summary Judgment on August 25, 2020, and Petitioners filed a Memorandum in Reply to Respondents’ Memorandum in Opposition on August 27, 2020. A hearing on Petitioners’ Motion was held on August 28, 2020. This Hearings Officer’s Order Denying Petitioners’ Motion for Partial Summary Judgment was filed on September 1, 2020.

The Due Process Hearing began on September 15, 2020. Petitioners called Private School Director to testify. Prior to the start of the Hearing, Mr. Peck informed this Hearings Officer and Mr. Roylo that Private School Director had a family emergency, requiring Private School Director to travel to the mainland. At that time, due to the family emergency, Private School Director was unable to complete testimony until October 2, 2020. Parent was also unavailable to attend the Hearing after 1:50 p.m. each day due to Parent’s children’s schedule, so the Hearing on September 15, 2020 was concluded at 1:50 p.m.

The Hearing continued to September 16, 2020, where Petitioners called Parent to testify. Parent was again unable to continue past 1:50 p.m. on that day, and the Hearing concluded at that

time. Due to the schedules of the attorneys and witnesses, the Hearing was continued to October 1 and 2, 2020. On October 1, 2020, Parent's testimony was completed. Private School Director's testimony was completed on October 2, 2020 and Petitioners' rested their case-in-chief. Respondents called Special Education Teacher (hereinafter "SPED") to testify. At the conclusion of SPED's testimony, Mr. Peck raised an issue regarding SPED's testimony prior to beginning his cross-examination of SPED. The parties agreed to continue the Hearing to another date to allow Mr. Roylo to speak with SPED and determine how to proceed. The Hearing was continued to November 9, 2020; however, Mr. Roylo had a medical emergency on November 9, 2020, and the Hearing was continued by agreement to December 21, 2020. The Hearing proceeded as scheduled on December 21, 2020 and the testimony of SPED and Speech Language Pathologist (hereinafter "SLP") was completed on that date. Respondents rested their case and Petitioners did not have any rebuttal witnesses to present.

Based on the circumstances surrounding the continuances of the Hearing dates, Respondents requested extensions of the deadlines from the original deadline of September 23, 2020 to November 7, 2020 to December 22, 2020 and finally to February 5, 2021. Petitioners did not have any objections to the requests for extensions and all of Respondents' requested extensions were granted. The deadline by which a decision in this case must be rendered is February 5, 2021.

Due to the coronavirus 2019 global pandemic, the parties stipulated to the Hearing being conducted via video conferencing to ensure compliance with government mandated social distancing.² An Order Regarding Video Conference Due Process Hearing was issued on

² See Governor of the State of Hawaii's Twelfth Proclamation Related to the COVID-19 Emergency, effective August 20, 2020, and Governor of the State of Hawaii's Thirteenth Proclamation Related to the COVID-19 Emergency, effective September 22, 2020.

September 8, 2020, which set forth the parameters for the video conference hearing. These parameters included: the instructions to participate via the Zoom video conference internet platform; 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 that witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting.

Each party submitted their exhibits for the Hearing by the disclosure deadline of September 8, 2020. On December 22, 2020, a list of exhibits that were discussed during the hearing was provided to counsel by this Hearings Officer. Both parties were allowed to propose additional exhibits that were not discussed at the Hearing to be received as evidence in this matter. The lists of proposed additional exhibits were due on January 5, 2021. Any objections to the proposed exhibits were due on January 8, 2021. Neither Petitioners nor Respondents submitted any corrections or additional proposed exhibits to be received as evidence for consideration in the Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-016;³ Exhibit 2, pages 019-024; and Exhibit 3, pages 027-038, 040-051, 053-072. Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 003-020; Exhibit 2, pages 021, 023; Exhibit 3, pages 024-030, 033, 036-042; Exhibit 4, pages 048-065; and Exhibit 5, pages 066-089.

Both parties wanted the opportunity to submit closing briefs regarding the legal issues

³ Petitioners and Respondents both submitted copies of Student's Individualized Education Program (hereinafter "IEP") dated May 29, 2019 (Petitioners Exhibit 1, pages 001-016 and Respondents Exhibit 1, pages 003-018). Due to what appears to be a copying error in Petitioners' Exhibit, the top portion of the document is cut off. Therefore, any references to Student's IEP dated May 29, 2019 will be to Respondents' Exhibit.

and the relevant facts supporting those issues to this Hearings Officer for review. The deadline by which the briefs were to be submitted was Monday, January 25, 2021. Both parties timely submitted their closing briefs on that date.

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

II. JURISDICTION

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act (hereinafter “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 “HAR”) § 8-60-1, *et seq.*

III. ISSUES PRESENTED

Petitioners assert five (5) issues in the Amended Complaint to be addressed at the Hearing:

1. Whether Respondents denied Student a free and appropriate public education (hereinafter “FAPE”) when the May 29, 2019 Individualized Education Program (hereinafter “IEP”) did not address the individual needs of Student regarding Extended School Year (hereinafter “ESY”) services, such as duration of school day, and/or restrictiveness of environment.
2. Whether Respondents denied Student a FAPE when the May 29, 2019 IEP team utilized improper factors to determine Student’s placement. Student’s placement was more restrictive than appropriate.
3. Whether Respondents denied Student a FAPE by failing to collect sufficient data/information and/or include participation by knowledgeable persons about Student’s needs at the May 29, 2019 IEP meeting. This includes a discussion about assistive technology and/or communication skills. This allegation relates to the concept of “lost educational opportunity.”
4. Whether Respondents denied Student a FAPE when the IEP dated May 29, 2019 fails to provide sufficient Supplementary Aids and Services for Student to be successful in

the Least Restrictive Environment and/or make adequate gains on academic, behavioral, and/or social needs. Examples of this are:

- a. The frequency “Daily” for “ABA Services” is vague and difficult for Parent to enforce, since it could mean once a day for 10 seconds or all day.
 - b. The frequency “Daily” for “Program RBT” is vague and difficult for Parent to enforce, since it could mean an RBT at the program will provide services once a day for 10 seconds or all day and be exclusive to Student or shared among many students. In the Clarification Section of the IEP, it states that “Placement will be in a classroom staffed with personnel trained in ABA strategies and with no more than 4 student/school personnel ratio.” Does this mean that a “Program RBT” will be in the classroom with others that are trained in ABA strategies or that the “Program RBT” will visit the classroom daily for a “check-in”?
 - c. The phrase “Sensory Diet Plan” is vague and difficult for Parent to enforce since what a “sensory diet plan” would entail is not clarified.
5. Whether Respondents denied Student a FAPE when the IEP dated May 29, 2019 expired on May 29, 2020 and has not been replaced. Since Student was entitled to ESY services, Student’s IEP lapsed.

IV. FINDINGS OF FACT

Background information

1. Private School Director is a licensed board-certified behavior analyst (hereinafter “BCBA”) and licensed and certified speech-language pathologist. Private School Director has a master’s degree in communication sciences and disorders and has been working as both a BCBA and a speech-language pathologist for over ___ years. Private School Director has experience in developing, guiding, and implementing programs using applied behavior analysis (hereinafter “ABA”), with an emphasis on verbal behavior (hereinafter “VB”) programs.⁴
2. SPED is a special education ___ teacher who has certifications in social work and a post-baccalaureate certification in special education. SPED is licensed in the State of

⁴ Testimony of Private School Director, Transcript Volume 1, page 16, line 6 to page 17, line 16 (hereinafter referenced as “Tr.V1, 16:6-17:16”); Petitioners’ Exhibit 3, page 048-049 (hereinafter referenced as “P-Ex.3, p.048-049”).

Hawai'i as a [REDACTED] special education teacher. SPED has been employed as a special education teacher since approximately [REDACTED].⁵

3. SLP is a licensed speech pathologist in the State of Hawai'i, who holds a Master of Science degree in communicative disorders. SLP has been working for the Hawai'i DOE for ___ years as a speech language pathologist, who performs speech and language therapy for children with communication needs. SLP also conducts assessments to determine whether students have a speech and language delay or deficit.⁶
4. In ___, the DOE contracted Private School Director, in Private School Director's capacity as a BCBA, as a consultant to develop and oversee the VB program at Home School.⁷
5. The VB program overseen by Private School Director was based on the science of ABA and, in part, on an assessment tool called the Verbal Behavior Milestones Assessment and Placement Program (hereinafter "VB-MAPP"), which is utilized for children with autism or other developmental disabilities. The VB-MAPP assesses a child's abilities based on a developmental hierarchy of skills of non-disabled children to determine what areas of skills a disabled child has or does not have relative to their non-disabled peers of the same age.⁸
6. Private School Director's role as a consultant was to run, guide and provide training for the VB program; including training the DOE teachers and staff to implement the

⁵ Testimony of SPED, Tr.V4, 516:17-519:21.

