



OFFICE OF DISPUTE RESOLUTION  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE OF HAWAI'I

In the Matter of STUDENT, by and through  
the Parent<sup>1</sup>,

Petitioners,

vs.

DEPARTMENT OF EDUCATION, STATE  
OF HAWAI'I and CHRISTINA  
KISHIMOTO, Superintendent of Hawai'i  
Public Schools,

Respondents.

DOE-SY2021-011

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing:  
November 23, 2020 &  
February 2-3, 2021

Hearings Officer: Charlene S.P.T. Murata

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION**

**I. JURISDICTION**

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, et seq.; the federal regulations implementing IDEA, 34 C.F.R. Part 300; and the Hawaii Administrative Rules §§ 8-

<sup>1</sup> [REDACTED]

60-1, et seq. Additionally, Petitioners reference Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended in 1974, codified at 29 U.S.C. §§ 794, et seq.; and the Hawaii Administrative Rules §§ 8-61-1, et seq. in their claims and requests for relief.

## **II. INTRODUCTION**

On July 28, 2020, the Department of Education, State of Hawaii and Christina Kishimoto, Superintendent of Hawaii Public Schools (“Respondents” or “DOE”) received a Complaint and Resolution Proposal from Student, by and through Student’s Parent (collectively “Petitioners”).

On August 4, 2020, Respondents filed Department of Education’s Response to Petitioners’ Complaint and Resolution Proposal.

On August 25, 2020, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for September 3, 2020. Before the prehearing conference, Petitioners requested permission to file a First Modified Complaint and Resolution Proposal. Respondents did not object to the request.

On September 8, 2020, with the consent of the undersigned Hearings Officer and with no objections by Respondents, Petitioners filed a First Modified Complaint and Resolution Proposal (“Modified Complaint”).

On September 17, 2020, Respondents filed a response to Petitioners’ Modified Complaint.

On October 6, 2020, an Amended Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for October 16, 2020.

On October 16, 2020, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners, and Deputy Attorney General Kunio Kuwabe (“Mr. Kuwabe”) appearing on behalf of Respondents. During the prehearing conference, the parties agreed to have the due process hearing on November 23, 2020, and requested an extension of the 45-day timeline. The request was granted on October 16, 2020, extending the 45-day timeline to January 6, 2021. See Order Granting Respondents’ Declaration of Kunio Kuwabe, filed October 16, 2020, issued on the same date.

On October 16, 2020, a Prehearing Order was issued to the parties, setting forth the issues and procedures for the due process hearing, and deadlines for submission of substantive motions; witness and exhibit lists, and exhibits; and witness email addresses. No substantive motions were filed, and the parties timely submitted their witness and exhibit lists, exhibits, and witness email addresses.

Due to the Coronavirus 2019 global pandemic, the parties agreed to conduct the due process hearing using a video conferencing platform to ensure compliance with government mandated social distancing. See Governor of the State of Hawaii’s Third Supplementary Proclamation, effective March 23, 2020, and Twelfth Proclamation Related to the COVID-19 Emergency, effective August 20, 2020.

On November 4, 2020, an Order Regarding Due Process Hearing Via Video Conference was issued to the parties, setting forth the procedures that would be implemented during the due process hearing using the Zoom video conferencing platform.

The due process hearing took place on November 23, 2020 using the Zoom video conferencing platform. All participants in the due process hearing appeared remotely via video and audio. The undersigned Hearings Officer presided over the matter. Petitioners were

represented by Mr. Peck, and Respondents were represented by Mr. Kuwabe. Parent-1 was present for the due process hearing. The Department of Education District Educational Specialist (“DES”) was present on behalf of Respondents. Due to an emergency, Petitioners could not continue with the due process hearing and the hearing ended early. Respondents did not object to the due process hearing ending early.

On November 30, 2020, a status conference was held and the parties agreed to a further due process hearing on February 2-3, 2021. See Notice of Setting Further Due Process Hearing, issued on December 9, 2020. On December 9, 2020, Petitioners filed a request to extend the 45-day timeline so that the further due process hearing can take place on February 2-3, 2021. An Order Granting Petitioners’ Request for an Extension, filed on December 9, 2020, was issued on the same date, setting February 19, 2021 as the new 45-day timeline.

The further due process hearing took place on February 2-3, 2021 using the Zoom video conferencing platform. All participants in the due process hearing appeared remotely via video and audio, except for Parent who appeared by audio only on February 3, 2021. The due process hearing concluded on February 3, 2021.

Petitioners called Parent and Special Education Teacher-1 (“SPED Teacher-1”) as their witnesses during the due process hearing. Respondents called the following witnesses during the due process hearing: SPED Teacher-1, General Education Teacher-1 (“GED Teacher-1”), Special Education Teacher-2 (“SPED Teacher-2”), and General Education Teacher-2 (“GED Teacher-2”), Speech-Language Pathologist-1 (“SLP-1”), and Speech-Language Pathologist-2 (“SLP-2”). Petitioners did not call any rebuttal witnesses.

The following exhibits were admitted into evidence without objections: Petitioners' Exhibits 1 through 3 (pages 001 through 054)<sup>2</sup>; Respondents' Exhibit 8 (pages 044-056), Exhibit 9 (pages 060-073), Exhibit 31 (page 129), Exhibit 32 (pages 130-134), Exhibit 33 (pages 135-137), Exhibit 34 (page 138), Exhibit 35 (pages 139-143), Exhibit 38 (pages 147-154), Exhibit 39 (pages 155-159), Exhibit 42 (pages 166-172), Exhibit 52 (pages 256-260), Exhibit 53 (pages 261-265), Exhibit 75 (pages 319-320), Exhibit 76 (pages 321-322), Exhibit 82 (pages 332-334), Exhibit 85 (page 338), Exhibit 87 (page 340), Exhibit 100 (pages 392-393), Exhibit 104 (pages 398-407), Exhibit 110 (pages 420-428), Exhibit 111 (pages 429-435), Exhibit 112 (pages 436-438), Exhibit 113 (pages 439-440), Exhibit 114 (pages 441-444), Exhibit 117 (page 448), Exhibit 119 (page 450), Exhibit 120 (page 451), Exhibit 121 (pages 452-467), Exhibit 122 (pages 468-469), Exhibit 123 (pages 470-472)<sup>3</sup>.

On February 8, 2021, Petitioners submitted a request to the undersigned Hearings Officer to extend the 45-day timeline under HAR § 8-60-69, from February 19, 2021 to April 5, 2021, so that transcripts can be prepared and post-hearing briefs filed. Respondents stipulated to the request for an extension. An Order Granting Petitioners' request to extend the 45-day timeline was issued on February 10, 2021. The new deadline by which a decision in this matter must be issued is April 5, 2021.

On March 9, 2021, the parties timely submitted their closing briefs.

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.

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<sup>2</sup> Tr. Vol. II, 64:15-65:3.

<sup>3</sup> Tr. Vol. III, 175:10-176:12; 273:14-275:8.

### **III. ISSUES PRESENTED**

In their September 8, 2020 Modified Complaint, Petitioners allege violations of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973. Specifically, Petitioners allege that the Respondents denied Student a free appropriate public education (“FAPE”) by failing to implement Student’s IEP. The issues for determination regarding the May 6, 2020 IEP are:

Issue 1 – Whether the provision of academic instruction and Speech and Language therapy by remote instruction was insufficient and Student did not make gains equivalent to Student’s normal rate of acquisition and regressed during the period from approximately March 17, 2020 to approximately May 29, 2020.

Issue 2<sup>4</sup> – Whether the 05/06/2020 IEP is being implemented in accordance with Student’s least restrictive environment statement. In the 05/06/2020 IEP, Item #23 states: “[Student] will participate with [Student’s] non-disabled peers for 80% of the day, including all extracurricular and non academic activities.”

Petitioners request the following remedies:

Remedy 1 – Find that the allegations in this Modified Complaint have been proven and Student was denied a FAPE;

Remedy 2 – Order the DOE to reimburse Parent for all educational and related expenses incurred that relate to mitigation of lost educational and related progress due to failure to implement Student’s IEP.

Remedy 3 – Order the DOE to assume the costs for all educational and related expenses incurred that relate to mitigation of lost educational and related progress due to failure to implement Student’s IEP.

Remedy 4 – Order the DOE to conduct an evaluative process to determine needed compensatory educational services for lost progress and/or regression caused by the failure to fully implement Student’s IEP.

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<sup>4</sup> On February 2, 2021, Petitioners withdrew Issue No. 2 for determination. Tr. Vol. II, 65:7-25. Therefore, the only issue for determination in this decision is Issue No. 1.

#### **IV. FINDINGS OF FACT**

##### **Student Background**

1. Student was born on \_\_\_ and was in the \_\_\_ grade for the 2020-2021 school year. Pet. Ex. 1 at 001; DOE Ex. 114 at 441.
2. Student is eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of \_\_\_. Pet. Ex. 1 at 003; Parent, Tr. Vol. I, 16:4-7<sup>5</sup>.
3. Student [REDACTED] [REDACTED] since Student was \_\_\_ years old. Pet. Ex.1 at 002; Parent, Tr. Vol. I, 16:8-16.
4. Student's "disability of [REDACTED] [REDACTED] resulting in the need for repeated exposure to visual and verbal information. This impacts access to reading-related instruction, and tasks such as (phonemic awareness, phonics, learning and using new vocabulary, learning abstract and multi-meaning words, understanding complex sentences, grammar and syntax). Student requires [REDACTED] services to help meet Student's academic needs and to help Student be successful in the academic setting." Pet. Ex. 1 at 003.

