



DEPT. OF COMMERCE AND CONSUMER AFFAIRS

2003 JUN -4 P 3:36

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of

y and through his Mother,

Petitioners,

vs.

DEPARTMENT OF EDUCATION,
STATE OF HAWAII,

Respondent.

DOE-2002-022

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION;
APPENDICES A and B

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

I. CHRONOLOGY OF CASE

By letter dated December 14, 2002, [redacted] Esq., requested a due process hearing on behalf of his clients [redacted] and her son [redacted] (hereinafter collectively referred to as "Petitioners").

On December 18, 2002, the Department of Education ("Respondent") transmitted Petitioners' request for a due process hearing to the Office of Administrative Hearings, Department of Commerce and Consumer Affairs.

On January 10, 2003, the pre-hearing conference in this matter was conducted by the undersigned Hearings Officer. Petitioners were represented [redacted] and Respondent was represented by its attorney [redacted]. During the course of the pre-hearing conference, the parties requested that the hearing be rescheduled. Consequently, the parties

requested an extension of the forty-five day period specified by Hawaii Administrative Rules ("HAR") §8-56-77(a), from January 31, 2003, to March 7, 2003. Good cause appearing therefore, the Hearings Officer granted the parties' request.

On February 12, 2003, [redacted] filed Petitioners' Brief.

On February 20, 2003, the hearing in the above-captioned matter was convened by the undersigned Hearings. Ms. [redacted] was present and was represented by Mr. [redacted]

[redacted] Also appearing on behalf of Petitioners was [redacted], parent advocate. [redacted] District Educational Specialist for the Department of Education, appeared at

the hearing as the designated representative for the Respondent, and Respondent was represented by its attorney Mr. [redacted]. The hearing continued on February 24, 2003; March 12, 2003; March 17, 2003; April 8, 2003; April 16, 2003; April 24, 2003; April 29, 2003; May 2, 2003; and concluded on May 5, 2003, with the parties present and represented by their respective counsel. At the conclusion of Respondent's evidentiary presentation, Petitioners moved for a determination that Respondent did not provide a free and appropriate public education ("FAPE") and that [redacted] was an appropriate placement for

After considering the evidence that had been presented, the Hearings Officer granted Petitioners' motion.

On June 3, 2003, the parties requested that the forty-five day period specified by Hawai'i Administrative Rules ("HAR") §8-56-77(a) be extended from March 7, 2003, to June 4, 2003. Good cause appearing therefore, the Hearings Officer granted the parties' request.

II. ISSUES PRESENTED

The issues to be decided in the present matter, as identified in Petitioners' request for impartial hearing dated December 14, 2002, are as follows:

1. Whether [redacted] Individualized Education Program ("IEP") placement at [redacted] Elementary School provided FAPE;
2. Whether [redacted] IEP was procedurally and substantively flawed, specifically as to:
 - The unilateral denial of therapeutic aide ("TA") services;
 - The unilateral denial of speech and language therapy;

10 day hearing

- The lack of educators qualified in autism spectrum disorders and able to address _____'s specific learning disability through appropriate techniques;
 - The lack of occupational therapy that would permit _____ to obtain education benefit; and
 - The lack of multi-sensory instruction in a small class with peers similarly situated that would permit _____ to obtain education benefit because it is designed to meet _____'s unique needs.
3. Whether _____, Respondent did not provide _____ was an appropriate placement for _____, if _____ with FAPE.

III. FINDINGS OF FACT

1. On or about November 7, 1998, _____ a licensed psychologist, conducted a DOE Psychological Evaluation of _____. Based upon his evaluation of _____, Dr. _____ diagnosed _____ as having Pervasive Developmental Disorder, not otherwise specified. Dr. _____ made a number of recommendations, including that _____ receive mental health services at school and at home (family therapy, in-school psychological counseling, and case management services).

2. On or about October 8, 1999, Dr. _____ conducted a CAMHD Mental Health Evaluation of _____. Based upon his evaluation of _____, Dr. _____ reiterated his diagnosis and recommendations regarding _____.

3. According to _____ June 1, 2000 IEP, the IEP Team determined that _____'s Present Levels of Educational Performance were as follows:

_____ is a 6 yr. old boy who has been diagnosed w/Pervasive Developmental Disorder. He is currently placed in a fully self-contained special education class, receives speech services and through his Mental Health Treatment Plan, has a therapeutic aide (TA) who accompanies him throughout the day.

I. Achievement Levels

READING

_____ can identify all letters in the alphabet – upper & lower, he can provide all phonetic sounds for each letters, can read classmates names, colors (primary), shapes, daily used words (i.e. kupuna, art, P.E. etc.) and a variety of object picture cards (i.e. name of animals, furnitures, etc.). _____ can read 13 out of the 100 frequency words; however, when words are in context (in a sentence w/pictures) _____ can read more. _____ will continue working w/the frequency words and will be introduced to words that pertain to life skills (i.e. traffic

signs, directional words, words on application) and will learn to act upon each word – (for ex: when shown the word STOP, I will read & stop, when shown the word PUSH, I will read the word and push, etc.).

WRITING

I is able to write his full name (first & last; including okinas & hyphen) & has been observed writing family members names. I's writing is legible. He is able to close copy as well as for distance copy, words or sentences that are written on paper or board. I uses the computer to type out simple morning/daily messages. He has learned how to capitalize letters, use space bar & the period. He uses such programs as "Type to learn", "Intellipics" & intellitalk. I will be working on using writing for functional uses (i.e. writing/typing about events, writing his address, telephone #, filling out simple applications, etc.). I will continue to use computer for journal purposes & morning/dialing messages.

MATH

I can tell time to the hour on an analog clock. He can identify/name most numbers from 1 – 20. When given cues, I can rote count from 1 – 100. I can identify his shapes; [8 different shapes drawn]. I can work on telling time by ½ hrs, identifying the coins, counting money & continue working on using the calculator to add/subtract.

SPEECH

Speech and Language:

I has been receiving speech and language services to improve his receptive language, expressive language and pragmatic skills. I has made gains with established goals. He has mastered the goal pertaining to choosing if he wants to play with a peer or by himself (pragmatics).

I has expanded his spontaneous utterances over the year. He exhibits some spontaneous speech productions that are topic relevant. I does communicate with some jargon words, but there is an increase in content words noted. He has also increased his vocabulary knowledge. When provided with cues (verbal/visual/auditory), I is able to answer simple wh-questions. I is able to imitate responses or actions when a model is provided.

He attempts all tasks, and participates well. At times, redirection[s] to tasks are needed.

I exhibits adequate pitch, volume, fluency, voice and hearing for speech production.

Speech services to continue 90 minutes per week in the speech room.

II. Behavioral Data

is a friendly & happy boy who is well liked by peers & anyone he meets. is mild mannered and responds best w/gentle redirections, praises & visual cues. works best in a highly structured setting w/work presented visually, in small segments, grasp concepts very well w/the use of manipulatives, demonstrates lots of modeling, short simple direction, w/emphasis on visual prompts. enjoys using the computer, art projects, watching videos, P.E. and using the calculator. memory is quite exceptional; he recites lines from movies & follows daily schedule. vocabulary & speech has increased throughout the year; he makes his needs/wants known in the classroom. uses a picture schedule to help him w/transitioning from one activity to another & works independently @ his work station; both "picture schedule" & "work station" are methods from the "TEACCH" approach.

It has been observed & noted that enjoys interacting w/ other children in & out of class.

III. Social/Family Info.

resides with his parents and siblings. . . in the community. Parents continue to be supportive & are advocates for their children.

Respondent's Exhibit 5 at 4, 8, and 10.

- 4. The Conference Information and Notes for

June 1, 2000 IEP

reflect:

6/00 Parent agreed on new goals/obj. Would like to implement goals but refused to sign until mental health portion has been addressed regarding Dr. report. Mom shared Mental Health Psy eval. dated 10/15/99.

Dr. recommends that receives supportive and psychoeducational family therapy, in home therapy and daily after school contact w/peers, w/close supervision and should have male role models and aides as much as possible. To lessen transition anxieties, Ms. will be present on first day in ESY class w/new ESY teachers to familiarize her w/ daily routine. Dr. LeGoff

¹ TEACCH - Treatment and Education of Autistic & Communicatively Handicapped Children.

recommends that in-home therapy program be designed by a senior mental health professional experienced in the treatment of autistic spectrum disorders.

