

2024 JAN -2 PM 4: 09



OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

In the Matter of the DEPARTMENT OF  
EDUCATION, STATE OF HAWAI'I,

Petitioner(s),

vs.

Parent(s)/Guardian(s) of STUDENT,<sup>1</sup>

Respondents.

DOE-SY2324-021

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing: December 7, 2023

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

**I. INTRODUCTION**

On November 21, 2023, the Department of Education, State of Hawai'i (hereinafter "Petitioners" or "DOE") submitted a Request for IDEA Impartial Due Process Hearing under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities Education Act, against Parents, as the parents/guardians of Student. (hereinafter "Respondents").

Pursuant to Hawai'i Administrative Rules Sections 8-60-62, 8-60-64, and 8-60-69, when

---

<sup>1</sup> Personal identifiable information is contained in the Legend.

the Department of Education files a Complaint, no resolution session is required, and the 45-day decision deadline begins to run on the date the Complaint is received by Respondents. The deadline in this case is January 4, 2024. Due to the expedited nature of the case, a prehearing conference was scheduled for Tuesday, November 28, 2023, with a notice that the Due Process Hearing would be scheduled for December 7-8, 2023. A Letter to Parties, Notice of Prehearing Conference, and Zoom invitation were sent to the parties via email on November 24, 2023.<sup>2</sup>

On November 28, 2023, a prehearing conference was held and the December 7, 2023 Due Process Hearing date was confirmed by this Hearings Officer to allow the hearing and the Decision in this case to be filed by the deadline of January 4, 2024. Respondents did not attend the prehearing conference or contact the Office of Dispute Resolution to state that they were unable to attend the prehearing conference. The Prehearing Order and Order Regarding Videoconference Due Process Hearing was sent to the parties on November 28, 2023, and a hard copy of those documents were received by Respondents via U.S. Mail on November 30, 2023.<sup>3</sup> A Zoom invitation and instructions on the Due Process Hearing was sent to the parties via email on November 30, 2023.

Between November 30, 2023 and December 4, 2023, Respondents sent numerous emails<sup>4</sup> to the Office of Dispute Resolution alleging that they were not notified of the prehearing conference on November 28, 2023 and that they are not available on December 7, 2023 for the

---

<sup>2</sup> The aforementioned documents were sent to Respondents at the email from which the Office of Dispute Resolution last received email correspondence from Respondents in a different case. This email address was later confirmed by Petitioners as the current email address that Respondents use to communicate with the DOE.

<sup>3</sup> This information was confirmed by Respondents in their emails dated November 30-December 4, 2023.

<sup>4</sup> The emails sent by Respondents on November 30, 2023 through December 4, 2023, were sent from the same email address that the Notice of Prehearing Conference was sent to on November 24, 2023.

Due Process Hearing. Parents also contacted the Office of Dispute Resolution by telephone and indicated that they did not intend to attend the hearing, but may change their mind.

The Hearing commenced on December 7, 2023, using the Zoom video conferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by the Office of Dispute Resolution. The Zoom meeting room was opened at 9:00 a.m. as scheduled. After waiting fifteen (15) minutes to see if Parents would appear by telephone or on the Zoom conference, the Hearing began. Parents did not call into the Office of Dispute Resolution nor appear in the Zoom meeting. No call or voicemail indicating their desire to participate was received from Parents at the Office of Dispute Resolution.

Present in the video conference Hearing were Hearings Officer Chastity T. Imamura, DES and RT on behalf of Petitioners, as well as the assigned court reporter. Petitioners called Special Education Teacher (hereinafter “SPED Teacher”) and Psychologist to testify, and Petitioners completed the presentation of evidence on that date. Neither Parents nor anyone representing Respondents made any attempt to join the Hearing or contacted the Office of Dispute Resolution expressing an interest in participating in the Hearing. The Hearing concluded on December 7, 2023.

Petitioners submitted their exhibits for the Hearing by the disclosure deadline of November 30, 2023. Petitioners requested that Petitioners’ Exhibits 1-14, pages 01-39, be received into evidence, so all exhibits submitted by Petitioners were considered for the Decision in this case.

Between December 7, 2023 and the date of this Decision, no correspondence via email or U.S. Mail, or telephone calls were received from Respondents regarding this Decision, the due process hearing, or anything related to this case.