##### **Teachers and Service Providers**

5. During the 2019-2020 school year, which ran from August 5, 2019 to May 28, 2020, Student was in the \_\_\_ grade. DOE Ex. 32 at 131.

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<sup>5</sup> "Parent, Tr. Vol. I, 16:4-7" means Testimony by Parent, Transcript of Due Process Hearing, Volume I, Page 16, lines 4-7.

6. SPED Teacher-1 was Student's special education [REDACTED] teacher during the 2019-2020 school year at Home School. In early May of 2020, SPED Teacher-1 went on medical leave and SPED Teacher-2 took over as Student's special education teacher. SPED Teacher-1 resumed SPED Teacher-1's position as Student's special [REDACTED] [REDACTED] teacher for the 2020-2021 school year. SPED Teacher-1 has known Student since Student was \_\_\_ years old. Parent, Tr. Vol. II, 83:21-84:2; SPED Teacher-1, Tr. Vol. II, 103:12-21, 119:16-120:13.
7. SPED Teacher-2 is a special education teacher with an emphasis in [REDACTED] [REDACTED]. SPED Teacher-2 worked with SPED Teacher-1 to provide services to Student beginning in March of 2020 to the end of the school year in May of 2020. SPED Teacher-2 began by shadowing SPED Teacher-1 in March, and then took over the provision of services to Student when SPED Teacher-1 went on medical leave in May. SPED Teacher-2, Tr. Vol. III, 186:10-188:10, 189:22-190:5.
8. GED Teacher-1 was Student's \_\_\_ grade general education teacher at Home School during the 2019-2020 school year. SPED Teacher-1, Tr. Vol. II, 122:14-17; GED Teacher-1, Tr. Vol. II, 147:19-25.
9. GED Teacher-2 is Student's general education teacher at Home School for the 2020-2021 school year. SPED Teacher-1, Tr. Vol. II, 123:6-8; Parent, Tr. Vol. II, 82:25-83:3; GED Teacher-2, Tr. Vol. III, 220:10-13.
10. Contracted Speech-Language Pathologist ("Contracted SLP") provided speech-language therapy services to Student during the 2019-2020 school year. Parent, Tr. Vol. I, 55:11-13.

11. SLP-1 provided speech-language therapy services to Student twice a week for two weeks in May of 2020. These services were provided through “telepractice.” SLP-1, Tr. Vol. III, 244:14-245:8, 247:13-15.
12. SLP-1 testified as an expert in the area of speech-language pathology during the due process hearing. SLP-1, Tr. Vol. III, 243:21-244:8.
13. SLP-2 provides in-person and online speech-language therapy to Student during the 2020-2021 school year. SLP-2, Tr. Vol. III, 259:25-260:12, 268:12-19.
14. SLP-2 did not provide any speech-language therapy services to Student during the school closure in March through May of 2020. SLP-2, Tr. Vol. III, 270:19-22.
15. SLP-2 testified as an expert in the area of speech-language pathology during the due process hearing. SLP-2, Tr. Vol. III, 258:13-259:23.

**Student’s December 16, 2019 IEP**

16. Student’s December 16, 2019 IEP (“12/16/2019-IEP”) provides 320 minutes per quarter of speech/language therapy services and 150 minutes per week of special education services. DOE Ex. 8 at 052.
17. The 12/16/2019-IEP provides the following Supplementary Aids and Services, Program Modifications and Supports for School Personnel (“Supplementary Aids and Services”): daily visual aids/supports; daily checks for understanding; 60 minutes per quarter [REDACTED]<sup>6</sup> Itinerant Consult; daily preferential seating (near instruction); daily FM system<sup>7</sup>; 2 times per month meeting with [REDACTED] and Parent to discuss progress. DOE Ex. 8 at 052.

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<sup>6</sup> [REDACTED]

<sup>7</sup> [REDACTED]

18. The 12/16/2019-IEP states that Student “will participate with non-disabled students for 80% or more of the day, including all extracurricular and non-academic activities to enhance Student’s and Student’s peers educational experience.” DOE Ex. 8 at 053.

**Student’s May 6, 2020 IEP**

19. On May 6, 2020, an IEP meeting was held, resulting in a May 6, 2020 IEP (“5/06/2020-IEP”). Pet. Ex. 1 at 001-012; DOE Ex. 9 at 060-071.
20. According to the 5/06/2020-IEP, Student will receive 240 minutes per week of special education services. Pet. Ex. 1 at 010.
21. Student will receive 540 minutes per quarter of special education-speech services. Pet. Ex. 1 at 010.
22. According to the 5/06/2020-IEP, Student will receive the following Supplementary Aids and Services: daily use of FM system; daily chunking and repeated directions; daily visual aids; two times a month meeting with [REDACTED] and Parent to discuss progress; 2 times per month [REDACTED] itinerant teacher consultation/observation; daily preferential seating; and daily listening check. Pet. Ex. 1 at 010.
23. The 5/06/2020-IEP also states that Student “will participate with Student’s non-disabled peers for 80% of the day, including all extracurricular and non academic [sic] activities.” Pet. Ex. 1 at 011.
24. Student did not meet the standard for an extended school year. Pet. Ex. 1 at 010.
25. The 5/06/2020-IEP contains grade \_\_\_ goals and objectives in the areas of Math and Language Arts (reading, speaking and listening). Pet. Ex. 1 at 005-009.

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[REDACTED] SLP-1, Tr. Vol. III, 252:17-253:4.

## **Provision of Academic Instruction and Services to Student During School Closure**

26. On March 16, 2020, Home School began spring break. Due to the COVID-19 pandemic, the State of Hawaii public schools, including Home School, extended spring break by one or two weeks. At the end of spring break, Hawaii public schools remained physically closed due to the COVID-19 pandemic, and transitioned to distance learning for all students until the 2019-2020 school year ended on May 28, 2020<sup>8</sup>. Parent, Tr. Vol. I, 19:20-20:9; Parent, Tr. Vol. II, 86:6-18; GED Teacher-1, Tr. Vol. II, 148:1-8.
27. During the school closure, SPED Teacher-1 went to Student's house and hand-delivered packets of educational materials to Student. The educational materials consisted of approximately 50 pages of activities that focused on prefixes, suffixes, root words, and vocabulary development. SPED Teacher-1 provided educational services to Student from mid-March to early May. SPED Teacher-1 had daily 30-minute to 45-minute sessions with Student via WebEx or by phone. During these sessions, Student would either do the activities in the educational materials by Student's self or they would do them together. Then, they would go over the activities and discuss them. SPED Teacher-1 also communicated with Parent through phone calls, text messages, and emails. Parent, Tr. Vol. II, 83:9-20; SPED Teacher-1, Tr. Vol. II, 109:6-113:1, 119:23-25, 120:14-122:4; DOE Ex. 117 at 448.
28. In May of 2020, SPED Teacher-2 provided educational services to Student twice a week through Google Slides, working on root words. SPED Teacher-2 also communicated

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<sup>8</sup> The period between March 16, 2020 to May 28, 2020 will be referred to as the "school closure" in this decision.

with Parent through phone calls and text messages. SPED Teacher-2, Tr. Vol. III, 188:11-189:15.

29. During the school closure, GED Teacher-1's \_\_\_ grade general education class was provided educational opportunities through "Choice Board," a collection of online/offline educational materials for Reading/Writing, Math, and Science/Social Studies. For each subject, students were given two options per day. Students choose one of the two options that they wanted to do for that day for each subject. The educational materials were not graded. Choice Board was made available on Home School's website by Principal-1; however, Parent could not access it online. When Parent informed GED Teacher-1 that Parent could not access the Choice Board online, GED Teacher-1 sent a link to each week's Choice Board by email to Parent. Parent, Tr. Vol. I, 20:13-21:1, 55:5-10; Parent, Tr. Vol. II, 79:24-81:16; GED Teacher-1, Tr. Vol. II, 148:9-149:2, 156:3-20; See DOE Ex. 35 at 140-143, Ex. 38 at 151-154, Ex. 52 at 257-260, Ex. 53 at 262-265.
30. Student received the same math instruction as Student's non-disabled peers. Parent, Tr. Vol. I, 30:11-31:1.
31. Zearn is a student-paced math computer program that aligns with DOE's math curriculum. Students log on to Zearn and participate in math activities and watch math lessons. GED Teacher-2, Tr. Vol. III, 210:17-212:7.
32. Student was provided educational opportunities through Choice Board, Zearn and Prodigy. Parent, Tr. Vol. I, 20:13-22:21.
33. Many parents, including Parent, contacted GED Teacher-1 requesting help during the school closure. GED Teacher-1 offered parents different options of how GED Teacher-