9-7-00 Conference Re: Fall ESY (Sept 25 - 29) (Oct. 2 - 6). . . Team agreed that [redacted] will benefit from services during Fall Break due to the nature of severity of the disability condition provided that regular yr. teacher (Ms. [redacted]) volunteer to teach for the 2 wks. Mother request transportation services for Fall ESY (Sept. 25 -29 Oct. 2-6).

Respondent's Exhibit 5 at 8.

5. The June 1, 2000 IEP noted that [redacted] met the standard for extended school year ("ESY") and indicated that [redacted] would be receiving the following services:

Special Education and Related Services

Services to be delivered	Initiation Date		Amount of Service		Projected Completion Date	
	Reg. Sch. Yr.	ESY	Reg. Sch. Yr.	ESY	Reg. Sch. Yr.	ESY
Sped. ed. FSC Room	06/01/00	06/19/00	25 hrs/wk	20 hrs/wk.	06/01/01	07/10/00
Speech therapy/resource room	06/01/00	06/19/00	90 mins/wk	45 mins/wk	06/01/01	07/10/00
Therapeutic Aide						
Mental Health /in school TA	06/01/00	06/19/00	20 hrs/wk	20 hrs/wk	06/01/01	07/10/00
Mental Health						

[Strike through in original text] Respondent's Exhibit 5 at 6.

6. The June 1, 2000 IEP provided that [redacted] would participate in regular education programs for homeroom, P.E., art, kupuna, library, field trips, assemblies, and school-wide special events as deemed appropriate. The June 1, 2000 IEP also provided that [redacted] was to be supervised or monitored by the special education teacher and educational assistants.

7. The Short-Term Objectives of the June 1, 2000 IEP, and the Progress Reports for [redacted] 2000 - 2001 school year (starting from the 2000 ESY) are attached hereto as Appendix A, and by this reference incorporated herein.

8. According to the draft of [redacted] s June 6, 2001 IEP, [redacted] s Present Levels of Educational Performance were as follows:

[redacted] needs in the areas of expressive/receptive communication, self-help skills and interacting appropriately w/peers hinder his participation and progress in the general education curriculum. [redacted] does well in a small group, well-structured setting. He participates in regular education class approximately 5 hrs/wk.

STRENGTHS

s memory is exceptional and because of this, he is able to rote count and identify his numbers up to 100 with little or no assistance, sort and match items, follow daily routines, associate speech with context/environment and read daily used words. With consistency (TEACH, RETEACH, MODEL W/SPEECH), is capable of mastering new skills. He is able to follow 1 - 3 steps verbal direction and 1 - 6 steps written directions, use the calculator to +/- up to 2 digit numbers and imitate song and movements to a music activity. is a persistent worker who will not move on to the next activity until done w/present activity. does well w/well-structured lesson presented through *TEACCH and PECS. is able to use a computer proficiently and is open and eager to learn new computer program/games. welcomes & responds to social interactions during free play.

NEEDS

Our overall goal for is for him to develop skills towards independency and in becoming a healthy and functional member of society. Four main areas are needed to be addressed in order to work on our goal; Language Arts, Math, Career and Life skills and Personal and Social. In the area of L.A., reading/wtg. to fill out application and to express himself through his journal. In the area of math; money and time will be covered (introduce digital clock). In the area of Career & Life Skills, cooking prep. & continue working on reading signs for safety; And in the area of personal & social standard, he'll continue working w/communication skills - especially among general ed. peers and will work on expressing his feelings verbally.

BEHAVIOR

does well in any setting but still needs some redirection when in a large group setting. will attempt to interact when faced with a new situation or setting (activities i.e. class parties w/general education, May Day, etc.).

PARENT CONCERN

Respondent's Exhibit 4 at 2.

9. Because of a disagreement between Ms. and some of the members of the IEP Team regarding the IEP process, the IEP meeting was deferred until September 2001.

10. According to September 6, 2001 IEP, the IEP Team determined that Present Levels of Educational Performance were as follows:

10. PRESENT LEVELS OF EDUCATIONAL PERFORMANCE

Reading Assessment Used: IRI

Reading Grade Equivalency: PP Assessment Date: 8/3/01, 9/5/01

_____ needs in the areas of expressive/receptive communication, self-help skills & interacting appropriately with peers hinder his participation & progress in the general education curriculum. _____ does well in a small group, well-structured setting. He participates in regular education class approximately 5hrs/wk.

STRENGTHS

_____ memory is exceptional & because of this, he is able to rote count & identify his numbers up to 100 with little or no assistance, sort & match items, follow daily routines, associate speech with context/environment, & read daily used words. With consistency (TEACH, RETEACH, MODEL WITH SPEECH), _____ is capable of mastering new skills. He is able to follow 1-3 steps verbal direction & 1-6 steps written directions, use the calculator to +/- up to 2 digit numbers & imitate song & movements to a music activity. _____ is a persistent worker who will not move on to the next activity until done with present activity. _____ does well with well-structured lesson presented through TEACCH & PECS. _____ is able to use a computer proficiently & is open & eager to learn new computer program/games. _____ welcomes & responds to social interactions during free play.

NEEDS

Our overall goal for _____ is for him to develop skills towards independency & in becoming a healthy & functional member of society. Four main areas are needed to be addressed in order to work on our goal; Language Arts, Math, Career & Life Skills & Personal & Social. Current work is being made in the areas of Language Arts, reading with writing to fill out application & to express himself through his journal. In the area of math, money & time will be covered (introduce digital clock). There will be continued work in the area of Career Life Skills, Cooking Prep, & reading signs for safety. And in the area of Personal & Social standard, _____ will continue working with communication skills, especially among general education peers & will work on expressing his feelings verbally.

BEHAVIOR

_____ does well in any setting, but still needs some redirection when in a large group setting. _____ will attempt to interact when faced with a new situation or setting (activities i.e; class parties with general education, May Day, etc.)

SPEECH AND LANGUAGE

_____ has made great gains in Speech Therapy. He fully participates & interacts in Speech Therapy. He has mastered verbally saying his likes/dislikes using visual & verbal cues. He has mastered

pointing to named items & uses carrier phrases to name items. He has also mastered using spatial concepts with object/pictures.

appears to exhibit adequate pitch, voice, fluency, & hearing for speech production.

Due to significant gains in therapy, established rapport, & ability to focus, it is recommended that speech services are 60 mins/per week in the speech room. ESY services to be 30mins./per week.

10/02/01

According to ISPED:

Reading Assessment Used: SESAT 4th Ed. (Gr. K.0-K. 5) Sounds & letters

Reading Scaled Score: 528

Reading Grade Equivalency: 1.5

Assessment Date: 05/03/2001

Respondent's Exhibit 4 at 2.

11. The September 6, 2001 IEP contained the following Annual Goals for

<p>16. STANDARD(S) Language Arts</p> <p>Apply knowledge of verbal and nonverbal language to communicate effectively. To speak clearly & expressively using nonverbal language to complement & enhance verbal messages.</p>
<p>17. MEASURABLE ANNUAL GOAL</p> <p>To improve receptive & expressive language skills.</p>
<p>18. BENCHMARKS/SHORT-TERM OBJECTIVES</p> <ol style="list-style-type: none"> 1. When presented with pictures, worksheets, etc., _____ will demonstrate understanding of the following concepts by pointing to or naming with 80% accuracy for 3 consecutive recording dates: <ol style="list-style-type: none"> a. size (small, medium, large) b. opposites (open/close, etc.) c. temporal (night, day, evening, etc.) 2. When presented with pictures, worksheets, etc. _____ will use personal and gender specific pronouns with 80% accuracy for 3 consecutive recording dates. 3. Throughout the school day, _____ will express his wants/ needs with 80% accuracy for 3 consecutive recording dates, using: <ol style="list-style-type: none"> a. communication board/ PECS, etc. b. verbally 1. When given the opportunity to converse throughout the day, _____ will appropriately answer questions regarding people/objective/activities with 80%

- accuracy for 3 consecutive recording dates:
- a. Using 2-3 word phrases
 - b. Using 4-6 word phrases
2. _____ will indicate his likes/dislikes verbally with 80% accuracy for 3 consecutive recording dates;
- a. With visual clues.
 - b. With question cues only (i.e.; What would you like?)

