



OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

In the Matter of STUDENT, by and through  
PARENT/LEGAL GUARDIAN,<sup>1</sup>

Petitioner(s),

vs.

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

Respondents.

DOE-SY2021-034

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION

Due Process Hearing: February 16 & 18,  
2021

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

**I. INTRODUCTION**

On November 30, 2020, the Department of Education, State of Hawai'i and Christina Kishimoto, Superintendent of the Hawai'i Public Schools (hereinafter "Respondents" or "DOE") received a request for a due process hearing (hereinafter "Complaint") under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities

Education Act, from Student, by and through Parent/Legal Guardian (hereinafter “Petitioners”), by and through their attorney Keith H.S. Peck, Esq. (hereinafter “Mr. Peck”). Respondents submitted a response to Petitioners’ Complaint on December 10, 2020.

On December 29, 2020, a prehearing conference was held before Hearings Officer Chastity T. Imamura, with Mr. Peck, representing Petitioners, and Anne T. Horiuchi, Esq. (hereinafter “Ms. Horiuchi”), representing Respondents. At the prehearing conference, the Due Process Hearing (hereinafter “Hearing”) was scheduled for February 16, 18, and 19, 2021. Deadlines for substantive prehearing motions were also set at the pre-hearing conference. Substantive motions were to be filed by January 8, 2021, opposition briefs were due on January 15, 2021, and reply briefs were due on January 21, 2021. A hearing date of January 26, 2021 at 10:00 a.m. was set for a hearing on any prehearing motions.

On January 8, 2021, Petitioners timely filed Petitioners’ Motion for ‘Stay-Put;’ Memorandum in Support of Motion; Declaration of Counsel Keith H.S. Peck, Esq.; Exhibit “1;” Certificate of Service (hereinafter “Motion”). Respondents timely filed Respondents’ Memorandum in Opposition to Petitioners’ Motion for ‘Stay-Put;’ Declaration of [Special Education Teacher]; Declaration of [Student Services Coordinator]; Certificate of Service (hereinafter “Opposition”) on January 15, 2021. Petitioners timely filed Petitioners’ Reply Memorandum in Support of Motion; Certificate of Service on January 19, 2021.

On January 26, 2021, the hearing was held on Petitioners’ Motion. Present at the hearing were Hearings Officer Chastity T. Imamura, Mr. Peck on behalf of Petitioners, and Ms. Horiuchi on behalf of Respondents, as well as the assigned court reporter. The hearing on Petitioners’

Motion was conducted via the Zoom web-based video conferencing platform due to government mandates related to the global pandemic involving coronavirus or COVID-19.<sup>2</sup>

On January 27, 2021, an Order Granting in Part and Denying in Part Petitioners' Motion for 'Stay-Put' (hereinafter "Order") was filed. Both parties agreed at the beginning of the Hearing that the Order disposed of the first issue listed in Petitioners' Complaint, so that issue will not be addressed in this Decision.

Based on the setting of the Hearing in February 2021, Petitioners filed a Request for an Extension of the Decision deadline, which was originally set at February 13, 2021. The Request was granted, and the Decision deadline was extended to March 30, 2021.

Due to the coronavirus 2019 global pandemic, the parties stipulated to the Hearing being conducted via video conferencing to ensure compliance with government mandated social distancing. An Order Regarding Video Conference Due Process Hearing was issued on January 28, 2021, which set forth the parameters for the video conference hearing. These parameters included: the instructions to participate via the Zoom video conference internet platform; a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and that witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting.

The Hearing commenced on February 16, 2021, using the Zoom video conferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by

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<sup>2</sup> See Governor of the State of Hawai'i's Fifteenth Proclamation Related to the COVID-19 Emergency, effective November 16, 2020; Seventeenth Proclamation Related to the COVID-19 Emergency, effective December 16, 2020; Eighteenth Proclamation Related to the COVID-19 Emergency, effective February 12, 2021.

the Office of Dispute Resolution. Present in the video conference Hearing were Hearings Officer Chastity T. Imamura; Parent/Legal Guardian (hereinafter referred to as “Parent”) and Mr. Peck, on behalf of Petitioners; and District Educational Specialist 1, District Resource Teacher 1, Jodi Yamachika, legal clerk from the Department of the Attorney General, and Ms. Horiuchi on behalf of Respondents; as well as the assigned court reporter. The Hearing continued to February 18, 2021 as scheduled, and the testimony of the witnesses was completed on that date.

At the Hearing, Petitioners called Parent to testify during their case-in-chief and rested. Respondents called Occupational Therapist (hereinafter “OT”), Speech/Language Pathologist (hereinafter “SLP”), Special Education Teacher (hereinafter “SPED”), and Student Services Coordinator (hereinafter “SSC”) during their case and rested. Petitioners did not present any rebuttal evidence.

Each party submitted their exhibits for the Hearing by the disclosure deadline of February 8, 2021. On February 19, 2021, a list of exhibits that were discussed during the Hearing was provided to counsel by this Hearings Officer. Both parties were allowed to propose additional exhibits that were not discussed at the Hearing to be received as evidence in this matter. The lists of proposed additional exhibits were due on February 26, 2021. Any objections to the proposed exhibits were due on March 3, 2021. Respondents submitted the following additional exhibits for consideration in the decision in this case. Respondents’ Exhibit 1, pages 0001-0130; Exhibit 2, pages 0131-0134; Exhibit 17, pages 0159-0162; Exhibit 18, pages 0163-0164; Exhibit 55, pages 0376-0377; Exhibit 56, pages 0378-0379; Exhibit 59, pages 0383-0384; Exhibit 61, pages 0386-0387; Exhibit 63, pages 0389-0390; Exhibit 65, pages 0392-0393; Exhibit 69, pages 0398-0399; Exhibit 71, pages 0401-0402; Exhibit 73, pages 0404-0405; Exhibit 75, pages 0407-0408; Exhibit 78, pages 0412-0413; Exhibit 80, pages 0415-0416; Exhibit 82, pages 0418-0419;

Exhibit 85, pages 0422-0423; Exhibit 110, pages 0570-0573; Exhibit 111, pages 0574-0577; Exhibit 114, pages 0586-0589; Exhibit 123, pages 0625-1057; Exhibit 124, pages 1058-1260; Exhibit 142, pages 1291-1343; Exhibit 162, page 1644; Exhibit 205, page 1828; Exhibit 240, pages 1944-1945; Exhibit 310, pages 2086-2088; Exhibit 312, pages 2090-2092; Exhibit 315, pages 2095-2097; Exhibit 319, pages 2102-2104; Exhibit 320, pages, 2105-2107; Exhibit 321, pages 2108-2154; Exhibit 322, pages 2155-2157; Exhibit 323, pages 2158-2160; Exhibit 324, pages 2161-2163; Exhibit 325, pages 2164-2166; Exhibit 326, pages 2167-2169; Exhibit 329, pages 2173-2247; Exhibit 330, pages 2248-2250; Exhibit 332, page 2252; Exhibit 334, pages 2255-2257; Exhibit 336, pages 2260-2262; Exhibit 419, pages 2418-2419; Exhibit 420, pages 2420-2421; Exhibits 438-454, pages 2465-2688; Exhibit 459, pages 2754-2788; and Exhibit 489, pages 3859-3870. Petitioners did not object to the introduction of any of these exhibits, so they were also received in addition to any exhibits that were discussed or mentioned at the Hearing.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 068-110, 114-120; Exhibit 2, pages 125-179, 193-271, 277-281; and Exhibit 3, pages 295-316, three (3) links to YouTube videos, and eleven (11) audio files dated 04/17/2020, 04/20/2020, 04/28/2020, 05/07/2020, 05/14/2020, 05/18/2020, 05/19/2020, 05/27/2020, 05/28/2020, 05/29/2020, 06/09/2020. Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibits 1-2, pages 0001-0134; Exhibits 17-18, pages 0159-0164; Exhibits 54-56, pages 0332-0379; Exhibit 59, pages 0383-0384; Exhibit 61, pages 0386-0387; Exhibit 63, pages 0389-0390; Exhibit 65, pages 0392-0393; Exhibit 69, pages 0398-0399; Exhibit 71, pages 0401-0402; Exhibit 73, pages 0404-0405; Exhibit 75, pages 0407-0408; Exhibit 78, pages 0412-0413; Exhibit 80, pages 0415-0416; Exhibit 82, pages 0418-0419; Exhibit 85, pages 0422-0423; Exhibits 88-89, pages 0426-0492; Exhibit 93, pages 0504-

0509; Exhibits 110-115, pages 0570-0613; Exhibits 123-124, pages 0625-1260; Exhibit 142, pages 1291-1343; Exhibit 162, page 1644; Exhibit 205, page 1828; Exhibit 240, pages 1944-1945; Exhibit 310, pages 2086-2088; Exhibit 312, pages 2090-2092; Exhibit 315, pages 2095-2097; Exhibits 319-326, pages 2102-2169; Exhibits 329-330, pages 2173-2250; Exhibit 332, page 2252; Exhibit 334, pages 2255-2257; Exhibit 336, pages 2260-2262; Exhibits 419-420, pages 2418-2421; Exhibits 438-455, pages 2465-2734; Exhibits 459-460, pages 2754-3377; Exhibit 462, pages 3398-3483; Exhibits 464-471, pages 3521-3801; Exhibit 475, pages 3813-3819; Exhibits 482-484, pages 3827-3841; Exhibits 486-487, pages 3844-3847; Exhibit 489, pages 3859-3870; and Exhibits 490-504, which are audio/video recordings.

Upon review of the audio/video recordings submitted by Petitioners and Respondents, this Hearings Officer notes that Petitioners' audio recordings were made on Parent's end of the conversation and Respondents' video recordings were made using the videoconferencing application, so the audio of Parent's statements are clearer in Petitioners' Exhibits. On certain portions of Respondents' video recordings, Parent cannot be heard clearly, however the rest of the content for all the recordings are the same despite minor discrepancies in the time-stamps of the recordings.

Both parties wanted the opportunity to submit closing briefs regarding the legal issues and the relevant facts supporting those issues to this Hearings Officer for review. Due to the number of issues, documentary exhibits, and audio recordings received in this case, Respondents requested an extension of the 45-day Decision deadline to allow the parties additional time to submit their written closing briefs. This Hearings Officer granted Respondents' request and the Decision deadline was extended to May 14, 2021. Based on the extension request, the deadline by which the briefs were to be submitted was Monday, March 29, 2021. Due to the delay in

getting the filed List of Exhibits Received at Hearing from this Hearings Officer, this Hearings Officer extended the deadline for the written closing briefs to April 5, 2021. Both parties timely submitted their closing briefs on that date.

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

## **II. JURISDICTION**

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act (hereinafter “IDEA”), as amended in 2004, codified at 20 U.S.C. § 1400, *et seq.*; the federal regulations implementing the IDEA, 34 C.F.R. § 300.1, *et seq.*; and the Hawai‘i Administrative Rules § 8-60-1, *et seq.*

## **III. ISSUES PRESENTED**

Petitioners assert eight (8) issues in the Complaint to be addressed at the Hearing:

1. Whether the “Current Individualized Education Program” (hereinafter “Current IEP”)<sup>3</sup> would allow Student to make appropriate progress toward Student’s functional language needs.
2. Whether the “Current IEP” sufficiently describes the needed behavioral supports, services, and/or interventions required to address Student’s behavioral needs.
3. Whether the participating agency identified in the “Current IEP” and/or the 02/20/2020, 12/18/2019 individualized education program (hereinafter “IEP”) failed to provide the transition services described in the IEP in accordance with §300.320(b), and if a failure occurred, whether the DOE reconvened the IEP team to identify alternative strategies to meet the transition objectives for Student set out in the IEP.
4. Whether the Individual Instructional Support services were removed from the IEP based upon appropriate considerations.

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<sup>3</sup> Petitioners refer to “Current IEP” as the IEP developed over the course of 13 meetings, with the most recent date of the IEP meeting being June 9, 2020.

5. Whether preventing Parent from direct communication with Student's school aide and/or opportunity to observe Student in Student's normal classroom setting denied Student a free appropriate public education (hereinafter "FAPE").
6. Whether failing to include Parent in discussions during the "Current IEP" about a "Fade Plan" or "transition plan" regarding the Individual Instructional Support services denied Student a FAPE.
7. Whether the "Current IEP" is being implemented, regarding the Community-Based Instruction and/or cooking goals.
8. Whether the Occupational Therapy consultant services were reduced in the "Current IEP" based upon appropriate considerations.

