



OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

PARENTS of STUDENT,¹

Respondents.

DOE-SY2021-030

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing: November 18, 2020

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On September 18, 2020, the Department of Education, State of Hawai'i and Christina Kishimoto, Superintendent of the Hawai'i Public Schools (hereinafter "Petitioners" or "DOE") submitted a Request for IDEA Impartial Due Process Hearing under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities Education Act, against Parents, as the parents/guardians of Student. (hereinafter "Respondents").

¹ Personal identifiable information is contained in the Legend.

On September 21, 2020, a Letter to Parties, Hearing Guidelines, Notice of Prehearing Conference, Zoom Invitation and Zoom User Guide were sent via U.S. Postal Service Mail to DOE District Educational Specialist (hereinafter “DES”), on behalf of Petitioners, and Parents, on behalf of Respondents. In the Letter to Parties and the Notice of Prehearing Conference, notice was provided to both parties that the prehearing conference in this case was scheduled for Wednesday, September 30, 2020 at 3:00 p.m., which was on the same date as another prehearing conference for another pending matter that Parent 1 had agreed to.

On September 30, 2020, a prehearing conference was held by telephone with this Hearings Officer, Parent 1, DES, and District Teacher 1. At the prehearing conference, Parent 1 requested that the Hearing be scheduled in November due to Parent 1’s unavailability in October. The Due Process Hearing (hereinafter “Hearing”) was scheduled by agreement of the parties for November 18 and 25, 2020 from 9:00 a.m. to 4:00 p.m. Due to the coronavirus 2019 global pandemic, this Hearings Officer informed the parties that the Hearing would need to be conducted via video conferencing to ensure compliance with government mandated social distancing.² Parent 1 requested accommodations to participate in person. Parent 1’s request was granted, and accommodations were arranged for Parent 1 to participate at the Office of Dispute Resolution using equipment and internet connections provided by the Office of Dispute Resolution. Parent 1 was also informed that any witnesses that needed accommodations would also be allowed to attend the Hearing in the same manner. All persons participating in the Hearing in person at the Office of Dispute Resolution would be subject to policies and

² See Governor of the State of Hawai‘i’s Thirteenth Proclamation Related to the COVID-19 Emergency, effective September 22, 2020 and Governor of the State of Hawai‘i’s Fourteenth Proclamation Related to the COVID-19 Emergency, effective October 13, 2020.

procedures put in place based on recommendations from the Center for Disease Control and the State of Hawai'i Act with Care mandates.

Due to the decision deadline being November 2, 2020, Parent 1 requested an extension of the decision deadline to accommodate Parent 1's request for the Hearing to take place in November. Parent 1 emailed Respondents' request to extend the deadline on September 30, 2020.³ This Hearings Officer granted Respondents' request to extend the deadline to December 17, 2020 in the Order Granting Respondents Request for Extension filed on October 2, 2020.

On October 16, 2020, Parent 1 called and emailed the Office of Dispute Resolution, informing this Hearings Officer that an employee of Home School had filed a temporary restraining order against Parent 1, which would affect Parent 1's ability to participate in the Hearing.⁴ On October 20, 2020, an email was sent to DES requesting that DES determine whether the alleged temporary restraining order would affect Parent 1's ability to participate in the Hearing. On October 23, 2020, DES confirmed that the temporary restraining order would not affect the Hearing and that Parent 1 would be able to participate without consequences regarding the order.⁵

An Order Providing Mandatory Procedures for Due Process Hearing was issued on November 2, 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

³ See Respondents' Exhibit 7, page 025 (hereinafter referenced as "R-Ex.7, p.025").

⁴ See Telephone Call Log, filed on December 14, 2020.

⁵ See R-Ex.23, p.082-083.

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.

At various times between October 12, 2020 and the Hearing date of November 18, 2020, Parent 1 contacted the Office of Dispute Resolution by telephone and spoke with the Legal Clerk, informing the Legal Clerk that the family does not believe that this Hearings Officer is fair and has any authority over them. Parent 1 also mentioned that the family was not willing to participate in the Hearing.⁶ Parents also sent emails to the Office of Dispute Resolution communicating the same.⁷

The Hearing commenced on November 18, 2020, using the Zoom video conferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by the Office of Dispute Resolution. Accommodations for Parent 1 as previously noted at the Office of Dispute Resolution were available for the Hearing. The Zoom meeting room was opened at 9:00 a.m. as scheduled. After waiting fifteen (15) minutes to see if Parents would appear either in person at the Office of Dispute Resolution, or on the Zoom conference, the Hearing began. Parent 1 nor Parent 2 appeared at the Office of Dispute Resolution nor in the Zoom meeting. No call or voicemail indicating their desire to participate was received from Parent 1 or Parent 2.