⁶ Testimony of SLP, Tr.V5, 587:5-588:13.

⁷ Testimony of Private School Director, Tr.V1, 17:12-18:15, 83:13-21.

⁸ Testimony of PSD, Tr.V1, 18:25-20:1, 83:5-12.

- program, as well as designing the individual student programs within the VB program and the classroom program.⁹
7. Private School Director's company also provided registered behavior technicians (hereinafter "RBTs") for the VB program to work with students and collect data for the program.¹⁰
 8. Private School Director worked as the consultant for the VB program at the Home School for the 2018-2019 school year.¹¹
 9. Private School Director's VB program was to be used specifically in the [REDACTED] disabled classroom at Home School.¹²

Student's background

10. Student is ___ years old and was diagnosed with ___ (hereinafter "___") in July 2019.¹³
11. From January 2018 until May 2019, Student attended Home School's special education [REDACTED] classroom as part of the designated VB program run by Private School Director.¹⁴
12. For the 2018-2019 school year, SPED was Student's teacher for the fully self-contained special education [REDACTED] class with the VB program run by Private School Director.¹⁵ The fully self-contained special education [REDACTED] class

⁹ Testimony of Private School Director, Tr.V1, 20:2-21:12, 83:13-87:3, 358:4-361:17.

¹⁰ Testimony of Private School Director, Tr.V1, 95:1-22.

¹¹ Testimony of Private School Director, Tr.V1, 83:5-12.

¹² Testimony of Private School Director, Tr.V1, 29:13-30:5.

¹³ Testimony of Parent, Tr.V2, 167:22-168:3"); *see also* Respondents' Exhibit 1, page 003-004 (hereinafter referenced as "R-Ex.1, p.003-004").

¹⁴ Testimony of Private School Director, Tr.V4, 371:11-13; Testimony of SPED, Tr.V4, 547:8-16, 568:20-569:6, 572:8-13.

¹⁵ Testimony of SPED, Tr.V4, 521:10-19, 527:10-17, 547:8-548:3.

- included other disabled students that were not part of the VB program.¹⁶
13. Prior to being placed into SPED's fully self-contained special education classroom, Student was in a smaller classroom with two (2) other students that were in the VB program run by Private School Director.¹⁷ Private School Director noted that it was more difficult to implement the VB program within the fully self-contained special education classroom.¹⁸
14. In May 2018, Private School Director conducted a VB-MAPP assessment on Student as part of Private School Director's contract for the VB program at Home School.¹⁹ Student's score on the VB-MAPP assessment was fifty and a half (50.5).²⁰
15. For Student's VB program during the 2018-2019 school year, Private School Director used information from Student's VB-MAPP assessment to determine objectives and goals for Student to work on in the VB program.²¹
16. Private School Director's company RBTs provided services to Student during Student's time at Home School during the 2018-2019 school year. Student was provided daily RBT services for the 2018-2019 school year.²²
17. As part of the VB Program run by Private School Director, Student received the assistance of visual aids, sensory materials, preferential seating or cot placement,

¹⁶ Testimony of Private School Director, Tr.V4, 371:14-373:6.

¹⁷ Testimony of Private School Director, Tr.V4, 371:17-373:6.

¹⁸ Testimony of Private School Director, Tr.V1, 45:2-15, 51:4-52:4, 96:10-20, Tr.V4, 483:14-485:10.

¹⁹ Testimony of Private School Director, Tr.V1, 91:24-93:17; R-Ex.4, p.048.

²⁰ R-Ex.4, p.048.

²¹ Testimony of Private School Director, Tr.V1, 90:25-91:16.

²² Testimony of Private School Director, Tr.V1, 95:20-96:7, 97:1-3; Testimony of SPED, Tr.V4, 527:18-528:19, 547:1-19.

- warnings before transitions, and a token economy.²³
18. Student's VB program for the 2018-2019 school year included a feeding program due to Student's sensory issues related to feeding.²⁴
19. SPED was able to observe Student make progress on Student's IEP goals and objectives from at least January 11, 2019 until the end of the 2019 school year. SPED completed progress reports related to Student's IEP goals and objectives for the reporting periods of January 11, 2019; April 3, 2019; and May 29, 2019.²⁵
20. During the 2018-2019 school year, Student received speech and language therapy from SLP, who was the assessor for Student's initial speech language assessment.²⁶
21. SLP observed Student making progress in Student's speech and language IEP goals and prepared progress reports for the 2018-2019 school year.²⁷

IEP meeting on May 29, 2019

22. On May 29, 2019, an IEP meeting was held with Home School, from which an IEP was prepared for Student (hereinafter referred to as "IEP-05/29/2019").²⁸
23. Present at the May 29, 2019 IEP meeting were SPED, Principal 1, Private School Director, Parent, General Education Teacher, SLP, and a special education [REDACTED] representative.²⁹
24. At the IEP meeting on May 29, 2019, the team discussed Student's eligibility for

²³ Testimony of Private School Director, Tr.V1, 37:10-40:2.

²⁴ Testimony of Private School Director, Tr.V4, 368:15-369:18.

²⁵ See generally R-Ex.4, p.051-065.

²⁶ Testimony of SLP, Tr.V5, 588:25-589:7.

²⁷ Testimony of SLP, Tr.V5, 595:14-596:8; R-Ex.4, p.049-050.

²⁸ R-Ex.1, p.003-018.

²⁹ Testimony of Parent, Tr.V2, 169:13-21; Testimony of Private School Director, Tr.V1, 21:22-22:2, Tr.V4, 190:20-23; Testimony of SPED, Tr.V4, 523:9-10; Testimony of SLP, Tr.V5, 589:13-15; R-Ex.1, p.018.

ESY. Based on the discussion at the IEP meeting, the team determined that Student would be eligible for ESY services after a break of twenty (20) days.³⁰

25. The IEP team discussed the data that was collected regarding Student's regression during the twenty (20) day winter break before the May 29, 2019 meeting, which showed some regression but recoupment of Student's skills within a reasonable amount of time.³¹

26. The IEP team also determined that since Student had made significant progress on Student's previous IEP, the new IEP that was being discussed would increase expectations for Student. Based on the increased expectations for Student, and because the team did not have data for regression or recoupment for a longer break, the IEP team determined that Student should be eligible for ESY after twenty (20) days.³²

27. The IEP team did not discuss the length of the ESY school day, nor was there a specific discussion regarding the restrictiveness of environment for Student's ESY services.³³

28. During the IEP meeting on May 29, 2019, Parent did not express any concerns or objections to the ESY decision made by the IEP team.³⁴ Parent was happy that Student had been deemed eligible for ESY.³⁵

³⁰ Testimony of Parent, Tr.V2, 170:5-22; Testimony of SPED, Tr.V4, 544:10-24, Tr.V5, 573:11-22; R-Ex.1, p.016,

³¹ Testimony of Parent, Tr.V2, 226:12-227:2; Testimony of SPED, Tr.V4, 544:25-545:14, Tr.V5, 573:11-22.

³² Testimony of SPED, Tr.V4, 541:18-542:14, Tr.V5, 573:4-574:2.

³³ Testimony of Parent, Tr.V2, 170:23-172:1.

³⁴ Testimony of Parent, Tr.V2, 228:19-3, Tr.V3, 296:5-24.

³⁵ Testimony of SPED, Tr.V4, 546:18-25.

29. The IEP team discussed Student's placement during the May 29, 2019 IEP meeting. At the time of the IEP meeting, Student had been in Private School Director's VB program within SPED's classroom.³⁶
30. The IEP team discussed different placements for Student and determined that Student would be overwhelmed in a general education classroom and still needed to be placed in a special education classroom with the supports from the VB program Student was currently receiving.³⁷
31. While Parent testified that no discussion was had regarding the least restrictive environment for Student at the May 29, 2019 IEP meeting, this Hearings Officer finds the testimony of SPED more persuasive given SPED's testimony that the IEP team is required to use a chart that shows the continuum of placements and go through them during the discussion of placement.³⁸
32. Additionally, during the time of Parent's testimony regarding this subject on direct examination, counsel was asking Parent about two different meetings and at some point Parent appeared to be confused and needed a break from testimony.³⁹ While Parent gave clear answers to questions regarding both meetings, at least some of these answers appeared to be in contradiction to what counsel wanted Parent to say.⁴⁰

³⁶ Testimony of SPED, Tr.V4, 527:5-17.

³⁷ Testimony of SPED, Tr.V4, 530:6-531:17.

³⁸ Testimony of Parent, Tr.V2, 233:20-239:1

³⁹ Testimony of Parent, Tr.V2, 207:21-210:25.