16. STANDARD(S) Math

Student use computational tools & strategies fluently & when appropriate, use estimation.

17. MEASURABLE ANNUAL GOAL

To improve math skills, money, & computational skills.

18. BENCHMARKS/SHORT-TERM OBJECTIVES

- 1) Given the different coins & the \$1 bill, _____ will state its VALUE 4 out of 5 opportunities
 - a. penny (\$. 01)
 - b. nickel (\$. 05)
 - c. dime
 - d. quarter
 - e. dollar bill
- 2) Given 5 problem[s] to add.
 - a. 2 coins
 - b. 3 coins
 - c. 4 coins

_____ will write its value then add for total (using [calculator] on 4 out of 5 opportunities.
- 3) When given a calculator, _____ will be able to solve for correct totals of:
 - a. 2 items (with price tags)
 - b. 3 items " "
 - c. 4 items " "

on 4 out of 5 opportunities.
- 4) Given an analog clock, _____ will be able to state correct time by:
 - a. quarter hrs. (ex. 1:15, 1:45, 2:15, 2:45)
 - b. 5 min. intervals (ex. 1:05, 1:10, 1:15, 1:20) with 80% accuracy.
- 5) Given a digital clock or watch, Ho`omalua will be able to state correct time 100% of the time.

16. STANDARD(S) Career & Life Skills

Student develop skills & attributes that are critical to a person's ability to successfully navigate the world in & out of school; at work; & at home.

<p>17. MEASURABLE ANNUAL GOAL To improve daily living skills/functional skills.</p>
<p>18. BENCHMARKS/SHORT-TERM OBJECTIVES</p> <p>1) During a cooking activity, _____ will be able to act upon the following Directions:</p> <ul style="list-style-type: none"> a. pour b. cut c. mix d. measure 1 cup e. measure 1/2 cup f. measure 1 tablespoon g. measure 1 teaspoon <p>On 3 of 5 consecutive recording dates.</p> <p>2) During clean up after cooking activity, _____ J will:</p> <ul style="list-style-type: none"> a. wash dishes with soap b. rinse dishes with water c. wipe table d. sweep floor (using broom/dust pan on 3 out of 5 consecutive recording dates. <p>3) Given the following warning signs, _____ will read then act out or self talk (talking out process) accordingly on 5 out of 5 given opportunities [on] 3 consecutive recording dates.</p> <ul style="list-style-type: none"> a. Poison (Bad! Tongue out-grimace) b. Danger (Oh-o, don't touch) c. Hot (Oh-o, don't go touch) d. Caution ("Be careful") e. Out of order ("Not working") f. Slippery when wet ("Walk carefully") g. Fragile ("Put it down carefully") <p>4) Given the following directional words _____ J will read then act out or self talk (talking out process) accordingly on 4 out of 5 on 3 consecutive recording dates.</p> <ul style="list-style-type: none"> a. right (turn to right) b. left (turn to left) c. straight (walk forward)

<p>16. STANDARD(S) Language Arts Apply knowledge of the conventions of language (reading & writing) to construct meaning.</p>
<p>17. MEASURABLE ANNUAL GOAL To improve reading & writing skills</p>
<p>18. BENCHMARKS/SHORT-TERM OBJECTIVES</p>

- 1) Given an application (teacher made or actual) that ask for the following:
 - a. last name
 - b. address
 - c. phone number
 - d. age
 - e. birthdate
 - f. city
 - g. state
 - h. zip code

_____ will read then provide correct information by writing on 4 out of 5 given opportunities on 3 consecutive recording dates.
- 2) Given a picture, _____ will comment on at least 2 things about the picture then write comment of paper with 80% accuracy

* Will need occasional cues & assistance.

16.	STANDARD(S) Personal & Social Interact with one or more children & with familiar adults.
17.	MEASURABLE ANNUAL GOAL To improve communication/social skills.
18.	BENCHMARKS/SHORT-TERM OBJECTIVES <ol style="list-style-type: none"> 1) When among peers in general education setting, _____ will engage in Basic social exchanges in full sentences 4 out of 5 times i.e.: <p style="margin-left: 40px;">"Hi _____"</p> <p>f. _____ : "Hi _____". What are you doing?"</p> <p>n: "I'm reading."</p> 2) When given the opportunity, _____ will be able to identify his feelings: <ol style="list-style-type: none"> a. sad b. angry c. happy <p>4 out of 5 times (i.e. ; I feel _____)</p>

12. The September 6, 2001 IEP noted that _____ met the standard for ESY and indicated that _____ would be receiving the following services:

24. SERVICES:	Projected Beginning Date	Projected Ending Date	Frequency	Location	ESY Dates
Special Education & Related Services:	9-7-01	9-7-02	26 hrs	FSC	10-1/10-12-01
Speech	9-7-01	9-7-02	90 min	Speech	45 min/wk ²
TA EA ³	9-7-01	9-7-02	22.5	FSC	"

Supplementary Aids & Services:					
<i>[No entries listed]</i>					

Program Modifications and Supports for School Personnel:					
<i>[No entries listed]</i>					

13. According to the Annual Review of Individualized Education Program for the September 6, 2001 IEP, the Related Services were noted to be not appropriate because, "TA not showing up [occasionally] w/no ~~phone call to~~ notice." *[Strike through in original text]*. Respondent's Exhibit 5 at 8.

14. According to the Meeting Notes for the September 6, 2001 IEP meeting:

1. Mr. [redacted] will be setting up a meeting between Mom, Behavior Health Specialist, [redacted] and District Psychologist, [redacted].
2. Mr. [redacted] will also try and have [redacted] District Autism Specialist) meet with Ms. [redacted].
3. Ms. [redacted] is setting up a meeting between Ms. [redacted] and Dr. [redacted]. (The above meetings are to address [redacted] and the [family's] needs for counseling and also the issues of yearly testing.) Mom is also requesting information on night time enuresis.
4. Speech services will remain at 90 minutes until Ms. [redacted] returns from maternity leave and can meet with Ms. [redacted].

Respondent's Exhibit 4 at 12.

15. [redacted] Progress Reports regarding the September 6, 2001 IEP Annual Goals are attached hereto as Appendix B, and by this reference incorporated herein.

²The Respondent's copy of the IEP contained a handwritten notation of "45 min/wk". Petitioners' copy of the IEP did not have the handwritten notation.

³The Respondent's copy of the IEP contained a deletion of the reference to "TA" and a handwritten notation of "EA" was made next to the stricken "TA." Petitioners' copy of the IEP did not have the handwritten notation.

16. From September 2001 to January 2002, [REDACTED]'s speech therapist, [REDACTED] was on maternity leave. Before going on maternity leave, Ms. [REDACTED] had recommended that [REDACTED] speech therapy sessions be reduced from 90 minutes per week to 60 minutes per week because of [REDACTED] progress.

17. In or around October 2001, [REDACTED] TA, [REDACTED] left [REDACTED] Elementary School without notifying the school in advance. Immediately after Mr. [REDACTED] left [REDACTED] Elementary School, another TA, that had been working part-time with [REDACTED], was assigned to take over [REDACTED]'s TA duties regarding [REDACTED].

18. As a result of [REDACTED]'s departure from [REDACTED] Elementary School, no one was available to meet [REDACTED] in the morning and accompany [REDACTED] to his homeroom in the general education class. Ms. C [REDACTED] had concerns about [REDACTED] safety in being dropped off at school and attending homeroom in the general education classroom without adequate supervision because [REDACTED] had been noted to be capable of wandering away from his classroom unless closely supervised. Consequently, in November 2001, Ms. C [REDACTED] requested that [REDACTED] not attend the general education classroom/homeroom in the mornings, and instead, that [REDACTED] report directly to his fully self-contained classroom.

19. After [REDACTED]'s departure from [REDACTED] Elementary School in October 2001, the Department of Health ("DOH") did not provide a replacement TA for [REDACTED] despite repeated requests from [REDACTED] Elementary School to DOH and the Leeward Oahu Family Guidance Center. In an effort to address [REDACTED] needs for 1:1 support, Respondent provided a skills trainer and 1:1 support via a paraprofessional tutor/teacher ("PPT").