#### IV. FINDINGS OF FACT

##### Background

1. Student is currently \_\_\_ years old and has been attending Home School since 2017.<sup>4</sup>
2. Parent has been appointed as Student's legal guardian for purposes of making educational decisions on behalf of Student and has acted as Student's representative at all meetings with Home School, including but not limited to IEP and other team meetings.<sup>5</sup>
3. Student was diagnosed with \_\_\_ (hereinafter "\_\_\_") and has an additional diagnosis of \_\_\_. Student has been eligible to receive IDEA services under the category of \_\_\_ since 2019.<sup>6</sup>
4. OT is an occupational therapist for the DOE \_\_\_ District and has been employed in that capacity since \_\_\_. As an occupational therapist for the DOE, OT's duties include completing assessments, writing reports, monitoring responses to interventions, attending meetings, conducting trainings, and supervising other occupational therapy personnel. OT has a bachelor's of science degree in occupational therapy and is licensed to practice in

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<sup>4</sup> P-Ex.1, p.068, R-Ex.54, p.0332; R-Ex.88, p.0426.

<sup>5</sup> R-Ex.482-484, p.3827-3841.

<sup>6</sup> Testimony of Parent, Tr.V1, 13:15-14:2; P-Ex.1, p.069, R-Ex.54, p.0333.

Hawai'i.<sup>7</sup>

5. OT is the occupational therapist that provides the teacher consultation services provided in Student's IEPs and has been on Student's IEP team since August 2019. OT does not provide direct services to Student.<sup>8</sup>
6. SLP is a speech and language pathologist who is employed by the DOE \_\_\_ District and has worked in that capacity since \_\_\_. SLP's duties include working with students with communication disorders, conducting assessments and evaluations to determine diagnoses and needs of students, developing goals and objectives for the students' IEPs, and assisting teachers with any communication needs. SLP also supervises graduate students and DOE communication aides and collaborates with parents on the students' programs.<sup>9</sup>
7. SLP is the speech/language pathologist that has been working with Student and providing direct speech/language services to Student since August 2016.<sup>10</sup>
8. SPED is a special education teacher in the State of Hawai'i and has been Student's special education teacher at Home School since 2017.<sup>11</sup>
9. SSC is a special education teacher who recently took the position of student services coordinator at Home School. SSC is also the special education teacher for Home School's fully self-contained special education classroom and the community-based instruction program. SSC has worked with Student since 2017.<sup>12</sup>

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<sup>7</sup> Testimony of OT, Transcript of Proceedings, Volume 1, page 114, line 11, through page 115, line 17 (hereinafter referenced as "Tr.V1, 114:11-115:17"); Respondents' Exhibit 486, page 3844 (hereinafter referenced as "R-Ex.486, p.3844").

<sup>8</sup> Testimony of OT, Tr.V1, 115:18-116:1, 134:11-136:3.

<sup>9</sup> Testimony of SLP, Tr.V1, 142:10-144:10; R-Ex.487, p.3845-3847.

<sup>10</sup> Testimony of SLP, Tr.V1, 144:11-20.

<sup>11</sup> Testimony of SPED, Tr.V2, 178:18-179:7.

<sup>12</sup> Testimony of SSC, Tr.V2, 257:9-259:17.

10. Home School typically asks parents of children working with support personnel to communicate any information, questions, or concerns with the special education teacher in charge of the student's care, rather than with the support personnel themselves. This is to ensure that communications from parents regarding their child's care does not get lost, miscommunicated, or overlooked.<sup>13</sup>
11. In September 2019, the DOE Superintendent informed the Hawai'i Public Schools, via a memorandum, that a new system for determining the need for an individual instructional support (hereinafter "IIS") for students would be implemented. The new system determined that "Individualized Instructional Support" would only be appropriate for students "when a student is in need of full-time uniquely designed behavior interventions to access academic and nonacademic activities during the school day. The provision of IIS must be outlined in the student's Behavior Intervention Plan (BIP), indicated on his/her IEP and provided by a qualified staff member under direct supervision of a qualified Applied Behavior Analysis (ABA) professional."<sup>14</sup>
12. The memorandum further indicated that if other adult support is needed for the students, the IEP teams must meet and determine the type and amount of need, which could be provided by an educational assistant, teacher, part-time teacher, or any combination thereof.<sup>15</sup>
13. The primary distinction of the IIS service was that the provider would be contracted by the DOE and be under the supervision of an ABA professional, which in most cases would be a registered behavior technician.<sup>16</sup>

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<sup>13</sup> Testimony of SSC, Tr.V2, 260:9-261:16, 284:20-24.

<sup>14</sup> P-Ex.2, p.280-281.

<sup>15</sup> P-Ex.2, p.280-281.

<sup>16</sup> See Testimony of SSC, Tr.V2, 262:24-263:25; P-Ex.2, p.280-281.

14. Student's IEP team began to use the term "close adult supervision" to label a DOE-employed educational assistant that would serve as a one-to-one aide for students that did not need the services of an IIS, but still needed one-to-one assistance with needs in daily living skills.<sup>17</sup>

#### Student's background

15. Since at least November 2018, Student had been working on a program called Language for Learning, which had been included as a goal/objective in Student's previous IEP.<sup>18</sup>
16. The Language for Learning program was run with Student three (3) times a day and Student's score would be based on the average score from all three (3) sessions. SPED or Student's one-to-one aide would run the program with Student. A "cold probe" for the exercise meant that Student would be given the lesson or task without any preparation.<sup>19</sup>
17. Student's objectives in the 2018 IEP included: "1) Student will complete a minimum of 13 SRA Language for Learning lessons with 90% accuracy (cold probe for each exercise); and 2) Student will demonstrate a mastery of Language for Learning lessons by scoring 100% on each comprehensive assessment before continuing on to the next lesson or unit."<sup>20</sup>
18. In the 2018-2019 school year, Student did not master the first objective (to receive 90%) accuracy and did not move onto the objective of 100% mastery. Student progressed from lesson 72 to lesson 73 during the 2018-2019 school year.<sup>21</sup>
19. Student's May 2019 IEP also included a goal/objective involving the Language for Learning

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<sup>17</sup> Testimony of SPED, Tr.V2, 199:19-201:12; Testimony of SSC, Tr.V2, 262:24-263:25.

<sup>18</sup> The IEP prior to this time was not received as evidence, so the date of the prior IEP is unknown, but it is not necessary for the purposes of this Decision. See R-Ex.445, p.2469.

<sup>19</sup> Testimony of SPED, Tr.V2, 251:6-252:6.

<sup>20</sup> See R-Ex.445, p.2469.

<sup>21</sup> R-Ex.445, p.2469.

program. The objectives included: “1) Student will complete a minimum of 10 SRA Language for Learning lessons with 90% accuracy; and 2) Student will demonstrate a mastery of Language for Learning lessons by scoring 100% on each comprehensive assessment before continuing onto the next lesson or unit.”<sup>22</sup>

20. During the first and second quarter of the 2019-2020 school year, Student made some progress on the first objective (90% accuracy), but only progressed within lesson 73. Student did not move onto the second objective of mastery at 100%.<sup>23</sup>
21. In December 2019 and February 2020, Student’s IEP was revised, but continued with the same goal/objective for the Language for Learning program as in Student’s May 2019 IEP. In the third quarter of the 2019-2020 school year, Student averaged 91% accuracy on the Language for Learning program but did not move onto the second objective of mastery at 100%.<sup>24</sup>
22. Home School kept data on Student’s progress in the Language for Learning program from May 1, 2018 through November 5, 2019.<sup>25</sup> Home School also included Language for Learning information in the daily communication logs that were sent to Parent from July 2018 through March 2020.<sup>26</sup>
23. The communication logs included information in the form of a checklist of each of the IEP goals and objectives that Student was working on and contained an area for Home School and Parent to write notes to each other.<sup>27</sup>

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<sup>22</sup> See R-Ex.452, p.2591-2592.

<sup>23</sup> R-Ex.452, p.2591-2592.

<sup>24</sup> R-Ex.454, p.2664-2665.

<sup>25</sup> See R-Ex.460, p. 2789, 2807, 2823, 2861, 2895, 2929, 2952, 2976, 3000, 3025, 3050, 3072, 3099, 3124, 3149, 3173, 3201, 3232.

<sup>26</sup> See R-Ex.123, p.0625-1185.

<sup>27</sup> See R-Ex.123, p.0625-1185.

24. Home School's data collection sheets and daily communication logs also included information about Student's behaviors in school and Student's performance on behavioral goals and objectives.<sup>28</sup>
25. In 2019, Parent requested to do an observation at Home School of Student in Student's classes. Home School arranged the observation with Parent and Parent was able to observe Student at school on two (2) days in Student's different classes.<sup>29</sup>
26. Prior to the IEP at issue, while Student attended Home School, Student was provided a one-to-one service of a contracted skills trainer. The skills trainer was not a registered behavior technician.<sup>30</sup>
27. During this time, Parent would occasionally text Student's one-to-one aide to inform them if Student would not be attending school or if Student felt ill, then Parent would inquire about what Student had eaten or done that day.<sup>31</sup>
28. Student's IEP team met and revised Student's IEP in December 2019 and February 2020. Based on the team meetings, a revision IEP was created for Student (hereinafter "IEP-02/20/2020").<sup>32</sup>
29. In February 2020, a reevaluation pursuant to the IDEA was completed with Student. As part of the reevaluation, Student completed the following assessments: Academic, Cognitive, Fine Motor, Speech/Language, Social/Family, and Functional Behavior.<sup>33</sup>

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<sup>28</sup> See R-Ex.123, p.0625-1185.

<sup>29</sup> Testimony of Parent, Tr.V1, 98:17-99:3.

<sup>30</sup> Testimony of SSC, Tr.V2, 263:3-12.

<sup>31</sup> Testimony of Parent, Tr.V1, 81:7-85:10.

<sup>32</sup> P-Ex.1, p.068-110, R-Ex.54, p.0332-0375.

<sup>33</sup> See R-Ex.17, p.0159-0162; P-Ex.2, p.229-239, R-Ex.110, p.0570-0573; R-Ex.111, p.0574-0577; R-Ex.112, p.0578-0580; R-Ex.113, p.0581-0585; P-Ex.2, p.200-204, R-Ex.114, p.0586-0589; P-Ex.2, p.205-228, R-Ex.115, p.0590-0613.

30. In March 2020 through May 2020, Parent attempted to implement Student's IEP-02/20/2020 at home due to Home School being shut down because of the COVID-19 global pandemic. Parent had requested Student's programs and data sheets from SPED to keep track of Student's progress at home. SPED emailed Parent the programs and data sheets.<sup>34</sup>
31. Parent also purchased the Language for Learning program and began to work with Student on the program. Parent took videos of Student's performance on the Language for Learning program and took data on the data sheets that SPED provided.<sup>35</sup>
32. Parent used different teaching methods for the Language for Learning program than what was called for in the goal and objective in Student's IEP-02/20/2020. Parent had observed that in using these different teaching methods, Student was progressing faster on the lessons than Student had been on the IEP goal and objective; and informed Student's team members of this at a monthly team meeting in March 2020.<sup>36</sup>
33. Parent also took videos of Parent working on some of Student's IEP goals with Student during the COVID-19 shutdown, such as identifying "earlier" or "later" for reading time; reading and answering text messages; and identifying equivalent measurements.<sup>37</sup>

#### Student's IEP-02/20/2020

34. In October 2019, several assessments were conducted with Student to determine vocational interest and daily living skills for Student's post-high school transition. The results of these assessments were summarized in Student's IEP-02/20/2020. While the results were inconclusive, it appeared that Student was interested in working in the food

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<sup>34</sup> Testimony of Parent, Tr. V1, 25:2-26:6.

<sup>35</sup> Testimony of Parent, Tr. V1, 26:7-30:25.

<sup>36</sup> Testimony of Parent, Tr. V1, 29:19-34:5, 69:3-76:14.