⁴⁰ For example, the following exchange between Mr. Peck and Parent occurred shortly after the break:

Mr. Peck: So, now, going back to the issue at hand, do you remember answering a question regarding the 5/29/2019 IEP, specifically about whether they went through a stage process? Can [Student] be in an inclusion classroom; can [Student] be pulled out for just certain subjects; does [Student] need to be in all SPED, do you remember having been asked that question about the 9/29/2019 (*sic*) meeting?

33. Private School Director initially testified that no discussion was held as to Student's least restrictive environment; however, during cross-examination, Private School director also testified that there was a discussion about when Student would have access to non-disabled peers.⁴¹
34. Student's least restrictive environment, or educational placement, was determined to be in the fully self-contained classroom during mealtimes, instructional times, and naptime. Student was to participate with non-disabled peers during recess and other school functions with modifications and accommodations.⁴²
35. During the May 29, 2019 IEP meeting, neither Parent nor Private School Director provided any input regarding Student's educational placement or least restrictive environment.⁴³
36. After the discussion regarding Student's placement, Parent agreed with the IEP

Parent: Okay, clarifying, you're asking me; right? If that was a discussion at the 9 (*sic*) IEP meeting or the 5/29 IEP meeting?

Mr. Peck: 5/29/2019 IEP meeting. Did [] (*sic*) go through that stage process?

Parent: No, they did not go through that process.

Mr. Peck: What did they do instead?

Parent: They read that part. They said that [Student] was a [redacted]. [Student] was going to be – since [Student] was a [redacted], [Student] would be in the [redacted] classroom, like a [redacted] special ed classroom.

Mr. Peck: Okay. Now, with regard to a totally different IEP meeting, the 9/4/2020 IEP meeting, what do you remember about the discussion about a stage process, or not, at that meeting?

Parent: There was no discussion about a stage process.

Mr. Peck: No, there was no discussion, but I don't know what you're saying. Was there a stage process where they said least restrictive, more restrictive, more restrictive, very restrictive? Was there a process of discussion with regard to [Student's] classroom, at the 9/4/2020 IEP meeting?

Parent: No.

Testimony of Parent, Tr.V2, 212:16-231:22.

⁴¹ Compare Testimony of Private School Director, Tr.V1, 28:1-29:12 and Tr.V1, 123:6-125:5.

⁴² Testimony of SPED, Tr.V4, 531:5-534:14; R-Ex.1, p.017.

⁴³ Testimony of Private School Director, Tr.V1, 29:11-30:16, 124:15-131:1; Testimony of Parent, Tr.V3, 297:6-298:11.

- team's decision that it was the best placement for Student and Parent did not have any concerns or objections to Student being in Private School Director's VB program.⁴⁴
37. At the May 29, 2019 IEP meeting, the team also discussed the supplemental aids and services that Student would receive as part of Student's IEP.⁴⁵
38. One of the supplementary aids and services that was discussed was "ABA Services," which included the supervision of Student's VB program by Private School Director in Private School Director's capacity as a BCBA.⁴⁶
39. A "Program RBT" was also discussed for the VB program, which was a term that referred to RBTs within the VB program and allowed flexibility for the RBTs in the VB program to rotate being with the students in the program.⁴⁷
40. Parent was informed that Student's "Program RBT" would be a one-to-one person to be with Student throughout Student's school day.⁴⁸
41. Student's placement also involved being in a classroom staffed with personnel trained in ABA strategies with no more than a four (4) to one (1) student to personnel ratio. This allowed for flexibility if an RBT was not available to assist with the VB program, and another staff with training in ABA strategies could substitute for the RBT.⁴⁹
42. The IEP team also provided Student with a "Sensory Diet Plan," which was discussed during the IEP meeting as an opportunity for Student to go to a sensory room as

⁴⁴ Testimony of SPED, Tr.V4, 536:6-537:7.

⁴⁵ Testimony of Parent, Tr.V2, 173:1-175:2, 187:11-188:8; Testimony of SPED, Tr.V4, 548:4-552:21.

⁴⁶ Testimony of Private School Director, Tr.V1, 23:19-24:8.

⁴⁷ Testimony of Private School Director, Tr.V1, 25:6-26:9, Tr.V4, 363:22-364:23, 367:7-20.

⁴⁸ Testimony of Parent, Tr. V2, 173:1-175:2.

⁴⁹ Testimony of Private School Director, Tr.V1, 27:7-25, Tr.V4, 365:11-366:1.

needed if Student had a behavior issue or needed a break.⁵⁰

43. At the IEP meeting on May 29, 2019, the IEP team did not discuss the issue of an assistive augmentative communication (hereinafter “AAC”) technology because Student had made significant progress on Student’s speech and language goals. For example, Student had been barely saying ten words and was only using one-word utterances prior to the start of the 2018-2019 school year, but by the time the May 29, 2019 IEP meeting occurred, Student’s vocabulary had increased, and Student was speaking in phrases and sentences.⁵¹

Student’s IEP-05/29/2019

44. Student’s IEP-05/29/2019 was provided to Parent some time after the meeting. When Parent received the IEP-05/29/2019, Parent reviewed it.⁵²

45. Student’s IEP-05/29/2019 indicated that “[Student] qualifies for ESY for Special Education and all supplementary aide[s] and services. [Student] will receive ESY services for SPED services only during breaks longer than 20 days. ESY Summer approximate dates June 20, 2019 – July 19, 2019. No school on 7/4/19 in observance of Fourth of July. A new annual IEP will be written and dates determined prior to the summer before the 2020-2021 school year.”⁵³

46. Student’s IEP-05/29/2019 also provided the following supplementary aids and services, program modifications, and supports for school personnel: “ABA Services” at the frequency of “Daily;” “BCBA Consult” at the frequency of “120 mins per

⁵⁰ Testimony of Parent, Tr.V2, 187:11-188:8; Testimony of SPED, Tr.V4, 549:11-552:22.

⁵¹ Testimony of SLP, Tr.V5, 596:10-597:18.

⁵² Testimony of Parent, Tr. V3, 296:17-19.

⁵³ R-Ex.1, p.016.

month;” “Program RBT” at the frequency of “Daily;” “Emergency Medical Action Plan for [REDACTED]” at the frequency of “Daily;” and “Sensory Diet Plan” at the frequency of “Daily.”⁵⁴

47. Student’s IEP-05/29/2019 indicated that “[Student] will not participate with [Student’s] non-disabled peers during mealtimes, instructional times, and naptime. [Student] will participate with [Student’s] non-disabled peers during recess and other school functions with modifications and accommodations.”⁵⁵
48. A prior written notice from the IEP meeting, dated May 31, 2019 (hereinafter “PWN-05/31/2019”) was also developed. The PWN-05/31/2019 indicated that Student’s placement was “in a Special Education [REDACTED] Classroom on a Public School campus.” Further, the PWN-05/31/2019 indicated that Student would be in the VB program combined with the fully self-contained classroom.⁵⁶
49. The PWN-05/31/2019 indicated that “The provision of a BCBA consult and ABA interventions and strategies, along with personnel trained in them and the presence of an RBT, is to offer more appropriate instruction determined from VB Mapping assessment and to help [Student] reach [Student’s] IEP goals, ... the Sensory Diet plan is [to] address [Student’s] need for sensory stimulation or redirection.”⁵⁷

Events after the May 29, 2019 IEP meeting

50. Student was scheduled to attend an ESY session from June 20, 2019 to July 19, 2019. Private School Director continued to run the VB program for Student’s ESY session

⁵⁴ R-Ex.1, p.016.

⁵⁵ R-Ex.1, p.017.

⁵⁶ R-Ex.1, p.019-020.

⁵⁷ R-Ex.1, p.019.

during the summer of 2019. Student attended ESY at Home School from around July 1, 2019 to July 19, 2019 and attended a summer camp run by Private School Director from June 17-28, 2019.⁵⁸

51. After seeing Student at the summer camp run by Private School Director, Parent began looking for private schools for Student to attend. After looking at other schools and speaking to other parents, Parent decided to send Student to Pilot Program for the 2019-2020 school year.⁵⁹

52. On August 5, 2019, Parent signed a document entitled “Request for Release,” which noted a “withdrawal date” of August 2, 2019. Parent signed this document to obtain Student’s records to transfer Student to Pilot Program. The “Request for Release” document did not contain any information about the private school Parent was sending Student, nor did it contain any written notice that Parent would be seeking reimbursement for Pilot Program tuition.⁶⁰

53. Parent enrolled Student at Pilot Program prior to the start of the 2019-2020 school year.⁶¹

54. Student attended Pilot Program from the start of the 2019-2020 school year until approximately March 2020, when Pilot Program was shut down due to the COVID-19 global pandemic.⁶²

55. In a form letter dated June 18, 2020, Principal 2 informed Parent that Student was

⁵⁸ Testimony of Private School Director, Tr.V1, 36:1-37:2; Testimony of Parent, Tr.V2, 229:5-231:7, Tr.V3, 295:18-25; R-Ex.1, p.016, R-Ex.2, p.021.