20. After Ms. [REDACTED] returned to [REDACTED] Elementary School in January 2002, Ms. [REDACTED] thought that her recommendations regarding the reduction in [REDACTED]'s speech therapy sessions had been adopted in [REDACTED] September 2001 IEP. Consequently, Ms. [REDACTED] provided 60 minutes of speech therapy to [REDACTED] during February, March, and April 2002.

21. By Prior Written Notice dated February 28, 2002, [REDACTED] Principal of [REDACTED] Elementary School notified Ms. [REDACTED] that [REDACTED] triennial reevaluation was due before the end of the school year to determine whether [REDACTED]

continued to qualify for Individuals with Disabilities Act ("IDEA") services. The February 28, 2002 Prior Written Notice also stated:

In addition to the review of current academic records and student work, the following assessments will be requested: Cognitive assessment, academic assessment, speech-language assessment, psychological assessment, OT, and PT.

Respondent's Exhibit 9 at 15.

22. On February 28, 2002, a Reevaluation Team Meeting was held regarding [redacted] reevaluation. The meeting participants were Ms. [redacted] Student Services Coordinator ("SSC") for [redacted] Elementary, and [redacted] Principal of [redacted] Elementary. At the February 28, 2002 meeting, Ms. [redacted] was informed that [redacted] s reevaluation needed to be completed by the end of the school year, and Ms. [redacted] also requested that [redacted] have occupational therapy (OT) and physical therapy (PT) assessments done. Ms. [redacted] also requested that Dr. [redacted] conduct a clinical evaluation of [redacted] but Ms. [redacted] was informed that the evaluation would have be done by Respondent's licensed clinical psychologist first.

23. On or about February 28, 2002, Ms. [redacted] signed a Consent for Assessment as Part of a Reevaluation form for [redacted] s assessments.

24. On or about February 28, 2002, [redacted] Elementary submitted a Request for Psychological Evaluation (for [redacted], which stated:

Last eval. dated 10/15/99. [redacted] is requesting that a licensed clinical psychologist complete eval since Mother is requesting Dr. [redacted], an outside licensed psychologist.

Pls. complete by 04/17/2002, as eligibility mtg. will be scheduled thereafter.

Respondent's Exhibit 9 at 13.

25. On or about March 18, 2002, [redacted], a licensed occupational therapist, conducted an OT evaluation of [redacted] as part of [redacted] s required triennial evaluation. However, as a result of an inadvertent omission in [redacted] s written OT evaluation report, the IEP Team was of the understanding that [redacted] had concluded that [redacted] did not require any OT services. Consequently, the IEP Team did not include OT as part of [redacted] May 31, 2002 IEP.

26. On or about April 2, 2002, [redacted] psycho-educational evaluation was completed as part of [redacted] s required triennial evaluation.

27. In the beginning of April 2002, because of Ms. [redacted] concerns regarding [redacted] progress and her desire to have Respondent provide with appropriate special education services, Ms. C [redacted] ick removed [redacted] from [redacted] Elementary School.

28. On or about April 13, 2002, [redacted] Speech and Language evaluation was substantially completed as part of [redacted] required triennial evaluation.

29. By letter dated April 17, 2002, Ms. [redacted] informed [redacted] of [redacted] Elementary School, that because of previous engagements, Ms. [redacted] was not able to commit herself to any of the proposed dates for [redacted] IEP meeting. Ms. [redacted] also requested that prior to scheduling any meetings for [redacted] in order to allow Ms. [redacted] the opportunity to give "adequate input at such meetings," that Ms. [redacted] be provided with: 7-10 days written notice of the meetings; written meeting announcements; a written agenda with beginning and ending times; and any written information pertaining to [redacted] (i.e. evaluations, drafts of PLEPS, goals, etc.).

30. By letter dated April 18, 2002, [redacted], Vice Principal of [redacted] Elementary School, informed Ms. [redacted]

We are in receipt of your letter dated 17 April, 2002 and have considered your requests with the following results:

-Written Meeting Announcements: This is your right by law and is no problem. In the past we have tried to communicate with you in an informal manner to find a time agreeable to all parties involved. We requested 3 dates from you when you signed the Consent for Assessment dated 02/28/02 and you were unwilling to set a time for the meeting. Again on the 11th of April, 2002 you were offered 4 dates to hold the meetings and you were still unable to set a date. Now we are approaching the end of the timeline and options are narrowing. The written meeting announcement you requested is attached.

-A written agenda with beginning and ending times: The beginning time is on the written announcement you requested. As you are well aware, the ending time is hard to predict as we are trying to inform you of testing results and then develop an appropriate IEP. At best an ending time is a guess because each meeting is for and individual and varies greatly. A time limit may be set and should be agreed upon by team members at the time of the meeting. At this time the agenda will look like this.

Introductions and Rights: 10 min
Results of Evaluations: 1 hr
Develop IEP: 50min
Closing: 10min

All times are an approximation and subject to change as needed.

-Any written information containing my child: The purpose of the Eligibility Meeting and the IEP is to share this information with you and the team. With the problem we have had scheduling the assessments, because is not attending school at this time; it is extremely hard to provide written reports prior to the meeting. However, the reports we now have are being forwarded for your review at this time.

Due to the 60 day time line for reevaluations and your schedule of previous commitments, we are offering the 23rd of April, 2002 as a possible meeting date for reevaluation/eligibility meeting. We understand that this is not within the 7/10 days you requested but with the scheduling problems we've encountered we feel it is reasonable notice. If you are unable to attend on the 23rd, the meeting will be held on the 26th of April, 2002. This will only be the eligibility meeting and we will continue to assess in preparation for the IEP meeting.

In the past, you have always provided us with input for your children's Present Levels of Educational Performance. If you wish to contribute prior to the IEP meeting, please forward your input to [redacted] at your earliest convenience.

Respondent's Exhibit 23 at 26, 27.

31. On or about April 22, 2002, [redacted] special education teacher) sent Attendance Notice 1 to Ms. [redacted] and informed her that [redacted] had a total of 20 absences for the school year. The Notice also informed Ms. [redacted] of the school's attendance policy, including the student's responsibility for making up any missed class work.

32. On or about April 23, 2002, Ms. [redacted] informed Ms. [redacted] via fax, of additional dates that Dr. [redacted] was available to conduct the psychological evaluation of [redacted]. Ms. [redacted] also provided Ms. [redacted] with Dr. [redacted]'s telephone and cell phone numbers so that Ms. [redacted] could contact Dr. [redacted] directly to schedule a time for [redacted]'s evaluation. Ms. [redacted] also offered to help Ms. [redacted] with scheduling the evaluation, getting [redacted] back to school, or anything else that Ms. [redacted] might need. Ms. [redacted] requested that Ms. [redacted] contact Dr. [redacted] as soon as possible because Dr. [redacted] had blocked off his calendar for Ms. [redacted] and [redacted].

33. By letter dated April 26, 2002, Ms. [REDACTED] informed Mr. and [REDACTED]

It was unfortunate that we did not get a response from you regarding the final two meeting announcements that were attached to our letter dated April 18, 2002. As a result, we proceeded to hold Eligibility Conference on April 26, 2002, as we stated in our letter.

The Team agreed that [REDACTED] continues to be eligible for special education and its related services under the category of Autism. This action was proposed because he continues to have a developmental disability that appears to have been evident before age three, that significantly impacts his communication (verbal and nonverbal) and social interaction. It was also reported from those who know and/or work with [REDACTED] that he continues to: 1) engage in repetitive activities and stereotyped movements, 2) be resistant to environmental change or change in daily routines, and 3) have unusual responses to sensory experiences. The only other option would have been no eligibility with general education programming and placement. This would not have been appropriate because [REDACTED] is in need of higher levels of services that cannot be provided by the general education classroom. The evaluation procedure used was to review [REDACTED] current psycho-educational and OT assessments, prior reports and assessment results, student status report, attendance records, input from teachers, speech-pathologist, occupational therapist, administration, and behavioral health specialist, and all other available information. We have attached your copy of the Documentation of Eligibility, Prior Written Notice, including the Eligibility Conference notes.