- 1 could help. GED Teacher-1 offered Parent the following options to help Student: making a schedule; phone check-ins; and answering questions. Parent requested that GED Teacher-1 conduct phone check-ins with Student, which GED Teacher-1 did until the end of the 2019-2020 school year. When GED Teacher-1 checked-in with Student, GED Teacher-1 would look at the work Student had done and gave Student advice or clarified questions Student had. GED Teacher-1, Tr. Vol. II, 149:3-150:4.
34. During the school closure, students in GED Teacher-1's \_\_\_ grade general education class had the opportunity to participate in WebEx meetings twice a week where they could socialize with one another. During these WebEx meetings, no educational instructions were given; students would play games, participate in scavenger hunts, or share stories. Student participated in these WebEx meetings a couple of times. GED Teacher-1, Tr. Vol. II, 150:5-151:11.
35. On March 30, 2020, SPED Teacher-1 emailed Parent to inform Parent that SPED Teacher-1 had a Google classroom set up and that SPED-Teacher-1 would text Parent the information. Pet. Ex. 3 at 033.
36. On March 31, 2020 at 6:34 a.m., SPED Teacher-1 emailed Parent and others that it was SPED Teacher-1's understanding that Contracted SLP would be connecting with families to provide support in speech therapy during the school closure. Pet. Ex. 3 at 034.
37. On March 31, 2020 at 7:19 a.m., Principal emailed SPED Teacher-1 (who then forwarded it to Parent and others): "Yes Many people are discussing what can be done to help our students such as your [child]. On Tuesday, March 24, 2020, the Hawaii Department of Education (HIDOE) announced school facilities will remain closed to

students through April 30, 2020. This decision is based on the latest guidance and information from health officials and elected leaders. This action is taken to support the health and safety of our students, families, and staff. Traditional in-school instruction is on hold until schools re-open to students. [Home School] has posted learning opportunities on our website and staff are reaching out. We hope to have more resources to share as we continue to collaborate and design more learning opportunities. Thanks fir [sic] reaching out to us.” Pet. Ex. 3 at 035.

38. On April 6, 2020, SPED Teacher-1 spoke to Parent on the phone to assist Parent with WebEx. DOE Ex. 117 at 448.
39. On April 6, 2020, Contracted SLP emailed Parent and others that in order for Contracted SLP to do telepractice, Contracted SLP had to use a DOE approved system. Contracted SLP stated that once Contracted SLP figured it out, Contracted SLP would let them know. Pet. Ex. 3 at 038.
40. On April 7, 2020, SPED Teacher-1 spoke to Parent on the phone to “confirm[ ] [Parent] got email and discuss[ ] learning opportunities.” DOE Ex. 117 at 448.
41. On April 9, 2020, SPED Teacher-1 spoke to Parent on the phone to help Parent get into a WebEx meeting. SPED Teacher-1 also emailed Parent and “offered to set up speech session.” DOE Ex. 117 at 448.
42. On April 13, 2020, SPED Teacher-1 texted Parent to provide “assistance with schedule and google [ ] classroom.” DOE Ex. 117 at 448.
43. On April 13, 2020, GED Teacher-1 provided one-on-one services by phone to Student for the first time. After speaking with Student on the phone that day, GED Teacher-1 emailed Parent and SPED Teacher-1 to report on what GED Teacher-1 and Student did.

GED Teacher-1 provided a summary of the phone call GED Teacher-1 had with Student and the work that Student did. GED Teacher-1 also informed Parent that GED Teacher-1 told Student they would be speaking again tomorrow. Pet. Ex. 3 at 041; DOE Ex. 33 at 135; GED Teacher-1, Tr. Vol. II, 152:13-154:12.

44. On the same day, Parent responded to GED Teacher-1's April 13, 2020 email, thanking GED Teacher-1 for GED Teacher-1's help. Parent shared that Parent observed Student trying really hard with the stories and asked for suggestions to help Student. Pet. Ex. 3 at 041-042; DOE Ex. 33 at 135-136.
45. On April 14, 2020 at 7:37 a.m., GED Teacher-1 emailed Parent and SPED Teacher-1 and made the following suggestion: "Maybe for next week I will give [Student] some basic questions to answer as [Student] listens to keep [Student] focused." GED Teacher-1 also included in GED Teacher-1's email information about Student's email and freckle.com account. Pet. Ex. 3 at 042-043; DOE Ex. 33 at 136-137.
46. On April 14, 2020 at 8:12 a.m., SPED Teacher-1 sent two emails to Parent and GED Teacher-1. In the first email, SPED Teacher-1 thanked GED Teacher-1 for sending Parent Student's email information. SPED Teacher-1 also confirmed that "[Contracted SLP] has reached out to you to figure out a time for speech." In the second email, SPED Teacher-1 described what Student did on freckle.com: Student worked for 19.5 minutes in the area of Adaptive Skills Practice; completed 78 questions; and received 63 correct out of 78 questions. SPED Teacher-1 also texted Parent-1 and "offered assistance and reminded [Parent] of speech offer." Pet. Ex. 3 at 043; DOE Ex. 117 at 448.
47. On April 15, 2020, SPED Teacher-1 contacted Parent and had a "discussion on changing learning activities." DOE Ex. 117 at 448.

48. On April 16, 2020, SPED Teacher-1 contacted Parent by text/phone, and “updated the google classroom, shared code with [Parent], dropped off interactive notebook.” DOE Ex. 117 at 448.
49. On April 17, 2020, GED Teacher-1 emailed Parent and “Bcc” SPED Teacher-1: “This morning when I spoke with [Student] I talked with [Student] about being more accountable. Over the past week I have been focusing on getting [Student] to understand the choices and how to follow the schedule. One thing I have noticed is [Student] is choosing to do other things. I know you know this because you expressed this concern to me that whenever you start your work [Student] goes on electronics for other purposes. I wanted to see for myself because I didn’t want to call [Student] out if [Student] was doing it because [Student] didn’t understand the assignment. Here is what I discovered which prompted me to talk with [Student]. Yesterday [Student] told me since [Student] didn’t have [Private Center] that [Student] did Prodigy during [Student’s] 30 minute math block. When I checked it said [Student] only did Prodigy (a program [Student] is very familiar with) for 4 minutes. So today I asked [Student] if [Student] was doing something else for learning during that time. [Student] said no. I have started to see a pattern. Therefore I told [Student] the following: I said that of course everyone has other stuff come up, but going forward I was going to be checking [Student’s] times and [Student’s] work. I said if you finish quality work early, then of course do something else, but don’t replace the work with something else. I told [Student] that I would be tracking all [Student’s] computer work and holding [Student] accountable going forward. I felt confident having this conversation based on your

feedback, but please feel free to let me know if you would like me to handle it differently.” DOE Ex. 34 at 138.

50. On April 17, 2020, SPED Teacher-1 contacted Student by phone to check in on the lessons completed. DOE Ex. 117 at 448.
51. On April 20, 2020 at 7:51 a.m., GED Teacher-1 emailed Parent “Choice Board Week 4.” DOE Ex. 35 at 139-143.
52. On April 20, 2020, SPED Teacher-1 contacted Student by phone to check in on the lessons and go over “root word.” DOE Ex. 117 at 448.
53. On April 21, 2020, SPED Teacher-1 contacted Student by phone to check in on the lessons and Student told SPED Teacher-1 that [Student] was taking the day off from school work. DOE Ex. 117 at 448.
54. On April 22, 2020, Contracted SLP emailed Parent offering Contracted SLP’s services. Contracted SLP informed Parent that Contracted SLP was holding 12:10-12:50 p.m. open on Wednesday and Friday if Parent was interested in speech/language therapy resuming via telepractice. Pet. Ex. 3 at 044.
55. On April 22, 2020, SPED Teacher-1 contacted Student by phone to check in on Student’s lessons. DOE Ex. 117 at 448.
56. On April 23, 2020 at 6:57 a.m., Parent emailed Contracted SLP saying that Parent was interested in speech/language therapy via telepractice. Pet. Ex. 3 at 044.
57. On April 23, 2020 at 9:40 a.m., Contracted SLP emailed Parent and SPED Teacher-1: “Excellent! [SPED Teacher-1] is familiar with Google Meet and I’m looking forward to checking it out. [SPED Teacher-1] can we check it out later? I have an appointment between 12:30-1:30 today. Or, [Parent] if you are okay with the schedule of Wednesday

- and Friday from 12:10-12:50, can we do it tomorrow? I am really looking forward to working with [Student] again.” Pet. Ex. 3 at 045.
58. On April 23, 2020, SPED Teacher-1 had a “face to face” with Student and “dropped off additional materials-root word study.” DOE Ex. 117 at 448.
59. On April 24, 2020 at 3:09 p.m., Parent emailed GED Teacher-1 and SPED Teacher-1 expressing Parent’s frustration with Student’s “lack of care.” Parent informed GED Teacher-1 and SPED Teacher-1 that Student “just rushes and does half ass...work.” Pet. Ex. 3 at 046; DOE Ex. 38 at 147.
60. On April 24, 2020 at 3:17 p.m., SPED Teacher-1 emailed Parent and GED Teacher-1: “I am seeing similar lack of effort from many students...not only my [Home School] Students but my own grandchildren. This is hard for the students. They didn’t sign up for homeschool. I feel the students would prefer to be in school instead of cooped up in the house and trying to do so many new things that are so new for them...distance learning is tough. I hear your frustration and understand your concern to get [Student] to be accountable and have better work ethic. I don’t know the answer to how to solve this but I do know it’s not only [Student] and many families are going through this as well. I know this doesn’t answer your question but I just want you to know you’re not alone. We can only do the best we can do. Try and give yourself the grace to know it’ll be okay.” Pet. Ex. 3 at 046; DOE Ex. 38 at 147.
61. On April 24, 2020, SPED Teacher-1 contacted Student by phone. DOE Ex. 117 at 448.
62. On April 25, 2020 at 7:45 a.m., GED Teacher-1 emailed Parent and SPED Teacher-1: “I agree with [SPED Teacher-1]. This transition has been hard for many students. I think things are going better than last week. I do think that [Student] is retaining some things.