⁵⁹ Testimony of Parent, Tr.V3, 343:13-344:5.

⁶⁰ Testimony of Parent, Tr.V2, 255:9-256:23; R-Ex.2, p.023.

⁶¹ Testimony of Parent, Tr.V2, 258:8-259:8.

⁶² Testimony of Private School Director, Tr.V1, 58:16-18, 67:11-16, Tr.V4, 472:16-474:20; Testimony of Parent, Tr.V2, 262:4-7.

eligible for a FAPE, even though Student was no longer enrolled at a DOE public school. In the letter, Principal 2 noted the following: “If we do not hear from you by 7/2/2020 (date) expressing your intent to have your child receive a FAPE, this will serve as an acknowledgement that you do not want your child to receive a FAPE and: *An IEP will not be developed for your child. *The DOE will not be responsible for developing subsequent IEPs until you contact your child’s current DOE home school to request one.” This letter was received by Parent on or about June 20, 2020.⁶³

56. Parent did not respond directly to the June 18, 2020 letter sent by Principal 2.⁶⁴

57. No other correspondence or notice was sent between Home School and Parent between the August 5, 2019 “Request for Release” form and the June 18, 2020 letter from Principal 2.⁶⁵

58. Parent filed the instant Complaint on July 10, 2020, alleging four issues related to the IEP-05/29/2019 and one issue related to Student not having a revised annual IEP after the expiration of the IEP-05/29/2019.⁶⁶

59. On August 24, 2020, Student Services Coordinator (hereinafter “SSC”) contacted Parent to schedule an IEP meeting for Student.⁶⁷

60. An IEP meeting was held with Home School on September 4, 2020, from which an updated IEP for Student was developed. Parent attended the September 4, 2020 IEP meeting.⁶⁸

⁶³ R-Ex.3, p.024-29.

⁶⁴ Testimony of Parent, Tr.V2, 214:20-215:25, 239:25-240:4.

⁶⁵ Testimony of Parent, Tr.V3, 344:23-345:12.

⁶⁶ Testimony of Parent, Tr.V3, 296:20-297:16, 325:17-326:3.

⁶⁷ Testimony of Parent, Tr.V2, 217:23-218:9, 240:5-241:10; R-Ex.3, p.030.

⁶⁸ Testimony of Parent, Tr.V2, 186:4-187:10, 196:13-197:12, 205:10-209:4, 220:14-224:4; R-Ex.3, p.030.

61. Prior to the IEP meeting on September 4, 2020, Parent emailed SSC a list of topics and concerns that Parent wanted to discuss at the IEP meeting. These topics and concerns included Student's success at Pilot Program, Student getting ABA services and assistive technology, concerns about COVID distance learning, Student moving to [REDACTED], behavior interventions for Student, and Student's access to non-disabled peers.⁶⁹

Private School

62. Pilot Program was a non-profit program run by Private School Director using funding from private donors to determine the costs of running a private school for children with special needs using ABA teachings based on VB-MAPP results.⁷⁰

63. Private School is a for-profit private school for children with special needs whose program is based on ABA teaching and utilizes the VB-MAPP as the primary basis for creating programming for students.⁷¹

64. Private School Director is familiar with Student from guiding Student's VB program at Home School for the 2018-2019 school year, having Student in a camp in the end of June 2019, and also from working with Student at Pilot Program in the 2019-2020 school year.⁷²

65. On June 17, 2019, Private School Director conducted a VB-MAPP assessment with Student. Student's score on the VB-MAPP [REDACTED] was [REDACTED] [REDACTED], which was an improvement from Student's previous VB-MAPP given in May

⁶⁹ P-Ex.2, p.020-021.

⁷⁰ Testimony of Private School Director, Tr.V1, 67:17-68:8, 118:2-8, Tr.V4, 375:15-377:7, 449:21-23.

⁷¹ Testimony of Private School Director, Tr.V1, 119:2-120:11, Tr.V4, 375:15-377:7, 449:24-25.

⁷² Testimony of Private School Director, Tr.V1, 20:11-21:12, 36:1-37:2, 38:10-40:2, 58:16-18

- 2018.⁷³
66. The total tuition for Pilot Program charged to Parent for the 2019-2020 school year was Eighteen Thousand Five Hundred Dollars (\$18,500). Parent received tuition assistance, and Parent made three (3) equal quarterly payments of Two Thousand Sixty-One Dollars and Twenty-Four Cents (\$2,061.24).⁷⁴ Pilot Program waived the fourth and final payment for Parent due to the closure of Pilot Program for COVID-19.⁷⁵
67. Parent enrolled Student at Private School for the 2020-2021 school year and signed an enrollment contract on August 14, 2020. The total tuition costs for Student's program for the 2020-2021 school year is Two Hundred Thirty-One Thousand One Hundred Eighty-Six Dollars and Eighty Cents (\$231,186.80).⁷⁶
68. Parent paid a Two Hundred Fifty Dollar (\$250.00) deposit for Student's enrollment at Private School for the 2020-2021 school year.⁷⁷
69. An Individualized Applied Behavior Analysis Education Plan dated August 14, 2020 (hereinafter "IABAEP-08/14/2020") was created for Student for the 2020-2021 school year.⁷⁸
70. Student's IABAEP-08/14/2020 includes results of a VB-MAPP assessment conducted with Student on August 10, 2020, and it also includes updated goals and objectives

⁷³ Testimony of Private School Director, Tr.V1, 58:21-60:23; P-Ex.3, p.034.

⁷⁴ Testimony of Parent, Tr.V2, 271:6-274:19, 277:18-229:1; Testimony of Private School Director, Tr.V4, 439:13-441:20P-Ex.3, p.064-066.

⁷⁵ Testimony of Parent, Tr.V2, 279:3-22; P-Ex.3, p.067.

⁷⁶ Testimony of Parent, Tr.V2, 224:5-14, 275:33-276:16, Tr.V3, 307:1-319:16; Testimony of Private School Director, Tr.V4, 393:11-394:12; P-Ex.3, p.050-051.

⁷⁷ Testimony of Private School Director, Tr.V4, 509:14-510:8. P-Ex.3, p.050.

⁷⁸ Testimony of Private School Director, Tr.V1, 57:16-23, Tr.V4, 388:10-389:11; P-Ex.3, p.027-035.

for Student based on the VB-MAPP results.⁷⁹ Student's VB-MAPP [REDACTED] score was [REDACTED].⁸⁰

71. While Parent did not provide written notice to Home School that Parent would be sending Student to Private School and asking for tuition reimbursement for the 2020-2021 school year, Parent did file the instant Complaint on July 10, 2020, in which Parent sought reimbursement of all educational and related expenses for Student and assumption of the cost of Student's private educational and related expenses.⁸¹

72. The costs for Student's program for the 2020-2021 school year are itemized and are based on prevailing rates for similar services in the area where Student resides.⁸²

73. For the 2020-2021 school year, Student will receive the following services at Private School: Speech Language Therapy; BCBA Consultation; RBT services; Special Education Teacher Consultation; Reverse Inclusion Program; Distance Bridge Assessment, Program, and Supplies if necessary.⁸³

74. Student will receive two thousand four hundred thirty-six (2,436) minutes of speech language therapy for the school year from August 17, 2020 to July 28, 2021.⁸⁴

75. Student will receive three thousand six hundred fifty-four (3,654) minutes of BCBA consultation for Student's IABAEP-08/14/2020.⁸⁵ Student's program also includes separate mandatory RBT supervision by a BCBA, which is equal to five (5) percent

⁷⁹ Testimony of Private School Director, Tr.V1, 57:16-69:15; P-Ex.3, p.034.

⁸⁰ P-Ex.3, p.034-039.

⁸¹ See Petitioners' Complaint and Resolution Proposal, dated July 10, 2020.

⁸² Testimony of Private School Director, Tr.V1, 72:12-73:23, 74:20-78:7; P-Ex.3, p.050, 053-062, 063.

⁸³ P-Ex.3, p.051.

⁸⁴ Testimony of Private School Director, Tr.V4, 396:5-398:3; P-Ex.3, p.050-051.