Present in the video conference Hearing were Hearings Officer Chastity T. Imamura, DES and District Teacher 1 on behalf of Petitioners, as well as the assigned court reporter. Petitioners called Psychologist, Speech-Language Pathologist (hereinafter “SLP”), and Student Services Coordinator (hereinafter “SSC”) to testify. At approximately 11:02 a.m., during the

⁶ See Telephone Log, filed December 14, 2020.

⁷ See, e.g. R-Ex.11, p.044-047, R-Ex.15, p.064-065, R-Ex.16, p.066-067,

testimony of SSC, Parents called the Office of Dispute Resolution to participate in the Hearing by telephone. Parents were instructed to standby as they would be called by this Hearings Officer and placed on speakerphone in the room with this Hearings Officer to participate in the Hearing.⁸ Parent 1 began the telephone call yelling and using profanity. Parent 1 was warned repeatedly that all participants to the Hearing were subject to the Order Providing Mandatory Procedures for Due Process Hearing and that if Parent 1 continued to yell and use profanity, the telephone call would be disconnected and Parents would no longer be able to participate in the Hearing. After failing to heed the repeated warnings by this Hearings Officer, Parent 1 continued to yell and use profanity and the call was disconnected.⁹ The Hearing proceeded with the testimony of SSC and continued on to the testimony of Principal. At approximately 11:20 a.m., Parent 1 called the Office of Dispute Resolution again and asked to place something on the record for the Hearing.¹⁰ Parent 1 was again connected to the Hearing through speakerphone in the room with this Hearings Officer. Parent 1 abided by the Order Providing Mandatory Procedures for Due Process Hearing and participated for the remainder of the Hearing. Parent 1 was present for the direct examination of Principal and was allowed to cross-examine Principal. After Principal's testimony, Petitioners rested. Parent 1 requested the ability to question DES, which was granted. DES answered Parent 1's relevant questions. Parent 1 was provided the opportunity to provide a statement on behalf of Respondents regarding the issue in this case. Upon completion of Parent 1's statement, the Hearing was concluded.

Petitioners submitted their exhibits for the Hearing by the disclosure deadline of

⁸ See Telephone Log, filed December 14, 2020.

⁹ See Transcript of Due Process Hearing, page 60, line 9, to page 61, line 22 (hereinafter referenced as "Tr.60:9-61:22").

¹⁰ See Telephone Log, filed December 14, 2020.

November 10, 2020. Respondents requested that all the emails that were sent to the Office of Dispute Resolution be received as evidence, so the legal clerk of the Office of Dispute Resolution time-stamped, cataloged and paginated the emails sent from Student's family. The time-stamped emails were also resent to the Petitioners and Respondents at or near the time they were received. The legal clerk also prepared a list of the emails as exhibits and the filed list was emailed to Petitioners and Respondents on November 12, 2020. All the exhibits received by Petitioners and Respondents were considered as part of the instant decision. Parent I requested that several items be received from Student's previous case filed with the Office of Dispute Resolution. These exhibits were compiled at the request of Parent I and received as Hearings Officer's Exhibits. These exhibits include filed documents and an audio recorded zoom hearing that were on file in Student's previous case under DOE-SY2021-020. The exhibit list and exhibits were emailed to the parties on December 14, 2020.

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 § 8-60-1, *et seq.*

III. ISSUES PRESENTED

Petitioners assert two (2) issues in the Complaint to be addressed at the Hearing:

1. Petitioners are requesting that the Assessments completed by the DOE were appropriate.

2. Petitioners are requesting a determination that Parents are not entitled to an Independent Educational Evaluation (hereinafter “IEE”).