<sup>37</sup> See P-Ex.3, YouTube video links.

service/restaurant industry and animal care industry.<sup>38</sup>

35. Student's IEP-02/20/2020 contained the following post-high school goal for Student: "Upon exiting from high school, [Student] will be employed (supported employment) as a part-time Prep Cook in the restaurant/hotel industry."<sup>39</sup>
36. Student's IEP-02/20/2020 contained the following statement of transition service needs for Student: "[Student] is currently in a Community Based Instruction (CBI) program that focuses on personal behavior management, communication, daily living skills, pre-vocational and vocational/work readiness skills, and functional academics. [Student's] daily curriculum includes instruction on skills tailored to [Student's] post high school goal of becoming a prep cook. [Student] is also taking Ukulele in the General Education setting to align with [Student's] interest in music and drawing. [Student] is not currently pursuing a high school diploma at this time, and [ ] will continue to have access to general education courses and curriculum, as appropriate."<sup>40</sup>
37. Student's Post-School Outcome goals in Student's IEP-02/20/2020 included the following:
- 1) Upon exiting from high school, Student will enroll in an adult cooking course;
  - 2) Upon exiting from high school, Student will work for at least 4 hours per day, 5 days per week;
  - 3) Upon exiting from high school, Student will independently wake, groom, and get transport using public transportation to the worksite by the specified start time; and
  - 4) Upon exiting from high school, Student will independently articulate Student's needs and wants to services providers in the community.<sup>41</sup>

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<sup>38</sup> P-Ex.1, p.071, R-Ex.54, p.0335.

<sup>39</sup> P-Ex.1, p.078, R-Ex.54, p.0342.

<sup>40</sup> P-Ex.1, p.078, R-Ex.54, p.0342.

<sup>41</sup> P-Ex.1, p.078-079, R-Ex.54, p.0342-0343.

38. Student's IEP-02/20/2020 included the following transition services needed for Student to prepare for Student's post school outcome: 1) Teachers to provide instruction on meal planning and preparation of basic meals, pre-vocational and vocational/job readiness skills, daily hygiene and utilizing public transportation; 2) Care Coordinator or Transition Coordinator to invite Student's post-high school agency to Student's IEP meetings to discuss post-high school programs; and Care Coordinator or Transition Coordinator to provide information on adult cooking courses in the community, applying for a disability bus pass or other disability transportation, and information on adult mental health services.<sup>42</sup>
39. Student's IEP-02/20/2020 included, *inter alia*, a goal regarding language arts that read as follows: "[Student] will complete a minimum of 10 Language for Learning lessons, and score 100% on each final comprehensive assessment in 1 calendar year." The corresponding objectives were listed as follows: "[Student] will complete a minimum of 10 SRA Language for Learning lessons with 90% accuracy (cold probe for each exercise)" and "[Student] will demonstrate a mastery of Language for Learning lessons by scoring 100% on each comprehensive assessment before continuing onto the next lesson or unit."<sup>43</sup>
40. The goals and objectives contained in the IEP-02/20/2020 included eighteen (18) health goals; seven (7) language arts goals; one (1) math goal; and one (1) career and technical education goal.
41. Student's IEP-02/20/2020 also provided monthly one-hour team meetings with Parent, SPED, and any other team members deemed necessary by Parent and/or SPED for the meeting, as a supplementary aid and support for Student.

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<sup>42</sup> P-Ex.1, p.078-079, R-Ex.54, p.0342-0343.

<sup>43</sup> P-Ex.1, p.089, R-Ex.54, p.0353.

42. A prior written notice dated March 11, 2020 for Student's IEP-02/20/2020 was prepared to summarize the revisions made to Student's IEP-02/20/2020. The revisions reflected in Student's IEP-02/20/2020 included the assessments for Student's post-high school goals and transition services, as well as clarification of Student's least restrictive environment (hereinafter "LRE") and other supports and services.<sup>44</sup>
43. Student's IEP-02/20/2020 included a supplementary aid and support of IIS for Student during the school day and during Student's extended school day hours.<sup>45</sup>
44. The IIS in Student's IEP-02/20/2020 was clarified as "during school day, assist [Student] in progressing on goals and objectives," and "after school to provide additional time to address [Student's] behavioral/social/academic needs."<sup>46</sup>
45. Student's IEP-02/20/2020 also included one hundred eighty (180) minutes of occupational therapy teacher consultation per quarter. The occupational therapy was clarified to explain that "occupational therapy consultation will be provided to the teacher regarding sensory strategies. Incorporate strategies to support core muscle activation throughout the school day (sensory walk, deep pressure, based on OT recommendations. Occupational therapy consultation-provides consulting services to teacher and support staff regarding sensory needs."<sup>47</sup>
46. Student's sensory strategies program consisted of core muscle activation [REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>44</sup> R-Ex.55, p.0376-0375.

<sup>45</sup> P-Ex.1, p.106-107, R-Ex.54, p.0371-0372.

<sup>46</sup> P-Ex.1, p.107, R-Ex.54, p.0372.

<sup>47</sup> P-Ex.1, p.106-107, R-Ex.54, p.0371-0372.

[REDACTED]. Student also had sensory strategies available on an as-needed basis

[REDACTED]

[REDACTED].<sup>48</sup>

47. Since 2019, Student has been able to participate in classroom activities without much need for the sensory strategies and there has been a significant decrease in Student [REDACTED]

[REDACTED].<sup>49</sup>

#### Student's reevaluation in February 2020

48. Student's academic assessment was conducted on February 18, 2020. Student's behavior during the testing period was described as sometimes distracted, but at ease and comfortable. Student was noted to [REDACTED],<sup>50</sup> requiring for the assessor to repeat instructions; however once engaged in the task, Student usually remained engaged until completion. No other behavioral concerns were noted to affect Student's academic assessment.<sup>51</sup>

49. Student's reading scores in the academic assessment ranged from the very low range to the low average range; Student's math scores were all in the very low range of test scores; and Student's writing scores ranged from the very low range to low range. Student's strengths in the academic assessment were identified in the areas of letter-word identification, spelling, word attack, and oral reading. Student appeared to struggle the most in the areas of applied problems, calculation, and writing samples.<sup>52</sup>

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<sup>48</sup> Testimony of OT, Tr.V1, 117:19-120:17.

<sup>49</sup> Testimony of OT, Tr.V1, 120:18-122:8.

<sup>50</sup> [REDACTED]. See Testimony of Parent, Tr.V1, 64:23-65:3.

<sup>51</sup> P-Ex.2, p.229-239, R-Ex.110, p.0570-0573.

<sup>52</sup> P-Ex.2, p.229-239, R-Ex.110, p.0570-0573.

50. Some of the suggestions recommended by the academic assessment to assist Student's learning included: allow Student to have extra time to complete assignments; clarify for understanding; repeat and simplify instructions; chunk assignments into small parts; use modeling and guided practice techniques; use manipulatives; and incorporate visual supports into instructions.<sup>53</sup>
51. Student's cognitive assessment was conducted on February 14, 2020. Student was cooperative with the assessor and began [REDACTED] while still engaging in the assessment. Student was not asked to stop [REDACTED], since Student was still focused and was able to continue answering questions on the test. Student was given a break about halfway through the assessment and began to [REDACTED] after resuming the assessment. Student was asked to pay attention and was able to complete the rest of the assessment after requested. No other behavioral concerns were noted for Student's performance during the cognitive assessment.<sup>54</sup>
52. In Student's cognitive assessment, Student's scores in the areas of verbal comprehension, perceptual reasoning, working memory, processing speed, and full-scale IQ all fell within the extremely low range. These scores suggest that Student's basic foundation of thinking and reasoning skills are far below the majority of same-aged peers.<sup>55</sup>
53. In Student's cognitive assessment, the following were some of the suggestions provided to assist with Student's learning: use clear and concise language; relate new information to already acquired knowledge; monitor Student for understanding and functioning throughout a task; explain assignments step-by-step; provide visual as well as oral directions; provide

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<sup>53</sup> P-Ex.2, p.229-239, R-Ex.110, p.0570-0573.

<sup>54</sup> R-Ex.111, p.0574-0577.

<sup>55</sup> R-Ex.111, p.0574-0577.

extra time to complete tasks; provide frequent breaks; provide constant encouragement and reinforcement and immediate feedback; and keep work space free of distractions.<sup>56</sup>

54. Student's fine motor assessment was conducted by OT. Due to Student's difficulty with self-reporting, Student's fine motor assessment was conducted by allowing school personnel and/or adult support staff to answer questions for Student. Student was cooperative and began the assessment when instructed to do so. Student participated in the testing tasks and began [REDACTED] about halfway through the testing but was still able to complete the tasks. At one point during the testing, Student asked for [REDACTED] repeatedly, but once provided a different [REDACTED], Student was able to complete the task. Student was noted to have remained seated appropriately throughout the testing session, responded to redirection from the examiner or support staff, and completed tasks appropriately.<sup>57</sup>

55. Student showed moderate differences in Student's sensory processing skills in two (2) of four (4) areas: low registration and sensation seeking. Low registration indicates that Student responds slowly or may miss stimuli that is noticed by others. Some of Student's behaviors in the low registration areas were [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>58</sup>

56. Sensation seeking refers to individuals who seek to create additional stimuli or look for environments that provide sensory stimuli; and in Student's case, Student's behaviors included [REDACTED]

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<sup>56</sup> R-Ex.111, p.0574-0577.

<sup>57</sup> R-Ex.112, p.0578-580.

<sup>58</sup> R-Ex.112, p.0578-580.

[REDACTED]

[REDACTED].<sup>59</sup>

57. While Student's results on the fine motor and visual motor skills were in the low to very low range, OT noted that Student was unable to complete many of the tasks on the testing date. However, when given the test again on a different date, Student was able to complete the tasks that were missed on the original testing date. OT opined that Student appears to demonstrate functional fine motor and visual motor skills for participation in Student's current educational environment. OT also noted that Student demonstrates the ability to write within the lines on standard wide-ruled notebook paper and uses appropriate sizing, spacing, and line orientation.<sup>60</sup>
58. Recommendations for Student's educational environment regarding Student's fine motor skills included: using a variety of visual supports; providing frequent breaks; and intermixing easy and difficult tasks.<sup>61</sup>
59. Student's Speech/Language assessment was conducted by SLP. Student's hearing, oral structures, and voice and fluency were examined; and all appeared to be within normal limits. Student was familiar with SLP and immediately sat down and participated in the assessment. Student was able to maintain focus throughout each session and was able to request to [REDACTED] as a reward for each session. Student did engage in [REDACTED] behaviors during the test session but was easily redirected when asked to focus on the task or reminded of the potential reward for completing the task.<sup>62</sup>

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<sup>59</sup> R-Ex.112, p.0578-580.

<sup>60</sup> R-Ex.112, p.0578-580.

<sup>61</sup> R-Ex.112, p.0578-580.

<sup>62</sup> R-Ex.113, p.0581-0585.

60. Student's speech/language assessment revealed that Student presents low abilities when articulating sounds in words and in sentences. Student has difficulty with certain blended sounds, but Student's intelligibility was judged to be within normal limits, despite errors, as both familiar and unfamiliar listeners are able to understand Student without issues.<sup>63</sup>
61. Student demonstrated difficulties with understanding and using various sentence structures and tends to speak in simple sentences. When visual aids and prompts were used with repetition, Student was able to correctly understand or generate appropriate sentence structures. Student also has difficulties with conversational skills including introducing a topic; repeating same information; participating in group discussions; asking, giving, or responding to information such as directions; asking or giving the time of events; offering to help others; and asking for permission.<sup>64</sup>
62. SLP's recommendations to assist Student's speech/language learning included encouraging Student to read a variety of books to increase vocabulary and sentence structure skills; encouraging Student to elaborate on sentences; exposing Student to a variety of activities at home and in the community; and assisting and encouraging Student to participate in a variety of social situations to help learn various types of interactions that can help for future encounters.<sup>65</sup>
63. Student's Social/Family assessment was conducted using an assessment completed separately by Parent and SPED regarding behaviors Student displays at home, school, and other settings. No behavior concerns were noted as it did not appear based on the assessments that were conducted, that a face-to-face observation was made of Student by the

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<sup>63</sup> R-Ex.113, p.0581-0585.

<sup>64</sup> R-Ex.113, p.0581-0585.