⁸⁵ Testimony of Private School Director, Tr.V1, 398:11-401:1; P-Ex.3, p.050.

of the ABA hours that the RBT engages in. This mandatory RBT supervision is required by the professional board.⁸⁶

76. Currently, Private School Director is the sole licensed BCBA that is employed by Private School, however Private School also has several employees that are in the process of becoming BCBAs or board-certified assistant behavior analysts.⁸⁷

77. Private School will provide Student with RBT supervision for six (6) hours per day,⁸⁸ which is roughly the entire school day from 8:15 a.m. to 2:15 p.m.⁸⁹

78. Student's IABAEP-08/14/2020 includes consultation from a special education teacher for Student's programming for a minimum of four thousand eight hundred seventy-two (4,872) minutes per year. Currently, Private School employs a special education teacher as a consultant that is [REDACTED] but provides consultations virtually [REDACTED]. The special education teacher consultant is also a BCBA with a doctoral degree.⁹⁰

79. The Reverse Inclusion Program at Private School is a program where non-disabled students that are distance learning, home schooled, or otherwise available during the school day, come to Private School to interact with the students at Private School. The cost of Ten Thousand Dollars (\$10,000) is the rate for a behavior technician to supervise the non-disabled students and encourage them to interact with the students at Private School, since the RBTs assigned to the Private School students need to

⁸⁶ Testimony of Private School Director, Tr.V4, 506:7-507:4.

⁸⁷ Testimony of Private School Director, Tr.V4, 480:14-481:8.

⁸⁸ Testimony of Private School Director, Tr.V4, 401:16-18; P-Ex.3, p.051.

⁸⁹ Testimony of Parent, Tr.V1, Testimony of Private School Director, Tr.V4, 234:20-23.

⁹⁰ Testimony of Private School Director, Tr.V1, 73:24-74:8, 145:13-147:15, 154:18-157:19, Tr.V4, 480:24-481:4; P-Ex.3, p.051.

focus their attention on their assigned student.⁹¹

80. The Distance Bridge Program Assessment at Private School is an assessment to determine each Private School student's needs in the event of another school closure, similar to what happened from March 2020-August 2020. The assessment cost of One Thousand Dollars (\$1000) includes hours for two Private School staff to conduct a distance learning session with Student to see how Student reacts to learning virtually and what accommodations Student would need for such a situation.⁹²
81. The Distance Bridge Program and Supplies cost of Two Thousand Dollars (\$2000) included in the itemized contract for Student includes any materials that would be provided to Student in the event of a school closure. This cost may be refunded in the event that the program is not needed.⁹³
82. Student's enrollment contract also includes assistive technologies, which are technologies that are or will be utilized as part of Student's program.⁹⁴
83. Private School also charges a fifteen (15) percent administrative fee.⁹⁵
84. The billing rate of the costs for Student's individualized services, such as tuition, speech-language therapy, board-certified behavior analyst rates, RBT and behavior technician rates, and the administrative fee are comparable to other similar centers located on the island in which Student attends school.⁹⁶
85. Private School maintains logs for each of the service providers for Student, which are

⁹¹ Testimony of Private School Director, Tr.V1, 79:16-80:17, 136:21-144:21, Tr.V4, 402:14-405:3, 450:1-451:17; P-Ex.3, p.051.

⁹² Testimony of Private School Director, Tr.V4, 428:9-432:7; P-Ex.3, p.051.

⁹³ Testimony of Private School Director, Tr.V4, 433:21-436:12; P-Ex.3, p.051.

⁹⁴ Testimony of Private School Director, Tr.V1, 69:16-70:17; P-Ex.3, p.051.

⁹⁵ Testimony of Private School Director, Tr.V4, 451:18-25; P-Ex.3, p.051.

⁹⁶ Testimony of Private School Director, Tr.V1, 75:20-78:7; *see* P-Ex.3, p.051, 053-062, 063.

regularly maintained and can be used to produce an invoice for all service minutes provided to Student.⁹⁷

86. As of the date of Parent's testimony, Parent has not paid more than the Two Hundred Fifty Dollar (\$250) registration fee toward Student's tuition at Private School.⁹⁸ The enrollment contract that Parent signed indicates that Parent is responsible for the tuition and program costs for Student's special education program at Private School.⁹⁹

V. CONCLUSIONS OF LAW

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.”¹⁰⁰ A FAPE includes both special education and related services.¹⁰¹

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.¹⁰² 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.”¹⁰³

The IEP is used as the “centerpiece of the statute's education delivery system for disabled

⁹⁷ Testimony of Private School Director, Tr.V4, 510:16-511:12.

⁹⁸ Testimony of Parent, Tr.V2, 280:12-24.

⁹⁹ Testimony of Parent, Tr.V2, 224:9-225:3; P-Ex.3, p.050-051.

¹⁰⁰ *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)).

¹⁰¹ H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

¹⁰² *Id.*

¹⁰³ *Dep't of Educ. of Hawai'i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai'i 2016).

children.”¹⁰⁴ 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.¹⁰⁵ The IEP is a collaborative education plan created by parents and educators who carefully consider the child’s unique circumstances and needs.¹⁰⁶

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.”¹⁰⁷ However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*,¹⁰⁸ held that the educational benefit must be more than *de minimus*. 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.”¹⁰⁹

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.¹¹⁰ “A state must meet both requirements to comply with the obligations of the IDEA.”¹¹¹

Procedural violations do not necessarily constitute a denial of FAPE.¹¹² If procedural violations are found, a further inquiry must be made to determine whether the violations: 1)

¹⁰⁴ *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 598, 98 L.Ed.2d 686 (1988).

¹⁰⁵ H.A.R. §8-60-2; 20 U.S.C. §1401(14); 34 C.F.R §300.22.

¹⁰⁶ H.A.R. §8-60-45; 20 U.S.C. §1414; 34 C.F.R §300.321-300.322.

¹⁰⁷ *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048.

¹⁰⁸ 137 S.Ct. 988, 197 L.Ed.2d 335 (2017).

¹⁰⁹ *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).

¹¹⁰ *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051.

¹¹¹ *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).

¹¹² *Amanda J.*, 267 F.3d at 892.

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.¹¹³

A. Petitioners failed to prove that Respondents denied Student a FAPE when the IEP-05/29/2019 did not address the individual needs of Student regarding ESY services, such as duration of school day and/or restrictiveness of environment

Petitioners' first issue asks whether Respondents denied Student a FAPE by failing to address Student's individual needs for ESY services, such as duration of the school day and the least restrictive environment for ESY. A school must provide ESY services only if the child's IEP team determines that the services are necessary 'for the provision of FAPE to the child.'¹¹⁴ To qualify for extended school year services, "a claimant seeking an ESY must satisfy an even stricter test, because 'providing an ESY is an exception and not the rule under the regulatory scheme.'¹¹⁵ The standard for ESY is higher than the standard for the provision of special education and related services due to the requirement to show that the benefits the student gains during the regular school year will be significantly jeopardized if he or she is not provided with an educational program during school breaks.¹¹⁶

¹¹³ *Id.*

¹¹⁴ *N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County Mont.*, 541 F.3d 1202, 1211 (9th Cir. 2008).

¹¹⁵ *N.B.*, 541 F.3d at 1211, quoting *Bd. of Educ. of Fayette County v. L.M.*, 478 F.3d 307, 315 (6th Cir.) quoting *Cordrey v. Euckert*, 917 F.2d 1460, 1473 (6th Cir. 1990), cert. denied, 552 U.S. 1042, 128 S.Ct. 693, 169 L.Ed.2d. 513 (2007); see also *Dep't of Educ. v. L.S. by C.S.*, 74 IDELR 71, 2019 WL 1421752 *7 (holding that ESY is "educational instruction beyond the normal academic year provided to students who need the additional instruction to retain information during a break in regularly scheduled classes, such as during the summer.").

¹¹⁶ *Id.*, quoting *MM ex rel. DM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537-538 (4th Cir. 2002); see also *K.K. ex rel. K.S.K. v. Hawaii*, 66 IDELR 12, 2015 WL 4611947; *Kenton County Sch. Dist. v. Hunt*, 384 F.3d 269, 279 (6th Cir. 2004) (confirming that "it is the proponent of ESY that bears the burden of proof either through the use of data or the use of expert testimony.").

In Student's IEP-05/29/2019, the IEP team made Student eligible for ESY services after a break of twenty (20) days.¹¹⁷ While the team had seen data that Student was able to recoup any skills that were lost during the winter break, the team determined that Student would benefit from ESY services due to the heightened expectations for Student in the new IEP-05/29/2019.¹¹⁸ While Petitioners argue that the IEP team did not address Student's needs in discussing the length of the school day or the environment Student in which Student was placed for ESY services, Petitioners do not point to any alternatives that would have been more beneficial for Student. Further, Parent did not raise any concerns to the team during the May 29, 2019 IEP meeting about the length of the school day for Student or the environment where Student would receive services.¹¹⁹ Student attended at least part of the ESY session during the summer of 2019,¹²⁰ and have failed to demonstrate that Student's ESY's duration or placement were not appropriate to meet Student's needs as outlined in Student's IEP-05/29/2019. Petitioners have failed to meet their burden of proving that the ESY session did not address Student's needs.