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 one (1) issue in the Complaint to be addressed at the Hearing:

1. Petitioners are requesting that this Hearings Officer find that the two (2) reevaluations completed for Student using the cognitive and academic assessments, and the classroom observations, were appropriate and that Parents are not entitled to an independent educational evaluation (hereinafter “IEE”).

Petitioners request the following remedies:

**Remedy 1** – Find that the DOE’s evaluations of Student were appropriate.

**Remedy 2** – Find that Parents are not entitled to an IEE funded by the DOE.

## IV. FINDINGS OF FACT

### Witness Background

1. SPED Teacher is a special education teacher for the State of Hawai‘i Department of Education and has held that position for nine (9) years. SPED Teacher has a bachelor’s degree in [REDACTED] for grades [REDACTED] through [REDACTED] and special education for grades [REDACTED] through [REDACTED] mild/moderate. Testimony of SPED Teacher, Transcript of Proceedings, page 12, line 23 through page 13, line 5 (hereinafter referenced as “Tr.12:23-13:5”).
2. Part of SPED Teacher’s duties include conducting certain assessments, such as

academic assessments, as part of the school's evaluation process for special education. SPED Teacher had been trained in conducting academic assessments, including the Woodcock-Johnson, IV edition, Test of Achievement (hereinafter "WJ-IV"), and has administered the WJ-IV approximately ten (10) times prior to this case. Testimony of SPED Teacher, Tr.16:2-13, 29:23-31:7.

3. Psychologist is a school psychologist for the State of Hawai'i Department of Education. Psychologist has both a master's and a doctorate degree in clinical psychology. Testimony of Psychologist, Tr.36:6-13.
4. Psychologist has been a school psychologist for three (3) years. Psychologist's duties consist of conducting psychological assessments to identify students' strengths and areas of need through both classroom assessments or other types of testing, as well as working with school staff and parents to determine whether students are eligible for special education services. Testimony of Psychologist, Tr.36:20-37:4.

#### Prior case background

5. Student is [REDACTED] years old and is enrolled in Home School. Student began attending Home School when Student was placed in the [REDACTED] grade based on Student's age. Testimony of SPED Teacher, Tr.28:12-17.
6. Student attended Former Home School for [REDACTED], but the school year was cut short due to the COVID-19 global pandemic, which ultimately forced the shut down of public schools in the State of Hawai'i for the end of the 2019-2020 school year. P-Ex.9, p.13.
7. Student enrolled as [REDACTED] grader at Home School for the 2021-2022 school year but did not attend school [REDACTED]. Student currently

- attends Home School and is in the [REDACTED] grade. See P-Ex.9, p.13; P-Ex.14, p.36.
8. When Student began attending Home School in August [REDACTED], Student did not demonstrate any ability to identify letters or make sounds associated with the letters of the alphabet. Home School began teaching Student the basics of reading, beginning with identification of letters, sounds, and moving onto sight words and phonetics. Testimony of SPED Teacher, Tr.13:23-1, 28:5-29:3.
  9. Student was determined to be eligible for special education services prior to August 2022, [REDACTED]  
[REDACTED] Home School organized a student-focused team (hereinafter “SFT”) meeting for December 7, 2022. Testimony of SPED, Tr.13:23-14:11.
  10. The SFT meeting on December 7, 2022 was held via videoconference. Parents participated in the meeting through calling into the videoconference. Also present at the meeting were SPED Teacher, Home School Principal, and a general education teacher from the [REDACTED] grade. Testimony of SPED Teacher, Tr.14:5-23, Petitioners’ Exhibit 4, page 06 (hereinafter referenced as “P-Ex.4, p.06”).
  11. At the SFT meeting, the team determined that a reevaluation would be conducted for Student to include adaptive and academic assessments, and a classroom observation. Parents agreed to the reevaluation and the assessments to be conducted. Testimony of SPED Teacher, Tr.14:24-15:22; P-Ex.5, p.07.
  12. The SFT discussed a possible cognitive assessment at the meeting on December 7, 2022, but Parents did not agree to a cognitive assessment because Parents did not want anyone outside the school conducting any assessments with Student. Testimony of SPED Teacher, Tr.15:10-13; Testimony of Psychologist, Tr.50:24-51:16; P-Ex.5,

p.07.