<sup>65</sup> R-Ex.113, p.0581-0585.

assessor.<sup>66</sup>

64. Student's adaptive behavior scores reflect Student's ability to engage in the age-appropriate behaviors necessary for individuals to live independently and function safely and appropriately in daily life. Student's scores on both Parent's and SPED's assessments fell in the extremely low range. Some suggestions for Student's learning included having ongoing supports and daily opportunities to practice adaptive skills; such as following directions to nearby places, reading and obeying common signs, telling time correctly, making simple meals, working on one activity for at least fifteen (15) minutes without needing reminders, and showing sympathy for others when they are sad or upset.<sup>67</sup>
65. Student's Functional Behavior Assessment (hereinafter "FBA") was conducted by Licensed Behavior Analyst (hereinafter "LBA"). LBA reviewed all of Student's other assessments as part of the reevaluation; assessments; reports; interviews conducted with Parent, SPED and Student's one-to-one skills trainer; Student's intervention plans and objectives (including data collection); Student's IEP; daily schedule; skills trainer substitute plan; safety plan; and behavior support plan (dated June 2018). LBA also observed Student at school on four (4) occasions within a three-week span.<sup>68</sup>
66. LBA determined that during the FBA, Student did not display any behaviors that would hypothesize Student to be dangerous to self or others, cause significant property damage, impede Student's own learning or the learning of others, lead to a more restrictive environment being necessary, or result in disciplinary considerations. The only behavior noted by LBA during the FBA was [REDACTED], but this behavior did not appear to have a

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<sup>66</sup> P-Ex.2, p.200-204, R-Ex.114, p.0586-0589.

<sup>67</sup> P-Ex.2, p.205-228, R-Ex.114, p.0586-0589.

<sup>68</sup> R-Ex.115, p.0590-0613.

negative impact on Student's learning in Student's current environment.<sup>69</sup>

67. LBA's recommendations for Student based on the FBA included: Student being supported toward independence with daily tasks; updating Student's current behavioral support plan; having family and school personnel work closely to collaborate on Student's wants, needs and factors affecting Student's motivation, performance and ability to attend to tasks; setting clear expectations; and frequently administering preference and/or reinforcer assessments to determine Student's preferred items.<sup>70</sup>
68. An evaluation summary report summarizing the results of all the assessments conducted during the reevaluation with Student was provided to Parent on March 18, 2020.<sup>71</sup>
69. Upon completion of the various assessments for Student's reevaluation, the IEP team met in March 2020 and determined that Student continued to be eligible for special education and related services under the IDEA under the category of \_\_\_\_.<sup>72</sup>

Student's IEP meetings from April 2020 to June 2020

70. Beginning in April 2020 and continuing through June 2020, the IEP team met over the course of thirteen (13) meetings to prepare an annual IEP for Student, as the IEP-02/20/2020 was a revision IEP and not an annual IEP. These meetings were held on April 9, April 17, April 20, April 22, April 28, May 7, May 14, May 18, May 19, May 27, May 28, May 29, and June 9, 2020.<sup>73</sup>
71. The IEP meetings were held via a videoconferencing platform, with some participants

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<sup>69</sup> R-Ex.115, p.0590-0613.

<sup>70</sup> R-Ex.115, p.0590-0613.

<sup>71</sup> R-Ex.17, p.0159-0162.

<sup>72</sup> R-Ex.18, p.0163-0164.

<sup>73</sup> See P-Ex.3, audio recordings dated 4/17/2020, 4/20/2020, 4/28/2020, 5/7/2020, 5/14/2020, 5/18/2020, 5/19/2020, 5/27/2020, 5/28/2020, 5/29/2020, 6/9/2020, R-Ex.492-504.

appearing with video and some participating through calling in without video. The meetings ranged from approximately forty-five (45) minutes to two (2) hours in length.<sup>74</sup>

72. Each of the team meetings included Parent,<sup>75</sup> Principal, Vice Principal, SPED, SSC, SLP, General Education Teacher, OT, LBA, Teacher Consultant (hereinafter “TC”), DES1, District Educational Specialist 2, District Resource Teacher 2, and Transition Resource Teacher (hereinafter “TRT”).<sup>76</sup>
73. Parent was accompanied to most of the IEP meetings by Educational Consultant (hereinafter “EC”).<sup>77</sup> EC has been providing consultation to Parent for Student’s educational needs since Student was in [REDACTED]. EC has not worked with Student to provide services directly, but has observed and interacted with Student and has reviewed Student’s assessments, IEPs, and other team documents.<sup>78</sup>
74. At the May 7, 2020 IEP meeting, Parent was also accompanied by an attorney, and the DOE’s attorney was also present.<sup>79</sup>
75. Prior to the initial IEP meeting in April 2020, SPED sent out a draft IEP for the team’s review and use during the meetings. Sections of the draft IEP were blank and new copies of the draft IEP were not re-sent to the IEP team members as the meetings progressed. SPED

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<sup>74</sup> See P-Ex.3, audio recordings dated 4/17/2020, 4/20/2020, 4/28/2020, 5/7/2020, 5/14/2020, 5/18/2020, 5/19/2020, 5/27/2020, 5/28/2020, 5/29/2020, 6/9/2020, R-Ex.492-504.

<sup>75</sup> While Parent’s name is not listed on the IEP attendance sheets for April 17, 2020 and April 22, 2020 (see R-Ex.88, p.0477 & 0479), a review of the audio/video recordings of both IEP meetings confirm that Parent was present for those two meetings as well. See P-Ex.3, audio recording 04/17/2020, 04/22/2020, R-Ex.493, R-Ex.495.

<sup>76</sup> See R-Ex.88, p.0476-0488.

<sup>77</sup> EC did not testify at the Hearing, nor was EC’s resume or curriculum vitae submitted as evidence. See P-Ex.3, audio recordings 04/17/2020 through 06/09/2020, R-Ex.88, p.0478-0488; R-Ex.494-504.

<sup>78</sup> Testimony of Parent, Tr.V1, 21:12-22:7, 99:4-100:23.

<sup>79</sup> P-Ex.3, audio recording dated 05/07/2020; R-Ex.88, p.0481; R-Ex.497.

did display the draft IEP on a shared screen through the videoconference platform at various points in the meetings.<sup>80</sup>

76. The IEP team began by discussing the present levels of educational performance (hereinafter “PLEP”)<sup>81</sup> for Student based on Student’s performance in school before the COVID-19 shutdown and on the various assessments that were completed with Student as part of the reevaluation. Each assessment summary from Student’s reevaluation was also discussed during the IEP meetings.<sup>82</sup>
77. The IEP team discussed Student’s strengths, needs, and Parent’s concerns over the course of eight (8) one-hour long IEP meetings. SPED reviewed each of Student’s strengths and needs from the IEP-02/20/2020 and provided updates to Parent and asked for input or concerns for each strength and need. EC, Parent, and the rest of the IEP team members provided input during these IEP meeting discussions.<sup>83</sup>
78. Parent sought clarifications and corrections to the language in several of the strengths and needs; and provided a list of concerns that Parent wanted to address concerning each of Student’s strengths and needs.<sup>84</sup>
79. Home School personnel attempted to address some of the concerns, questions, or provide clarifications; and if there were disagreements between Parent and the Home School team

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<sup>80</sup> See P-Ex.3, audio recordings dated 4/17/2020, 4/20/2020, 4/28/2020, 5/7/2020, 5/14/2020, 5/18/2020, 5/19/2020, 5/27/2020, 5/28/2020, 5/29/2020, 6/9/2020, R-Ex.492-504.

<sup>81</sup> This Hearings Officer notes that the current terminology refers to this section of the IEP as the Present Levels of Academic Achievement and Functional Performance or “PLAAFP,” but since Student’s IEP team and written IEP refer to these as PLEP, it will be referred to as such in this Decision.

<sup>82</sup> See R-Ex.492.

<sup>83</sup> See P-Ex.3, audio recordings dated 04/17/2020, 04/20/2020, 04/28/2020, 05/07/2020, 05/14/2020, 05/18/2020; R-Ex.492-499.

<sup>84</sup> See P-Ex.3, audio recordings dated 4/17/2020, 4/20/2020, 4/28/2020, 5/7/2020, 5/14/2020, 5/18/2020, R-Ex.492-499.

members, they were noted to be included in the Parent Concerns section of the IEP.<sup>85</sup>

80. For example, a concern of Parent was Student's lack of progress in being able to answer "how" questions, such as "how do you get to the mall," "how do you make the bed," or "how do you cook an omelet." SLP explained that while they would continue to work with Student on that ability, it is more important for Student to be able to understand the necessary steps or directions than to explain it to someone else. SLP explained that based on Student's disabilities, it is more difficult for Student to have the complex language and cognitive skills to explain a set of directions, and that Student will not likely need such a skill in Student's future. Rather, the team wanted to focus on making sure that Student could understand and execute the steps necessary for the task.<sup>86</sup>
81. Parent also had questions and concerns regarding Student's post-school transition services and wanted the IEP team to include additional instruction for Student in preparation for the transition services. TRT explained to Parent that Student and Parent should go to site visits to see the different programs available to see what program would be the best fit for Student. Other members of the IEP team also explained that once they determined Student's ideal placement, then Student's program can be geared toward learning skills specific to that placement.<sup>87</sup>
82. After thoroughly discussing Student's PLEP and Parent's concerns over the course of eight (8) meetings, the IEP team moved on to discussing the goals and objectives to address Student's needs, beginning at the May 19, 2020 meeting.<sup>88</sup>

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<sup>85</sup> See P-Ex.3, audio recordings dated 4/17/2020, 4/20/2020, 4/28/2020, 5/7/2020, 5/14/2020, 5/18/2020, R-Ex.492-499.

<sup>86</sup> See P-Ex.3, audio recording dated 05/18/2020, R-Ex.499.

<sup>87</sup> See P-Ex.3, audio recording dated 05/18/2020, R-Ex.499.

<sup>88</sup> See P-Ex.3, audio recording dated 05/19/2020, 05/27/2020, 05/28/2020, 05/29/2020, R-

83. The IEP team created a goal or objective for each of the needs that were listed for Student in the PLEP. Parent and EC provided input regarding the wording of the goals or objectives, most of which was considered and accepted by the rest of the IEP team and included in Student's IEP. The concerns or changes that were not accepted were noted under the Parent Concerns section of the PLEP.<sup>89</sup>
84. For example, Parent and EC expressed concerns about the IEP team's desire to reduce the focus on Student's reading comprehension for main characters, events, or topics of a story. Parent and EC indicated that they believed the team should still work to try to get Student to progress to the next reading grade level. The Home School team members expressed that they wanted to focus Student's goals less on understanding for casual reading and more on getting Student's functional language and comprehension, like reading a menu at a restaurant. After a discussion of the issue, the IEP team determined that the reading goals/objectives for Student would focus on functional language and comprehension. EC noted that Parent and EC would not agree to the IEP based on this issue.<sup>90</sup>
85. Parent also had some concerns about the measurement of the data collection for some of Student's goals and objectives being "with 80% accuracy for 4 out of 5 consecutive recording days." While the rest of the IEP team and EC attempted to explain the reasoning behind the measurement, Parent continued to express that Parent did not understand the data collection measurement. To address this concern, TC offered to include further discussion on the matter during the parent training session that TC was going to have with Parent as

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Ex.500-503.

<sup>89</sup> See P-Ex.3, audio recording dated 05/19/2020, 05/27/2020, 05/28/2020, 05/29/2020, R-Ex.500-503.

