

**DECISIONS ISSUED BY HAWAII HEARINGS OFFICERS UNDER  
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

(Last updated September 1, 2014)

The following tabulation summarizes decisions issued by hearings officers appointed by the Hawaii Department of Commerce and Consumer Affairs (“DCCA”) under the Individuals With Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415(f)(3). IDEA regulations require that school districts make due process decisions available to the public after redacting personally identifiable information. 34 C.F.R. §300.513(d). A statistical summary and list of cases on appeal is included in the appendix. Redacted decisions may be found in their entirety on the website of the Hawaii Department of Education (“DOE”) at <http://hidoereports.k12.hi.us/DueProcessHearings/2013-2014/Pages/default.aspx>. Decisions that were reversed, modified, or remanded on appeal are shaded. A summary of decisions issued before July 1, 2011 is available at [http://www.hawaiidisabilityrights.org/Forms/IDEA\\_Decisions.pdf](http://www.hawaiidisabilityrights.org/Forms/IDEA_Decisions.pdf), with subsequent developments shown below. Compiled by John P. Deller, J.D. Comments may be sent to: [jpdell@aloha.net](mailto:jpdell@aloha.net).

<b>NEW AND UPDATED CASES since:</b>	<b>July 1, 2014 (*)</b> 1314-026* 0910-087R*	<b>May 1, 2014 (***)</b> 1314-042*** 1314-040*** 1213-007*** 1011-105R***	<b>March 1, 2014 (**)</b> 1314-033** 1314-030** 1314-011** 1314-008** 1112-101** 1011-103R**
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DCCA Docket Number	Student’s Attorney	DOE’s Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
DOE-SY1314-042***	Keith H.S. Peck	Kunio Kuwabe	David H. Karlen 4/17/2014	1. Least restrictive environment (certificate track program); 2. ESY; 3. LRE (physical education);  <u>OUTCOME:</u> <b>For DOE</b>  <u>REASONING:</u> (1) Parent did not show how student was prejudiced by being placed in certificate track workplace readiness program, nor did DOE predetermine the issue by proposing placement in a draft IEP; (2) Parent failed to show that denial of ESY services deprived student of meaningful educational progress; (3) parent failed to show that student should have been included in regular physical education classes under criteria in <i>Rachel H.</i> , 14 F.3d 1398 (9th Cir. 1994).  <u>ON APPEAL:</u> <i>A.G. v. DOE</i> , D. Haw. Civ. No. 14-234 DKW-

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				RLP – pending.
DOE-SY1314-040***	Keith H.S. Peck	Kunio Kuwabe	Richard A. Young 5/13/2014	<ol style="list-style-type: none"> <li>1. Eligibility for ESY;</li> <li>2. Denial of speech-language services;</li> <li>3. LRE placement (certificate track - workplace readiness program);</li> <li>4. LRE (physical education).</li> </ol> <p><b>OUTCOME: For DOE</b></p> <p><b>REASONING:</b> (1) Teachers did not notice regression during 5-day break in education; student had received private tutoring during break, but IEP team was not informed of that; (2) evidence showed that speech-language services were consultative only and that those were provided; (3) based upon Student's limited cognitive and adaptive abilities, the workplace readiness program is an appropriate placement; (4) low functional skills in academic classes made placement inappropriate in general physical education class.</p>
DOE-SY1314-033**	Matthew C. Bassett	Steve Miyasaka	David H. Karlen 3/7/2014	<ol style="list-style-type: none"> <li>1. Confidentiality of resolution sessions;</li> <li>2. Least restrictive environment;</li> <li>3. Failure to implement IEP.</li> </ol> <p><b>OUTCOME: For Student</b></p> <p><b>REASONING:</b> (1) Resolution session discussions are not inadmissible settlement negotiations; (2) DOE denied placement in the least restrictive environment and failed to implement IEP by limiting student to one general physical education class per week and not preparing a lesson plan; (3) student did not prove that DOE's refusal to enroll certificate track student in a culinary arts class was a material failure to implement the IEP, given the academic nature of the class and safety issues.</p>
DOE-SY1314-030**	Pro se	None	Richard A. Young 2/24/2014	<ol style="list-style-type: none"> <li>1. Failure to implement IEP;</li> <li>2. Inadequacy of IEP;</li> <li>3. Charter school was inappropriate placement;</li> </ol>

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				<p>4. Private school placement.</p> <p><u>OUTCOME:</u> <b>For DOE</b></p> <p><u>REASONING:</u> (1) Failure to implement IEP provision for pull-out sessions for two weeks was not a material discrepancy where student resisted pull-out sessions and special education teacher chose to delay pull-out in order to build rapport; failure to implement other provisions did not result in a loss of educational opportunity or deny parents meaningful participation in the IEP process; (2) parents did not offer evidence showing that student regressed, but charter school staff testified about progress in group settings and that student had a positive attitude; (3) parents did not prove that during the two months student attended the charter school, inclusion in groups and pull-out special education classes for math, reading, and writing were inappropriate; instances of bullying and weapons on campus were isolated and properly dealt with; (4) parents did not offer any evidence showing that private school's program was appropriate for student.</p> <p><u>ON APPEAL:</u> <i>Tyler J. v. DOE</i>, D. Haw. Civ. No. 14-121 DKW-KSC – pending.</p>
DOE-SY1314-026*	Keith H.S. Peck	Gregg Ushiroda	Rowena A. Somerville 7/11/2014	<p>1. Provision of FAPE in view of bullying and assault at school;  2. Least restrictive environment;  3. Parental participation in IEP process;  4. ESY</p> <p><u>OUTCOME:</u> <b>For DOE</b></p> <p><u>REASONING:</u> (1) DOE was not deliberately indifferent to harassment and bullying of Student as it disciplined offenders; DOE offered 1:1 aide, transfer to another school or home tutoring as response to Student's fears caused by an assault at school; (2) Student's frequent absence from school did not trigger ESY because student was making academic progress; (3) Placement in special education classes was appropriate because student needed extra supports; (4) DOE lacked</p>