13. A consent form was sent to Parents to sign for the adaptive and academic assessments and the classroom observation. Parent signed the consent form but wrote on the form that Parent was consenting to only the academic assessment and classroom observation. Testimony of SPED Teacher, Tr.15:5-17, P-Ex.6, p.08.
14. SPED Teacher conducted the academic assessment with Student on December 9 and 12, 2022. SPED Teacher administered the WJ-IV to Student in the manner in which SPED Teacher had been trained. Testimony of SPED Teacher, Tr.30:4-16.
15. The WJ-IV was administered to Student over a [REDACTED] day span to provide Student a break to avoid any concerns of Student losing focus or attention to the test. Testimony of SPED Teacher, Tr.17:5-11.
16. SPED Teacher also conducted a classroom observation of Student on December 9, 2022 as part of the reevaluation. The observation was conducted in Student's general education classroom for approximately forty-six (46) minutes. Testimony of SPED Teacher, Tr.20:4-17; P-Ex.12, p.25.
17. Student's classroom observations were consistent with the academic assessment, in that Student was able to follow directions and attempt Student's assignments, complete assignments in the allotted time, participate in group activities, respond to teachers and students, and demonstrate normal activity levels. Testimony of SPED Teacher, Tr.20:19-21:4; P-Ex.12, p.29.
18. Student's results in the academic assessment and classroom observation were consistent with what SPED Teacher sees of Student's general performance/behavior in school. Testimony of SPED Teacher, Tr.21:5-7.

19. In December 2021, Psychologist conducted a cognitive assessment with Student as part of a reevaluation done with Student at that time. Testimony of Psychologist, Tr.37:5-13; P-Ex.13, p.31.
20. Psychologist administered the Differential Ability Scales-II, Early Years Battery Upper Level (hereinafter "DAS-II) assessment to Student for the reevaluation. Psychologist chose the DAS-II assessment since Student had recently been given a different assessment in a previous reevaluation and because Psychologist believed that the DAS-II would provide further insight into Student's cognitive abilities. Testimony of Psychologist, Tr.37:14-38:6.
21. Psychologist conducted the DAS-II assessment on December ■■■ 2021 with Student. The results of the DAS-II assessment are considered generally valid within a year as long as there is no evidence of significant change within the student. Psychologist noted that there were no significant changes to or with Student from 2021-2022, so the results would still be considered valid. Testimony of Psychologist, Tr.38:15-19.
22. Psychologist did not conduct another cognitive assessment with Student for the December 2022 reevaluation because Parents did not consent to the cognitive assessment. Testimony of Psychologist, Tr.38:7-11.
23. Psychologist had previously administered the DAS-II to other students approximately eighty (80) times before conducting the assessment with Student in December 2021. Psychologist administered the DAS-II as Psychologist had been trained in accordance with the manufacturer's specifications. Testimony of Psychologist, Tr.39:2-3, 47:10-20.
24. The DAS-II assessment allowed Psychologist to get a better understanding of



Student's verbal abilities, such as identifying an object out of an array of objects, following two-step instructions, and being able to identify an object using a description of an object instead of naming the object. The DAS-II assessment provides a better understanding for the student's abilities for students with [REDACTED] verbal skills than other commonly used assessments. Testimony of Psychologist, Tr.48:5-49:13.

25. Psychologist had reviewed Student's prior cognitive assessment prior to administering the DAS-II in December 2021 and after completing the DAS-II assessment, determined that Student's scores on the DAS-II were consistent with Student's scores on the previous cognitive assessment that was done previously with Student. Testimony of Psychologist, Tr.49:7-50:6.

26. Psychologist also reviewed other assessments conducted with Student and determined that Student's scores on the DAS-II were also consistent with Student's scores on other assessments and observations. Testimony of Psychologist, Tr.45:5-18.

#### Student's assessment results

27. Student's cognitive assessment with Psychologist in December 2021 reflected a [REDACTED] range of scores for Student for verbal abilities, and while the scores for Student's spatial abilities showed that they were [REDACTED] than Student's verbal abilities, they were still in the [REDACTED] range. Testimony of Psychologist, Tr.40:6-42:5; P-Ex.13, p.31-34.

28. Student's cognitive assessment scores from the DAS-II were consistent with Student's scores from the previous cognitive assessment conducted with Student in February 2020. Testimony of Psychologist, Tr.49:14-50:6; P-Ex.13, p.31-32.