Our efforts to schedule the psychological evaluation with you will continue, as this is a Department of Health requirement for [REDACTED] Oahu Guidance Center. All other assessments are tied to the time line that will end on April 29, 2002, therefore, should you continue to want the physical therapy, speech-language, and additional academic assessments completed, please contact our SSC, [REDACTED]. She will ask you to complete a consent form to begin another reevaluation process, schedule the assessments, and finally, schedule the Eligibility Conference.

We would like to schedule an IEP meeting to especially address [REDACTED] not being in school. He has made much progress since first entering [REDACTED] and [REDACTED] Elementary School are extremely concerned about possible regression as a result of his nonattendance. We hope that you will share your concerns, as we would like to work with you on how we can get [REDACTED] back in school. As you know, a Skilled Trainer who knows [REDACTED], has been assigned to provide the one-on-one assistance to meet [REDACTED] educational needs. We have attached eleven (11) meeting notices and the agenda, and are flexible to time changes.

Respondent's Exhibit 23 at 22 and 23.

34. In or around May 2002, Ms. [REDACTED] met with Ms. [REDACTED] regarding the make-up times for [REDACTED] speech therapy sessions.

35. By Attendance Notice 3, dated May 14, 2002, Mr. [redacted] informed Ms. [redacted] that [redacted] had a total of 36 absences. Because of the school's concern regarding [redacted] absences, Mr. [redacted] requested an opportunity to meet with Ms. [redacted] on May 22, 2002, at 10:00 a.m.

36. On May 14, 2002 and May 17, 2002, Dr. [redacted] conducted a Mental Health Evaluation of [redacted]. Based upon his evaluation of [redacted] Dr. [redacted] reiterated his previous diagnosis and recommendations regarding [redacted]

37. By letter dated May 23, 2002, [redacted], Mental Health Care Coordinator, Department of Health, Child and Adolescent Mental Health Division, [redacted] Family Guidance Center, informed Ms. [redacted]

This is to inform you that as of July 1, 2002, Department of Health, Child & Mental Health Division will no longer be providing Respite services. I had left a message on your answering machine this morning referring you to the Developmental Disabilities Division to apply for support services. The number to call is [redacted]. They are currently restructuring their department, so you may be referred to another number to call. You can request for help to receive a break from caring for your children. The Developmental Disabilities Division is not responsible to provide any educational supports or assistance. If you have any questions, please feel free to call me.

Respondent's Exhibit 23 at 16.

38. By letter dated May 28, 2002, [redacted], Grade Level Chair of [redacted] Elementary School, informed Ms. [redacted]

Hi

Just a short note to explain about the IEP and let you know what's planned for next year. As you know, [redacted] hasn't been to school in quite awhile so we have no idea how much he has progressed or regressed over the last couple of months. Consequently the IEP you are viewing is basically the same as last year with minor changing in the wording of the PLEP and the services. If or when [redacted] does return, we will need to do some in room assessments to see where he is and what he needs to work on besides the social aspects. When we have a good idea of what his present needs are, we will call another IEP and share with you how we plan to address them.

The plan for next year is that I would be [redacted] teacher with one of the trained EA's as his aide. Part of the day would again be with his regular classmates. This will address both his academic and social needs.

I understand that you are having difficulties with the school but I have always felt that you and I communicated quite well. I'm looking forward to working with [redacted] again and if I can help you address the problems with the school, please contact me by phone or in person.

Respondent's Exhibit 23 at 13.

39. According to _____ May 31, 2002 IEP, the IEP Team determined that Present Levels of Educational Performance were as follows:

10. PRESENT LEVELS OF EDUCATIONAL PERFORMANCE

Reading Assessment Used: Informal Reading Inventory

Assessment Date: 08/03/2001 Grade Equivalent: PP Scaled Score:

_____ needs in the area of expressive/ receptive communication, self-help skills & interacting appropriately with peers hinder his participation & progress in the general education curriculum. _____ does well in a small group, well structured setting. He participates in regular education class approximately 5 hours a week. **STRENGTHS:** _____ memory is exceptional & because of this, he is able to rote count & identify his numbers up to 100 with little or no assistance, sort & match items, follow daily routines, associate speech with context/ environment, & read daily used words. With consistency (TEACH, RETEACH, [MODEL] WITH SPEECH), _____ is capable of mastering new skills. He is able to follow 1-3 steps verbal direction, & 1-6 steps written directions, use the [calculator] to +/- up to 2 digit numbers & imitate song & movements to a music [activity]. _____ does well with well-structured lesson presented through structured teaching that includes physical boundaries, visual schedules and individual 1:1 and independent work systems. Also, through visual communication systems with pictures. _____ is able to use a computer proficiently & is open & eager to learn new computer program/ games. _____ welcomes & responds to social interactions during free play. **NEEDS** Our overall goal for _____ is for him to develop skills towards independency & in becoming a healthy & functional member of society. Four main area are needed to be addressed in order to work on our goal: Language Arts, Math, Career & Life Skills & Personal & Social. Current work is being made in the areas of Language Arts, reading with writing to fill out application & to express himself through his journal. In the areas of math, money & time will be covered (introduce digital clock). There will be continued work in the areas of Career Life Skills, Cooking Prep, & reading signs for safety. And in the area of Personal & Social standard, _____ will continue working with communication [skills], especially among general education peers & will work on expressing his feelings verbally. **BEHAVIOR** _____ does well in any setting, but still needs some redirection when in a large group setting. _____ will attempt to interact when faced with a new situation or setting (activities i. e; class parties with general education, May Day, etc.) **SPEECH AND LANGUAGE** _____ as made great gains in Speech Therapy. He fully participates & interacts in Speech Therapy. He has mastered verbally saying his likes/ dislikes using visual & verbal cues. He has mastered pointing to named items & uses carrier phrases to name items. He has also mastered using spatial concepts

with objects/ pictures. I appears to exhibit adequate pitch, voice, fluency, & hearing for speech production. Due to significant gains in therapy, established rapport, & []'s ability to focus, it is recommended that speech services are 60 mins. / per week in the speech room. ESY services to be 30mins. / per week 10/02/01 According to [ISPED]: Reading Assessment Used: SESAT 4th Ed. (Gr. k. O-k. 5) sounds & letters Reading Scaled score: 528 Reading [Grade] Equivalency.

Respondent's Exhibit 3 at 2.

40. The May 31, 2002 IEP contained the following Annual Goals:

16.	STANDARD(S) Language Arts - Oral Communication Apply knowledge of verbal and nonverbal language to communicate effectively.
17.	MEASURABLE ANNUAL GOAL To improve receptive & expressive language skills.
18.	How will progress toward the annual goal be measured? Observation; records
19.	BENCHMARKS/SHORT-TERM OBJECTIVES <ol style="list-style-type: none"> When presented with pictures, worksheets, etc., will demonstrate understanding of the following concepts by pointing to or naming with 80% accuracy for 3 consecutive recording dates: a. size (small, medium, large) b. opposites (open, close, etc.) c. temporal (night, day, evening, etc.) When presented with pictures, worksheets, etc., will use personal and gender specific pronouns with 80% accuracy for 3 consecutive recording dates. Throughout the school day, will express his wants/ needs with 80% accuracy for 3 consecutive recording dates, using: a. communication boards/ PECS, etc. b. verbally <ol style="list-style-type: none"> When given the opportunity to converse throughout the day, I will appropriately answer questions regarding people/ objective/ activities with 80% accuracy for 3 consecutive recording date: a. Using 2-3 word phrases b. Using 4-6 word phrases I will indicate his likes/dislikes verbally with 80% accuracy for 3 consecutive recording dates; a. with visual clues. B. with question cues only (i.e., What would you like?)