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				<p>information for IEP because parent failed to provide an evaluation of student's needs and refused to sign consent forms for a re-evaluation by the DOE.</p> <p><u>ON APPEAL</u>: <i>K.K. v. DOE</i>, D. Haw. Civ. No. 14-358 JMS-RLP – pending.</p>
DOE-SY1314-018	Keith H.S. Peck	Carter Siu	Richard A. Young 1/7/2014	<ol style="list-style-type: none"> <li>1. Least restrictive environment (mainstreaming in math and language classes);</li> <li>2. Adequacy of supplementary aids;</li> <li>3. Private school placement</li> </ol> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: (1) Evidence showed that student did well in special education class but shut down in regular class. Also, modifications student needed in general ed class would adversely affect other students. Student did not show, therefore, that placement in sped class was inappropriate. (2) preferential seating close to the source, repeated instruction, and extra time to process statements were adequate.</p> <p><u>ON APPEAL</u>: <i>B.E.L. v. DOE</i>, D. Haw. Civ. No. 14-66 SOM-BMK – pending</p>
DOE-SY1314-011**	Susan Dorsey	Undisclosed	David H. Karlen 2/27/14	<ol style="list-style-type: none"> <li>1. Failure to evaluate suspected disabilities;</li> <li>2. Predetermination of placement;</li> <li>3. Denial of parental participation in IEP process;</li> <li>4. Inadequate IEP;</li> <li>5. ESY services;</li> <li>6. Reimbursement of private school tuition</li> </ol> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: (1) DOE failed to evaluate student as required by decision in DOE-SY1011-111, but that did not deny FAPE because parent never intended to send student to public school; (2) placement is not the same as location, and parent has no right to participate in determining the location of</p>

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				<p>services; predetermination of placement at the home school does not violate the IDEA if the DOE is willing to consider alternatives; (3) non-English speaking parent did not attend IEP meeting; it is therefore immaterial that the interpreter provided by the DOE could not speak parent's language; (4) IEP was inadequate because of gaps in PLEPs and goals that DOE intended to fill after student transferred from private school; (5) student did not prove that educational gains would be significantly jeopardized without ESY services; (6) even though the DOE denied a FAPE, reimbursement of private school tuition is denied because of parent's refusal to attend IEP meeting and to fairly consider placement at home school.</p> <p><u>ON APPEAL:</u> <i>Derek H. v. DOE</i>, D. Haw. Civ. No. 14-143 ACK-KSC – pending.</p>
DOE-SY1314-008**	Susan Dorsey	Michelle Puu	Richard A. Young 3/7/2014	<ol style="list-style-type: none"> <li>1. Failure to evaluate suspected disabilities;</li> <li>2. Inadequate IEP;</li> <li>3. Parental participation;</li> <li>4. ESY period;</li> <li>5. Private school placement</li> </ol> <p><u>OUTCOME:</u> <b>For DOE</b></p> <p><u>REASONING:</u> (1) DES experienced in student's disability attended IEP meetings; use of data over one year old in PLEPs was outweighed by DOE's testimony that past and present needs were considered; (2) articulation goals were not necessary because of student's cognitive difficulties; parent did not object to goals as being unmeasurable at IEP meetings; (3) special education and related services and the experience of DOE staff in disabilities similar to student's offered a FAPE in the home school; private school staff participated in IEP meetings, although their advice was not followed; (4) ESY period appropriate where there was no proof of regression; (5) private school is an appropriate placement, but FAPE is offered in public school.</p> <p><u>ON APPEAL:</u> <i>Kimi R. v. DOE</i>, D. Haw., Civ. No. 14-165 DKW-</p>

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				RLP – pending.
DOE-SY1314-005	Keith H.S. Peck	Steve Miyasaka	Haunani H. Alm 12/30/2013	<p>1. Denial of speech-language services</p> <p><b>OUTCOME: For Student</b></p> <p><b>REASONING:</b> (1) DOE's failure to provide 2 hours per day of speech-language services from a qualified SLP was a material IEP deficiency and thus a denial of FAPE; (2) based on <i>I.T. v. DOE</i>, 2012 WL 3985686 (D. Haw. 9/11/2012), compensatory education includes retrospective as well as prospective relief; (3) student is entitled to be reimbursed for the cost of private speech-language services that the DOE failed to provide; (4) compensatory education is not warranted because the DOE worked diligently to establish an IEP; (5) private placement is denied because violation of FAPE involved only five weeks.</p>
DOE-SY1213-050	Keith H.S. Peck	Carter K. Siu	Haunani H. Alm 8/2/2013	<p>1. Provision of FAPE to student moving from another State; 2. Reimbursement for private placement.</p> <p><b>OUTCOME: For DOE</b></p> <p><b>REASONING:</b> (1) DOE was not required to implement an IEP from another State until student was enrolled in public school; (2) parent did not prove that DOE could not implement IEP.</p> <p><b>ON APPEAL:</b> <i>N.B. v. DOE</i>, D. Haw. Civ. No. 13-439 BMK (Jocelyn Chong for DOE) – pending.</p>
DOE-SY1213-046	Matthew C. Bassett Jerel D. Fonseca	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	<p>1. Failure to implement IEP; 2. Eligibility under autism; 3. Inadequate services; 4. Placement without notice; 5. Placement in private school</p> <p><b>OUTCOME:</b> No decision by statutory deadline.</p> <p><b>ON APPEAL:</b> <i>Dylan S. v. DOE</i>, D. Haw. Civ. No. 14-120 ACK-</p>