I definitely have seen the rushing and lack of care that you have witnessed. I think there are a few things to consider. I don't think we can expect [Student] to be self motivated [sic]. I also don't think we can expect it to be the same as when [Student] is in school. I have been trying to get [Student] to write down on a piece of paper what [Student] does (like a log) so [Student] can talk about it better. I also have been trying to get [Student] to send me [Student's] work, but many times [Student] says [Student] hasn't done it. I know you work during the day and can't always help [Student], but I think if we can work together we can help [Student].” GED Teacher-1 suggested a routine Parent and Student could engage in that week to address Student's lack of motivation. GED Teacher-1 stated that “if [Student] knows that you and I are checking in with [Student] and not allowing [Student] to check out, then [Student's] work and learning will get better.” GED Teacher-1 suggested that they reflect on this routine or method at the end of the week and decide whether to continue with this plan or try a new one. Pet. Ex. 3 at 046-047; DOE Ex. 38 at 147-148.

63. On April 25, 2020 at 10:13 a.m., SPED Teacher-1 emailed GED Teacher-1 and Parent stating that SPED Teacher-1 calls Student daily at 12:45 p.m. to check if Student has done the work that SPED Teacher-1 had assigned. If Student completed [Student's] assignment by the time SPED Teacher-1 calls, they go over the answers together. Student often does not have any questions for SPED Teacher-1 during these phone calls. Pet. Ex. 3 at 047; DOE Ex. 38 at 148.
64. On April 26, 2020 at 12:38 p.m., GED Teacher-1 emailed Parent the Choice Board for “Grade [ ] Distance Learning Week 5.” Pet. Ex. 3 at 047; DOE Ex. 38 at 148, 151-154.

65. On April 26, 2020 at 1:07 p.m., Parent sent an email to SPED Teacher-1 and GED Teacher-1 asking if Student was completing the work that they were giving to Student. Pet. Ex. 3 at 047-048; DOE Ex. 38 at 148-149.
66. On April 26, 2020 at 4:24 p.m., GED Teacher-1 responded to Parent's email: "I would say most of the time [Student] is completing the work. It is easy for me to follow up on the computer work, but not so easy when [Student] doesn't turn in work to me because I have to just go from what [Student] tells me." Pet. Ex. 3 at 048; DOE Ex. 38 at 149.
67. On April 26, 2020 at 6:19 p.m., Parent emailed SPED Teacher-1 and GED Teacher-1 and asked SPED Teacher-1 if Student was completing the work that SPED Teacher-1 was giving [Student]. Pet. Ex. 3 at 048; DOE Ex. 38 at 149.
68. On April 27, 2020 at 7:19 a.m., GED Teacher-1 emailed Parent and SPED Teacher-1: "[Parent], I am a little confused by this question. On Friday you were expressing your frustration over [Student's] lack of effort and follow up. I gave you a new suggestion on what we could try. Did you want to try it this week?" Pet. Ex. 3 at 048; DOE Ex. 38 at 149.
69. On April 27, 2020 at 8:27 a.m., Parent emailed GED Teacher-1 asking GED Teacher-1 to re-send that week's Choice Board because Principal's Choice Board was not working. DOE Ex. 39 at 155.
70. On April 27, 2020 at 8:30 a.m., GED Teacher-1 emailed Parent: "I sent it to you yesterday on the email. Here it is." An attachment entitled "Grade [ ] Distance Learning Week 5" was included in the email. DOE Ex. 39 at 155-159.
71. On April 27, 2020 at 1:31 p.m., Parent emailed GED Teacher-1 and SPED Teacher-1: "Hi [GED Teacher-1], I just wanted to know if [Student] is giving you guys quality

work because [Student] is definitely not trying here at home. Yes, I absolutely want to try your suggestions. Let's talk to [Student] about it again today and then start it tomorrow? Hope to hear from you soon." Pet. Ex. 3 at 048-049; DOE Ex. 38 at 149-150.

72. On April 27, 2020, SPED Teacher-1 contacted Student by phone/Facetime to "ck in/Word Geo [sic] went over words and talked about assignments." DOE Ex. 117 at 448.
73. On April 28, 2020, SPED Teacher-1 contacted Student by phone/Facetime to "ck in/Word Geo [sic] went over words and talked about assignments." DOE Ex. 117 at 448.
74. On April 29, 2020 at 7:34 a.m., GED Teacher-1 emailed Parent, SPED Teacher-1, and "Bcc" SPED Teacher-2: "Good morning [Parent], After we talked two days ago about your concerns regarding [Student's] lack of motivation, we implemented new suggestions of writing down a log and submitting work later after work hours for me to review and give feedback. This is what happened on the first day: I did my usual phone check in at 9:15...." GED Teacher-1 listed the work done by Student and the time Student did the work. GED Teacher-1 concluded the email by writing, "As you can see Day 1 needs work. How did your check in go last night? I am looking forward to a better Day 2." DOE Ex. 42 at 166.
75. On April 29, 2020 at 9:54 a.m., SPED Teacher-1 emailed Parent and GED Teacher-1: "I talked with [Student] yesterday for 20 minutes during the normal time I am checking in. We went over the root word on Geo and I helped [Student] with going over the definitions." SPED Teacher-1 described further what SPED Teacher-1 and Student did

yesterday and stated that SPED Teacher-1 felt Student “wasn’t giving it [Student’s] full effort.” SPED Teacher-1 stated that SPED Teacher-1 would go over Student’s work with [Student] today to correct it. SPED Teacher-1 confirmed that SPED Teacher-1 has surgery on May 11th and that SPED Teacher-1 had spoken to SPED Teacher-2 about SPED Teacher-2’s role in helping Student. DOE Ex. 42 at 166-167.

76. On April 29, 2020, SPED Teacher-1 texted Parent to “ck [sic] in and set up time for IEP/Reeval.” DOE Ex. 117 at 448.
77. On April 30, 2020, SPED Teacher-1 contacted Student by phone/Facetime to “ck in/word geo [sic] completed worksheet went over expectations for freckle.com.” DOE Ex. 117 at 448.
78. On May 1, 2020, GED Teacher-1 emailed Parent and SPED Teacher-1, “[Parent], It is the end of the first week of implementing the two new suggestions we agreed upon to see if [Student] would be more accountable for [Student’s] work. Just a reminder – Suggestion 1 – [Student] keeps a time log of what [Student] does, how long, and questions [Student] has. Suggestion 2 – The two of you sometime in the evening review [Student’s] log and submit work to [GED Teacher-1] before 8 pm and [GED Teacher-1] would give feedback and guidance on work the next day. I could give you a detailed report like I did the first day, but I think that would be overwhelming. So these are my overall observations and noticings [sic] based on what [Student] is telling me. After reading them please tell me how you would like me to proceed for Week 2. Overall things are getting better, but here are the concerns:... [GED Teacher-1 lists 5 examples of Student not being accountable]. The long and short of it is, I don’t know how much more I can make [Student] accountable on my own. Please advise me on what you

would like me to do next week to make [Student] more successful. I think we can do this, if we work together.” DOE Ex. 42 at 167.

79. On May 1, 2020, SPED Teacher-1 texted Parent about setting up an IEP time and “needed to ck [sic] in for daily time.” DOE Ex. 117 at 448.
80. On May 3, 2020, GED Teacher-1 emailed SPED Teacher-1 and Parent, “[Parent], Here is the week 6 choice board for you.” The email indicates that an attachment entitled “Grade [ ] Distance Learning Week 6” is attached; however, the attachment that was sent with the email was Choice Board Week 5, the same Choice Board that was sent on April 27, 2020. DOE Ex. 42 at 167-172.
81. On May 4, 2020, SPED Teacher-1 sent a text message to Parent “asking about IEP,” and did Facetime with Student about “Instruction on word rupt/cked [sic] on Freckle.com.” DOE Ex. 117 at 448.
82. On May 5, 2020, SPED Teacher-1 checked in with Student by phone. DOE Ex. 117 at 448.
83. On May 7, 2020, SPED Teacher-2 contacted Parent and Student through text messaging and Google Meet. SPED Teacher-2 worked with Student for 30 minutes. “Student completed interactive slide, Student didn’t have any additional questions after lesson.” The interactive slides reviewed root words. DOE Ex. 119 at 450<sup>9</sup>.
84. On May 8, 2020, SPED Teacher-2 contacted Parent by text message to “inform [Parent] that [SPED Teacher-1] would be working with student” for Reading. DOE Ex. 119 at 450.