<sup>90</sup> P-Ex.3, audio recording dated 05/19/2020, R-Ex.500 (approximate time stamp 15:40-41:43).

part of the IEP.<sup>91</sup>

86. The IEP team also discussed Parent's concern about taking the Language for Learning program out of Student's IEP as a goal/objective for Student's language arts skills. Both SPED and SLP explained to Parent that since Student is so far below Student's peers in speech and communication, they wanted to focus on making sure that Student understands and practices functional language skills, instead of the basic skills that the Language for Learning program taught. Parent disagreed with this idea, and the IEP team decided to leave the Language for Learning program out of Student's IEP.<sup>92</sup>
87. OT and SPED discussed the reduction in OT consultation minutes with the IEP team, noting that since OT has been observing Student in school and noting that Student, SPED and the staff working with Student were all familiar with Student's OT program, the one hundred eighty (180) minutes per quarter that were in Student's previous IEP were not necessary and that OT believed that ninety (90) minutes per quarter was enough to manage Student's program and meet Student's needs. OT noted Student had a very specific OT program that SPED was familiar with, and that since the consultation was for teacher consultation only, and not for direct services to Student, that the reduction was warranted.<sup>93</sup>
88. Parent believed that the one hundred eighty (180) minutes per quarter should be kept in place in the event that SPED or OT were no longer assigned to Student's case and that someone new would need to become familiar with Student's program. OT and Principal informed Parent that should such a scenario occur, the IEP team could meet and adjust the

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<sup>91</sup> P-Ex.3, audio recording dated 05/27/2020, R-Ex.501 (approximate time stamp 1:53:19-2:23:30); P-Ex.3 audio recording dated 05/28/2020; R-Ex.502 (approximate time stamp 2:10-24:27).

<sup>92</sup> P-Ex.3, audio recording dated 05/28/2020, R-Ex.502 (approximate time stamp 29:36-57:37).

<sup>93</sup> P-Ex.3, audio recording dated 05/29/2020; R-Ex.503 (approximate time stamp 24:06-32:00).

minutes as necessary, and OT further informed Parent that OT could also provide more than the ninety (90) minutes allotted in the IEP, as that was a minimum amount of service minutes.<sup>94</sup>

89. At the IEP meeting on June 9, 2020, the team discussed Student's behavior support plan (hereinafter "BSP"), as SPED was recommending that the team continue to list the BSP as a supplementary aid and support. Parent agreed to keep Student's BSP in the IEP as a supplemental aid and support and agreed to the team updating the BSP at a later meeting based on the recommendation of the FBA.<sup>95</sup>
90. The IEP team then moved on to discussing the removal of the IIS from Student's IEP based on the findings of the FBA that Student did not exhibit significant behaviors that would affect Student's or others' learning. SPED explained that the DOE has determined that IIS support was only available to students that exhibited significant or intense behaviors in school that affected access to their education. Both Parent and EC did not agree to the removal of the IIS for Student, expressing concern that Student needs the services of a one-to-one support.<sup>96</sup>
91. The IEP team further discussed the removal of the IIS and explained that Student would have the support of an educational assistant and SPED during school and the team also informed Parent that a fade plan would be prepared to slowly fade the IIS support for Student.<sup>97</sup>
92. At the conclusion of the IEP meeting on June 9, 2020, Principal offered the IEP terms as

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<sup>94</sup> P-Ex.3, audio recording dated 05/29/2020; R-Ex.503 (approximate time stamp 24:06-32:00).

<sup>95</sup> P-Ex.3, audio recording dated 06/09/2020; R-Ex.504 (approximate time stamp 3:58-5:37).

<sup>96</sup> P-Ex.3, audio recording dated 06/09/2020; R-Ex.504 (approximate time stamp 5:45-11:38).

<sup>97</sup> P-Ex.3, audio recording dated 06/09/2020; R-Ex.504 (approximate time stamp 24:10-28:09, 31:45-32:58, 56:30-57:21).

had been discussed in all of the IEP meetings from April to June 2020 as Home School's offer of FAPE. Parent indicated that Parent would not be accepting the offer of free appropriate public education (hereinafter "FAPE") as Parent did not believe that the services provided were appropriate for Student.<sup>98</sup>

Student's IEP-06/09/2020

93. The PLEP section of the IEP-06/09/2020 contains summaries of the assessments conducted with Student as part of the reevaluation, including the speech/language assessment, occupational therapy assessment, academic assessment, cognitive assessment, behavior assessment, adaptive assessment, and also included a summary of the vocational assessment conducted with Student in January 2020.<sup>99</sup>

94. The IEP-06/09/2020 PLEP also includes a list of Student's strengths in the area of behavior; communication; intraverbal; life skills; community skills; toileting and grooming skills; reading, writing and math strengths; play and leisure strengths; and technology strengths.<sup>100</sup>

95. Student's IEP-06/09/2020 also contained a listing of specific needs of Student in eleven areas: behavioral; communication; intraverbal; life skills; community skills; toileting; grooming; reading; math; writing; and vocational.<sup>101</sup>

96. Student's behavioral needs are listed in the IEP-06/09/2020 as follows: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>98</sup> P-Ex.3, audio recording dated 06/09/2020; R-Ex.504 (approximate time stamp 57:22-58:10).

<sup>99</sup> R-Ex.88, p.0427-0430.

<sup>100</sup> R-Ex.88, p.0430-0433.

<sup>101</sup> R-Ex.88, p.0433-0435.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>102</sup>

97. Student's communication needs are listed in the IEP-06/09/2020 as follows: 1) to be able to initiate an appropriate conversational topic; 2) to be able to respond to another person's conversational statement via a comment or a question; 3) to be able to identify character, setting, events, main idea; 4) to be able to produce /l/-blend in conversation; and 5) to be able to produce /th/ at sentence level.<sup>103</sup>
98. Student's intraverbal communication needs in the IEP-06/09/2020 are listed as: 1) to be able to emit the correct response within three (3) seconds of the presentation of the demand across twenty-five (25) functions, features, and classes of items; when presented with a phrase regarding the function, feature, and class of an item.<sup>104</sup>
99. Student's life skills needs identified in the IEP-06/09/2020 are as follows: 1) to be able to correctly identify earlier or later (temporal words); 2) to be able to state "before" and "after" when referencing events on Student's visual schedule; 3) to be able to list the days of the week, days vs. dates, yesterday, today, tomorrow, next week; 4) to come to school on time; and 5) to be able to play a simple board game or card game with peer/s with adult

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<sup>102</sup> R-Ex.88, p.0433.

<sup>103</sup> R-Ex.88, p.0433.

<sup>104</sup> R-Ex.88, p.0433.

supervision.<sup>105</sup>

100. Student's community skills needs in the IEP-06/09/2020 are listed as follows: 1) to be able to create shopping list based on need to make personal snack; 2) to be able to use public transportation; 3) to be able to call parent/staff when lost; and 4) to be able to describe current location.<sup>106</sup>

101. Student's grooming needs in the IEP-06/09/2020 are listed as follows: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>107</sup>

102. Student's reading needs listed in the IEP-06/09/2020 are as follows: 1) to be able to navigate and read a restaurant menu and answer questions to demonstrate understanding (e.g. what are two items you can get for breakfast, how much is a hamburger, what is in the omelette, find an item under \$5, etc.); 2) to be able to read and follow recipe/written directions to prepare simple food dishes; and 3) to be able to read and answer questions about a written recipe (e.g. what temperature do you preheat the oven, how many eggs, etc.).<sup>108</sup>

103. Student's math needs in the IEP-06/09/2020 are listed as follows: 1) to be able to set a personal timer according to recipe/written instructions; and 2) to be able to respond to an alarm (personal timer, microwave timer, etc.).<sup>109</sup>

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<sup>105</sup> R-Ex.88, p.0434.

<sup>106</sup> R-Ex.88, p.0434.

<sup>107</sup> R-Ex.88, p.0434.

<sup>108</sup> R-Ex.88, p.0434.

<sup>109</sup> R-Ex.88, p.0434.

104. Student's writing needs in the IEP-06/09/2020 are listed as follows: 1) to be able to write an email/note to parents; and 2) to be able to accurately respond to a text message (where are you, who are you with, what are you doing).<sup>110</sup>

105. Student's vocational needs in the IEP-06/09/2020 are listed as follows: 1) to be able to follow a sequence of steps; 2) to be able to begin promptly; 3) to be able to follow written directions; 4) to be able to remain on task; 5) to be able to complete task without being distracted; 6) to be able to return to task if distracted; 7) to be able to clean floors; 8) to be able to retrieve all necessary items for cooking listed in a recipe (utensils and ingredients); 9) to be able to utilize 10 cooking measuring tools (cake server, salad spoons, tongs, spatula, ladle, pizza cutter, paring knife, orange peeler, cheese grater, cheese shredder); 10) to be able to use a knife to slice, peel, dice, shred, and trim; 11) to be able to pour liquids to an appropriate height without overflowing for (teaspoon and tablespoon); 12) to be able to demonstrate cooperative play/workskills; 13) to be able to alphabetize by 3<sup>rd</sup> letter; 14) to be able to measure and state volumes in terms of cups, pints, quarts and gallons; and 15) to be able to state equivalent measures.<sup>111</sup>

106. Parent's concerns expressed to the IEP team throughout the IEP meetings were also listed in the PLEP of the IEP-06/09/2020. These concerns included, *inter alia*, 5) Parent's report of additional behaviors observed at home, such as [REDACTED]; 6) Parent not agreeing to the removal of the Language for Learning program that was previously included in Student's IEP-02/20/2020; 8) Parent's concerns regarding Student not being able to answer "how" questions; 10) Parent's concerns that Student was not being taught to

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<sup>110</sup> R-Ex.88, p.0434.

<sup>111</sup> R-Ex.88, p.0434-0435.

determine “earlier/later” on an analog clock as well as a digital clock and objected to Student only learning on a digital clock only; 11) Parent objecting to Student’s reading goals and objectives not including reading comprehension of paragraphs and books; 16) Parent objecting to the reduction of the occupational therapy consultation minutes from one hundred eighty (180) minutes per quarter to ninety (90) minutes per quarter; and 17) Parent not agreeing with instructional support being faded due to other behaviors including

[REDACTED] 112

107. Student’s post-high school goals statement in the IEP-06/09/2020 was written as “Upon exiting from high school, [Student] will be employed (supported employment) as a part-time Prep Cook in the restaurant/hotel industry.”<sup>113</sup>

108. Student’s post-school interests, transition service needs, and the needed services to be provided to Student as part of the transition were identical to those listed in the IEP-02/20/2020.<sup>114</sup>

109. Student’s IEP-06/09/2020 includes annual goals and/or objectives that address each of the needs listed above.<sup>115</sup>

110. Student’s IEP-06/09/2020 contains twenty-two (22) goals and/or objectives that relate to Student’s language needs. Some of these goals/objectives relate to expressive language, meaning that Student needs to verbally communicate; pragmatic language, meaning that Student must practice interacting with others; and receptive language, where Student must understand what is being communicated to Student. In addition to the above-mentioned

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<sup>112</sup> R-Ex.88, p.0435-0436.

<sup>113</sup> R-Ex.88, p.0437.

<sup>114</sup> Compare R-Ex.54, p.0342-0343; R-Ex.88, p.0437-0438.

<sup>115</sup> R-Ex.88, p.0439-0471.

goals/objectives, Student's IEP-06/09/2020 also contains two (2) goals created by SLP to focus on Student's pre-conversational skills, articulation, and vocabulary.<sup>116</sup>

111. Student's IEP-06/09/2020 also contains five (5) goals that include specific objectives that correspond with each of Student's behavior needs as listed in the PLEP.<sup>117</sup>

112. Student's IEP-06/09/2020 lists the special education and related services that Student will be provided, including seven thousand five hundred (7500) minutes of special education per month in the general and special education settings, which includes an after-school program in SSC's classroom, and five hundred forty (540) minutes of speech/language therapy per quarter.<sup>118</sup>

113. The following supplementary aids and services are also provided in Student's IEP-06/09/2020: occupational therapy consultation of ninety (90) minutes per quarter; parent education and training for one hundred twenty (120) minutes per month; a team meeting for sixty (60) minutes per month; teacher consultation (regarding Student's \_\_\_ and behavioral needs) of one thousand eighty (1080) minutes per month. Student's supplementary aids and supports also includes the following to be provided daily: visual supports; frequent breaks; sensory strategies; safety plan; communication log; intermix easy with difficult tasks; systematic prompts and prompt fading procedures; emergency action plan; behavior support plan; close adult supervision; and individual instructional support to be provided until December 18, 2020.<sup>119</sup>

114. The IEP-06/09/2020 also included clarifications for each of the supplementary aids and

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<sup>116</sup> Testimony of SLP, Tr.V2, 154:14-164:8; R-Ex.88, p.0440-0441, 0443-0448, 0450, 0452-0456, 0458-0460, 0463-0464, 0466, 0470-0471.

<sup>117</sup> R-Ex.88, p.0439-0443.

<sup>118</sup> R-Ex.88, p.0472.