IV. FINDINGS OF FACT

1. Student is currently a student at Home School.¹¹
2. Student had been determined eligible for special education and related services under the IDEA at Home School, and Student’s triennial reevaluation was due in the fall of 2019.¹²
3. On August 5, 2019, the IEP team met regarding Student’s triennial reevaluation and determined that Student would be evaluated by Assessments.¹³ On the same date, Parents signed a Consent for Assessment as Part of a Reevaluation form.¹⁴
4. Psychologist was assigned to conduct Student’s Assessment for the reevaluation.¹⁵
5. Psychologist has been a school psychologist for about five and half (5 ½) years and prior to that was a clinical psychologist for the DOE. Psychologist has a bachelor’s degree in Psychology, a master’s degree in public health, and a master’s degree and a doctorate degree.¹⁶
6. During Psychologist’s experience with the DOE, Psychologist has completed around three hundred (300) to four hundred (400) Assessments. Psychologist has given Assessment approximately two hundred seventy-five (275) times.¹⁷

¹¹ Testimony of SSC, Tr.25:5-20; Petitioners Exhibit 2, page 4 (hereinafter referenced as “P-Ex.2, p.4”).

¹² P-Ex.6, p.13.

¹³ P-Ex.1, p.001.

¹⁴ P-Ex.2, p.003

¹⁵ Testimony of Psychologist, Tr.12:1-3; P-Ex.1, p.1-2.

¹⁶ Testimony of Psychologist, Tr.11:16-20, 23:18-25.

¹⁷ Testimony of Psychologist, Tr.23:18-24:15.

7. The Assessment is a standardized assessment that is scored strictly by instructions in an examiner's manual to obtain standardized scores. It was designed to assess children that are having learning problems or children with learning disabilities and is widely recognized in the field of school psychology as an accurate measure of capability.¹⁸
8. On August 27, 2019, Psychologist administered the Assessment on Student in accordance with the testing protocols for the administration of the test. Based on the test, Psychologist obtained standardized scores for Student. Student's scores in all three areas were documented as "Low Average."¹⁹
9. During Student's Assessment, Psychologist observed Student to be cooperative, respectful, and personable, and Student appeared to put forth Student's best efforts during the assessment.²⁰
10. Based on Psychologist's Assessment of Student, Psychologist was able to come up with a list of accommodations that would be helpful to assist Student to perform academically, such as: having both visual and verbal instructions, providing Student with multiple modalities to engage Student's interest, reviewing previous lessons for repetition and visually and verbally highlighting the main ideas of the lessons, utilizing mnemonics, providing extra time and frequent checks for Student, and using encouragement and praise for Student's accomplishments.²¹
11. Psychologist submitted a complete report dated September 16, 2019 for Student's

¹⁸ Testimony of Psychologist, Tr.15:16-24, 22:3-23:12.

¹⁹ Testimony of Psychologist, Tr.16:2-17:15; P-Ex.5, p.16-22.

²⁰ Testimony of Psychologist, Tr.14:13-15:1; P-Ex.5, p.021.

²¹ Testimony of Psychologist, Tr.19:18-21:17; P-Ex.5, p.021-022.

- Assessment to be provided to the IEP team for review at Student's reevaluation and IEP review.²²
12. SLP has been a speech-language pathologist for around thirty-seven (37) years and currently works for the DOE. SLP has a bachelor's degree and a master's degree in speech pathology and audiology. SLP is has a clinical certificate of competence and is also licensed to practice speech pathology in the State of Hawai'i.²³
13. SLP is familiar with Student as SLP has been providing Student's speech therapy in articulation and language skills since around 2018.²⁴
14. On August 7, 2019, SLP conducted an Assessment on Student. Part of the assessment included a hearing screening of Student, as well the administration of Assessment.²⁵
15. SLP has been trained in administering Assessments. SLP has used the Assessments twenty-five (25) to thirty (30) times, the Assessment approximately two hundred (200) times, and the Assessment at least fifty (50) times. All three of these assessments are commonly used and regularly recognized as reliable tests.²⁶
16. SLP administered the Assessments as SLP had been trained to do and in accordance with the protocols provided for each test. SLP was able to obtain accurate results for each of the tests conducted with Student.²⁷
17. SLP prepared a report summarizing Student's test results for all three (3) assessments

²² Testimony of Psychologist, Tr.13:2-15; P-Ex.5, p.016-022.