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<sup>9</sup> DOE Ex. 119 at 450 has two entries for “[REDACTED].” These two entries were examples for SPED Teacher-2 on how to use the document to make SPED Teacher-2’s entries. [REDACTED] had no part in providing services to Student. SPED Teacher-2, Tr. Vol. III, 194:1-24.

85. On May 11, 2020, SPED Teacher-2 did a lesson on root word with Student. SPED Teacher-2 noted that “Student enjoyed the lesson and was able to complete lesson.” DOE Ex. 119 at 450.
86. On May 11, 2020, SLP-1 contacted Parent through email to set up a time to call. DOE Ex. 120 at 451; SLP-1, Tr. Vol. III, 248:4-15.
87. On May 12, 2020, SPED Teacher-2 and Student “[w]orked on new root word through interactive slides” and “Student was engaged and able to complete the lesson.” SPED Teacher-2 also emailed Parent on May 12, 2020 “[t]o set up new schedule due to a new speech provider, will meet with student 5/14, 5/18, 5/21, 5/28.” DOE Ex. 119 at 450.
88. On May 12, 2020, SLP-1 spoke to Parent about recent activity and new goals/objectives for Speech. SLP-1 also had a 30-minute initial virtual meeting with Student on May 12, 2020. DOE Ex. 120 at 451; SLP-1, Tr. Vol. III, 248:4-15.
89. On May 14, 2020, SPED Teacher-2 worked with Student on root word. DOE Ex. 119 at 450.
90. On May 15, 2020, SLP-1 had a virtual meeting with Student for 30 minutes to work on Speech. DOE Ex. 120 at 451; SLP-1, Tr. Vol. III, 248:4-15.
91. On May 18, 2020, SPED Teacher-1 worked with Student on Reading and “review[ed] new words for the week.” DOE Ex. 119 at 450.
92. On May 18, 2020, GED Teacher-1 emailed Parent “Week 8 Grade [ ] Choice Board.” DOE Ex. 52 at 256-260.
93. On May 19, 2020, SLP-1 had a virtual meeting with Student for 30 minutes to work on Speech. DOE Ex. 120 at 451; SLP-1, Tr. Vol. III, 248:4-15.

94. On May 21, 2020, SPED Teacher-2 worked with Student on Reading. Student participated during the lesson and didn't have any questions. DOE Ex. 119 at 450.
95. On May 22, 2020, SLP-1 had a virtual meeting with Student for 30 minutes to work on Speech. DOE Ex. 120 at 451; SLP-1, Tr. Vol. III, 248:4-15.
96. On May 26, 2020, GED Teacher-1 emailed Parent "Week 9 Grade [ ] Choice Board." DOE Ex. 53 at 261-265.
97. On May 26, 2020, SLP-1 had a virtual meeting with Student to "discuss 5 senses for description, visualization." DOE Ex. 120 at 451; SLP-1, Tr. Vol. III, 248:4-15.
98. On May 28, 2020, SPED Teacher-2 worked with Student on Reading. SPED Teacher-2 noted in SPED Teacher-2's log that Student "review game of vocab -Kahoot," and "Student enjoyed game and playing against classmate." DOE Ex. 119 at 450.

#### **Student's Academic Progress Before School Closure**

##### Grade \_\_\_\_ Report Card

99. No grades were given for Quarter 4 of the 2019-2020 school year (3/23/2020-5/28/2020). Student's Grade \_\_\_\_ Report Card contained the following message: "Due to the COVID-19 pandemic, schools were closed for Qtr 4. No students were marked absent and no grades given for quarter 4. Semester 2 and year grades are based on the student's progress during quarters 1, 2 and 3. There is no teacher signature on the report card. Wishing you a fun and safe summer!" DOE Ex. 112 at 436-438.

##### Star Math Enterprise Assessment

100. Star Math Enterprise Assessment is an academic assessment that is done quarterly for all students at Home School. SPED Teacher-1, Tr. Vol. II, 104:2-14.

101. On May 11, 2018, Student took the Star Math Enterprise Assessment and received a scaled score of \_\_\_, which is the grade equivalent of \_\_\_ (\_\_\_ grade, \_\_\_ month)<sup>10</sup>.  
DOE Ex. 113 at 440.
102. On August 21, 2018, Student took the Star Math Enterprise Assessment and received a scaled score of \_\_\_, which is the grade equivalent of \_\_\_ (\_\_\_ grade, \_\_\_ month). DOE Ex. 113 at 440.
103. On March 7, 2019, Student took the Star Math Enterprise Assessment and received a scaled score of \_\_\_, which is the grade equivalent of \_\_\_ (\_\_\_ grade, \_\_\_ month). DOE Ex. 113 at 440.
104. On May 15, 2019, Student took the Star Math Enterprise Assessment and received a scaled score of \_\_\_, which is the grade equivalent of \_\_\_ (\_\_\_ grade, \_\_\_ month). DOE Ex. 113 at 440.
105. On March 10, 2020, Student took the Star Math Enterprise Assessment and received a scaled score of \_\_\_, which is the grade equivalent of \_\_\_ (\_\_\_ grade, \_\_\_ month). Pet. Ex. 1 at 002; Pet. Ex. 2 at 013; DOE Ex. 113 at 440.

Star Reading Enterprise Assessment

106. Since Student began taking the Star Reading Enterprise Assessments in August of 2017, Student's scaled scores and grade equivalents have gone up and down. Although Student's reading skills progressed through the years, Student's scaled scores and grade equivalents fluctuated. DOE Ex. 113 at 439.

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<sup>10</sup> "Grade equivalent" is a measurement of a student's grade level and is based on a ten month school year. The number before the period is a student's "grade" and the number after the period is the "month." For 4th grade, the highest grade equivalent achievable is 4.10 (4th grade, 10th month). The next grade would be 5.0. SPED Teacher-1, Tr. Vol. II, 106:6-25.

107. On March 9, 2020, Student took the Star Reading Enterprise Assessment and received a scaled score of \_\_\_, which is the grade equivalent of \_\_\_ (\_\_\_ grade, \_\_\_ month). DOE Ex. 113 at 439; Pet. Ex. 1 at 002<sup>11</sup>.

Individualized Education Program-Progress Report for the 12/16/2019-IEP

108. An Individualized Education Program-Progress Report (“IEP-Progress Report”) for the 12/16/2019-IEP has reporting periods for 5/31/2019, 10/21/2019, 1/13/2020 and 4/01/2020. DOE Ex. 110 at 420-428.

109. During the last reporting period on 4/01/2020, Student had mastered most of Student’s objectives and was progressing in three Language Arts objectives in Student’s 12/16/2019-IEP.

**Academic Progress Post School Closure**

110. From May 29, 2020 to August 16, 2020, Home School was on summer break. DOE Ex. 32 at 131, Ex. 121 at 452.

111. The 2020-2021 school year runs from August 17, 2020<sup>12</sup> to May 28, 2021. DOE Ex. 114 at 441; GED Teacher-2, Tr. Vol. III, 204:24-205:1.

112. Student is in the \_\_\_ grade for the 2020-2021 school year. Pet. Ex. 2 at 017.

113. Student, as well as Student’s general education classmates, began receiving Student’s general education instruction from GED Teacher-2 by virtual means on August 17,

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<sup>11</sup> According to an IEP dated May 6, 2020, Student took a Star Reading Enterprise Assessment on March 9, 2020 and received a scaled score of \_\_\_, which is equivalent to a \_\_\_ reading level. Pet. Ex. 1 at 002.

<sup>12</sup> Hawaii DOE postponed the beginning the 2020-2021 school year to August 17, 2020. It is unclear when the original date for the new school year was supposed to begin. Historically, a new school year would begin at the beginning of August. Pet. Ex. 3 at 051; Parent, Tr. Vol. I, 40:8-10.

2020. Eventually, students who were deemed vulnerable were offered in-person general education instruction, which Student elected to receive. Student, along with \_\_\_ other vulnerable students, began receiving in-person general education instruction from GED Teacher-2 on November 5, 2020, while non-vulnerable students continued to receive their general education instruction by virtual means. On February 1, 2021, non-vulnerable students returned to the physical classroom to receive their general education instruction from GED Teacher-2. By February 1, 2021, all students were receiving in-person general education instruction four days a week at Home School. GED Teacher-2, Tr. Vol. III, 205:5-207:24, 218:20-220:9. Before the school closure, Student was receiving in-person general education instruction five days a week. Parent, Tr. Vol. I, 56:18-23.

114. At the beginning of the 2020-2021 school year, Student received Student's special education instruction in-person from SPED Teacher-1 four days a week. Student would receive Student's general education instruction virtually while physically being in SPED Teacher-1's classroom. SPED Teacher-1, Tr. Vol. II, 123:13-125:11; GED Teacher-2, Tr. Vol. III, 205:16-206:7.