<sup>119</sup> R-Ex.88, p.0472-0473.

supports listed above. These included, *inter alia*: “Occupational Therapy (OT) consultation will be provided to [Student’s] service providers regarding sensory strategies. Incorporate strategies to support core muscle activation throughout the school day...;” “Close adult supervision: Transition plan to fade individual instructional support will include close supervision of student (maintain visual support of client throughout school day: school and community setting);” and “Individual instructional support (IIS) services will be provided during the transition period as [Student] moves toward independence supported by an adult.”<sup>120</sup>

### Summer 2020

115. On June 2, 2020, Student began attending Home School in-person for Student’s extended school year (hereinafter “ESY”) session.<sup>121</sup>

116. Home School continued to send communication logs to Parent after school resumed in June 2020.<sup>122</sup>

117. Throughout the ESY session until December 2020, Student received one-to-one supervision by a skills trainer (IIS), and in December 2020, Student’s one-to-one supervision was being provided by a DOE educational assistant (hereinafter “EA”).<sup>123</sup>

118. Upon Student’s return to school, Parent would occasionally attempt to speak with Student’s assigned aides, but Parent would be referred to speak with SPED or one of Student’s other teachers instead.<sup>124</sup>

119. On June 22, 2020, SPED emailed Parent a cover letter, the IEP-06/09/2020, a prior written

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<sup>120</sup> R-Ex.88, p.0473-0474.

<sup>121</sup> Testimony of Parent, Tr.V1, 103:24-104:2.

<sup>122</sup> See R-Ex.124, p.1186-1260.

<sup>123</sup> Testimony of SSC, Tr.V2, 279:14-282:2.

<sup>124</sup> Testimony of Parent, Tr.V1, 82:23-84:6.

notice dated June 22, 2020; and the Transfer Plan for Student's IIS removal.<sup>125</sup>

120. The Transfer Plan indicated that the goal for the plan was "By the end of the first semester, [Student] will transition from Individual Instructional Support to close adult supervision."<sup>126</sup>

121. The Transfer Plan addressed the four (4) settings for Student's IEP, special education, lunch, general education, and community-based instruction. Each setting had instructions for the teacher, the contracted paraprofessional (IIS), and the DOE paraprofessional (EA), in four (4) phases. For each phase, the teacher was responsible for providing direction and assistance to Student. The first phase included the contracted paraprofessional continuing the normal level of support for Student, while the DOE paraprofessional observed. In the second and third phases, there was gradual shift from the responsibilities of the contracted paraprofessional to the DOE paraprofessional. By the fourth phase, the contracted paraprofessional was no longer providing any services to Student. Each phase had some criteria in which Student had to demonstrate appropriate behavior before the team would transition to the new phase of the plan.<sup>127</sup>

122. According to the Transfer Plan, Student's contracted paraprofessional was gradually replaced by a paraprofessional employed by the DOE. This provision resulted in a difference only in the staff member working with Student being a contracted hire versus a DOE employee and did not result in any change in the provision of a one-to-one aide to Student.<sup>128</sup>

123. The DOE EAs and the IIS contract hires have similar qualifications and go through the same

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<sup>125</sup> R-Ex.329, p.2173-2247.

<sup>126</sup> R-Ex.329, p.2174.

<sup>127</sup> R-Ex.329, p.2174-2179.

<sup>128</sup> Testimony of SPED, Tr.V2, 200:14-201:12, 226:11-228:5; Testimony of SSC, Tr.V2, 262:21-263:25, 281:6-282:2, 287:23-16.

training to work with Student.<sup>129</sup>

124. Due to the nature of the switch from an IIS to a DOE EA assistance being more of a funding/administrative matter, the team that drafted the Transfer Plan did not include Parent in the meeting to create the Transfer Plan.<sup>130</sup>

#### Fall 2020

125. As part of Student's post-high school goals, Student was applying to enter into two vocational training programs, one called the JumpStart program, which is run by the State of Hawai'i Department of Vocational Rehabilitation, and one called the Vocational Education Program (hereinafter "VEP"), which is run by the DOE.<sup>131</sup>

126. The JumpStart program is a work-readiness class that typically runs as a one-year class to prepare eligible candidates for the process of getting and keeping a job. Due to the COVID-19 global pandemic, the JumpStart program did not start at the beginning of the 2020-2021 school year, but started recently.<sup>132</sup>

127. At the time of the Hearing, Student had begun participating in the JumpStart program.<sup>133</sup>

128. Home School participates in running the VEP for other schools in their district area. To participate in the DOE VEP, students must go through an application process of applying for the program, having an interview, getting accepted, while meeting the prerequisites for the program itself.<sup>134</sup>

129. For the VEP, participating students must be able to demonstrate a level of independence so

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<sup>129</sup> Testimony of SPED, Tr.V2, 200:6-10, 225:10-226:7; Testimony of SSC, Tr.V2, 279:14-280:8.

<sup>130</sup> Testimony of SPED, Tr.V2, 228:7-233:9; Testimony of SSC, Tr.V2, 267:14-270:5.

<sup>131</sup> Testimony of SSC, Tr.V2, 270:6-273:24.

<sup>132</sup> Testimony of SSC, Tr.V2, 270:6-271:4.

<sup>133</sup> Testimony of SSC, Tr.V2, 271:5-7.

<sup>134</sup> Testimony of SSC, Tr.V2, 271:23-272:23.

that the student can be supported by the special education teacher and the paraprofessionals on site. Students who rely upon the services of a one-to-one aide may not be eligible to participate in this program.<sup>135</sup>

130. Parent has completed the forms for the VEP, but Student has not participated in the program as of the time of the Hearing.<sup>136</sup>

131. For the 2020-2021 school year, Parent had expressed an interest in Student taking a general education culinary course at Home School. The culinary course was designed to teach students to cook and practice safety and sanitation in an industrial cooking setting for future work in the restaurant/hospitality industry.<sup>137</sup>

132. To participate in the general education culinary class, all students enrolling in the class needed to pass a safety and sanitation test. Student was provided modifications and accommodations to take the test but was unable to pass the test to get into the general education class.<sup>138</sup>

133. Home School provided Parent with daily communication logs and progress reports since Student's return back to school in the summer of 2020.<sup>139</sup>

134. In the first quarter of the 2020-2021 school year, Student has demonstrated emerging skills or has made progress on each of Student's IEP goals and objectives, with the exception of cooking and some of the community outing-related goals and objectives.<sup>140</sup>

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<sup>135</sup> Testimony of SSC, Tr.V2, 272:24-273:254.

<sup>136</sup> Testimony of Parent, Tr.V2,

<sup>137</sup> Testimony of SPED, Tr.V2, 181:20-182:21.

<sup>138</sup> Testimony of SPED, Tr.V2, 182:22-184:5.

<sup>139</sup> *See e.g.*, R-Ex.310, p.2086-2088; R-Ex.312, p.2090-2092; R-Ex.315, p.2095-2097; R-Ex.319-326, pages 2102-2169; R-Ex.330, p.2248-2250; R-Ex.334, p.2255-2257; R-Ex.336, p.2260-2262.

<sup>140</sup> R-Ex.459, p.2754-2788.

135. Home School has also collected data on Student's progress in the areas of cooking, hygiene, and use of public transportation, as well as skills to enhance Student's ability to function in the community.<sup>141</sup>

136. At the time of the Hearing, Student was participating in non-industrial cooking classes in SSC's classroom on Thursdays to target Student's cooking goals and objectives. SSC's cooking instruction is geared more toward preparing a meal at home, rather than in an industrial kitchen like the general education culinary class.<sup>142</sup>

## V. CONCLUSIONS OF LAW

### IDEA framework

To "ensure that the rights of children with disabilities and parents of such children are protected, the IDEA guarantees a FAPE to children with disabilities."<sup>143</sup> A FAPE includes both special education and related services.<sup>144</sup>

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.<sup>145</sup> To provide a FAPE in compliance with the IDEA, the state educational agency receiving federal funds must "evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP."<sup>146</sup>

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

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<sup>141</sup> See R-Ex.459, p.2754-2788, R-Ex.462-468, p.3398-3755.

<sup>142</sup> Testimony of SSC, Tr.V2, 286:25-287:21.

<sup>143</sup> *Doug C. v. Hawaii Dept. of Educ.*, 720 F.3d 1038, 1043 (2013) (citing 20 U.S.C. §1400(d)(1)(B), 20 U.S.C. §1412(a)(1)(A), and 34 C.F.R. §§300.1(b) & 300.101)).

<sup>144</sup> H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

<sup>145</sup> *Id.*

<sup>146</sup> *Dep't of Educ. of Hawai'i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai'i 2016).

children.”<sup>147</sup> It is “a written statement for each child with a disability that is developed, reviewed, and revised” according to specific detailed procedures contained in the statute.<sup>148</sup> The IEP is a collaborative education plan created by parents and educators who carefully consider the child’s unique circumstances and needs.<sup>149</sup>

Denials of FAPE determinations are based on one of two categories of review. Procedural violations can occur when the educational agency has not complied with the procedures set forth in the IDEA.<sup>150</sup> Procedural violations do not automatically result in a denial of FAPE, however, as a secondary determination must be made as to whether the violation resulted in: 1) loss of educational opportunity, 2) significant infringement on parental participation, or 3) deprivation of educational benefits.<sup>151</sup>

Substantive violations of the IDEA require an examination of the child’s IEP. The DOE is not required to “maximize the potential” of each student; rather, the DOE is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.”<sup>152</sup> However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*,<sup>153</sup> 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

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<sup>147</sup> *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 598, 98 L.Ed.2d 686 (1988).

<sup>148</sup> H.A.R. §8-60-2; 20 U.S.C. §1401(14); 34 C.F.R §300.22.

<sup>149</sup> H.A.R. §8-60-45; 20 U.S.C. §1414; 34 C.F.R §300.321-300.322.

<sup>150</sup> *Amanda J. ex rel. Annette J. v. Clark County School Dist.* 267 F.3d 877, 890 (9<sup>th</sup> Cir. 2001) (citing *Rowley*, 458 U.S. at 206-207, 102 S.Ct. at 3034), see also *L.J. by and through Hudson v. Pittsburg Unified School District*, 850 F.3d 996, 1003 (9<sup>th</sup> Cir. 2017).

<sup>151</sup> *Id.* at 892.

<sup>152</sup> *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048.

<sup>153</sup> 137 S.Ct. 988, 197 L.Ed.2d 335 (2017).

of the child's circumstances."<sup>154</sup>

"The standard for evaluating IEPs, commonly called 'the snapshot rule,' is not retrospective."<sup>155</sup> An IEP is to be judged by looking at whether the IEP goals and goal achieving methods were objectively reasonably calculated to confer Student with a meaningful benefit based on the information available to the IEP team at the time the IEP was created.<sup>156</sup> In determining appropriateness, "an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is at the time the IEP was drafted."<sup>157</sup>

A. Student's IEP-06/09/2020 addressed Student's functional language needs to allow Student to make appropriate progress

Petitioners' first issue in the Complaint questions whether Student's IEP-06/09/2020 would allow Student to make appropriate progress toward Student's functional language needs. While Petitioners fail to describe or identify specific deficits in the IEP-06/09/2020, it appears that Petitioners' argument revolves primarily around the IEP team's removal of the "Language for Learning" objective in Student's IEP-06/09/2020.<sup>158</sup> For the reasons set forth below, this Hearings Officer finds that Student's IEP-06/09/2020 addresses Student's functional language needs to allow Student to make appropriate progress, and Petitioners have failed to prove any deficiency in the program set forth in the IEP-06/09/2020 resulted in a denial of FAPE by Respondents.

Student's IEP-06/09/2020 contains numerous goals and objectives to address Student's

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<sup>154</sup> *Andrew F.*, 137 S.Ct. at 1001, 197 L.Ed.2d 335; *See also, Blake c. ex rel. Tina F. v. Hawai'i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai'i 2009).

<sup>155</sup> *K.K. ex rel. K.S.K. v. Hawaii*, 2015 WL 4611947 \*16 (D. Hawai'i 2015) (*quoting J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9<sup>th</sup> Cir. 2010)).

<sup>156</sup> *K.K.*, 2015 WL 4611947 \*16 (*quoting Adams v. Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999)).