29. Student was quiet and cooperative during the testing process, maintained appropriate eye contact, put forth good effort during the test, and appeared to understand the test instructions; indicating that Student's scores on the DAS-II assessment were valid and not affected by any behaviors of Student. Student did have difficulty [REDACTED] [REDACTED] but this did not affect the test results. Testimony of Psychologist, Tr.39:6-18; P-Ex.13, p.31.
30. Student's scores on the cognitive assessment indicate that Student is more of a visual learner than a verbal learner who may require concepts to be presented in smaller units, with repetitions as necessary, and would likely benefit from visual aids, hands-on learning, and discussions after reading to facilitate growth in expressive language skills. P-Ex.13, p.33.
31. Student's cognitive assessment results indicated a need for Student to have special education and related services to get Student up to speed with Student's grade level peers. P-Ex.13, p.31-34.
32. Student's academic assessment conducted by SPED Teacher indicated that Student's individual testing section scores and Student's overall composite scores were in the [REDACTED] range, particularly in the areas of reading, written language, and written expression. Student's scores in math were also in the [REDACTED] range but were [REDACTED] than Student's reading and writing scores. P-Ex.11, p.19-23.
33. During the academic assessment, Student was cooperative and stayed focused for most of the testing. Student attempted to perform all the tasks in the test and only needed some prompting during timed portions of the test. Student's behavior did not interfere or invalidate the test results that were obtained from the WJ-IV. Testimony

of SPED Teacher, Tr.16:19-17:16; P-Ex.11, p.21.

34. Student's academic assessment noted that Student can write [REDACTED]  
[REDACTED]  
[REDACTED] The assessment also noted that Student was able to sit quietly and attend to group instruction, participate in group discussions/activities, and attempt to complete all tasks given. P-Ex.11, p.22.
35. Student's academic assessment also indicated that Student would benefit from visual aids and supports including manipulatives and repetition. P-Ex.11, p.23.
36. Student's academic assessment results indicated that Student was in need of special education and related services to get Student closer to grade-level abilities in reading, writing, and math. P-Ex.11, p.23.

#### Eligibility meeting

37. On December 16, 2022, the SFT had an eligibility meeting to review the results of the academic assessment and classroom observation. The meeting was held via videoconference and Parent participated in the meeting through a call-in feature. Also present at the meeting were SPED Teacher, Principal, Psychologist, and a general education teacher from Home School. Testimony of SPED Teacher, Tr.21:8-21; Testimony of Psychologist, Tr.43:14-16; P-Ex.8, p.12.
38. At the eligibility meeting, the SFT reviewed the new academic assessment and classroom observations conducted by SPED Teacher, as well as the cognitive assessment report that was completed by Psychologist in December 2021. Testimony of SPED Teacher, Tr.21:23-22:8; Testimony of Psychologist, Tr.43:17-25.

39. Parents were afforded the opportunity to ask questions about the reports that were presented as part of the reevaluation for Student but did not have any questions. Testimony of SPED Teacher, Tr.22:13-15, 24:3-5; Testimony of Psychologist, Tr.44:6-12, 46:1-19, 51:17-52:9.
40. At the eligibility meeting, the SFT determined that Student remained eligible for special education and related services under the IDEA under the category of [REDACTED]. Testimony of SPED Teacher, Tr.22:16-23:2; Testimony of Psychologist, Tr.44:13-25.
41. Parent was in agreement with the eligibility determination for Student and did not raise any questions regarding the reevaluation, eligibility, or the process for Student being found eligible for IDEA special education and related services under the category of [REDACTED]. Testimony of SPED Teacher, Tr.22:25-24:9; Testimony of Psychologist, Tr.45:20-25.
42. Based on the results of the reevaluation, the team was then able to develop an individualized education program (hereinafter “IEP”) for Student for the 2023-2024 school year to address Student’s needs. Testimony of SPED Teacher, Tr.24:10-13, 26:3-28:9; Testimony of Psychologist, Tr.46:20-23.
43. In developing Student’s IEP, the team also reviewed Student’s “GRADE” assessment, which is a tool used for special education testing, as well as assessments that were conducted as part of a prior reevaluation for Student in the summer of 2022. Testimony of SPED Teacher, Tr.26:3-27:22.
44. Parents raised concerns with the IEP team regarding Student’s reading, specifically that Student was not reading at Student’s grade level. Parents are aware that Student

- has not caught up to Student's age-grade level for reading. Testimony of SPED Teacher, Tr.31:8-14.
45. The IEP team addressed Student's reading concerns in Student's IEP by having reading goals and objectives for Student. Student has been making progress on Student's IEP goals and objectives for reading. Testimony of SPED Teacher, Tr.
46. SPED Teacher noted that Student is performing to the best of Student's abilities, however, Student needs a lot of practice and repetition before Student is able to generalize what Student learns in reading. Testimony of SPED Teacher, Tr.31:15-32:9.