16.	STANDARD(S) Language Arts - Oral Communication Communicate orally using various forms - inter-personal; group; and public - for a variety of purposes and situations. Use strategies within speaking and listening process to construct and communicate meaning.
17.	MEASURABLE ANNUAL GOAL To improve social language skills.
18.	How will progress toward the annual goal be measured?
19.	BENCHMARKS/SHORT-TERM OBJECTIVES

16.	STANDARD(S) Mathematics - Number and Operation Use computational tools and strategies fluently and when appropriate, use estimation.
17.	MEASURABLE ANNUAL GOAL To improve math skills, money, & computation skills by .5 gr. equivalency.
18.	How will progress toward the annual goal be measured? Teacher-made tests, Observation; records
19.	BENCHMARKS/SHORT-TERM OBJECTIVES 1) Given the different coins & the \$1 bill, _____ will state its VALUE 4 out of 5 opportunities a. penny (\$. 01) b. nickel (\$. 05) c. dime d. quarter e. dollar bill 2) Given 5 problem[s] to add. a. 2 coins b. 3 coins c. 4 coins 1) _____ will write its value then add for total (using calculator) on 4 out of 5 opportunities. 3) When given a [calculator], _____ will be able to solve for correct totals of: a. 2 items (with price tags) b. 3 items " " c. 4 items " " 4 out of 5 opportunities. 4) Given an analog clock, _____ will be able to state correct time by: a. quarter hrs. (ex. 1:15, 1:45, 2:15, 2:45) b. 5 min. intervals (ex. 1:05, 1:10, 1:15, 1:20) with 80% accuracy. 5) Given a digital clock, Ho'omalulu will be able to state correct time 100% of the time.

16.	STANDARD(S) Language Arts - Oral Communication Communicate orally using various forms - inter-personal; group; and public - for a variety of purposes and situations.
17.	MEASURABLE ANNUAL GOAL _____ will be able to improve communication and social skills with 90% accuracy.
18.	How will progress toward the annual goal be measured? Observation; records, Daily work
19.	BENCHMARKS/SHORT-TERM OBJECTIVES 1) When among peers in general education setting, _____ will engage in Basic social exchanges in full sentences 4 out of 5 times i.e.:

"Hi"

"Hi What are you doing?"

Sam: "I'm reading."

2) When given the opportunity, _____ will be able to identify his feelings:

- a. sad
- b. angry
- c. happy

4 out of 5 times (i.e. ; I feel _____)

16. STANDARD(S) Language Arts - Writing

Apply knowledge and understanding of the conventions of language and research when writing.

17. MEASURABLE ANNUAL GOAL

_____ will improve his reading and writing skills with 80% accuracy

18. How will progress toward the annual goal be measured? Observation; records, Daily work

19. BENCHMARKS/SHORT-TERM OBJECTIVES

1) Given an application (teacher made or actual) that ask[s] for the following:

- a. last name
- b. address
- c. phone number
- d. age
- e. birthdate
- f. city
- g. state
- h. zip code

_____ will read then provide correct information by writing on 4 out of 5 given opportunities on 3 consecutive recording dates.

2) Given a picture, _____ will comment on at least 2 things about the picture then write comment of paper with 80% accuracy

* Will need occasional cues & assistance.

16. STANDARD(S) Career and Life Skills

Develop skills and attributes that are critical to a person's ability to successfully navigate the world in and out of school; at work; and at home: Thinking and reasoning skills; personal qualities; skills for managing resources; interpersonal skills

17. MEASURABLE ANNUAL GOAL

_____ will improve his daily living skills and functional skills with 85% accuracy.

18. How will progress toward the annual goal be measured? Observation; records, Daily work

19. BENCHMARKS/SHORT-TERM OBJECTIVES

1) During a cooking activity, _____ will be able to act upon the following Directions:

- a. pour
- b. cut
- c. mix
- d. measure 1 cup
- e. measure 1/2 cup
- f. measure 1 tablespoon
- g. measure 1 teaspoon

On 3 of 5 consecutive recording dates.

2) During clean up after cooking activity _____ will:

- a. wash dishes with soap
- b. rinse dishes with water
- c. wipe table
- d. sweep floor (using broom/dust pan on 3 out of 5 consecutive recording dates.

3) Given the following warning signs, _____ will read them then act out or self talk (talking out process) accordingly on 5 out of 5 given opportunities [on] 3 consecutive recording dates.

- a. Poison (Bad! Tongue out - grimace)
- b. Danger (Oh-o, don't touch)
- c. Hot (Oh-o, don't touch)
- d. Caution ("Be careful")
- e. Out of Order ("Not working")
- f. Slippery when wet ("Walk carefully")
- g. Fragile ("Put it down carefully")

4) Given the following directional words, _____ will read them then act out or self talk (talking out process) accordingly 4 out of 5 on 3 consecutive recording dates.

- a. right (turn to right)
- b. left (turn to left)
- c. straight (walk forward)

41. The May 31, 2002 IEP noted that _____ met the standard for ESY because of the "extent of regression caused by interruption of education programming. Breaks longer than 5 days." Additionally, the May 31, 2002 IEP indicated that _____ would be receiving the following services:

21. SERVICES:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location	ESY Yes/No
Special Education and Related Services:					
Special Education	05/31/2002	05/31/2003	1560m/5x/wk	Special Ed.	Yes
Speech/ Language Therapy	05/31/2002	05/31/2003	90m/ /wk	Special Ed.	Yes

Supplementary Aids and Services, Program Modifications and Supports for School Personnel:	Projected Beginning Date	Projected Ending Date	Frequency (Min/Times/Period)	Location
Therapeutic Aide (T.A.)	05/31/2002	06/30/2002	1350m/ /wk	Gen. Ed. / SPED
1:1 support	06/30/2002	05/31/2003	1350m/ /wk	Gen. Ed. / SPED

Respondent's Exhibit 3 at 27.

42. At the May 31, 2002 IEP meeting, a Proposed Behavior Support Plan was discussed by the IEP Team.

43. The Meeting Notes from May 31, 2002 IEP meeting state:

- ** Mother clarified that she is keeping [redacted] home (Quarter 4) because he did not get appropriate support in the class.
- ** Have a contingency plan should assigned 1:1 support not be present.
- ** Compulsory attendance law reviewed.
- ** Mother requested listing of missed Speech Language sessions.
- ** Team agreed that current Speech Language goals can continue until programming data can be acquired,
- ** Team agreed that Math, Career & Life Skills, Personal & Social, and Language Arts goals will continue until programming data can be acquired.
- ** Team agreed to a reevaluation to complete Speech Language, Physical Therapy, Clinical evaluation, and Brigance assessments. Mother requested Curriculum Vitae for all assessors prior to testing. Although mother would like to sign reevaluation. Consent forms and begin the timeline, the school decided that mother sign consent forms once she agrees to assessors.
- ** Mother requests Therapeutic Aide remain on the grid until June 30, 2002, thereafter, the terminology will read 1:1 support.
- ** Mother would like 1:1 support to meet the T A, Level III credentials. School responded that 1:1 support personal will be qualified under 1:1 support qualifications. (Department of Health's Therapeutic Aide-III credentials attached as requested by mother.
- ** Mother would like to continue to request respite. Developmental Disabilities respite information and application have been forwarded to mother by [redacted] family Guidance Center.
- ** Mother requests Coordinated Service Plan (CSP) remain as part of the Individual Evaluation Plan (IEP) until June 30, 2002. Thereafter she requested to reconvene. The school informed mother that after July 01, 2002, the Coordinated Service Plan

(CSP) will no longer be apart of the Individual Evaluation Plan (IEP).

* * Mother was offered Free and Appropriate Public [Education] (FAPE) . 05/31/2002

Respondent's Exhibit 3 at 28. Pursuant to the request of Ms. [redacted], the credentialing requirements for the Therapeutic Aide (T.A.) Level III, were included as part of the notes for the May 31, 2002 IEP meeting.

44. By letter dated June 3, 2002, [redacted], Vice Principal of [redacted] Elementary School, informed Ms. [redacted]

Dear Parent:

I would like to take this opportunity to thank you for attending Individualized Education Program (IEP) meeting on May 31, 2002. At this meeting you accepted the 1:1 support, effective July 1, 2002, and requested that the Therapeutic Aide (TA) remain on the IEP grid through June 30, 2002. The transition from Department of Health's (DOH) mental health services to Department of Education's School-Based Behavioral Health (SBBH) services will be effective as of July 1, 2002. You currently do not have respite, however, [redacted] Family Guidance Center's [redacted] letter to you dated May 23, 2002 referred you to the Developmental Disabilities Division [redacted] to apply for support services. Should you need to contact [redacted] during the interim, please call Loretta Debina, MH Supervisor, at [redacted] since [redacted] LOFGC's MH Care Coordinator assigned to [redacted] as found employment elsewhere.