115. Student began receiving speech-language therapy on August 17, 2020 at Home School. Speech-language therapy was delivered in-person by SLP-2. DOE Ex. 121 at 452-467.

Grade \_\_\_ Report Card

116. GED Teacher-2 completed Student's Grade \_\_\_ Standards-Based Report Card for the 2020-2021 school year, Quarter 1, which covers August 17, 2020 through October 2, 2020. Pet. Ex. 2 at 017-020; DOE Ex. 114 at 441-444; GED Teacher-2, Tr. Vol. III, 220:14-221:20.

117. Student received three WBs, ten DPs, and two MPs in Quarter 1 of Student’s Grade \_\_\_\_ Report Card<sup>13</sup>. Pet. Ex. at 017-020; DOE Ex. 114 at 441-444.
118. Quarter 2 for the 2020-2021 school year covered October 12, 2020 to December 18, 2020<sup>14</sup>. Pet. Ex. 2 at 017-020; DOE Ex. 114 at 441-444; GED Teacher-2, Tr. Vol. III, 220:25-221:3.
119. In the 2020-2021 school year, between Quarter 1 and Quarter 2, Student showed growth in Student’s behavior while in the general education classroom setting. Pet. Ex. 2 at 017; DOE Ex. 114 at 441; GED Teacher-2, Tr. Vol. III, 222:6-14.
120. In the 2020-2021 school year, between Quarter 1 and Quarter 2, Student’s academics generally improved—Student received DPs and MPs. Although Student received WBs, Student had less WBs in Quarter 2 than Student did in Quarter 1. GED Teacher-2, Tr. Vol. III, 222:6-224:10.
- Star Math Enterprise Assessment
121. On August 17, 2020, Student took the Star Math Enterprise Assessment and received a scaled score of \_\_\_\_, which is the grade equivalent of \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ month). Pet. Ex. 2 at 013; DOE Ex. 113 at 440.
122. On October 16, 2020, Student took the Star Math Enterprise Assessment and received a scaled score of \_\_\_\_, which is the grade equivalent of \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ month). Pet. Ex. 2 at 016; DOE Ex. 113 at 440.

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<sup>13</sup> “WB” means Well Below Proficiency; “DP” means Developing Proficiency; and “MP” means Meets with Proficiency. Pet. Ex. 2 at 018.

<sup>14</sup> Pursuant to the Prehearing Order, exhibits for the due process hearing were due on November 16, 2020, which was before the 2020-2021 School Year, Quarter 2 report card was available.

123. In December of 2020, Student took the Star Math Enterprise Assessment and received a scaled score of over \_\_\_\_, which is the grade equivalent of \_\_\_\_ or \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ or \_\_\_\_ month). GED Teacher-2, Tr. Vol. III, 227:23-229:19, 235:20-236:21; SPED Teacher-1, Tr. Vol. II, 106:6-107:4; DOE Ex. 113 at 440.
124. Student's math skills regressed between the March 10, 2020 assessment and the August 17, 2020 assessment. SPED Teacher-1, Tr. Vol. II, 105:9-22.
125. Student's Star Math Enterprise Assessment scaled score increased as the 2020-2021 school year progressed, and reached \_\_\_\_ grade, \_\_\_\_ / \_\_\_\_ months for Math in December of 2020.

Star Reading Enterprise Assessment

126. On August 17, 2020, Student took the Star Reading Enterprise Assessment and received a scaled score of \_\_\_\_, which is the grade equivalent of \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ month). DOE Ex. 113 at 439.
127. On August 25, 2020, Student took the Star Reading Enterprise Assessment and received a scaled score of \_\_\_\_, which is the grade equivalent of \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ month). DOE Ex. 113 at 439.
128. On September 30, 2020, Student took the Star Reading Enterprise Assessment and received a scaled score of \_\_\_\_, which is the grade equivalent of \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ month). DOE Ex. 113 at 439.
129. On October 1, 2020, Student took the Star Reading Enterprise Assessment and received a scaled score of \_\_\_\_, which is a grade equivalent of \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ month). Pet. Ex. 2 at 015; DOE Ex. 113 at 439.

130. In December of 2020, Student took the Star Reading Enterprise Assessment and received a scaled score greater than \_\_\_\_, which is a grade equivalent greater than \_\_\_\_ (\_\_\_\_ grade, \_\_\_\_ month). GED Teacher-2, Tr. Vol. III, 225:3-227:18, 235:20-236:21; DOE Ex. 113 at 439.
131. Student's scaled scores in the Star Reading Enterprise Assessment fluctuated during the first half of 2020-2021 school year, but Student was able to achieve grade equivalent of \_\_\_\_ in Reading by December of 2020.
- Individualized Education Program-Progress Report for the 5/06/2020-IEP
132. SPED Teacher-1 and SPED Teacher-2 discussed which objectives would be graded and which would be non-graded enrichment activities for an IEP-Progress Report for the 5/06/2020-IEP. SPED Teacher-2 was an evaluator for the IEP-Progress Report for the 5/06/2020-IEP. SPED Teacher-2 did not have enough data to provide scores for all objectives because assessments were not given to any students due to the school closure and everything was considered optional activities. For objectives that SPED Teacher-2 could not score, a "not applicable" or "N/A" designation was given. SPED Teacher-1, Tr. Vol. II, 130:16-25; SPED Teacher-2, Tr. Vol. III, 197:1-10; DOE Ex. 111 at 429-433.
133. SPED Teacher-2 scored reporting period 1 ("R1"), dated June 8, 2020, as either "P" for "Progressing" in Student's objectives or the objectives were "N/A," meaning that they were non-graded enrichment activities. DOE Ex. 111 at 429-433; SPED Teacher-2, Tr. Vol. III, 191:11-193:17.
134. The IEP-Progress Report for reporting period 2 ("R2") for the 5/06/2020-IEP ended sometime in October of 2020, and reporting period 3 ("R3") for the 5/06/2020-IEP was

delivered to Parent on January 11, 2021. SPED Teacher-1 was the evaluator for the objectives for reporting periods R2 and R3. SPED Teacher-1, Tr. Vol. II, 131:1-25; DOE Ex. 111 at 429-433<sup>15</sup>.

135. During reporting period R2, Student mastered the following math objective: “By 10/10/20, given (4) two-step addition and subtraction word problems with solutions. [Student] will solve the problem by drawing on the equation mats with 80% accuracy (4 out of 5) problems, for (2 out of 3) problem sets.” DOE Ex. 111 at 431; SPED Teacher-1, Tr. Vol. II, 132:15-134:4.
136. During reporting period R3, Student mastered the following math objective: “By 12/2020, given (4) two-step multiplication word problems with solutions. [Student] will solve the problem by drawing on the equation mats with 80% accuracy (4 out of 5) problems, for (2 out of 3) problem sets.” DOE Ex. 111 at 431; SPED Teacher-1, Tr. Vol. II, 132:15-134:4.
137. With the exception of the two mastered objectives in Math, Student was progressing in the other objectives. SPED Teacher-1, Tr. Vol. II, 134:5-13.
138. SLP-1 was the evaluator on two speech-language objectives in the IEP-Progress Report for the 5/06/2020-IEP: (1) when presented with a visual, Student will say/write a sentence using the correct syntax; and (2) given minimal cues, Student will use applied strategies to circumvent word finding blocks to improve Student’s communication with 80% accuracy. SLP-1, Tr. Vol. III, 245:13-246:11; DOE Ex. 111 at 434-435.

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<sup>15</sup> Individualized Education Program-Progress Report for the 5/06/2020-IEP with scores for reporting periods R2 and R3 was not offered as an exhibit at the due process hearing. It is noted that exhibits for the due process hearing were due on November 16, 2020, which is before reporting period R3. See Prehearing Order, filed October 16, 2020.

139. In the IEP-Progress Report for the 5/06/2020-IEP, in reporting period R1, dated June 8, 2020, Student was “Emerging” in Student’s objectives for the two speech-language objectives. DOE Ex. 111 at 434-435; SPED Teacher-1, Tr. Vol. II, 129:4-130:7; SLP-1, Tr. Vol. III, 245:9-247:12.
140. SLP-2 replaced SLP-1 as Student’s speech-language pathologist for reporting periods R2 and R3. SLP-2, Tr. Vol. III, 261:24-262:10.
141. SLP-2 scored the IEP-Progress Report for reporting period R2 and R3 for the 5/06/2020-IEP. Reporting period R2 ended sometime in October of 2020 and reporting period R3 ended sometime in January of 2021. SLP-2, Tr. Vol. III, 260:13-261:23.
142. SLP-2 worked with Student on two speech-language objectives in the IEP-Progress Report for the 5/06/2020-IEP: (1) when presented with a visual, Student will say/write a sentence using the correct syntax; and (2) given minimal cues, Student will use applied strategies to circumvent word finding blocks to improve Student’s communication with 80% accuracy. SLP-2, Tr. Vol. III, 261:1-14; DOE Ex. 112 at 434-435.
143. In the first speech-language objective, Student made gains between reporting periods R1 and R2. SLP-2 scored Student’s progress as “P” for “Progressing.” SLP-2, Tr. Vol. III, 262:11-263:20. Between reporting periods R2 and R3, Student made further gains. Although SLP-2 continued to score Student’s progress between reporting periods R2 and R3 as “P,” Student needed less “prompting” during R3 than R2. SLP-2, Tr. Vol. III, 263:21-264:21.
144. In the second speech-language objective, Student made gains between reporting periods R1 and R2 and received a score of “P” for reporting period R2 in Student’s IEP-Progress Report. Student continued to make gains between reporting periods R2 and R3 and

received a score of “P” for reporting period R3; however, Student learned and was using more words during reporting period R3. SLP-2, Tr. Vol. III, 264:22-266:15, 267:15-23.