#### Current dispute

47. In October 2023, Parents contacted Home School via email regarding a disagreement that Parents had with the books that Student was being assigned to read. Parents indicated that Student was able to read more difficult books and sent books to school for Student to read. While Home School noted that they would attempt to find more difficult books for Student to read based on the books that Parent sent, Parents continued to express displeasure with Student's education. P-Ex.14, p.36-39.
48. Within the email sent to Home School, Parents noted that "If we cannot figure out why [Student] can't read then maybe we need to have an IEE and an outside testing process to determine what is wrong since your educators cannot succeed maybe you educators don't have enough resources. Maybe your educators aren't doing their best maybe [Student] has a disability now just because you labeled [Student] something does not make it medically accurate it is a labeling created to get [Student] into a system." P-Ex.14, p.37.

49. In a separate email from Parents to Home School, Parents also indicated “[w]e have tried to work with your school for the last two years! And you have shown very little growth my [child’s] education is at a [REDACTED] level! When I asked why [Student] is at such a [REDACTED] level, you have limited answer to no answers fact that you respond with you don’t know what the other school did with [Student] or what disabilities [Student] had at the other school sounds like your basically blaming! So yeah, we need to have [Student] tested outside of your school outside of DOE so we can figure out why [Student] is so [REDACTED] It’s easy to say that [Student] did not have an official [REDACTED] year, but who’s fault was that was that the state was that the government who shut down everything!”

50. In a meeting involving Parent, SPED Teacher, and the principal of Home School, Parent also voiced a request for an IEE for Student. This request was not based on an current or pending reevaluation for Student and appeared to be solely based on Parent’s concerns regarding Student’s reading skills. Testimony of SPED Teacher, Tr.25:10-26:2.

51. Based on the emails from October 2023, excerpts from which are noted above, and Parent’s request at the Parent meeting, Home School determined that Parents were requesting an IEE for Student and filed their Request for IDEA Impartial Due Process Hearing on November 21, 2023.

## **V. CONCLUSIONS OF LAW**

### **A. IDEA framework**

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related

services designed to meet their unique needs.” *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91, 102 S.Ct. 3034, 3037-3043 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F.Supp.2d 89, 98 (D. D.C. 2008) (citing 20 U.S.C. §1400(d)(1)(A)). H.A.R. §8-60-2; \ 34 C.F.R §300.34; 34 C.F.R §300.39. A FAPE includes both special education and related services. H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

Special education means “specially designed instruction to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a student to benefit from their special education. *Id.* To provide FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.” *Dep’t of Educ. of Hawai’i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093 (D. Hawai’i 2016).

A parent has a right to an independent educational evaluation of their child if they disagree with the evaluation that was completed by the school district. H.A.R. §8-60-57; 20 U.S.C. §1415(b)(1) and (d)(2)(A); 34 C.F.R. §300.502. Once an IEE is requested, the school district must either file a due process complaint or provide the parent with an IEE at public expense. *Id.*

#### B. Validity of the Assessments Conducted by Petitioners

Petitioners argue that the cognitive assessment completed by Psychologist in December 2021 and the academic assessment conducted by SPED Teacher in December 2022 for Student’s reevaluation in 2022 are appropriate. Hawaii Administrative Rules Section 8-60-36(c) provide the parameters by which assessments for students undergoing an evaluation or reevaluation for special education services under the IDEA must be conducted. H.A.R. §8-60-37(b)-(c); 34

C.F.R. §300.304(b)-(c). The record here demonstrates that the cognitive and academic assessments comply with the recommended requirements under the IDEA.