²³ Testimony of SLP, Tr.28:8-29:3.

²⁴ Testimony of SLP, Tr.29:15-23.

²⁵ Testimony of SLP, Tr.30:2-12; P-Ex.3, p.005-008.

²⁶ Testimony of SLP, Tr.31:23-34:4, 35:25-36:13.

²⁷ Testimony of SLP, Tr.31:2-32:11, 32:12-33:5, 33:8-34:4.

and determined that Student's hearing, voice and fluency skills were within normal limits, however, Student's scores in articulation and expressive vocabulary were in the low or below average range, and Student's speech was intelligible, although noticeably in error. Student's oral language composite, listening comprehension and oral expression scores were at an average level.²⁸

18. SLP also made observations of Student's behavior during the assessment and noted that Student was pleasant and cooperative, appeared at ease and put forth adequate attention and effort.²⁹

19. In SLP's report, SLP also noted implications of Student's test results for learning, to provide insight and assistance to Student's IEP team in formulating Student's IEP. Some of these suggestions included: continued exposure to a language rich environment, increased awareness of how target sounds should be produced, and provision of clear speech models.³⁰

20. SSC has been a student-services coordinator at Home School for twelve (12) years. SSC has a bachelor's degree in education and a professional fifth year diploma in education and is licensed to teach elementary education in Hawai'i.³¹

21. SSC's duties include helping with the referral process and coordinating meetings and assessments for students that are referred for eligibility for special education. SSC also administers Assessments to students as part of the initial or reevaluation process.³²

²⁸ P-Ex.3, p.008.

²⁹ P-Ex.3, p.006.

³⁰ Testimony of SLP, Tr.34:5-35:19; P-Ex.3, p.007-008.

³¹ Testimony of SSC, Tr.40:1-18.

³² Testimony of SSC, Tr.40:19-41:5, 43:3-18.

22. On August 20, 2019, SSC administered the Assessment to Student. SSC has been trained in administering the Assessment and has conducted the assessment approximately a couple hundred times over the twelve (12) years that SSC has been a student-services coordinator.³³
23. The Assessment is a standardized test that follows protocols for the administration of the assessment to obtain a standardized score for a student's performance compared to same-aged general education peers.³⁴
24. Student's scores on the Assessment were well below the average scores for peers Student's age.³⁵
25. SSC also did a classroom observation of Student to determine if there were any behaviors or distractions that may be getting in the way of Student's learning. During the classroom observation, SSC noted that Student was well-behaved, appears to enjoy learning, is attentive and listens.³⁶
26. SSC prepared reports on both Student's Assessment and classroom observation for the IEP team to use and discuss when determining Student's eligibility and preparing an IEP for Student.³⁷
27. After the Assessments and classroom observation were completed for Student's reevaluation, and copies of all the reports were sent home to Parents ahead of the scheduled eligibility meeting. An evaluation summary was also prepared, which

³³ Testimony of SSC, Tr.43:13-44:12.

³⁴ Testimony of SSC, Tr.66:23-67:14.

³⁵ Testimony of SSC, Tr.44:25-45:2; P-Ex.4, p.010-014.

³⁶ Testimony of SSC, Tr.51:16-52:13.

³⁷ P-Ex.4, p.010-014; P-Ex.6, p.024.

- summarized the findings of the assessments and the classroom observation.³⁸
28. On September 23, 2019, the IEP team met for an eligibility meeting based on Student's reevaluation and to prepare an IEP for Student if Student was determined to be eligible for special education services.³⁹
29. Present at the September 23, 2019 eligibility meeting was SSC, Special Education Teacher, General Education Teacher, Principal and Parent 2 participated by telephone.⁴⁰
30. At the eligibility meeting, the team reviewed and discussed the assessment reports submitted by Psychologist, SLP and SSC. The team utilized an eligibility worksheet for specific learning disability, to determine whether and in what areas Student would be eligible for special education services under the IDEA. The decision made by the team was that Student would continue to be eligible for IDEA special education and related services under Eligibility Category 1, in the areas of reading, writing and math.⁴¹
31. Parent 2 did not have any questions or express any concerns about any of the assessments that were completed as part of Student's reevaluation. Parent 2 did not object to the team's finding that Student was eligible for IDEA special education and related services.⁴²
32. After the eligibility meeting, the team held the IEP team meeting for Student on

³⁸ Testimony of SSC, Tr.54:9-56:1; P-Ex.7, p.026-027.