You shared at this IEP meeting that [redacted] has been kept home because you felt that he was not being provided with adequate classroom support. [redacted] would like to ensure that appropriate support is in place for your son when he returns to school. The school attempted to be proactive when [redacted] only TA, who was providing part-time services only, abruptly left on February 28, 2002. The services of a Paraprofessional Teacher (PPT) was immediately procured and when it became evident that the PPT's nineteen hours per week was not sufficient to meet his educational needs, the services of an Educational Aide (EA) was then allocated to [redacted]. The EA was then formally trained and now meets the requirements of a Skilled Trainer.

You will find enclosed the Parent and Student Rights In Special Education as well as, curriculum vitae from our Complex Clinical Psychologist (clinical evaluation), Speech-Language Pathologist (speech-language assessment), Physical Therapist (PT assessment), and SPED Grade Level Chair (academic assessment). Please contact [redacted], our Student Services Coordinator, when you are ready to sign the necessary consent form to begin [redacted] reevaluation process. At that time, [redacted] will schedule with you the

time for each discipline to complete their testing, including the return date to complete the eligibility process and review/revise IEP.

I would appreciate a response by Thursday, June 6, 2002 to indicate whether you would like to proceed with a reevaluation, and thereby, scheduling the signing of forms, testing, and return meeting date to address eligibility and any revision to s IEP. Please feel free to contact me at 697-7110 if I can address any questions, concerns, or if I can be of any further assistance to you.

Respondent's Exhibit 23 at 11. Ms. D also attached the curriculum vitae of: Dr. [REDACTED], Complex Clinical Psychologist; [REDACTED], Speech-Language Pathologist; [REDACTED], Physical Therapist; and [REDACTED], SPED Grade Level Chair.

45. By letter dated June 6, 2002, [REDACTED], Vice Principal of [REDACTED] Elementary School, transmitted a copy of [REDACTED] May 31, 2002 IEP to Ms. [REDACTED]

along with the Prior Written Notice, Conference Notes, and a letter from Superintendent [REDACTED] dated June 6, 2002 to parents of students with autism spectrum disorder. Superintendent [REDACTED], letter stated:

Dear Parent:

As you are aware, beginning July 1, 2002 the responsibility for educational supports and services to your child with Autism Spectrum Disorder (ASD) and/or Severe Mental Retardation (SMR) will move from the Child and Adolescent Mental Health Division (DOH) to the Department of Education (DOE). I am writing this letter to give you up-to-date information about this transition. During the parent meeting held in your district you learned that several protests were filed about the Request for Proposal (RFP). The RFP is the basis for developing contracts with providers for the necessary supports and services to your child. It is now evident that the time required to legally make a final decision on the protests will unnecessarily disrupt services and may make the transition more difficult for your child.

Because we want to make this transition as smooth as possible for you and your child, the DOE will be doing the following

1. *Withdrawing the RFP,*
2. *Establishing contracts with those provider agencies currently providing services to students with ASD and SMR, and*
3. *Reissuing an RFP for services that will begin July 2003.*

This will make the transition smoother by making it easier to maintain "student teams." It will also provide more time for you and your "student team" to become familiar with the new way of describing the educationally relevant supports and services needed by your child and make any necessary changes in individualized education programs.

Someone from the DOE will soon be speaking directly to you about the transition. They will provide you with the name of your contact person, and verify the type and amount of supports and services your child receives, and the name of your current provides agency.

If you are not contacted by June 25, 2002, please call your Complex Area Office. Please be assured that we are committed to providing the necessary services and to making the transition go smoothly. Thank you for your patience and understanding.

Respondent's Exhibit 23 at 9.

46. On or about June 10, 2002, [redacted], Student Services Coordinator for [redacted] Elementary School, personally delivered to Ms. [redacted]: a) the curriculum vitae of [redacted] (the DOE clinical psychologist that has to conduct the psychological assessment of [redacted] and [redacted] speech therapist that was going to conduct [redacted] speech assessment); and b) a list of dates that did not receive speech services, and Ms. [redacted]'s projected make-up time. The dates that Ms. [redacted] had identified were: February 4, 7, and 21, 2002; March 4, 13, and 14, 2002; and April 1, 4, and 10, 2002. Ms. [redacted] proposed that the time could be made up during the ESY session, Wednesday through Friday for three (3) weeks, for 30 minutes each day, in addition to 20 minutes on Mondays and 25 minutes on Tuesdays, which were already part of Ho'omalulu's IEP for the ESY.

47. By letter dated June 12, 2002, [redacted], Vice Principal of [redacted] Elementary School, informed Ms. [redacted]

We have not received your response to our June 3, 2002 letter that included the curriculum vitae that you requested during [redacted] May 31, 2002 Individualized Education Program (IEP) meeting. Because of this, we are assuming that you do not wish to proceed with a reevaluation. Should you at anytime decide that you would like to proceed with a reevaluation, please feel free to contact our Student Services Coordinator (SSC), [redacted]. She would then assist you with scheduling: 1) signing of the appropriate consent forms, 2) testing, and finally, 3) the return date to complete the eligibility process, and if necessary, a review/revision to [redacted] IEP to address his needs based on new information.

qualifies for Extended School Year (ESY) and although you requested and [were] provided with the forms during his last IEP meeting, we have not received the completed and signed forms back from you. We would like to remind you that ESY will begin on June 18, 2002 and hope that you will complete and return the ESY forms as we all look forward to working with [redacted] again.

Respondent's Exhibit 23 at 4.

48. By letter dated July 10, 2002, Mr. [redacted] thanked Ms. [redacted] for informing [redacted] Elementary School of her recent move. Mr. [redacted] also informed Ms. [redacted] that [redacted] Elementary School would be the new home school for [redacted] and his elementary school-aged siblings. Mr. [redacted] asked Ms. [redacted] to contact [redacted] Elementary School to arrange for the necessary release documents for [redacted] and his siblings.

49. By letter dated September 9, 2002, Ms. [redacted] informed Mr. [redacted] and the IEP Team:

I would like to meet with the rest of the IEP Team to meet the benefit of [redacted]'s individualized and unique needs. However, due to circumstances out of my control, I will not be able to schedule any meetings until the crisis that my family is dealing with has subsided.

Thank you for your patience and understanding, and if you have any questions, do not hesitate to contact me via mail.

As I have stated in the past, please remind your staff or any other parties or persons:

- Please do not come to my home without my prior mutual agreement.
- Please do not follow or observe me or my family without my knowledge or prior mutual agreement.

Respondent's Exhibit 23 at 3

50. On or about November 2, 2002, [redacted] Psy. D., [redacted] Clinical Director, conducted an independent psychological re-evaluation of [redacted] at [redacted] home. As part of her psychological re-evaluation of [redacted] [redacted] conducted a clinical interview, reviewed [redacted] st records, and administered the following assessment instruments:

- Test of Nonverbal Intelligence-third edition (TONI-3)
- Peabody Picture Vocabulary Test-revised (PPVT-R)

- Wide Range Achievement Test-third edition (WRAT-3)
- Vineland Adaptive Behavior Scales-interview edition (VABS)
- Gilliam Autism Rating Scale (GARS)
- Achenbach Child Behavior Checklist-Parent Rating Scale
- Behavior Assessment System for Children-Parent Rating Scale (BASC)
- Projective Drawing

Based upon the results of her re-evaluation of _____, Dr. _____ diagnosed _____ has having autistic disorder, and made a number of recommendations including:

- a. _____ should be in a highly structured setting with teachers who are experienced with autism;
- b. _____ should have a full-time therapeutic aid who was trained to deal with autistic children; and
- c. _____ needed a new IEP and a functional behavioral assessment once he adjusted to his new placement.

51. On November 2, 2002, _____, a licensed occupational therapist with experience and training in autism spectrum disorder, performed an independent OT evaluation of _____. Based upon her OT evaluation of _____ Ms. _____ recommended that _____ be placed in a highly structured learning environment with minimal distractions, and have a 1:1 therapeutic aide to assist with academics. Ms. _____ also recommended that an OT help _____ with self-regulation. Ms. _____ was of the opinion that _____ needed direct and consultative OT services,⁴ and recommended that OT be provided to _____ 45 minutes to 1 hour, three times per week with multiple motor breaks. Ms. _____ also was of the opinion that OT would help _____ receive maximum educational benefit.