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				KSC – DCCA retained retired H.O. Haunani H. Alm to issue the administrative decision. Case dismissed for lack of jurisdiction.
DOE-SY1213-041	John P. Dellera	Michelle Pu`u	Richard A. Young 7/31/2013	<p>1. Compensatory education for violation of stay put</p> <p><u>OUTCOME:</u> <b>For Student</b> – placement at Loveland Academy ordered for SY 1213-1214 and ESY 2014.</p> <p><u>REASONING:</u> (1) DOE denied student a FAPE by failing to comply with stay put order that required payment of tuition at Loveland Academy until student became 22 in May 2013; (2) student regressed during 7 months education was interrupted; (3) compensatory education at Loveland Academy is awarded for SY2013-2014 and ESY 2014 to restore seven months of FAPE plus time reasonably required to recoup regression.</p>
DOE-SY1213-028	Keith H.S. Peck	Michelle Pu`u	Haunani H. Alm 5/30/2013	<p>1. DOE restrictions on subjects for IEP meeting; 2. Reimbursement for unilateral parental placement</p> <p><u>OUTCOME:</u> <b>For Student</b> – private school tuition reimbursed.</p> <p><u>REASONING:</u> (1) the IEP team's failure to engage in a discussion about Student's behavior and the use of positive behavioral interventions significantly impeded Parents' opportunity to participate in the IEP process and thus denied a FAPE to Student.</p> <p><u>ON APPEAL:</u> <i>DOE v. Z.Y.</i>, D. Haw. Civ. No. 13-322 LEK-RLP – <b>affirmed in part and remanded in part</b>, Doc. 21, 11/27/2013, 2013 WL 6210637: (1) HO's decision is affirmed as to denial of parental participation; (2) case is remanded to determine whether private school is an appropriate placement for reimbursement purposes.</p>
DOE-SY1213-026	Matthew C. Bassett	Michelle Pu`u	Haunani H. Alm 3/28/2013	<p>1. Need for 1:1 adult aide.</p> <p><u>OUTCOME:</u> <b>For Student</b></p>

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				<p><u>REASONING:</u> Brain injury and physical needs of student required that she have an adult aide assigned to her exclusively throughout the school day. Without an aide, student was unable to focus on teacher in class and lunch with other students in order to benefit from social interactions with nondisabled students.</p>
DOE-SY1213-016	Keith H.S. Peck	Milton S. Tani	Haunani H. Alm 5/20/2013	<p>1. Provision of FAPE; 2. Parental participation in IEP process; 3. Private placement.</p> <p><u>OUTCOME:</u> <b>For Student</b></p> <p><u>REASONING:</u> (1) Student did not prove that IEPs denied a FAPE; (2) During IEP meeting, parent raised issues of student's participation with non-disabled peers during ESY breaks and need for 1:1 aide, but issues were not addressed. The failure to address these issues was a serious infringement on parent's participation and thus a denial of FAPE; (3) Student is placed in private school at DOE expense because DOE denied FAPE and private school is appropriate.</p>
DOE-SY1213-007***	Jerel D. Fonseca	Milton S. Tani	Rowena A. Somerville 5/16/2014	<p>1. Inadequate IEPs; 2. Failure to re-evaluate student; 3. Least restrictive environment; 4. Failure to have IEP in place at start of school year; 5. Reimbursement for related services; 6. Payment for private evaluations; 7. Compensatory education</p> <p><u>OUTCOME:</u> <b>For DOE</b></p> <p><u>REASONING:</u> (1) IEPs based on 4 year-old tests of autistic student subject to seizures were adequate because PLEPs were based on over 1500 pages of "data" provided by special education teacher and DOE staff comments; (2) parent waived triennial re-evaluation; (3) placement was in the least restrictive environment; (4) parent obstructed completion of IEP before school year by requesting adjournments of IEP meetings and</p>



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				<p>moving residence; (5) reimbursement for private behavioral services denied because provider interfered with DOE's program; (6) compensatory education denied because DOE did not deny a FAPE.</p> <p><u>ON APPEAL</u>: <i>Nyle D. v. DOE</i>, D. Haw. Civ. No. 14-274 DKW-KSC (Steve Miyasaka for DOE) – pending.</p>
DOE-SY1213-004	Stanley E. Levin	Toby Tanaki	Richard A. Young 2/25/2013	<ol style="list-style-type: none"> <li>1. Adequacy of goals and objectives;</li> <li>2. Qualifications of IEP team members;</li> <li>3. Need for ESY;</li> <li>4. least restrictive environment;</li> <li>5. private school placement</li> </ol> <p><u>OUTCOME</u>: <b>For Student. Private school tuition reimbursed.</b></p> <p><u>REASONING</u>: (1) goals and objectives properly took account of student's progress in private school; (2) because student had never attended home school, DOE team members could not have had personal knowledge of student; (3) DOE should have considered severity of receptive language disorder, not just regression and recoupment in deciding whether ESY services were needed; (4) DOE failed to include parents in decision to assign student to special education classes for core subjects and failed to consider whether mainstreaming with supports would be the LRE; (5) private school offered mental health counseling for anxiety, small class size, Orton-Gillingham method, and student made progress. Placement was therefore appropriate.</p>
DOE-SY1213-002	Keith H.S. Peck	Milton Tani	Richard A. Young 1/4/2013	<ol style="list-style-type: none"> <li>1. Least restrictive environment;</li> <li>2. Provision of special education in general education class.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: (1) Student of average intelligence was properly placed in special education classes for academic subjects because of smaller class size and greater attention</p>