³⁹ Testimony of SSC, Tr.53:1-14; Testimony of Principal, Tr.87:20-22.

⁴⁰ Testimony of SSC, Tr.53:4-8; Testimony of Principal, Tr.87:20-22; P-Ex.8, p.029-031.

⁴¹ Testimony of SSC, Tr.53:9-56:1, 58:6-12, 68:5-13; Testimony of Principal, Tr.87:23-88:3; P-Ex.9, p.033.

⁴² Testimony of SSC, Tr.55:4-56:6, 58:24-59:3; Testimony of Principal, Tr.88:4-9.

- September 23, 2019, during which an IEP was developed for Student (hereinafter “IEP-09/23/2019”).⁴³
33. Student attended Home School for the 2019-2020 school year until approximately March 2020, when the COVID-19 global pandemic shut down DOE public schools, including Home School.⁴⁴
34. Prior to July 7, 2020, Parent 1 contacted Home School and demanded that Student’s special education services be reduced based on Parent 1’s desire for Student to be more independent and also due to Parent 1’s belief that Student was capable of doing more challenging work that Student was being assigned.⁴⁵
35. On July 7, 2020, the IEP team met to address Parent 1’s concerns about Student’s IEP. Parent 1 participated by telephone and while the IEP team was attempting to gather information from Parent 1 on Parent 1’s concerns, Parent 1 then requested an IEE.⁴⁶
36. The IEP team meeting concluded shortly after Parent 1 requested an IEE for Student. Parent 1 did not provide any basis for the IEE request or specify which assessments Parent 1 was contesting, so Principal followed up with Parents to inquire as to what assessments Parents were requesting to be done for the IEE.⁴⁷
37. Home School reviewed the assessments that had been completed as part of Student’s reevaluation in 2019, to which Parents had agreed and which were used to develop Student’s IEP. After review, Home School determined that they would not agree to

⁴³ Testimony of SSC, Tr.69:4-16; P-Ex.10, p.035-046.

⁴⁴ Testimony of SSC, Tr.73:9-74:5; Testimony of Principal, Tr.92:11-93:4.

⁴⁵ Testimony of SSC, Tr.62:1-16; Testimony of Principal, Tr.89:11-90:10.

⁴⁶ Testimony of SSC, Tr.62:20-63:13; Testimony of Principal, Tr.90:11-20.

⁴⁷ Testimony of SSC, Tr.63:14-64:1; Testimony of Principal, Tr.90:21-92:10; P-Ex.12, p.050.

- an IEE for Student and a Request for IDEA Impartial Due Process Hearing was filed on August 4, 2020 (hereinafter “Complaint-08/04/2020”) under DOE-SY2021-020.⁴⁸
38. The Complaint-08/04/2020 was assigned to this Hearings Officer and a prehearing conference was set up between this Hearings Officer, Parent 1, DES and RT for August 13, 2020.⁴⁹
39. During the pre-hearing conference, Parent 1 agreed to allow Home School to conduct internal testing instead of an IEE and welcomed further discussion with Home School about testing Student at the school level.⁵⁰
40. On Monday, August 24, 2020, Parent 1 sent an email to Principal stating that the family was withdrawing the request for an IEE for Student. In the email, Parent 1 indicated that they wanted to give the school a chance to fix what the family felt was an incorrect handling of the IEP. Parent 1 also voiced unrelated complaints about Home School and Home School personnel in the email.⁵¹
41. On August 25, 2020, Respondents sent an email to the Office of Dispute Resolution, requesting to withdraw the Complaint-08/04/2020 because Parents were withdrawing their request for an IEE. On August 25, 2020, the Order of Dismissal was filed by this Hearings Officer and the case was dismissed with prejudice.⁵²
42. Home School attempted to have another IEP meeting with Parent to further discuss the school-level testing requested for Student and to review Student’s IEP. Home

⁴⁸ Testimony of SSC, Tr.64:2-6; Testimony of Principal, Tr.94:7-23; P-Ex.13, p.52.