<sup>157</sup> *J.W.*, 626 F.3d at 439 (*quoting Adams v. Oregon*, 195 F.3d at 1149).

<sup>158</sup> *See* Petitioners' Opening Statement, Tr.V1, 8:22-9:9.

functional language needs.<sup>159</sup> While Parent's concerns and Petitioners' arguments seem to revolve around the Language for Learning program, Petitioners have failed to prove that the specific program actually addresses Student's functional language needs. As demonstrated in the data collection sheets and communication logs that were sent home to Parent daily, Student was not making meaningful progress on the program.<sup>160</sup> Additionally, SPED testified that the Language for Learning program needed to be run three (3) times per day according to the IEP goal and it took time away from other lessons that Student could be learning during those times.<sup>161</sup>

Functional language is the ability to communicate sufficiently to function in daily life in the community.<sup>162</sup> Student's IEP-06/09/2020 is filled with goals and objectives to have Student practice daily communication skills, including following directions,<sup>163</sup> having conversations with others,<sup>164</sup> determining function and features of an item,<sup>165</sup> using language to access public transportation,<sup>166</sup> describing Student's location if Student is lost,<sup>167</sup> navigating a restaurant menu and answering questions regarding items on the menu.<sup>168</sup>

One of the primary concerns expressed by Parent during the IEP meetings was that Student was unable to explain the 'how' questions that were asked; for example, Student was unable to explain how to clean the floor and what steps were needed, such as getting the broom,

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<sup>159</sup> FOF 110.

<sup>160</sup> FOF 15-22.

<sup>161</sup> FOF 16.

<sup>162</sup> Testimony of SLP, Tr.V1, 146:1-4.

<sup>163</sup> See R-Ex.88, p.0444 & 0464.

<sup>164</sup> See R-Ex.88, p.0445.

<sup>165</sup> See R-Ex.88, p.0446.

<sup>166</sup> See R-Ex.88, p.0452.

<sup>167</sup> See R-Ex.88, p.0453.

<sup>168</sup> See R-Ex.88, p.0458.

getting the dustpan, sweeping the floor, sweeping the dust into the dustpan, emptying the dustpan, and putting all of the cleaning items away. While the IEP team listened to Parent's concerns, they explained that while it is important for Student to know the steps that are required, Student's disabilities made it difficult for Student to grasp the communication of how to explain the steps required. The IEP team further explained that while they will still work on having Student learn the steps that are required, Student is unlikely to be in a position to need to explain the steps on how to accomplish such a task.<sup>169</sup>

Throughout the annual IEP team meetings, the IEP team considered Parent's concerns regarding Student's language needs and determined that the removal of one program (Language for Learning) and inserting/keeping several other goals and objectives to address Student's needs was appropriate based on the information that the team had at the time. Student's IEP-06/09/2020 does contain numerous goals and objectives that has Student working on language needs. Petitioners have not identified any deficiencies in Student's IEP-06/09/2020, besides the removal of the Language for Learning program, or any areas in which Student's functional language needs are not being addressed. Petitioners have not met their burden to prove that the IEP-06/09/2020 does not allow Student to make appropriate progress on Student's functional language needs.

B. Student's IEP-06/09/2020 sufficiently describes the needed behavioral supports, services, and/or interventions required to address Student's behavioral needs

Petitioners' second argument is that Student's IEP-06/09/2020 fails to sufficiently describe the needed behavioral supports, services, and/or interventions required to address Student's behavioral needs. Petitioners do not identify a behavioral need of Student that is not

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<sup>169</sup> FOF 80.

addressed in the IEP-06/09/2020, nor do they suggest what additional supports, services and/or interventions were required to address those needs.

As part of Student's reevaluation in February 2020, each of the assessors that met with Student made observations about Student's behaviors during the testing, and an FBA was conducted with Student.<sup>170</sup> Based on a review of all these assessments, Student's single behavior that was identified was [REDACTED]. None of the assessors identified the [REDACTED] behavior of Student to significantly impede Student's ability to complete the assessments or other assignments/tasks that Student was given. During the FBA, Student did not demonstrate any behaviors that would result in harm to Student or others, destruction of property, impeding of Student's or others ability to learn, or a violation of the school conduct rules.<sup>171</sup> In the FBA, Student's only identified behavior was [REDACTED], which was noted to occasionally lead to positive interactions with other students.<sup>172</sup>

During the IEP meetings, other behaviors of Student were discussed, such as Student's [REDACTED] [REDACTED]. Student was also noted to have behavioral needs in the areas of [REDACTED]. Each of the behavioral needs that Student demonstrated at school and in the community were discussed at the annual IEP meetings.<sup>173</sup> The IEP team also created specific goals and objectives to address each of the behavioral needs of Student.<sup>174</sup> The IEP team further determined that the supplementary support of a behavioral support plan would be kept as a support for Student's IEP-06/09/2020 and would be revised at

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<sup>170</sup> FOF 48, 51, 54, 59, 65.

<sup>171</sup> FOF 66.

<sup>172</sup> FOF 66.

<sup>173</sup> FOF 77, 96.

<sup>174</sup> FOF 111.

one of the monthly team meetings that the school had with Parent.<sup>175</sup> Parent did not express any additional concerns that Parent had that were not addressed at any of the IEP team meetings, nor do Petitioners raise or identify any specific behavior concerns that are not addressed in the IEP-06/09/2020.

While Petitioners do not specifically argue the issue of Student's BSP, it appears<sup>176</sup> that Petitioners' argument may be that the team did not discuss the update of Student's BSP during the IEP team meetings, nor does the IEP-06/09/2020 contain the details of Student's BSP. The IDEA requires that where a child's behavior impedes appropriate learning, the student's IEP must reasonably address those behavioral issues.<sup>177</sup> While in some instances, a denial of FAPE could be found where an IEP does not contain a behavioral support plan for a child with significant behavioral issues,<sup>178</sup> the facts of this case do not support such a conclusion.<sup>179</sup> As noted above, Student's behavioral issues center largely around Student's [REDACTED], and none of Student's behaviors cause significant concerns or result in impediments to Student accessing Student's education.

The issue, as stated by Petitioners, in this case is whether the IEP-06/09/2020 sufficiently describes the needed behavioral supports, services and/or interventions needed to address Student's behavioral concerns. This Hearings Officer finds that the IEP-06/09/2020 does address Student's behavioral concerns, using IEP goals and objectives, and supplementary aids

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<sup>175</sup> FOF 89.

<sup>176</sup> This is based on Petitioners' mention of this Hearings Officer's decision in an unrelated case. Petitioners' Closing Brief, page 2-3. *See also* Petitioners' Opening Statement, Tr.V1, 9:10-15.

<sup>177</sup> *Dep't of Educ. State of Hawaii v. L.S., by and through C.S.*, 2019 WL 1421752 (D. Hawai'i 2019)

<sup>178</sup> *See L.S.*, 2019 WL 1421752 \*12; *Carrie I. ex rel. Greg I. v. Dept. of Educ., Haw.*, 869 F.Supp.2d 1225, 1242, 1246 (D.Hawai'i 2012) (finding a denial of FAPE when an IEP did not contain a behavioral support plan for a student with significant behavioral issues);

<sup>179</sup> FOF 66.

and supports. These include teacher consultation, monthly team meetings, parent training and education, visual supports, frequent breaks, intermixing easy with difficult tasks, and systematic prompts and prompt fading procedures, as well as the inclusion of a BSP.

C. Petitioners have failed to prove that Student did not receive transition services described in the IEP-02/20/2020 or that the DOE failed to identify alternative strategies to meet the transition objectives set out for Student in the IEP-02/20/2020.

Petitioners third argument is that Respondents and any related participating agencies failed to provide post-school transition services to Student as described in the IEP-02/20/2020 or that Respondents failed to reconvene an IEP meeting to identify alternative strategies to meet the transition objectives for Student. While Petitioners do not identify what transition services were not provided to Student, nor do they identify what ‘participating agency’ would have been responsible for providing such services, it appears based on the arguments made at the Hearing that Petitioners are referring to Student’s non-participation in the JumpStart and/or VEP programs offered by the Department of Vocational Rehabilitation and/or the DOE.

In Hawai‘i, beginning at age fourteen (14), the IEP team must consider and include a statement of the post-school transition services needs for the student that focuses on the student’s courses of study.<sup>180</sup> By age sixteen (16), the student’s IEP must contain measurable post-secondary goals based upon transition assessments, and the appropriate transition support services necessary to assist the student in meeting the goals.<sup>181</sup> Transition services under the IDEA are defined as:

The term “transition services” means a coordinated set of activities for a child with a disability that (A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities,

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<sup>180</sup> *Virginia S. ex rel. Rachael M. v. Department of Educ., Hawaii*, 2007 WL 80814 , \*9-10 (D. Hawai‘i 2007); H.A.R. §8-60-44(b).

<sup>181</sup> H.A.R. §8-60-44(b).

including post-secondary education, vocational education, integrated employment (including supported employment), continuing adult education, adult services, independent living or community participation; (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.<sup>182</sup>

Here, transition assessments were conducted with Student and it was determined that Student's post-high school goals included working as a prep cook or working with animals. The IEP-06/09/2020 included four (4) post-school goals for Student: 1) Student to enroll in an adult cooking course; 2) Student will work for at least four (4) hours a day for five (5) days a week; 3) Student will independently wake, groom, and get transportation independently to Student's worksite; and 4) Student will independently articulate wants and needs to services providers in the community.<sup>183</sup> The identified support services needed was for the teachers to: provide instruction on meal planning and preparation of basic meals, pre-vocational and vocational job readiness skills, rituals of daily hygiene and use of public transportation; invite Student's post-high school service agency to the IEP meetings; and provide information on adult cooking courses, applying for a disability bus pass or other disability transportation, and adult mental health services.<sup>184</sup>

While Student was at home during the school shutdown pursuant to the COVID-19 global pandemic, upon Student's return to school, Student was receiving instruction related to cooking, hygiene, and the use of public transportation.<sup>185</sup> A DOE transition resource teacher was present at the IEP meetings, and discussions were held with Parent during the meetings from

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<sup>182</sup> *Id.*; quoting 20 U.S.C. §1401(34).

<sup>183</sup> FOF 37.

<sup>184</sup> FOF 38.

<sup>185</sup> FOF 135-136.

April 2020 to June 2020 about scheduling site visits with the available supported employment locations to determine where Student will likely be working upon Student's exit from the DOE.<sup>186</sup>

While it is undisputed that Student did not enter into the VEP program provided by the DOE and only recently started in the JumpStart program offered by DVR, Petitioners do not identify how this failure for Student to enter these programs was a failure of Respondents to provide the necessary transition services and supports as provided in the IEP. Petitioners have also failed to demonstrate that any additional meetings or follow up was necessary to address any alleged failure to provide such services. Student was still receiving instruction related to preparing Student for the eventual goals of the transition plan, like cooking, hygiene, and use of public transportation.<sup>187</sup> Based on the evidence presented at the Hearing, Home School was providing the necessary supports and services listed in the IEP-02/20/2020 and the IEP-06/09/2020 to Student at Home School.

D. The Individual Instructional Support service for Student was removed from the IEP-06/09/2020 based upon appropriate considerations

Petitioners question whether the June 9, 2020 IEP team removed Student's IIS from Student's IEP-06/09/2020 based upon appropriate considerations. To support their argument, Petitioners assert that the IEP team removed Student's IIS service based upon a memo from the DOE, rather than what was appropriate for Student's needs.

In this case, Student does not require the assistance of an ABA-trained one-to-one aide and had been assigned a contracted skills trainer or paraprofessional in Student's prior IEPs.<sup>188</sup>

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<sup>186</sup> FOF 72, 81.

<sup>187</sup> FOF 81.

<sup>188</sup> FOF 27.

The change from the administration of the DOE clarified to the school districts that the use of an IIS, or an ABA-professional, should be reserved only for students who needed such full-time behavior interventions to access their education.<sup>189</sup>

The IEP team determined that based on the results of the FBA conducted with Student in February 2020, that Student did not have behaviors significant enough to warrant the assignment of an IIS for Student.<sup>190</sup> The IEP team did continue to provide Student with a one-to-one aide in the form of a DOE-employed educational assistant.<sup>191</sup> During the IEP team meetings from April to June 2020, there was not much discussion regarding this change to explain to Parent that Student would still have a one-to-one aide but that the change meant that it would be a DOE employee instead of a contracted employee.