52. On November 13, 2002, _____ began attending _____.

53. By letter dated November 19, 2002, _____ of the _____ informed Mr. _____ that _____ and two of his siblings had been attending _____ on a daily basis since November 13, 2002.

54. On or about December 19, 2002, _____ was formally withdrawn from _____ Elementary School.

55. By letter dated February 3, 2003, [REDACTED], District Educational Specialist, [REDACTED] District, requested Mr. [REDACTED] to have Ms. [REDACTED] sign the consent form for [REDACTED] assessments.

56. At the hearing convened on March 12, 2003, [REDACTED], Psy. D., a licensed psychologist, testified regarding her evaluation of [REDACTED]. After being duly qualified as an expert in the treatment and diagnosis of autism spectrum disorder as a psychologist and as a speech and language therapist, Dr. [REDACTED] testified credibly that in her opinion, [REDACTED] required intensive intervention as soon as possible, and up to 40 hours per week of intensive autism programming. Dr. [REDACTED] also testified credibly that as of that date, [REDACTED] was receiving reading and language instruction and can read using a computer-based reading program. [REDACTED] was also learning to do math. [REDACTED] had a full-time TA, and [REDACTED] and his family (including Ms. [REDACTED], [REDACTED] older sisters, and Grandmother) were receiving family therapy. Dr. [REDACTED] was of the opinion that [REDACTED] was receiving education benefit from his current school, the [REDACTED].

57. At the hearing on April 8, 2003, after being qualified as an expert in OT, Ms. [REDACTED] testified credibly that having worked with [REDACTED] from February 2001 through March 2002, and after having conducted the OT evaluation of [REDACTED] Ms. [REDACTED] was of the opinion that [REDACTED] would benefit from receiving OT on a consultative basis, instead of receiving direct OT services. Consequently, Ms. [REDACTED] testified that her written OT evaluation report inadvertently characterized her recommendations regarding OT services for [REDACTED]. Ms. [REDACTED] testified that her report should have reflected that she was of the opinion that [REDACTED] did not require direct OT services on a regular basis; however, [REDACTED] should have continued to receive OT services provided on a consultative basis, whereby Ms. [REDACTED] could instruct [REDACTED] s T.A. or E.A. in how to provide appropriate OT services to [REDACTED].

58. In or around April 2003, [REDACTED] Elementary School sent [REDACTED] ISPED records to [REDACTED] Elementary School.

⁴ Ms. [REDACTED] testified that after reading Ms. [REDACTED] OT evaluation of [REDACTED], Ms. [REDACTED] was under the impression that Ms. [REDACTED] had determined that [REDACTED] did not require OT.

IV. CONCLUSIONS OF LAW

As stated previously, the issues to be decided in the present matter, as identified in Petitioners' request for impartial hearing dated December 14, 2002, are as follows:

1. Whether [redacted] s IEP placement at [redacted] Elementary School provided FAPE;
2. Whether [redacted] IEP was procedurally and substantively flawed, specifically as to:
 - The unilateral denial of TA services;
 - The unilateral denial of speech and language therapy;
 - The lack of educators qualified in autism spectrum disorders and able to address [redacted] s specific learning disability through appropriate techniques;
 - The lack of occupational therapy that would permit [redacted] o obtain education benefit; and
 - The lack of multi-sensory instruction in a small class with peers similarly situated that would permit [redacted] to obtain education benefit because it is designed to meet [redacted] s unique needs.
3. Whether [redacted] was an appropriate placement for [redacted] , if Respondent did not provide [redacted] with FAPE.

A. [redacted] s Placement at [redacted] Elementary School

First, the Hearings Officer would note that because of procedural notification requirements, [redacted] Elementary School was not formally notified that [redacted] had been withdrawn from [redacted] Elementary School until December 19, 2002.

Therefore, despite the constructive and actual notice that [redacted] Elementary School had received regarding Ms. [redacted] s move to the [redacted] Elementary School district in July 2002, the Hearings Officer must conclude that [redacted] was formally enrolled at [redacted] Elementary School until his withdrawal in December 2002.

As such, Petitioners' argument regarding the lack of FAPE being provided by [redacted] Elementary School was not supported by a preponderance of the evidence.

B. Substantive Flaws in the IEP

The preponderance of the evidence established that [redacted] had identifiable mental health and OT needs. The preponderance of the evidence also established that these two specific special education needs were not addressed in the May 31, 2002 IEP.

The evidence indicates that despite annual psychological reports/evaluations conducted by Dr. [redacted] and despite continued requests for psychological evaluations and mental health services by Ms. [redacted] there was a progressive reduction of mental health services to [redacted] from his 1999 IEP, to the complete elimination of mental health services as reflected in the May 31, 2002 IEP.

The evidence presented at the hearing did not provide an adequate explanation for the total omission of mental health services to [redacted] in the May 31, 2002 IEP, except that the IEP team was waiting for Ms. [redacted] to sign another consent for the psychological assessment/evaluation of [redacted]

The Hearings Officer finds the reports of Dr. [redacted] and the testimony of Dr. [redacted] to be credible and persuasive in establishing [redacted] need for mental health services.⁶

As to [redacted] OT needs, the Hearings Officer finds and concludes that the preponderance of the evidence established that [redacted] required OT services in order to obtain educational benefit.

The Hearings Officer finds the testimony of Ms. [redacted] to be credible and persuasive in establishing [redacted] s need for OT services.

The Hearings Officer would also note that the omission of OT services in the May 31, 2002 IEP by the IEP Team, appears to have been the result of relying on Ms. [redacted] s report that had inadvertently stated that no OT services were recommended. As Ms. [redacted] noted in her testimony at the hearing, Ms. [redacted] s actual recommendation was that direct OT services were not recommended at that time, but OT services should have been made available to [redacted] on a consultative basis.

⁵ The contents of Dr. [redacted] : CAMDHE Mental Health Evaluation Reports of October 28, 1998, October 15, 1999, and May 18, 2002 were reviewed and discussed during the course of Respondent s case, but had not been received into evidence.

⁶ [redacted] : April 20, 1999 IEP provided mental health services in school with a clinician for 1 hour per week; 15 hours a week for therapeutic aide; and a case manager.

Accordingly, based on [redacted] s need for mental health services and OT services, the Hearings Officer finds and concludes that FAPE was not provided because these services were not included in the May 31, 2002 IEP.

C. Placement at [redacted]

Having determined that FAPE was not provided by the May 31, 2002 IEP, the Hearings Officer further finds and concludes that the preponderance of the evidence established that the [redacted] was an appropriate placement for [redacted]

The credible testimony of Dr. [redacted] established [redacted] was an appropriate educational placement for [redacted], and that [redacted] was receiving educational benefit at [redacted] while progressing academically in reading and math.

V. DECISION

For the reasons stated above, the Hearings Officer finds and concludes that the May 31, 2002 IEP did not offer FAPE.

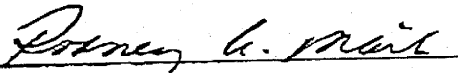
Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. Respondent convene [redacted] s IEP team at the first mutually available date to make the necessary arrangements to complete [redacted] s remaining evaluations, including the psychological and academic evaluations;
2. Once the required evaluations are completed, the IEP team shall meet and develop an IEP for [redacted] that is based upon current and appropriate information, and that sets meaningful goals and objectives that are capable of measurement and review; and
3. Because Petitioners did not inform Respondent that [redacted] had been placed at the [redacted], until December 17, 2002, Respondent shall reimburse Petitioners for the cost of [redacted] current private placement at the [redacted] from December 27, 2002, until such time as the IEP process is completed and FAPE offered.

VI. RIGHT TO APPEAL

The parties have the right to appeal to a court of competent jurisdiction within thirty (30) days of receipt of this Decision.

DATED: Honolulu, Hawai'i, June 4, 2003



RODNEY A. MAILE
Senior Hearings Officer
Department of Commerce
and Consumer Affairs