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				<p>from teacher that addressed Student's lack of focus and need for re-direction; (2) parent did not prove that providing only 504-type accommodations in general education class denied a FAPE.</p> <p><u>ON APPEAL</u>: <i>D.E.B. [J.S. by D.S.-S.] v. DOE</i>, D. Haw. 13-59 DKW-RLP (Jocelyn H. Chong for DOE) – <b>affirmed</b>, Doc. 21, 11/27/2013, 2013 WL 6210633.</p>
DOE-SY1112-105	Stanley E. Levin	Carter Siu	Richard A. Young 12/18/2012	<ol style="list-style-type: none"> <li>1. Lack of baselines in PLEPs;</li> <li>2. Evaluation for transition from private to public school;</li> <li>3. Least restrictive environment</li> </ol> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: (1) information about student's progress in private school was used to write goals and objectives, which were measureable; (2) although IDEA does not require evaluation before transition to public school, DOE staff reviewed private school records of progress and observed student in private school, thereby learning of transition needs; (3) student's placement in special education classroom was appropriate because of behavioral issues that presented a danger to student and others.</p> <p><u>ON APPEAL</u>: <i>Anthony C. v. DOE</i>, D. Haw. Civ. No. 12-698 DKW-BMK – <b>affirmed</b>, Doc. 33, 2/14/2014, 2014 WL 587848.</p>
DOE-SY1112-101**	Keith H.S. Peck	Kris Murakami	Richard A. Young 12/13/2012	<ol style="list-style-type: none"> <li>1. IEP omits agreements made at meeting;</li> <li>2. Discussion of transition needs at IEP meeting;</li> <li>3. Methodology omitted from IEP;</li> <li>4. ESY</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) student failed to prove, e.g. by specific references to tape recording of IEP meeting, that DOE agreed to matters omitted from the IEP; (2) because student had few</p>

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				<p>behavioral needs, there was no need to discuss transition at IEP meeting when subject was discussed at transition plan meeting; (3) educational methods used are within DOE's discretion and need not be addressed in IEP; (4) there was no need to discuss ESY at IEP because it could be discussed at transition meeting, and DOE staff had reviewed private school records.</p> <p><u>ON APPEAL:</u> <i>R.E.B. v. DOE</i>, D. Haw. Civ. No. 13-16 DKW-BMK – <b>affirmed</b> Doc. 40, 4/16/2014: (1) transition from private to public school need not be addressed at IEP meeting; (2) DOE rotates sites for summer ESY and need not specify them in IEPs; (3) there was no proof that the DOE agreed to include paraprofessional tutor's qualifications in the IEP or that the omission thereof denied a FAPE; (4) Applied Behavior Analysis therapy is a methodology that the DOE is not required to specify in IEPs; (5) placement in LRE "as deemed appropriate" by teachers was not an improper delegation of authority because it avoided the need to call IEP meetings before every change of placement.</p> <p><u>FURTHER APPEAL:</u> <i>R.E.B. v. DOE</i>, 9<sup>th</sup> Cir. No. 14-15895 – pending.</p>
DOE-SY1112-100	Keith H.S. Peck	Milton Tani	Hauvani H. Alm 11/2/2012	<ol style="list-style-type: none"> <li>1. Delay in preparing IEP;</li> <li>2. Inaccurate PLEPs and Goals;</li> <li>3. Parental involvement in determining placement;</li> <li>4. Stay put.</li> </ol> <p><u>OUTCOME:</u> <b>For Student.</b> Private school tuition reimbursed.</p> <p><u>REASONING:</u> (1) DOE was not required to offer an IEP prior to the school year because parent was not ready to schedule an IEP meeting until three months later; (2) preparation of PLEPs was thorough, considered private school records, parent's input, and clinical psychologist reports; (3) IEP team did not consider placement options other than home school and failed to consider parent's input. DOE therefore denied FAPE both procedurally and substantively; (4) private school</p>

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				was stay put placement by virtue of decision in DOE-SY1112-012.
DOE-SY1112-093	Stanley E. Levin	Toby Tanaki	Richard A. Young 7/11/2012 (SDO); 9/25/2012 (Hrg)	<p><u>Summary Disposition Order</u> ("SDO")</p> <p>1. Statute of limitations for unilateral private placement</p> <p><u>OUTCOME: For DOE</u></p> <p><u>REASONING:</u> DOE agreed to pay private school tuition for specified period, but did not agree to private placement. Thus, student's attendance at private school after period ended was unilateral, and claim for reimbursement filed more than 180 days thereafter was untimely.</p> <p><u>Decision After Hearing</u> ("Hrg")</p> <p>1. Evaluation of suspected disabilities; 2. Placement in least restrictive environment; 3. Lack of transition services from private to public school; 4. Reimbursement of private school tuition; 5. Parental participation in IEP process.</p> <p><u>OUTCOME: For DOE.</u></p> <p><u>REASONING:</u> (1) DOE had no duty to identify certain disabilities because school psychologist so testified and special education teacher thought IEP was adequate based upon review of report cards and conversation with private school teacher; (2) DOE did not predetermine placement and program by drafting an IEP that changed placement to public school because special education teacher testified IEP was only a starting point; (3) placement in special education class for language arts and math was least restrictive environment because non-academic subjects were held in regular classes; (4) no transition plan was required because parents had no intention of changing placement to public school; (5) reimbursement of private school tuition denied because DOE offered a FAPE in public school.</p>