Student's IEP-06/09/2020 did note that Student would receive "close adult supervision," and was further clarified that it would be to "maintain visual support of client throughout the school day: school and community setting."<sup>192</sup> While it is unclear whether Parent fully understood the intentions of Respondents in changing Student's services from an IIS to a DOE paraprofessional, failure to fully explain the procedure to Parent during the IEP meetings may have amounted to a procedural error on the part of the IEP team. However, the determination of a denial of FAPE requires that Petitioners prove that such a procedural error resulted in a loss of educational opportunity, significant infringement of parental participation, or deprivation of educational benefits.<sup>193</sup>

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<sup>189</sup> FOF 11-13.

<sup>190</sup> FOF 65-67, 90-91.

<sup>191</sup> FOF 117.

<sup>192</sup> FOF 114.

<sup>193</sup> See *Amanda J.*, 267 F.3d at 892.

Here, the ultimate result of the change in the terms “IIS” and “close adult supervision” was more of an administrative change than a change in services for Student. Student continued to receive the services of a one-to-one aide and Petitioners have not demonstrated any lost educational opportunities or deprivation of educational benefits as a result of having a DOE-employed paraprofessional instead of a contracted paraprofessional. Parent and EC were able to express their concerns about Student needing the one-to-one aide as a continued service during the IEP meetings.<sup>194</sup> This issue was ultimately addressed by the IEP team continuing to provide Student with a one-to-one aide, Petitioners have not demonstrated any significant infringement of parental participation, or that Parent would have sought to discuss a different result. This Hearings Officer finds that the removal of the IIS in Student’s IEP-06/09/2020 was based upon appropriate considerations.

- E. Petitioners have failed to prove that Respondents prevented Parent from direct communication with Student’s school aide and/or observing Student in the normal classroom setting

Petitioners next argument is that Respondents prevented Parent from communicating with Student’s school aides and/or prevented Parent from observing Student in Student’s normal classroom setting. Petitioners further argue that Respondents actions in this regard denied Student a FAPE. Petitioners have not provided any evidence of an instance where Respondents prevented Parent from communicating with Student’s school aides or observing Student in Student’s normal classroom setting. No evidence of attempts by Parent to schedule an observation that was denied by Respondents was presented at the Hearing. The only evidence that was presented at the Hearing was Parent’s testimony that Parent would previously text or

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<sup>194</sup> FOF 90.

Speak directly to Student's aides, but that the new aides that were assigned to Student would refer Parent to speak with SPED or Student's other teachers.<sup>195</sup>

Even if Petitioners had presented evidence of a refusal by Respondents to allow Parent to communicate with Student's aides or schedule an observation, Petitioners have not provided any authority to support their argument that this results in a denial of FAPE. In fact, administrative hearing bodies and courts have long declined to interfere with educational policy; noting that "courts should not substitute their own notions of sound educational policy for those of the school authorities which they review," and must grant deference to the sound judgement of various state educational agencies.<sup>196</sup> School's decisions, if any, to restrict the observations of students or communication with personnel by parents fall into the category of educational policy that should not be infringed upon by reviewing bodies.

Finally, the only communication that Parent testified that Parent had with Student's aides included basic communications about Student's absences, illnesses, or things of that nature.<sup>197</sup> Parent has not alleged any attempts to communicate with Student's aides or attempts to schedule observations that were substantive in nature. Parent had scheduled at least one observation in 2019 of Student at Home School, which occurred without difficulty.<sup>198</sup> Parent also has monthly one-hour meetings with Home School personnel as provided in Student's IEP-02/20/2020 and IEP-06/09/2020 to discuss Student's performance in school.<sup>199</sup> Petitioners have not presented

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<sup>195</sup> FOF 27, 118.

<sup>196</sup> *Rowley*, 458 U.S. at 206, 102 S.Ct. at 3051; *Wilson v. Marana Unified School Dist. No. 6 of Pima County*, 735 F.2d 1178, 1183 (9<sup>th</sup> Cir. 1984); *Union School Dist. v. Smith*, 15 F.3d 1519, 1524 (9<sup>th</sup> Cir. 1994); *K.D. ex rel. C.L. v. Department of Educ., Hawaii*, 665 F.3d 1110, 1117 (9<sup>th</sup> Cir. 2011).

<sup>197</sup> FOF 27.

<sup>198</sup> FOF 25.

<sup>199</sup> FOF 41, 113.

any evidence on how any restrictions on Parent's communication with Student's aides or scheduling of observations of Student at school would have resulted in any loss of educational opportunities, infringement on parental participation, or deprivation of educational benefits.

F. Petitioners have failed to prove that Respondents denied Student a FAPE by failing to include Parent in the transition or fade plan to remove Student's IIS services

Petitioners raise the argument that Respondents denied Student a FAPE by failing to include Parent in discussions about the Transfer Plan for the removal of Student's IIS services. As discussed *supra*, Student's IIS services were removed from the IEP and were replaced by 'close adult supervision,' which essentially meant a change from a contracted provider to a DOE employee. Respondents have argued that since the change was an administrative change to Student's program rather than a substantive change, it was not necessary for Parent to be involved in the creation of the Transfer Plan for the new support personnel.

While Respondents argument would have been more persuasive if the change from IIS to close adult supervision had been clearly outlined in the IEP-06/09/2020 or thoroughly discussed at the IEP meetings with Parent, failure to include Parent in discussions about the Transfer Plan amounted, at most, to a procedural violation by Respondents. Since Parent may have been left with the impression that Student would no longer receive the support of a one-to-one aide as part of the IEP-06/09/2020, Parent should have been included in the discussions for the Transfer Plan to further allow Parent to understand what the significance, or lack thereof, of the change in support personnel would have on Student's program.

While Respondents may have committed a procedural error in either not clearly explaining the change from IIS to close adult supervision in Student's IEP-06/09/2020 or in not including Parent in the Transfer Plan meetings to ensure Parent's understanding of the change, Petitioners must still prove that the procedural error resulted in a loss of educational

opportunities, infringement of parental participation, or deprivation of educational benefits. As discussed, *supra*, Petitioners have not demonstrated any of these additional considerations in the present case. Further, Petitioners have not identified any opportunities that were lost based on the team's decision to create the Transfer Plan without Parent. Respondents' Transfer Plan consisted of a slow fade of services from the contracted skills trainer and the slow introduction of services provided by the DOE personnel.<sup>200</sup> The plan provided for criteria for behaviors which Student needed to demonstrate to proceed to the next phase of the transfer.<sup>201</sup> Under the Transfer Plan, Student would basically transition from one service provider to another in a gradual manner and the teacher would be responsible for also providing instruction and support to Student throughout the process.<sup>202</sup>

Petitioners have failed to prove that the failure of Respondents to include Parent in the meetings to create the Transfer Plan for Student's transition from a contracted skills trainer to a DOE-employed educational assistant rose to the level of a denial of FAPE.

G. Respondents are implementing Student's IEP-06/09/2020 regarding Community-Based Instruction and cooking goals

Petitioners' next argument is that Respondents are not currently implementing Student's IEP-06/09/2020, specifically regarding community-based instruction and/or cooking goals. Petitioners do not specify what services are not being provided or identify any goals that are not being addressed, nor do they provide any argument in their closing brief about this issue. Nonetheless, evidence was presented by Respondents that address this issue.

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<sup>200</sup> FOF 120-121.

<sup>201</sup> FOF 121.

<sup>202</sup> FOF 171.

The Ninth Circuit Court of Appeals has reviewed IDEA cases in relation to implementation failures alleged against school districts. In *Van Duyn ex rel. Van Duyn v. Baker School Dist.*, the Court reviewed the IDEA’s definition of a free appropriate public education as “special education and related services that ... are provided in conformity with the [child’s] individualized education program,” and determined that “[t]here 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.”<sup>203</sup> The Ninth Circuit also explored the analysis done by the Fifth Circuit in *Houston Indep. Sch. Dist. v. Bobby R.*,<sup>204</sup> and recognized the court’s conclusion that implementation failures did not violate the IDEA because “the significant provisions of [the child’s] IEP were followed, and, as a result, he received an educational benefit.”<sup>205</sup>

In this case, Respondents provided evidence in the form of daily communication logs to Parent, an IEP progress report for the first quarter of the 2020-2021 school year, and weekly behavior data logs.<sup>206</sup> While it does appear that no data was collected for many of Student’s community-based instruction and cooking goals, the evidence presented by Respondents demonstrate that significant portions of Student’s IEP-06/09/2020 is being implemented such that Student is receiving an educational benefit.<sup>207</sup> Student’s IEP progress report from October 2020 indicates that Student is making progress on most of the goals and objectives that are being implemented, including some of the goals related to Student’s community-based instruction.<sup>208</sup>

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<sup>203</sup> 502 F.3d 811, 821 (9<sup>th</sup> Cir. 2007).

<sup>204</sup> 200 F.3d 341 (5<sup>th</sup> Cir. 2000).

<sup>205</sup> *Van Duyn*, 502 F.3d at 821.

<sup>206</sup> FOF 133.

<sup>207</sup> FOF 134.

<sup>208</sup> FOF 134-135.

SSC testified that Student is currently participating in cooking in SSC's class once a week.<sup>209</sup>

Student is receiving the services of a one-to-one aide and is receiving instruction on a significant number of goals and objectives laid out in the IEP-06/09/2020.<sup>210</sup>

Petitioners have failed to demonstrate that Student's IEP-06/09/2020 is not being implemented, resulting in a denial of FAPE.

H. The occupational therapy consultation service minutes were reduced in the IEP-06/09/2020 based upon appropriate considerations

Petitioners' final argument questions whether the occupational therapy consultation minutes were reduced in the IEP-06/09/2020 based upon appropriate considerations. In Student's IEP-02/20/2020, the occupational therapy consultation minutes were one hundred eighty (180) minutes per quarter, but in the IEP-06/09/2020, the consultation minutes were reduced to ninety (90) minutes per quarter.<sup>211</sup>

The evidence presented at the Hearing was that OT and SPED determined that the reduction to ninety (90) minutes per quarter was based on Student's needs for Student's sensory program.<sup>212</sup> This determination was based on OT's observations of Student in school and consultation with SPED during the previous time allotted under the IEP-02/20/2020. When Parent raised concerns about the reduction in minutes, it was explained to Parent that Student, SPED, and all of Student's support staff were familiar with Student's occupational therapy program and that the ninety (90) minutes of consultation with SPED was sufficient.<sup>213</sup> Parent expressed concerns about what could happen if SPED left the school and a new teacher came in

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<sup>209</sup> FOF 136.

<sup>210</sup> FOF 117.

<sup>211</sup> FOF 45, 113.

<sup>212</sup> FOF 87-88.

<sup>213</sup> FOF 87.

to teach Student, but OT and Principal explained to Parent that if such a situation occurred, that OT could increase the minutes of consultation to the new teacher.<sup>214</sup>

Petitioners argue that the consultation minutes should be based on Student's needs and not based on the familiarity of Student and Student's program, however, Petitioners have provided no evidence or argument that Student's needs in occupational therapy required teacher consultation for more than ninety (90) minutes. It is important to note that the occupational therapy service provided in both Student's IEP-02/20/2020 and IEP-06/09/2020 was strictly consultation with Student's teacher and not direct therapy provided to Student.<sup>215</sup> Petitioners' argument would be more persuasive if the minutes in question were for direct servicing to Student; however in this case, SPED's familiarity with Student and Student's occupational therapy program was relevant and appropriate to consider in determining the amount of teacher consultation minutes that was necessary to meet Student's needs. Therefore, this Hearings Officer concludes that the reduction in occupational therapy consultation minutes for teacher consultation was based upon appropriate considerations in this case.

## **VI. DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not met their burden of proving that Respondents have denied Student a FAPE as outlined in the issues in the Complaint by a preponderance of the evidence. As Petitioners have failed to prove that Respondents denied Student a FAPE, Petitioners' request to have Respondents revise Student's IEP-06/09/2020 or any other relief requested by Petitioners is denied.

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<sup>214</sup> FOF 88.

<sup>215</sup> FOF 5.

## **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, May 14, 2021.

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