B. Petitioners have failed to prove that the IEP team utilized improper factors in determining Student's placement or that Student's placement was more restrictive than appropriate.

Petitioners' next argument addresses Student's educational placement in Student's IEP-05/29/2019. Petitioners argue that the IEP team at the May 29, 2019 meeting utilized improper factors to determine Student's placement. Further, Petitioners argue that Student's placement was more restrictive than appropriate.

¹¹⁷ FOF 24.

¹¹⁸ FOF 25-26.

¹¹⁹ FOF 28.

¹²⁰ FOF 50.

The IDEA provides that “procedures to assure that, to the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily...”¹²¹ The Ninth Circuit Court of Appeals has adopted a four-part balancing test in determining whether a student’s educational placement is the least restrictive environment to the maximum extent appropriate.¹²² The four factors consisted of 1) the educational benefits of placement in full-time regular class; 2) the non-academic benefits of such placement, 3) the effect students have on the teacher and children in the regular class; and 4) the costs of mainstreaming the students.¹²³

In this case, it does appear that the IEP team may not have gone through each of the factors of the Holland analysis in determining Student’s educational placement.¹²⁴ Failure to fully discuss each factor of the educational placement analysis is, however, a procedural violation. Even if Respondents committed a procedural violation, Petitioners must prove that the violation resulted in either a loss of educational opportunity, a significant infringement of parental participation, or a deprivation of educational benefits.

It is clear from the record that everyone on the IEP team, including Parent and Private School Director, believed that Student would be part of the new VB program that Private School

¹²¹ *Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. by and through Holland*, 14 F.3d 1398, 1403 (9th Cir. 1994) (*citing* 20 U.S.C. §1412(5)(b)); *see also* H.A.R §8-60-15.

¹²² *Id.* at 1404.

¹²³ *Id.*

¹²⁴ *See* FOF 30-31.

Director was implementing at Home School.¹²⁵ Through the VB program, Student was receiving additional services that specifically addressed Student's needs based on the results of the VB-MAPP assessment.¹²⁶ Private School Director designed the VB program to be specifically in its own special education classroom and had more difficulty implementing the program when the VB class was integrated with the fully self-contained special education classroom.¹²⁷ SPED teacher testified that Student would not have benefitted from being placed in a less restrictive classroom due to the accommodations that were provided specifically to meet Student's needs, because Student required those services and would likely be overwhelmed in a less restrictive setting.¹²⁸ At the time of the IEP meeting, neither Parent nor Private School Director provided any input regarding a possibly less restrictive environment in which Student should be placed.¹²⁹ The IEP team members did attempt to include Student with non-disabled peers in less demanding situations, such as recess, lunch, and other school activities.¹³⁰ Petitioners have not demonstrated that Student's placement was overly restrictive.

Further, Parent did not raise any objections to Student's placement at the IEP meeting on May 29, 2019 and did not make any complaint to Home School or the IEP team about concerns with Student's educational placement until July 10, 2020, when Parent filed the instant Complaint.¹³¹ Parent decided on Parent's own accord that Student could benefit from attending Private School, especially after Student attended the summer camp run by Private School

¹²⁵ FOF 29-30.

¹²⁶ FOF 14-18.

¹²⁷ FOF 9-13.

¹²⁸ FOF 30.

¹²⁹ FOF 35

¹³⁰ FOF 34, 47.

¹³¹ FOF 57-58.

Director.¹³² Parent withdrew Student from Home School without raising any objection to the IEP-05/29/2019 and sent Student to Private School as a better opportunity for Student, rather than an alternative to a faulty IEP. Petitioners have not met their burden of proving that the IEP team's failure to fully discuss the Holland factors for Student's educational placement resulted in a loss of educational opportunity, significant infringement on parental participation, or a deprivation of educational benefits.

C. Petitioners have failed to prove that Respondents did not collect sufficient data/information or include the participation of knowledgeable persons about Student's needs at the May 29, 2019 IEP meeting

Petitioners next argue that Respondents failed to collect sufficient data/information or include participation of knowledgeable persons at Student's May 29, 2019 IEP meeting, including the discussion regarding assistive technology or communication skills.

"The standard for evaluating IEPs, commonly called 'the snapshot rule,' is not retrospective."¹³³ An IEP is to be judged by looking at whether the IEP goals and goal achieving methods were objectively reasonably calculated to confer Student with a meaningful benefit based on the information available to the IEP team at the time the IEP was created.¹³⁴ In determining appropriateness, "an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is at the time the IEP was drafted."¹³⁵

As an initial matter, for the 2018-2019 school year Student was placed into the VB program run by Private School Director specifically to address Student's unique needs based on

¹³² FOF 51.

¹³³ *K.K. ex rel. K.S.K. v. Hawaii*, 2015 WL 4611947 *16 (D. Hawai'i 2015) (quoting *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010)).

¹³⁴ *K.K.*, 2015 WL 4611947 *16 (quoting *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)).

¹³⁵ *J.W.*, 626 F.3d at 439 (quoting *Adams v. Oregon*, 195 F.3d at 1149).

the VB-MAPP assessment.¹³⁶ The IEP team developed Student's IEP-05/29/2019 with the intent that for the 2019-2020 school year, Student would be in the same VB program.¹³⁷ Private School Director was contracted by the DOE for Private School Director's extensive experience in designing, guiding, and implementing such programs in the school setting.¹³⁸ Private School Director is also a certified speech/language pathologist and has been working as such for over [REDACTED] years.¹³⁹ While Petitioners argue that the IEP team failed to gather knowledgeable persons for Student's needs in assistive technology and communication, it is difficult to fathom who would have been more knowledgeable than Private School Director, who had designed, implemented, and oversaw Student's VB program for the 2018-2019 school year. Further, Private School Director did testify about the assistive technology that was used in Student's VB program, such as informing Student of transitions, utilizing data collection tools, preferential seating, visual aids, sensory materials.¹⁴⁰

Finally, SLP had been Student's speech-language pathologist during Student's initial testing and had provided speech-language therapy for Student throughout the 2018-2019 school year.¹⁴¹ SLP had observed Student's progress during the IEP periods from October 19, 2018 through and including May 29, 2019 and had prepared IEP progress reports for Student during those periods.¹⁴² SLP was certainly a knowledgeable person regarding Student's needs in communication skills and was present during the IEP meeting on May 29, 2019.¹⁴³

¹³⁶ FOF 14-15.

¹³⁷ FOF 29-30.

¹³⁸ FOF 1, 4-6.

¹³⁹ FOF 1.

¹⁴⁰ FOF 17.

¹⁴¹ FOF 20.

¹⁴² FOF 21.

¹⁴³ FOF 23.

Petitioners have failed to prove that the IEP team failed to collect sufficient data/information or failed to include knowledgeable persons in the May 29, 2019 meeting to develop Student's IEP.

D. Petitioners have failed to prove that Student's IEP-05/29/2019 failed to provide sufficient supplementary aids and services for Student

Petitioners next allege that Respondents denied Student a FAPE by failing to provide sufficient supplementary aids and services for Student to be successful in the least restrictive environment or to make adequate gains in Student's academic, behavioral, and social needs. Specifically, Petitioners argue that the phrases "Daily," for "ABA services" and "Program RBT," as well as the term "Sensory Diet Plan" are vague and difficult to enforce.

As discussed *supra*, an IEP is to be examined through the 'snapshot' rule, meaning that the analysis is focused on the information that was available to the IEP team at the time of the development of the student's IEP. In this case, in the May 29, 2019 IEP meeting, the IEP team determined that Student would be placed in the [REDACTED] program with the VB program.¹⁴⁴ Throughout the process of the IEP meeting, the above-phrases that were used for Student's IEP-05/29/2019 were explained to Parent and Parent understood what each term meant.¹⁴⁵ Parent testified that Parent understood that "Program RBT" meant that Student would get a one-to-one RBT with Student throughout the school day.¹⁴⁶ The Sensory Diet Plan was also understood by Parent to be an opportunity for Student to get sensory breaks in a room equipped with sensory equipment.¹⁴⁷ Finally, the ABA services was accepted as the services provided under Private

¹⁴⁴ FOF 29-30, 36.

¹⁴⁵ FOF 38, 40, 42.

¹⁴⁶ FOF 40.

¹⁴⁷ FOF 42.

School Director's VB program, which was the same program that Student had been placed for the 2018-2019 school year.¹⁴⁸

Petitioners have failed to prove that any of the terms included in the IEP-05/29/2019 were vague or not understood by Parent as used in Student's program. Petitioners further have offered no evidence of additional supplementary aids or supports from which Student would have benefitted in Student's IEP-05/29/2019. Finally, both Student's VB-MAPP assessments and Student's IEP progress reports demonstrate that Student progressed with the supplemental aids and supports that were provided to Student as part of the VB program for the 2018-2019 school year.¹⁴⁹ Petitioners have not offered any evidence or made any argument as to why the supplementary aids and supports provided to Student's IEP-05/29/2019 were insufficient to meet Student's unique needs.