Teacher Observations

145. On September 1, 2020, GED Teacher-2 emailed Parent and SPED Teacher-1 the following: “[W]hen [Student] is in school and with [SPED Teacher-1], [Student] does attend my WebEx sessions (if it doesn’t conflict with other services), [Student’s] been doing really well by the way during those meetings! Overall, [Student] is doing really well and in my opinion thriving with this online learning. [Student] is shy but I don’t expect that to change immediately.... It is quite different and scarier to participate online. There are a lot of [Student’s] peers who still are adjusting and are not quite confident in unmuting their mics.... [Student] is showing [Student’s] face which also shows one more step of confidence amongst [Student’s] peers! [Student] is also engaging with me on [Student’s] assignment slides which is a huge huge [sic] improvement!” DOE Ex. 82 at 333.
146. On September 2, 2020, SPED Teacher-1 emailed Parent-1 and GED Teacher-2 the following: “Today [Student] and I worked through [Student’s] math book and Zearn together. [Student] was able to complete it. I noticed [Student] needed reminders to read the directions carefully and not just try to do it without reading.” DOE Ex. 82 at 334.

**Private Center**

147. Parent enrolled Student at Private Center on April 1, 2020 to receive tutorial services in math. Parent, Tr. Vol. I, 26:22-27:14, 44:7-45:11.

148. Student goes to Private Center twice a week for tutoring in math. While at Private Center, Student receives worksheets to do at the center. When Student leaves Private Center, the center gives Student more work to do at home. Parent, Tr. Vol. I, 49:14-50:9; Parent, Tr. Vol. II, 69:15-22.
149. Parent was charged \$100 per month at Private Center. Between April 1, 2020 through November 2, 2020, Parent paid a total of \$900 for tutorial services in math at Private Center. Private Center charged Parent twice for the month of August. Pet. Ex. 2 at 022-029; Parent, Tr. Vol. I, 27:12-14.

## V. CONCLUSIONS OF LAW

### A. BURDEN OF PROOF

Pursuant to Hawaii Administrative Rules (“H.A.R.”) § 8-60-66(a)(2)(A), “the party initiating the due process complaint has the burden of proof.” The Hawaii Administrative Rules also state that “[t]he burden of proof is the responsibility of the party initiating and seeking relief in an administrative hearing under the IDEA or this chapter is to prove, by a preponderance of the evidence, the allegations of the complaint.” H.A.R. § 8-60-66(a)(2)(B).

The Supreme Court held in Schaffer that “[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005). The Court “conclude[d] that the burden of persuasion lies where it usually falls, upon the party seeking relief.” Id. at 535. Neither Schaffer nor the text of the IDEA supports imposing a different burden in IEP implementation cases than in formulation cases.

### B. IDEA REQUIREMENTS

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 (2008)(citing 20 U.S.C. § 1400(d)(1)(A)). A free and appropriate public education (“FAPE”) includes both special education and related services. H.A.R. § 8-60-1; H.A.R. § 8-60-3; 20 U.S.C. § 1401(9); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 34 C.F.R. § 300.101.

Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 20 U.S.C. §§ 1401(26) and (29). To provide 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 Hawaii v. Leo W., 226 F.Supp.3d 1081, 1093 (D. Haw.2016).

In Bd. of Educ. v. Rowley, the Court set out a two-part test for determining whether the school offered a FAPE: (1) whether there has been compliance with the procedural requirements of the IDEA; and (2) whether the IEP is reasonably calculated to enable the student to receive educational benefits. Rowley, 458 U.S. 176, 206-207, 102 S. Ct. at 3050-3051 (1982). “A state must meet both requirements to comply with the obligations of the IDEA.” Doug C. v. Hawaii Dept. of Educ., 720 F.3d 1038, 1043 (9th Cir.2013) (quoting Rowley). See also, Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001).

The school is not required to “maximize the potential” of each student; rather, the school 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. However, the United States Supreme Court in Andrew F. v. Douglas County Sch. Dist. 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.” Andrew F. v. Douglas County Sch. Dist., 137 S. Ct. 988, 1001 (2017). See also, Blake C. v. Hawaii Dept. of Educ., 593 F.Supp.2d 1199, 1206 (D. Haw.2009).

The mechanism for ensuring a FAPE is through the development of a detailed, individualized instruction plan known as an Individualized Education Program (“IEP”) for each child. 20 U.S.C. §§ 1401(9), 1401(14), and 1414(d). The IEP is a written statement, prepared at a meeting of qualified representatives of the local educational agency, the child’s teacher(s), parent(s), and where appropriate, the child. The IEP contains, among other things, a statement of the child’s present levels of academic achievement and functional performance, a statement of the child’s annual goals and short-term objectives, and a statement of specific educational services to be provided for the child. 20 U.S.C. § 1414(d). The IEP is reviewed and, if appropriate, revised, at least once annually. 20 U.S.C. § 1414(d). The IEP is, in effect, a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Burlington v. Dep’t of Educ. of the Commonwealth of Massachusetts, 471 U.S. 359, 368, 105 S. Ct. 1996, 2002 (1985). An IEP must be evaluated prospectively as of the time it was created.

Retrospective evidence that materially alters the IEP is not permissible. R.E. v. New York City Dep’t of Educ., 694 F.3d 167 (2nd Cir.2012).

Procedural violations do not necessarily constitute a denial of FAPE. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001). 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. Amanda J., 267 F.3d 877, 892 (9th Cir.2001).

### C. ISSUES FOR DETERMINATION

1. Whether the provision of academic instruction and Speech and Language therapy by remote instruction was insufficient and Student did not make gains equivalent to Student's normal rate of acquisition and regressed during the period from approximately March 17, 2020 to approximately May 29, 2020

Petitioners are alleging that the provision of academic instruction and speech-language therapy by remote instruction was not sufficient, and that Student did not make gains equivalent to Student's normal rate of acquisition and regressed between March 17, 2020 and May 29, 2020. Basically, Petitioners are alleging that DOE materially failed to implement Student's IEP for approximately two and a half months. Pet. Closing Brief at p. 2. Based on the evidence, Petitioners have failed to meet their burden in showing that the provision of academic instruction and speech-language therapy by remote instruction was insufficient, and that Student did not make gains equivalent to Student's normal rate of acquisition and regressed during the school closure, thereby denying Student a FAPE.

The Ninth Circuit Court in Van Duyn v. Baker School Dist. 5J held that "when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 815

(9th Cir.2007). “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” Van Duyn, 502 F.3d at 822.

The term FAPE means special education and related services that are provided in conformity with an IEP. 20 U.S.C. §1401(9)(D). Special education and related services “need only be provided ‘in conformity with’ the IEP. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.” Van Duyn, 502 F.3d at 821.

To properly apply the *Van Duyn* standard, the Hearings Officer must analyze whether the DOE failed to implement specific provisions of C.J.’s IEP. *See Van Duyn*, 502 F.3d at 822. If the DOE has failed to implement specific provisions of C.J.’s IEP, the Hearings Officer must decide whether the failure was material. *Id.* In doing so, the Hearings Officer is required to determine whether “there is more than a minor discrepancy between the services a school provides to a disable child and the services required by the child’s IEP.” *Id.* In this case, the Hearings Officer must determine whether the DOE materially failed to implement specific provisions of C.J.’s IEP despite its efforts after furloughs began.

Dept. of Educ., Hawaii v. C.J., 2011 WL 6002621, CV. No. 10-00257 AWT-BMK, at \*4

(D.Haw. Nov. 29, 2011). Although not binding legal authority, the United States Department of Education (“USDOE”) provided some guidance to districts on how to address providing IDEA services during school closures. In the *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, the USDOE noted that “the IDEA, Section 504 and Title II of the American Disabilities Act do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time. . . because of exceptional circumstances, such as an outbreak of a particular disease.”

However, the USDOE went on to say

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA. . . .

76 IDELR 77 (EDU, March 2020). The USDOE's guidance comports with the Ninth Circuit Court's decision in N.D. v. Hawaii Dept. of Educ., 600 F.3d 1104 (9th Cir.2010), which addressed disabled students' access to education during "Furlough Fridays" in Hawaii in the 2009-2010 school year. The Ninth Circuit Court held that "the overarching goal of the IDEA is to prevent the isolation and exclusion of disabled children, and provide them with a classroom setting as similar to non-disabled children as possible." N.D., 600 F.3d at 1115. The Ninth Circuit Court affirmed the district court's denial of a preliminary injunction because disabled and non-disabled students were equally affected. The Hawaii DOE did not implement policies and procedures that favored one group over the other, but rather made a financial decision to balance the budget that affected all students.