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DOE-SY1112-087	Carl M. Varady	Carter Siu	Richard A. Young 11/9/2012	<p>1. Student's need for 1:1 aide; 2. Parental participation in IEP process; 3. IEP team's failure to consider private psychological evaluation</p> <p><b>OUTCOME: For DOE</b></p> <p><b>REASONING:</b> (1) IEP team agreed to provide 1:1 aide for 2 months, then reassess need; parent's misunderstanding of time limit was not a denial of FAPE; (2) because parent failed to inform the IEP team that student had been evaluated by a private SLP, student did not prove that IEP speech-language services were inadequate; (3) DOE was not required to consider private psychologist's recommendations because parent did not inform IEP team that report was forthcoming.</p> <p><b>ON APPEAL:</b> <i>Landon O. v. DOE</i>, D. Haw. Civ. No. 12-675 RLP – withdrawn.</p>
DOE-SY1112-075	Jerel D. Fonseca	Michelle Pu`u	Richard A. Young 9/11/2012	<p>1. IEP goals for high-functioning student with attention deficits; 2. Bullying; 3. Placement</p> <p><b>OUTCOME: For DOE.</b></p> <p><b>REASONING:</b> (1) 1:1 pull-out counseling for 45 minutes per week, "adult assistance" for 405 minutes per week and various 504 accommodations were sufficient to address anxiety and attention deficit; program does not offer the best education, but it meets the <i>Rowley</i> standard; (2) DOE sufficiently addressed bullying by reprimanding students involved and offering parent option to transfer child to the home school; (3) placement in special education class for language arts was appropriate in view of student's reading disorder.</p>
DOE-SY1112-074	Jerel D. Fonseca	Gary S. Suganuma	David H. Karlen 8/3/2012	<p>1. IEP fails to include sign language, behavioral interventions, and adequate speech-language and occupational therapy;</p>

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				<p>2. DOE's failure to evaluate student;  3. Reimbursement for private evaluation;  4. Full-time 1:1 skills trainer;  5. ESY break of 7 days is too long;  6. IEP should plan for transition from private to public school;  7. Whether placement is appropriate.</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) DOE had no duty to conduct its own evaluation because it had a private evaluation from parent; (2) parent has no right to recover the cost of a private evaluation unless the DOE has conducted its own evaluation and the parent objects; (3) sign language is a methodology that need not be included in the IEP; (4) due process request must specify how much speech-language therapy is needed and whether it should be in a group setting; (5) Student did not prove IEPs were inadequate, as behavioral issues had to be resolved before communication skills could be addressed; (6) due process complaint must be more detailed than Circuit Court pleadings because there is no discovery in IDEA hearings; (7) complaint that ESY period of 7 days was too long for some services did not, therefore, raise an issue that 21 days was too long for other services; evidence did not show student would regress after a break of 7 days; (8) transition plan is not a statutory subject for IEPs and it is improper, therefore, to include any discussion of child's transition needs; (9) due process complaint did not raise specific issue of harmful effects of placement in public school.</p> <p><u>ON APPEAL:</u> <i>A.P. v. DOE</i>, D. Haw. Civ. No. 12-493 HG-BMK – <b>Affirmed</b>, Doc. 41 (7/17/13): (1) failure to raise issues in due process complaint cannot be cured by argument and evidence at hearing, absent DOE's agreement to consider additional issues; (2) parent is entitled to reimbursement for private evaluation only if it is obtained in response to DOE evaluation; (3) IEP goals and objectives were adequate; (3) one hour of speech-language therapy per week, including sign language for student with autism was adequate; (4) IEP need not include</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				statement of transition services from private to public school.
DOE-SY1112-071	Carl M. Varady	Kris Murakami	Haunani H. Alm 7/6/2012	<p>1. Eligibility for special education; 2. Unilateral private placement.</p> <p><b>OUTCOME: For Student. Private placement appropriate</b></p> <p><b>REASONING:</b> (1) DOE's observation of student on two occasions in private special education school was an inadequate basis to find student ineligible for special education; (2) private psychological evaluation showed student had specific learning disability; (3) because student never attended public school, the DOE members of the eligibility team lacked sufficient information to evaluate him and parent's input was not given appropriate consideration; (4) DOE's reliance on student's grades in denying eligibility was unreasonable because grades reflected special education services provided at private school; (5) DOE is ordered to reimburse private school tuition because it denied FAPE by denying eligibility and private school is an appropriate placement.</p> <p><b>ON APPEAL: DOE v. Patrick P., D. Haw. Civ. No. 12-438 LEK-BMK – Reversed, Doc. 35 (5/20/2013) – Grade 12</b> Student's need for special education was not evident from DOE's observations at private school. Student showed no significant discrepancy between cognition and academic achievement on his assessments. The DOE properly found him ineligible for IDEA services.</p>
DOE-SY1112-070	Keith H.S. Peck	Michelle Pu`u	Richard A. Young 7/23/2012	<p>1. Least restrictive environment;</p> <p><b>OUTCOME: For Student. Private school tuition reimbursed.</b></p> <p><b>REASONING:</b> (1) IEP team did not consider placement in general math class or outside "workplace readiness program" despite student's high-functioning ability in math; (2) IEP provision allowed student to participate with non-disabled</p>