- E. Respondents denied Student a FAPE by failing to review, revise or replace Student's IEP-05/29/2019 prior to its expiration and/or prior to the start of the 2020-2021 school year

Petitioners final issue is that Student's IEP-05/29/2019 expired on or about May 29, 2020 and has not been replaced. Petitioners also note that Student was entitled to ESY services, therefore Student's IEP lapsed.

In this case, Student's IEP-05/29/2019 specifically indicates that a new IEP will be written and developed for Student prior to the ESY session before the 2020-2021 school year.¹⁵⁰ Since Student was also determined to be eligible for ESY in the IEP-05/29/2019 and any discussion that would remove Student's eligibility or set forth Student's ESY program for the summer of 2020 needed to be addressed prior to the end of the 2019-2020 school year. No

¹⁴⁸ FOF 38, 41.

¹⁴⁹ FOF 19, 21; *see also* FOF 14, 65.

¹⁵⁰ FOF 45.

attempts were made to contact Parent to convene an IEP prior to the expiration of Student's IEP-05/29/2019 or prior to the start of the ESY session for 2020.¹⁵¹

Further, Principal 2's letter dated June 18, 2020 misleads Parent into thinking that Respondents are not under an obligation to review or revise Student's IEP prior to at least the start of the 2020-2021 school year.¹⁵² The IDEA provides that "each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP team: (i) reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals of the child are being achieved..."¹⁵³ The Ninth Circuit Court of Appeals has consistently held that educational agencies "cannot eschew its affirmative duties under the IDEA by blaming the parents."¹⁵⁴

Here, Principal 2's letter, which was already untimely due to the IEP-05/29/2019's expiration, attempted to place the burden on Parent of contacting the school to convene an IEP meeting, when it was Respondents' responsibility to contact Parent to set up a meeting prior to the expiration of the IEP-05/29/2019. No other evidence of attempts of Home School to contact Parent were presented, and Parent testified that after signing the "Request for Release" form, no contact was made with Home School until the June 18, 2020 letter.¹⁵⁵ This Hearings Officer finds that Petitioners have proven that Respondents committed a procedural violation by failing to convene an IEP review meeting prior to the expiration of the IEP-05/29/2019.

¹⁵¹ FOF 55, 57, 59.

¹⁵² FOF 55.

¹⁵³ 34 C.F.R. §300.324(b)(1)(i), 20 U.S.C. §1414(d)(4)(A)(i), H.A.R. §8-60-48(b)(1)(A).

¹⁵⁴ *Doug C.*, 720 F.3d at 1045 (citing *Anchorage School Dist. v. M.P.*, 689 F.3d 1047, 1055 (9th Cir. 2012) and *W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.*, 960 F.2d 1479, 1485 (9th Cir. 1992)).

¹⁵⁵ FOF 57.

The Ninth Circuit Court of Appeals has previously determined that failure of a school district to update an outdated IEP to address the unique needs of a student can rise to the level of a denial of FAPE if it is not reasonably calculated to ensure educational benefits to a student in the next year of school.¹⁵⁶ In the *Anchorage School Dist. v. M.P.*, the court supported factual findings made by the hearings officer that a second grade IEP was not reviewed and revised appropriately to address the needs of the student who would be in third grade.¹⁵⁷

Here, Student's IEP-05/29/2019 by its own terms demonstrates a loss of educational opportunity for Student. The IEP-05/29/2019 contains language in the ESY session that reads: "A new annual IEP will be written and dates determined prior to the summer before the 2020/2021 school year."¹⁵⁸ Since Student was deemed eligible for ESY services and a new determination was to have been made prior to the start of the summer before the 2020-2021 school year, it is clear that Student lost the opportunity to receive ESY services from Home School for the summer of 2020.

Further, Student's IEP-05/29/2019 was created for Student as a [REDACTED] in a VB program that was specifically designed for the [REDACTED] classroom.¹⁵⁹ Much like the situation in *Anchorage*, a [REDACTED] IEP written for a program that was not designed for the grade would be inappropriate for Student, who would be [REDACTED] for the 2020-2021 school year. While it is unclear what changes would have been made to Student's IEP for the 2020-2021 school year, Petitioners have proven that by failing to review and revise Student's IEP prior to the expiration of the IEP-05/29/2019 resulted in a loss of educational opportunity for Student.

¹⁵⁶ *Anchorage School Dist.*, 689 F.3d at 1058.

¹⁵⁷ 689 F.3d at 1058.

¹⁵⁸ FOF 45.

¹⁵⁹ FOF 48.

Additionally, Parent participated in an IEP meeting on September 4, 2020.¹⁶⁰ In preparation for the IEP meeting, Parent sent a list of concerns to SSC that Parent wanted to discuss with the IEP team at the IEP meeting.¹⁶¹ These concerns deal with issues such as Student's current services at Private School, Student's need for continued ABA services, Parent's concerns for distance learning for Student, the regression Student experienced during the COVID-19 shutdown, as well as academic and behavioral concerns that Parent wished to discuss during the IEP meeting. Many of these concerns would have been in effect prior to the start of the 2020-2021 school year, and by failing to convene an IEP meeting to review Student's IEP prior to its expiration, Respondents significantly infringed on Parent's right to participate in the development of Student's IEP.

Petitioners have met their burden in proving that Respondents denied Student a FAPE by failing to review and revise Student's IEP prior to the expiration of the IEP-05/29/2019, or at a minimum, prior to the start of the summer of 2020.

F. Petitioners have proven that Private School is an appropriate placement for Student

Petitioners are seeking tuition reimbursement for Student's tuition at Private School as a remedy for any denials of FAPE by Respondents. The U.S. Supreme Court has recognized the rights of parents who disagree with a proposed IEP to unilaterally withdraw their child from public school and place the child in private school and request reimbursement for tuition at said private school from the local educational agency.¹⁶² However, parents are entitled to

¹⁶⁰ FOF 60.

¹⁶¹ FOF 61.

¹⁶² *Florence County School Dist. Four v. Carter*, 510 U.S. 7, 12, 114 S.Ct. 361, 364-365, 126 L. Ed.2d 284 (1993), citing *School Comm. of Burlington v. Department of Ed. Of Mass.*, 471 U.S. 359, 369-370, 105 S.Ct. 1996, 2002-2003, 85 L.Ed.2d 385 (1985), see also 20 U.S.C. §1415(b)(6), (f)(1)(A).

reimbursement for placement at a private school only if a court concludes both that the public placement violated the IDEA and the private school placement was proper under the Act.¹⁶³ The Ninth Circuit Court of Appeals has adopted the standard put forth by the Second Circuit in *Frank G. v. Bd. of Educ.*,¹⁶⁴ where “to qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child’s potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.”¹⁶⁵

Petitioners have established that Parent paid tuition for Student to Pilot Program for the 2019-2020 school year¹⁶⁶ and has signed an enrollment contract obligating Parent to pay tuition for Student for the 2020-2021 school year at Private School.¹⁶⁷ As the tuition reimbursement relates to two separate school years and are distinguished by the allegations raised in this Complaint, each reimbursement request shall be addressed separately.

1. Tuition for 2019-2020 school year

Regarding tuition for Student’s attendance at Pilot Program for the 2019-2020 school year, this Hearings Officer has found that Petitioners have failed to prove that Respondents denied Student a FAPE in Student’s IEP-05/29/2019. The IDEA provides that local educational agencies are not required to pay for the cost of education, including special education and related services at a private school or facility if the agency made a FAPE available to the child and the

¹⁶³ *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 247, 129 S.Ct. 2484, 2496, 174 L.Ed.2d 168 (2009).

¹⁶⁴ 459 F.3d 356, 365 (2nd Cir. 2006).

¹⁶⁵ *C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011), citing *Frank G. v. Bd. of Educ.*, 459 F.3d at 365.

¹⁶⁶ FOF 66.

¹⁶⁷ FOF 67.

parents elected to place the child at the private school or facility.¹⁶⁸ Further, equitable considerations under the IDEA provide that limitations may be made on reimbursement orders if: 1) at the most recent IEP meeting parents did not inform the IEP team that they were rejecting the IEP and were seeking for their child to receive private education at public expense,¹⁶⁹ or 2) if within ten (10) business days of the removal of the child from the public school, parents did not give written notice to the public agency.¹⁷⁰ Finally, Hawai'i Revised Statutes Section 302A-443(a)(2) provides that

An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested: ... (2) Notwithstanding paragraph (1), within one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.