⁴⁹ See Hearings Officer’s Exhibit 1, pages 01-04, Exhibit 2, pages 05-07 (hereinafter referenced as “H-Ex.1, p.01-03, H-Ex.2, p.05-07”).

⁵⁰ See H-Ex.4.

⁵¹ Testimony of Principal, Tr.95:6-13; see P-Ex.14, p.056.

⁵² See H-Ex.3, p.08-09.

- School proposed several dates to Parents in October, but Parents did not agree with any of the dates offered.⁵³
43. An informal meeting was held in August 2020, during which Parents had requested that the school retest Student at the school level without having to go through an IEE. At that time while Home School stood by its original assessments, Home School was considering offering an additional school-level assessment and a possible review of Student's IEP on a trial basis due to the unique situation faced by all students as a result of the COVID-19 pandemic.⁵⁴
44. Parents sent an email to General Education Teacher on September 14, 2020 requesting that Student be in General Education Teacher's class and again requesting a reduction in Student's special education services. In this email, Parents again requested an IEE, but did not state a basis for which they requested an IEE. The email indicated that Parents were unhappy that Student did not appear to be included in the general education classes.⁵⁵
45. As with the previous IEE request, Parents requested that all three assessments completed on Student in 2019 be redone for the IEE, however, they did not state a basis for their dispute with the original assessments.⁵⁶
46. Home School again refused to grant Parent's request for an IEE and the instant Request for IDEA Impartial Due Process Hearing was filed on September 18, 2020.
47. Parents' position is that since Student has been distance learning, Student has been

⁵³ Testimony of SSC, Tr.65:15-21; *see e.g.* R-Ex.2, p.007-009, R-Ex.3, p.017-019.

⁵⁴ Testimony of Principal, Tr.152:14-155:1.

⁵⁵ Testimony of SSC, Tr.65:17-66:3; Testimony of Principal, Tr.96:8-97:6; P-Ex.15, p.059-060.

⁵⁶ Testimony of SSC, Tr.65:25-66:3.

able to complete assignments that are above the level to which Student is currently assigned. Parent has submitted copies of Student's work and some test scores as evidence of Student's growth, but Home School has not changed Student's IEP to reduce Student's special education.⁵⁷

V. CONCLUSIONS OF LAW

A. 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.”⁵⁸ A FAPE includes both special education and related services.⁵⁹

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.⁶⁰ 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.”⁶¹

A parent has a right to an independent educational evaluation of their child if they disagree with the evaluation that was completed by the school district.⁶² Once an IEE is requested, the school district must either file a due process complaint or provide the parent with

⁵⁷ Testimony of Principal, Tr.145:9-21, *see also e.g.*, R-Ex.9, p.027-031, R-Ex.22, p.080-081.

⁵⁸ *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)).

⁵⁹ H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

⁶⁰ *Id.*

⁶¹ *Dep't of Educ. of Hawai'i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai'i 2016).

⁶² H.A.R. §8-60-57; 20 U.S.C. §1415(b)(1) and (d)(2)(A); 34 C.F.R. §300.502.

an IEE at public expense.⁶³

B. Validity of the Assessments Conducted by Petitioners

Petitioners argue that the assessments completed by Psychologist, SLP, and SSC for Student's reevaluation in 2019 are appropriate. Hawaii Administrative Rules Section 8-60-36(c) provide the parameters by which assessments for students undergoing an evaluation or reevaluation for special education services under the IDEA must be conducted.⁶⁴ The record here demonstrates that the assessments and partially completed by Psychologist, SLP and SSC comply with the recommended requirements under the IDEA.

The Assessment completed by Psychologist was done using an assessment tool widely-recognized to be an accurate measure of a student's abilities.⁶⁵ Psychologist has many years of experience in conducting these assessments and followed the prescribed protocols for scoring the assessment to get an accurate rating of Student's abilities.⁶⁶ Further, Parents did not object to this assessment at the time of the eligibility meeting or during Student's IEP meeting, when the Assessment was used to develop Student's IEP.⁶⁷ Parents have provided no basis for disputing the results of the Assessment completed by Psychologist.

The Assessment completed by SLP was similarly conducted using three widely recognized tools for measuring a child's abilities in different areas.⁶⁸ SLP has been a speech-language pathologist for around thirty-seven (37) years and has been regularly conducting these assessments on children with the Hawaii DOE.⁶⁹ SLP conducted all three assessments on

⁶³ *Id.*

⁶⁴ H.A.R. §8-60-37(b)-(c); 34 C.F.R. §300.304(b)-(c).