When Congress enacted the IDEA, Congress did not intend for the IDEA to apply to system wide administrative decisions. Hawaii's furloughs affect all public schools and all students, disabled and non-disabled alike. An across the board reduction of school days such as the one here does not conflict with Congress's intent of protecting disabled children from being singled out. In comparison to cases in which a child is singled out in relation to her peers, the furlough days do not remove the plaintiffs from the regular classroom setting anymore than they do the other children. Disabled children are not singled out for furlough days. To the extent possible under the new school calendar, the disabled children are still "mainstreamed" with regular children at school. To allow the stay-put provisions to apply in this instance would be essentially to give the parents of disabled children veto power over a state's decisions regarding the management of its schools. The IDEA did not intend to strip administrative powers away from local school boards and give them to parents of individual children, and we do not read it as doing so.

N.D., 600 F.3d at 1116-1117. While the Ninth Circuit Court did note that N.D.’s claim was more properly characterized as a “material failure to implement the IEP” under Van Duyn, 502 F.3d at 822, it still provides significant guidance on how at the administrative level we should be interpreting and applying the IDEA when faced with unprecedented challenges that require sacrifices from everyone.

The United States Department of Education Office for Civil Rights (“OCR”) and Office of Special Education and Rehabilitative Services (“OSERS”) later clarified that during this unprecedented time,

School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online or telephonically.

*Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, 120 LRP 10623 (OSERS/OCR March 21, 2020). Issue No. 1, as presented by Petitioners, does not allege that DOE failed to implement a specific provision of Student’s IEP; however, Petitioners’ Closing Brief clarifies that the “focus of this claim is on the lost mathematic skills Student lost during a specific period of instruction caused by the DOE’s **choices.**” Pet. Closing Brief at p. 2 (bold in original). Based on the evidence adduced at the due process hearing, Petitioners fail to show that DOE materially failed to implement Student’s IEP, including those portions that pertain to Math.

During the beginning months of the COVID-19 pandemic lockdown<sup>16</sup> and school closure, DOE made reasonable efforts to provide general education, special education, and speech-language therapy to Student. DOE provided Student with an educational program reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. Andrew F. v. Douglas County Sch. Dist., 137 S. Ct. 988, 1001 (2017). DOE's efforts to provide educational material and instruction to Student came in the form of hand-delivery of educational material, emailed resource materials, utilization of Google Meets, WebEx and Facetime, and phone calls. DOE also maintained constant contact with Parent through various modes of communication during the COVID-19 lockdown and school closure. (FOF 27-98).

Student received the same general education as non-disabled students. (FOF 29-34). Student received the same instruction in Math as Student's non-disabled peers. (FOF 30). GED Teacher-1 emailed educational material to Student, reviewed Student's work, and discussed Student's work with Student, and conducted routine phone check-ins with Student. (FOF 29, 33, 43, 51, 64, 92, 96). SPED Teacher-1 had virtual meetings with Student on a daily basis and hand-delivered educational material to Student. (FOF 27, 46, 48, 50, 52, 53, 55, 58, 61, 72, 73, 75, 77, 81, 82, 91). SPED Teacher-2 provided remote instruction to Student. (FOF 28, 83, 85, 87, 89, 94, 98). SLP-1 provided speech-language therapy to Student virtually. (FOF 88, 90, 93, 95, 97). Hawaii's COVID-19 lockdown and school closure affected all public schools and all

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<sup>16</sup> Judicial Notice is taken of the "Office of the Governor, State of Hawaii, Third Supplementary Proclamation," signed by Governor David Y. Ige on March 23, 2020 ("Third Supplementary Proclamation"). Pursuant to the Third Supplementary Proclamation, a state of emergency was declared on March 4, 2020 for the State of Hawaii. All persons in the State of Hawaii was ordered to stay at home or in their place of residence from March 25, 2020 to April 30, 2020. People engaged in essential activities or essential businesses as defined by the Third Supplementary Proclamation were allowed to leave their homes.

students, disabled and non-disabled alike. Transitioning the delivery of educational instruction from in-person to remote/virtual does not conflict with Congress's intent of protecting disabled children from being singled out. Student was given the same resources and same opportunities as all the other students. In light of the unprecedented circumstances, delivering educational instruction by remote/virtual means was reasonable in this case.

Furthermore, Student qualifies for special education under the IDEA because of a [REDACTED] disability [REDACTED]. There is no evidence that Student was not able to participate in Student's general education, special education or speech-language therapy because Student could not \_\_\_\_\_. The difficulty that Student faced, as did other disabled and non-disabled students, was learning to function in a remote/virtual environment that required a type of discipline and accountability that students did not need before the COVID-19 lockdown and school closure. (FOF 49, 53, 59, 60, 62, 63, 65, 66-68, 71, 74, 75, 78). As Parent testified during the due process hearing, Student was putting in the least effort [Student] could get away with and Student needed more accountability. Parent, Tr. Vol. I, 26:12-15, 28:16-19. Although the road to establishing a workable process to deliver education by remote/virtual means was not smooth, the shutdown of the entire State of Hawaii was an unforeseen, unprecedented move, forcing everyone to reassess and recreate a way to live. Time was needed by everyone to learn and acclimate. Therefore, Petitioners fail to show that the provision of academic instruction and speech-language therapy by remote instruction from March 17, 2020 to May 29, 2020 was a material failure to implement Student's IEP.

Petitioners also failed to show that Student did not make gains equivalent to Student's normal rate of acquisition and that the school closure alone caused Student's regression. There is insufficient evidence of what Student's "normal rate of acquisition" is and there is insufficient

evidence to show that the school closure alone caused Student's regression. Student's scaled scores and grade equivalent scores in the Star Reading Enterprise Assessment and Star Math Enterprise Assessment from August 2017 to December 2020 do not have a straight upward trajectory. While Student generally improved in Reading and Math through the years, Student's scaled scores and grade equivalent scores had an up and down pattern. Even though Student regressed in the area of Math between the March 10, 2020 and August 17, 2020 Star Math Enterprise Assessments (scaled scores of \_\_\_ to \_\_\_), this regression was not an isolated incident. (FOF 105, 121). Student also showed regression when Student took the Star Math Enterprise Assessments on May 11, 2018 and August 21, 2018 (scaled score of \_\_\_ to \_\_\_ and a grade equivalent of \_\_\_ to \_\_\_), and March 7, 2019 and May 15, 2019 (scaled score of \_\_\_ to \_\_\_ and grade equivalent of \_\_\_ to \_\_\_). (FOF 101-104). Similarly, even though Student progressed in the area of Reading, Student's scaled scores and grade equivalent scores in the Star Reading Enterprise Assessments fluctuated up and down throughout the years. (FOF 106-107, 126-131). Based on Student's history of taking the Star Math and Reading Enterprise Assessments, Student's regression in Math between the March 2020 and August 2020 assessments was not an aberration. Furthermore, even if Student's math skills regressed solely because of the school closure, Student was able to recoup what Student had lost and made further gains because in March of 2020, Student's grade equivalent in Math was \_\_\_ but by December of 2020, Student's grade equivalent was \_\_\_ or \_\_\_ (FOF 105, 123, 125).

For the reasons stated above, the undersigned Hearings Officer finds that Petitioners have not met their burden in showing that the provision of academic instruction and speech-language therapy by remote instruction was insufficient and Student did not make gains equivalent to Student's normal rate of acquisition and regressed during the school closure.

Petitioners have failed to prove that DOE denied Student a FAPE by materially failing to implement Student's IEP from March 17, 2020 to May 29, 2020.

**E. PETITIONERS' SECTION 504 OF THE REHABILITATION ACT OF 1974 CLAIM**

Petitioners' First Modified Complaint and Resolution Proposal "assert[s] Student's eligibility for rights and protections under Section 504 of the Rehabilitation Act of 1974." First Modified Complaint and Resolution Proposal, p. 2. Petitioners, however, did not present any evidence or argument during the due process hearing and in their closing brief regarding their Section 504 claim. Based on the lack of evidence or argument to support this claim, the undersigned Hearings Officer concludes that Petitioners have effectively abandoned their Section 504 claim and have not met their burden of proof.

**VI. DECISION**

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not met their burden of proving the issue raised in the September 8, 2020 First Modified Complaint and Resolution Proposal by a preponderance of the evidence. As Petitioners have failed to prove that DOE denied Student a FAPE, Petitioners' request for reimbursement of all educational and related expenses and other relief that is appropriate and justified in equity and/or in law is 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 to file a civil action, with respect to the issue 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 H.A.R. § 8-60-70(b).

DATED: Honolulu, Hawai'i, April 5, 2021.

/s/ Charlene S.P.T. Murata  
CHARLENE S.P.T. MURATA  
Hearings Officer  
707 Richards Street, Suite 520  
Honolulu, Hawai'i 96813  
Phone: (808) 587-7680  
Fax: (808) 587-7682  
atg.odr@hawaii.gov

Redacted Hearing Decision