Student had been determined to be eligible for special education and related services prior to starting at Home School in August 2022, however due to Student's age, Home School arranged for a reevaluation for Student in December 2022 to update Student's eligibility. *FOF 8-9.*

The SFT determined that an academic assessment and classroom observation would be conducted with Student for the reevaluation, since Parents did not consent to a cognitive assessment, and the team had a valid cognitive assessment from December 2021 that they could use to determine Student's eligibility. *FOF 10-13.*

The academic assessment used by SPED Teacher is commonly used in the field of academics to assess a student's academic ability, and SPED Teacher administered the assessment according to the manufacturer's recommendations. *FOF 2, 14.* The academic assessment provided the SFT and subsequent IEP team with information to determine Student's eligibility and to develop an IEP for Student for the end of the 2022-2023 school year and the 2023-2024 school year. *FOF 32-36, 38-42.*

Student's cognitive assessment conducted by Psychologist in December 2021 was more comprehensive than the previous cognitive assessment performed with Student, as it could provide more insight into Student's baseline abilities. *FOF 19-21.* Student's cognitive assessment also provided the team with information to determine eligibility for Student for special education and related services, as well as develop an IEP for Student. *FOF 27-31, 38-42.*

The classroom observation conducted with Student demonstrated that Student's academic and cognitive assessments were accurate and that Student's school performance was consistent



with the assessments. *FOF 18*. The classroom observation indicated that while Student is cooperative, compliant, and tries hard in class, Student still has difficulty with reading, writing, and math. *FOF 17*. Student requires special education and related services to attempt to get Student up to speed with Student's grade-level peers.

Parents do not disagree that Student requires supports to get up to speed with grade level peers and expectations. The emails sent to Home School from Parents indicate that Parents are dissatisfied with Student's slow progress in school, specifically with reading. *FOF 47-49*. This is also consistent with the concerns expressed by Parent to the SFT and IEP teams. However, as noted by SPED Teacher, Student came to Home School with very limited reading abilities, having had Student's [REDACTED] years disrupted by the COVID-19 pandemic. *FOF 5-8*. Student's cognitive and academic assessments also explain Student's slow progress in school, specifically with reading, since Student's verbal skills are in the very low range.

While Parents did not participate in the Due Process Hearing in this case, it is clear to this Hearings Officer that Parents are unhappy with Student's current progress in school. However, Parent's request for an IEE in this case was misplaced. Parents should first consult with the IEP team to address their concern of the lack of progress with Student and discuss ways to provide additional support, modifications, or other specially designed instruction to help Student with developing the skills to make further progress.

Parents did not express any concerns regarding the assessments conducted or used as part of Student's reevaluation in December 2022, and agreed with the determination of Student's eligibility. There is no current need for an independent educational evaluation specifically to address Parent's concerns about Student's lack of progress in reading.

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

Under the IDEA, parents are entitled to an IEE when they disagree with a school district's evaluation done for their child with a disability. This IEE means "an evaluation conducted by a qualified examiner who is not employed by the department;" and, if so warranted, the IEE would be at "public expense, meaning that the department either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent." H.A.R. §8-60-57(a)(3); 34 C.F.R. §300.502(a)(3). As part of the rules provide, the school district is to provide parents with the information on where to obtain an IEE and for the department's criteria for IEEs. H.A.R. §8-60-57(a)(2); 34 C.F.R. §300.502(a)(2). Even if the DOE's assessments are determined to be valid, Parents in this case are still entitled to obtain an IEE, however, not at public expense. H.A.R. §8-60-57(a)(4); 34 C.F.R. §300.502(a)(4).

Here, Petitioners have proven that the assessments conducted as part of Student's reevaluation in December 2022 were valid and conducted in compliance with the IDEA. Parents originally agreed to the assessments that were conducted and the eligibility determination that was made by the SFT for Student's continued special education needs. *FOF 11-13*. In their emails and verbal communications with Home School, Parents have not set forth any problems, concerns, or inaccuracies regarding any of the assessments conducted for Student's reevaluation. Further, Parents have not obtained an IEE to which they could point to in order to dispute the assessments performed by Petitioners. This Hearings Officer concludes that Petitioners have proven that Parents are not entitled to an IEE at public expense. If an IEE is obtained for Student, it would be a cost to Parents and not the DOE.

## **VI. DECISION**


Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that the cognitive and academic assessments and classroom observation

conducted by Petitioners as part of Student's reevaluation in December 2022 to be appropriate, and that Parents are not entitled to an independent educational evaluation at public expense.

**RIGHT TO APPEAL**

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

DATED: Honolulu, Hawai'i, January 2, 2024.

  
\_\_\_\_\_  
CHASTITY T. IMAMURA  
Hearings Officer  
Richards Building  
707 Richards Street, Suite 520  
Honolulu, Hawai'i 96813  
Phone: (808) 587-7680  
Fax: (808) 587-7682  
atg.odr@hawaii.gov