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				<p>students in non-academic settings, but it did not ensure that student would do so in order to acquire social skills.</p> <p><u>ON APPEAL</u>: <i>DOE v. S.C.</i>, D. Haw. Civ. No. 12-475 LEK-BMK – <b>reversed in part, Doc. 27, 3/28/2013</b>: (1) hearings officer reasonably concluded that FAPE was denied because student should have been mainstreamed in math class and socialization opportunities offered by DOE (having lunch with nondisabled students should student so choose) were inadequate; (2) 50% of tuition reimbursement is denied because parent acted unreasonably by requesting placement at Horizons Academy instead of collaborating with the DOE and objecting to its IEP in order to resolve concerns about public placement.</p>
DOE-SY1112-067	Matthew C. Bassett	Michelle Pu`u	David H. Karlen 4/25/2012	<ol style="list-style-type: none"> <li>1. Whether DOE's failure to pay private school tuition is a unilateral change of placement that denies FAPE and violates stay put;</li> <li>2. Preemption of Acts 128 and 129, SLH 2011;</li> <li>3. Whether reevaluation of student more than once a year disrupts education and denies FAPE.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) hearings officer lacks subject matter jurisdiction to decide whether Acts 128 and 129 are preempted by federal law; (2) although stay put order entered in DOE-SY1011-126 required DOE to pay private school tuition, hearing officer has no jurisdiction to issue a preliminary injunction enforcing that order; in any event, there is no evidence that student's placement was changed by the nonpayments; (3) there is no evidence that the DOE made multiple assessments in violation of the IDEA or that any attempt to do so deprived student of educational opportunity.</p> <p><u>ON APPEAL</u>: <i>F.K. v. DOE</i>, D. Haw. Civ. No. 12-240 ACK-RLP – <b>affirmed</b>, Doc. #41 (12/11/2011): (1) evidence showed that DOE's failure to pay Loveland's tuition was not a unilateral change in placement because Student's services were not</p>



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				<p>affected.</p> <p><u>FURTHER APPEAL</u>: <i>F.K. v. DOE</i>, 9<sup>th</sup> Cir. No. 13-15071 – pending.</p> <p><u>RELATED PROCEEDING</u>: <i>F.K. v. DOE v. Loveland Academy</i>, D. Haw. Civ. No. 12-136-ACK-RLP – suit for enforcement of stay put order in DOE-SY1011-126 and declaration that Act 129, SLH 2011 is preempted by IDEA; DOE third party complaint against Loveland Academy and Patricia Dukes to enforce Act 129; Loveland and Dukes counterclaim for damages against DOE – pending; <b>preliminary injunction granted enforcing stay put and enjoining enforcement of HRS § 302A-443(i) (DOE's right to withhold payment to private school)</b>, Doc. # 33 (6/22/12).</p>
DOE-SY1112-066	Matthew C. Bassett	Carter Siu	Haunani H. Alm 7/13/2012	<ol style="list-style-type: none"> <li>1. Improper development of IEP</li> <li>2. Unilateral private school placement;</li> <li>3. Stay put;</li> <li>4. Compensatory education</li> </ol> <p><u>OUTCOME</u>: <b>For Student. Reimbursement for private school ordered.</b></p> <p><u>REASONING</u>: (1) DOE adopted prior IEP without a meeting because it unilaterally decided that student's needs had not changed; (2) DOE failed to have valid IEP in effect at beginning of school year; (3) student was entitled to stay put at private school under court order in <i>Marcus I. v. DOE</i>, D. Haw. Civ. No. 10-381 SOM-BMK, Doc. #68. Therefore, stay put at private school continues during pendency of this case; (4) private school tuition is reimbursed because of denial of FAPE and private placement is proper for purposes of reimbursement; (5) student did not show why compensatory education should be awarded.</p>
DOE-SY1112-065	Stanley E. Levin	Gary Suganuma	Richard A. Young 10/26/2012	<ol style="list-style-type: none"> <li>1. Evaluation of suspected disabilities;</li> <li>2. Adequacy of IEP PLEPs and Goals;</li> <li>3. Transition services from private to public school;</li> </ol>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p>4. Least restrictive environment  5. IEP team members not knowledgeable about student;  6. ESY</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) DOE assessed child for some suspected disabilities at private school because that is what parents wanted; no need to mention dysgraphia in PLEPs because parents did not prove child had been diagnosed with that condition; (2) behavior not mentioned in PLEPs was considered by DOE; goals addressed needs described in PLEPs; (3) transition planning was adequate as DOE held monthly transition meetings, provided special services, and parents did not cooperate fully; (4) public school was LRE because of greater opportunities to learn with nondisabled children; (5) student had attended private school for five years, which is why DOE members of IEP team had no direct dealings with student; private school chose not to send teachers to IEP meeting; (6) DOE was justified in ending ESY services during spring break in order to see if student would be harmed.</p> <p><u>ON APPEAL:</u> <i>Matthew O. v. DOE</i>, D. Haw. Civ. No. 12-612 DKW-RLP – <b>affirmed</b>, ECF Doc. 27, 2/5/2014:</p>
DOE-SY1112-057	Keith H.S. Peck	Gary Sukanuma	David H. Karlen 5/9/2012	<p>1. Need for 1:1 aide;  2. ESY;  3. Reimbursement for parental placement at private school.</p> <p><u>OUTCOME:</u> <b>For DOE</b> (Student designated prevailing party, but relief was denied)</p> <p><u>REASONING:</u> (1) DOE agreed that student needed a 1:1 adult aide, but none was provided in the IEP; nevertheless, claim was settled at resolution session; (2) evidence did not show regression in the absence of ESY services; in any event, parents settled claim for ESY at resolution session; (3) parent failed to offer evidence showing that private school was</p>