⁶⁵ FOF 7.

⁶⁶ FOF 6, 8.

⁶⁷ FOF 30-31.

⁶⁸ FOF 14-15.

⁶⁹ FOF 12.

Student as SLP had been trained to do and was able to obtain scores for Student in several areas of abilities.⁷⁰ SLP had also been providing speech-language services to Student in the 2018-2019 school year and was able to make suggestions to the IEP team for Student's continued speech-language goals and objectives for Student's IEP.⁷¹ Parents additionally did not provide a basis for disputing the Assessment completed by SLP.

Finally, SSC conducted the Assessment for Student using a standardized test, in which SSC had been trained and had followed the specific scoring protocols necessary to obtain a standardized score for Student.⁷² SSC had conducted this assessment over two hundred (200) times in SSC's twelve (12) years as a student-services coordinator.⁷³ SSC also made classroom observations of Student to determine if any distractions or barriers were present for Student's learning in the classroom.⁷⁴ Based on the assessment and SSC's observation of Student, SSC was able to also make recommendations for Student's eligibility for IDEA services and IEP development.⁷⁵

Parent 1's primary concern with the Assessment for Student was that Parent 1 did not understand why Student was being given work, specifically in math, that was far below Student's chronological grade level.⁷⁶ Additionally, Parent 1 had been working with Student while Student was distance learning during the COVID-19 pandemic and believed that Student is capable of doing more challenging work.⁷⁷

⁷⁰ FOF 16.

⁷¹ FOF 13, 19.

⁷² FOF 22-23.

⁷³ FOF 22.

⁷⁴ FOF 25.

⁷⁵ FOF 26.

⁷⁶ FOF 34.

⁷⁷ FOF 47.

Parents have not challenged the validity of any of the assessments or the reevaluation completed for Student. Parent 1's main concern regarding the specific curriculum that Student is receiving is not an area that reviewing authorities are encouraged to encroach upon. In *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*,⁷⁸ the U.S. Supreme Court noted that the absence of a bright-line rule determining a student's progress "should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." Similarly, this Hearings Officer declines to invalidate the reevaluation done by the aforementioned professionals for Student based on a question of the curriculum that Student is currently receiving during distance learning in the times of the COVID-19 global pandemic.

C. Parents are not entitled to an independent educational evaluation at public expense

Under the IDEA, parents are entitled to an IEE when they disagree with a school district's evaluation done for their child with a disability. This IEE means "an evaluation conducted by a qualified examiner who is not employed by the department;" and, if so warranted, the IEE would be at "public expense, meaning that the department either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent."⁷⁹ As part of the rules provide, the school district is to provide parents with the information on where to obtain an IEE and for the department's criteria for IEEs.⁸⁰ Even if the DOE's assessments are determined to be valid, Parents in this case are still entitled to obtain an IEE, however, not at public expense.⁸¹

⁷⁸ 137 S.Ct. 988, 1001-1002, 197 L.Ed.2d 335 (2017) (*quoting Rowley*, 458 U.S. at 206, 102 S.Ct. at 3034).

⁷⁹ H.A.R. §8-60-57(a)(3); 34 C.F.R. §300.502(a)(3).

⁸⁰ H.A.R. §8-60-57(a)(2); 34 C.F.R. §300.502(a)(2).

⁸¹ H.A.R. §8-60-57(a)(4); 34 C.F.R. §300.502(a)(4).

Here, Petitioners have proven that the assessments conducted as part of Student's reevaluation were valid and conducted in compliance with the IDEA. Parents have not set forth any problems, concerns or inaccuracies regarding any of the assessments conducted for Student's reevaluation. Further, Parents have not obtained an IEE to which they could point to in order to dispute the assessments performed by Petitioners. This Hearings Officer concludes that Petitioners have proven that Parents are not entitled to an IEE at public expense. If an IEE is obtained for Student, it would be a cost to Parents and not the DOE.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that the Assessments conducted by Petitioners to be appropriate and that Parents are not entitled to an independent educational evaluation.

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, December 14, 2020.

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