Here, Parent voluntarily chose to send Student to Pilot Program for the 2019-2020 school year as an opportunity for Student, rather than an alternative to a deficient program offered by the DOE.¹⁷¹ Parent did not object to the IEP-05/29/2019 at the IEP meetings, nor did Parent provide notice to the DOE that Student would be enrolled in private placement and that tuition reimbursement would be sought.¹⁷² Finally, Parent filed the Complaint in this case on July 10, 2020.¹⁷³ As Parent unilaterally placed Student at Pilot Program in August 2019, more than one hundred eighty (180) days have passed between the enrollment of Student and Parent's request for reimbursement for the 2019-2020 school year. Petitioners' request for tuition reimbursement for Student's attendance at Pilot Program for the 2019-2020 school year is denied.

¹⁶⁸ 20 U.S.C. §1412(a)(10)(C)(i); H.A.R. 8-60-27(a).

¹⁶⁹ 20 U.S.C. §1412(a)(10)(C)(iii)(aa); H.A.R. 8-60-27(d)(1)(a).

¹⁷⁰ 20 U.S.C. §1412(a)(10)(C)(iii)(bb); H.A.R. 8-60-27(d)(1)(b).

¹⁷¹ FOF 51.

¹⁷² FOF 28, 35-36, 44, 52, 57.

¹⁷³ FOF 58; *see also* Petitioners' Complaint filed on July 10, 2020.

2. Tuition for 2020-2021 school year

Petitioners seek tuition reimbursement for Student's tuition based on the enrollment contract signed by Parent for the 2020-2021 school year. Petitioners have proven that Respondents failed to review and revise Student's IEP prior to its expiration on or about May 29, 2020 and prior to the start of the 2020-2021 school year, resulting in a loss of educational opportunity for Student. This Hearings Officer finds that Petitioners have proven a denial of FAPE for purposes of tuition reimbursement.

The second requirement for tuition reimbursement to be ordered is a determination that Private School is an appropriate placement for Student. Private School Director has completed two formal VB-MAPP assessments of Students in June 2019 and August 2020.¹⁷⁴ Based on the results of the assessments, Student has made overall progress in the milestones in the VB-MAPP.¹⁷⁵ Private School has created an educational program with specific goals and objectives for Student for the 2020-2021 school year.¹⁷⁶ Private School will provide Student with speech-language therapy; ABA services, including a one-to-one RBT for Student throughout the school day; consultation from a special education teacher for Student's programming; and a reverse inclusion program, which allows Student to interact with non-disabled peers of the same age.¹⁷⁷ Private School has also planned for a distance learning program if confronted with another government mandated shut-down due to a pandemic.¹⁷⁸ Private School has created a specific and detailed educational program for Student that addresses Student's individual needs. This

¹⁷⁴ FOF 65, 70.

¹⁷⁵ FOF 65, 70.

¹⁷⁶ FOF 69.

¹⁷⁷ FOF 73-75, 77-79.

¹⁷⁸ FOF 80-81.

Hearings Officer concludes that Private School is an appropriate placement for Student for purposes of tuition reimbursement.

3. Equitable considerations

The IDEA provides reviewing authorities with the power to consider equity in determining whether and in what amount tuition reimbursement is to be awarded to a parent that unilaterally places a child at a private program.¹⁷⁹ In *C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist.*, the district court determined that while the private placement where student was placed delivered many, but not all, of the special education services that the student needed, the full amount of tuition was appropriate for the because everything that the placement provided was “proper, reasonably priced, and appropriate, and the program benefitted [the student] educationally.”¹⁸⁰ The Ninth Circuit Court of Appeals affirmed the district court’s decision, adopting the standard set forth in *Frank G.* as discussed *supra*.¹⁸¹

Here, Respondents argue two related points in requesting that tuition reimbursement be reduced for equitable considerations. First, Respondents argue that tuition reimbursement be reduced because Private School’s high cost for Student’s program. As discussed previously, Private School’s hourly rates are based upon comparable programs for similar services on the same island on which Student resides.¹⁸² While some programs, such as the reverse inclusion program, does not have comparable service prices, this Hearings Officer notes that the rate was

¹⁷⁹ *C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011) (holding that if both criteria are met for reimbursement for unilateral placement at a private school, “the district court must exercise its ‘broad discretion’ and weigh ‘equitable considerations’ to determine whether, and how much, reimbursement is appropriate.”)

¹⁸⁰ *Id.* at 1160.

¹⁸¹ *Id.*

¹⁸² FOF 72, 84.

explained by Private School Director as the rate for a behavior technician.¹⁸³ Private School's enrollment contract does specify the hourly rate for a behavior technician, which appears to be reasonable in comparison to the hourly rates of other service providers for Student. Private School Director further noted that Student's services will be carefully logged to allow for the production of an invoice, from which a reasonable amount of payment for Student's service providers can be obtained.¹⁸⁴ This Hearings Officer declines to reduce the reimbursement award based on the overall enrollment contract price and instead will provide a reimbursement for payment of services actually provided, rather than a lump sum as described in the enrollment contract.

Respondents further argue that the tuition reimbursement award will result in a windfall to Private School Director and Private School. While this Hearings Officer notes that Private School Director is currently the only BCBA on staff and as a speech-language pathologist, may collect the payment for both of those services as listed in the enrollment contract, this Hearings Officer also recognizes that Private School is a new school and declines to reduce tuition reimbursement based on this argument, as it is conceivable that Private School may look to expand and hire additional staff to provide the itemized services for Student.

Finally, this Hearings Officer also notes that while Parent has not made any payments toward Student's tuition under the enrollment contract,¹⁸⁵ an award of tuition reimbursement or a direct-payment award may be made in this case. While this issue has not been decided by the Ninth Circuit, the Second Circuit Court of Appeals has provided guidance directly on point. In

¹⁸³ FOF 79.

¹⁸⁴ FOF 85.

¹⁸⁵ FOF 86.

E.M. v. New York City Dept. of Educ.,¹⁸⁶ the Court determined that the broad equitable powers under the IDEA as well as within the framework of *Burlington-Carter*, allows for a “direct-payment” remedy for parents who opt to unilaterally place their child at a private program due to a failure by the educational agency to provide an appropriate education.¹⁸⁷ The Court noted that such a remedy also furthers the purposes of the IDEA “by extending the unilateral withdrawal options to parents with limited financial means, who otherwise could not avail themselves of it.”¹⁸⁸ Here, similar to the facts of *E.M.*, Parent signed a binding enrollment contract by which both Parent and Private School understood to be an obligation to pay regardless of the outcome of the instant Hearing.¹⁸⁹

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not proven the allegations of Respondents denying Student a FAPE based on Student’s IEP-05/29/2019. Any reimbursement request made by Petitioners for Student’s tuition at Private School for the 2019-2020 school year is denied.

Petitioners have proven that Respondents denied Student a FAPE by failing to convene an annual IEP meeting to review or revise Student’s IEP prior to its expiration without justification and failing to have a valid IEP in place for Student prior to the 2020-2021 school year. Petitioners have further proven that Private School is an appropriate placement for Student and that Parent is entitled to tuition reimbursement to Private School for the 2020-2021 school year. This Hearings Officer finds that the equitable considerations in this case allow for Parent

¹⁸⁶ 758 F.3d 442.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ FOF 67, 86.

to receive full tuition reimbursement or direct tuition payments to Private School for the 2020-2021 school year.

For the reasons stated above, IT IS HEREBY ORDERED –

1. That Parent shall be reimbursed for the deposit payment made to Private School for Student's enrollment for the 2020-2021 school year in the amount of Two Hundred Fifty Dollars (\$250). Parent shall also be reimbursed for any additional payments made to Private School upon Respondents' receipt of itemized invoices with payment verification from Private School.
2. That upon receipt of itemized invoice(s) which reflect the actual amount of service minutes/hours and/or assessments and/or supplies provided to Student, Respondents shall make payments for Student's tuition for the 2020-2021 school year to Private School in accordance with Hawai'i Revised Statutes Section 302A-443(f)-(j). These itemized invoices shall reflect the Two Hundred Fifty Dollar (\$250) deposit made by Parent and any additional payments made by Parent to Private School as noted in item #1 above.
3. In no event should the total payment (including the Two Hundred Fifty Dollar (\$250) deposit and any other payments made by Parent) to Private School exceed Two Hundred Thirty-One Thousand One Hundred Eighty-Six Dollars and Eighty Cents (\$231,186.80).

RIGHT TO APPEAL

The decision issued by this Hearings Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearings Officer shall have 30 days from the date of the decision of the hearings officer to file a civil action, with respect to the issues

presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2) and §8-60-70(b).

DATED: Honolulu, Hawai'i, January 29, 2021.

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Redacted Hearing Decision