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				appropriate by providing educational instruction specially designed to meet the unique needs of their child.
DOE-SY1112-055	Jerel D. Fonseca	Michelle Pu`u	Haunani H. Alm 8/31/2012	<p>1. Failure to evaluate mental health needs;  2. Need for transfer plan for change from private school to public school;  3. Adequacy of PLEPs and Goals and Objectives.</p> <p><b>OUTCOME: For DOE.</b></p> <p><b>REASONING:</b> (1) DOE's agreement to conduct an emotional behavior assessment instead of a neuropsychological evaluation was sufficient to evaluate student's mental health needs; (2) the IDEA does not require that an IEP include a transition plan to assist the child in transferring from private to public school; the child's transition needs must be addressed, however, when they relate to proper subjects of the IEP; (3) DOE's use of 2009 information in 2011 PLEPs was not improper because parent did not raise an objection at the IEP meeting or provide more current information.</p> <p><b>ON APPEAL:</b> <i>D.S. v. DOE</i>, D. Haw. Civ. No. 12-533 DKW-RLP – (Carl M. Varady co-counsel for student). <b>Reversed</b>, Doc. 41, 11/14/2013: (1) DOE denied a FAPE by preparing IEP on the basis of stale information and by ignoring facts conveyed by parent and Loveland Academy about student's behavior and mental health needs; (2) prior reimbursement order taken with stay put order in Civ. 10-53 establish Loveland as student's current placement for stay put purposes.</p> <p><b>FURTHER APPEAL:</b> <i>DOE v. D.S.</i>, 9<sup>th</sup> Cir. No. 13-17677 – pending.</p>
DOE-SY1112-047	Carl M. Varady	Not disclosed by DCCA	David H. Karlen 5/24/2012	<p>1. Placement predetermined and inappropriate;  2. Failure to have IEP in effect at start of school year;  3. Reimbursement for unilateral parental placement;  4. Statute of limitations;  5. Compensatory education;  6. Stay put.</p>

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				<p><u>OUTCOME</u>: <b>For DOE</b> (Student designated prevailing party, but relief was denied)</p> <p><u>REASONING</u>: (1) Placement at private school selected by DOE was predetermined as shown by the school director's presence at pre-placement IEP meetings; (2) DOE used "bin item technique" to defer discussion of items requested by parent in order to expedite IEP process; it was not responsible, therefore, for failing to complete IEP before the beginning of school year; (3) Failure to address "bin items" was not shown to deny a FAPE; (4) DOE's proposed placement – a behavioral modification program without an academic component -- was inappropriate: "placement of Student there was ill advised, inappropriate, and potentially disastrous to Student and Student's education"; (5) parental placement is appropriate as it provides individualized services and student is progressing; (6) tuition reimbursement claim for SY 2011-12 was untimely because it was filed more than 180 days after parent received DOE's placement offer; (7) private school was not student's stay put placement because after the period expired for which the Court had placed student at the private school in <i>D.C. v. Department of Education</i>, 550 F. Supp. 2d 1238 (D. Hawaii 2008), DOE agreed only to pay tuition, not that the school was an appropriate placement; (8) compensatory education denied because student received services at private school.</p> <p><u>ON APPEAL</u>: <i>Sam K. v. DOE</i>, D. Haw. Civ. No. 12-355 ACK-BMK – <b>affirmed in part and reversed in part</b>, Doc. 46, 2/13/2013 – affirmed in all respects, except that reimbursement of private school tuition is not barred by statute of limitations, which is 2 years for bilateral placement.</p> <p><u>Stay put granted</u>, Doc. #35 (8/22/12) – stay put does not depend upon the merits of the case, including whether the due process request was timely. Loveland Academy is the current placement for stay put purposes because of prior decisions that found it to be appropriate.</p>

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				<p><u>FURTHER APPEAL</u>: <i>DOE v. Sam K.</i>, 9<sup>th</sup> Cir. No. 13-15486 – pending.</p>
DOE-SY1112-038	Keith H.S. Peck	Gary Suganuma	Richard A. Young 4/24/2012	<ol style="list-style-type: none"> <li>1. Failure to have IEP in effect at start of school year;</li> <li>2. Participation in IEP meeting by private school teacher;</li> <li>3. Inadequate IEP services;</li> <li>4. Private placement;</li> <li>5. Preemption of Act 129, SLH 2011 (HRS 302A-443(g))</li> </ol> <p><u>OUTCOME</u>: <b>For Student</b> – reimbursement awarded for 3 months at private school.</p> <p><u>REASONING</u>: (1) DOE denied FAPE by failing to call an IEP meeting to consider placement in an autism program and to include placement in an IEP by the start of the school year; (2) there was no need to invite private school teacher to IEP meeting because student had not been enrolled there long enough to make teacher knowledgeable about student's needs; (3) DOE denied FAPE by failing to provide a 1:1 aide, regardless of whether parent requested one; (4) private placement offers an appropriate program for which reimbursement is granted, but placement is inappropriate because school lacks accreditation and staff lacks training in special education; no reimbursement required after November 2011 when a new IEP was offered but not challenged by parent; (5) hearings officer lacks subject matter jurisdiction to decide whether Act 129 is constitutional.</p> <p><u>ON APPEAL</u>: <i>Thomas W. v. DOE</i>, D. Haw. Civ. No. 12-289 JMS-KSC – motion for stay put granted, appeal dismissed as moot, Doc. 26 (5/9/2013).</p>
DOE-SY1112-034	Keith H.S. Peck	Berton Kato	Richard A. Young 6/21/2012	<ol style="list-style-type: none"> <li>1. Parent's participation in IEP process;</li> <li>2. Adequacy of IEP's description of 1:1 aide services.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE</b>.</p> <p><u>REASONING</u>: (1) DOE was justified in conducting IEP meeting without parent because of parent's repeated requests</p>

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				for adjournments and limited cooperation in making child available for evaluation; (2) IEP did not have to specify how long 1:1 aide would work directly with student or "fade" into the background to increase student's independence and reliance on other students ("buddy system").
DOE-SY1112-032	Jerel D. Fonseca	Kris S. Murakami	Haunani H. Alm 7/2/2012	<ol style="list-style-type: none"> <li>1. Adequacy of four IEPs (Oct. 2010 to Aug. 2011);</li> <li>2. Failure to have IEP in place at beginning of school year;</li> <li>3. Unilateral private placement;</li> <li>4. Compensatory education.</li> </ol> <p><b>OUTCOME: For student. Private school reimbursement for 2 years ordered.</b></p> <p><b>REASONING:</b> (1) DOE staff failed to respond to parent's questions and comments and were disengaged at IEP meetings; DOE failed to consider private psychological evaluation; (2) DOE terminated speech-language services in 2008 when student's performance was borderline to average; no speech-language pathologist attended IEP meetings; (3) IEPs denied FAPE by failing to identify student's needs and to include appropriate goals and services; (4) IEPs repeated prior goals to a large extent and thus were not updated to meet student's unique needs; (5) OT services were reduced from 60 to 30 minutes per week based on a limited review of handwriting and fine motor skills needs.</p>
DOE-SY1112-028	Stanley E. Levin	Jerrold Yashiro	Richard A. Young 3/6/2012	<ol style="list-style-type: none"> <li>1. Private school placement after summary judgment that FAPE was denied by DOE's failure to convene an IEP meeting and to have an IEP in place at beginning of school year;</li> <li>2. Failure of parent to notify DOE of unilateral private school placement.</li> </ol> <p><b>OUTCOME: For Student.</b></p> <p><b>REASONING:</b> (1) private school is an appropriate placement for Student as it meets Student's needs, and Student is making meaningful educational gains; (2) reimbursement of tuition is</p>

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				<p>awarded for SY2011-12 despite parent's failure to serve notice of private placement because DOE failed to offer an IEP or even to convene an IEP meeting for SY2011-12.</p> <p><u>ON APPEAL</u>: <i>DOE v. K.F.</i>, D. Haw. Civ. No. 12-210 JMS-BMK (removed from 1<sup>st</sup> Cir. Ct.; Toby M. Tonaki for appellant) – <b>appeal withdrawn</b>.</p>
DOE-SY1112-027	Stanley E. Levin	Toby M. Tonaki	Haunani H. Alm 1/10/2012	<p>1. Private school placement after summary judgment that FAPE was denied by DOE's failure to convene an IEP meeting and to have an IEP in place at beginning of school year.</p> <p><u>OUTCOME</u>: <b>For Student</b>.</p> <p><u>REASONING</u>: "Private School's small school setting, multi-sensory teaching methods, and classroom accommodations, all helped Student make good academic progress in 2010-2011."</p>
DOE-SY1112-026	Susan Dorsey	Kris Murakami	Richard A. Young 3/27/2012	<p>1. Failure to conduct 3-yr re-evaluation and assess suspected disabilities;</p> <p>2. Adequacy of IEP (lack of socialization and sensory goals);</p> <p>3. Private placement.</p> <p><u>OUTCOME</u>: <b>For Student</b>. Reimbursement of private school tuition ordered.</p> <p><u>REASONING</u>: (1) Student was last deemed eligible for special ed in 2011; therefore, no re-evaluation is required until 2014; (2) DOE considered assessments as well as a psychiatric evaluation to identify all suspected disabilities; (3) sensory and behavioral responses and socialization needs were mentioned in assessments but not addressed in the January 2011 IEP. Parents did not specifically ask for communication or socialization goals, but it is the DOE's duty to address all of Student's deficits which affect Student's ability to access education. Its failure to do so denied FAPE; (4) August 2011 IEP added needed goals and thus did not deny FAPE; (5)</p>

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				<p>performing arts school with college preparatory academic classes is an appropriate placement.</p> <p><u>ON APPEAL</u>: <i>Lainey C. v. DOE</i>, D. Haw. Civ. No. 12-223 SOM-BMK – item # 4 above on appeal – <b>Affirmed</b>, Doc. 46 (4/30/2013).</p> <p><u>FURTHER APPEAL</u>: <i>Lainey C. v. DOE</i>, 9<sup>th</sup> Cir. No. 13-16093 – pending.</p>
DOE-SY1112-025	Stanley E. Levin	Berton T. Kato	David H. Karlen 4/13/2012	<ol style="list-style-type: none"> <li>1. Evaluation of suspected disabilities;</li> <li>2. Least restrictive environment;</li> <li>3. IEP team members' knowledge of student;</li> <li>4. PLEPs are not complete and accurate;</li> <li>5. Private school placement.</li> </ol> <p><u>OUTCOME</u>: <b>For Student.</b></p> <p><u>REASONING</u>: (1) IDEA does not require the DOE to conduct an evaluation of student before changing placement from private to public school, but it must consider the possible harmful effects, which it did in a Behavior Assessment Report; (2) record does not show that student was placed in regular academic classes that may have been inappropriate in view of student's inattention, borderline general language abilities, weak reading comprehension and math reasoning deficits; (3) IEP team members had adequate knowledge of student's needs; (4) PLEPs did not state student's actual performance level in reading, writing, and mathematics and omitted private school's current profile of student; IEPs, therefore, failed to meet student's needs; (5) private school reports documented student's progress which proves placement is appropriate.</p>
DOE-SY1112-021	Jerel D. Fonseca	Toby Tonaki	Richard A. Young 10/18/2012	<ol style="list-style-type: none"> <li>1. Speech-language services required;</li> <li>2. Reimbursement for private placement;</li> <li>3. Reimbursement for private evaluation;</li> <li>4. Reimbursement for private speech-language services</li> </ol> <p><u>OUTCOME</u>: <b>For Student</b></p>



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				<p><u>REASONING:</u> (1) Student needs direct speech-language services based upon testimony of private psychologist and speech-language pathologist; (2) IEP PLEPs made no mention of speech-language problems, and goals failed to offer needed services; (3) special education teacher ended speech-language services without conferring with SLP; (4) parents are entitled to reimbursement with the exception of one private speech-language report that was not shared with the IEP team.</p>
DOE-SY1112-20R	Keith H.S. Peck	Monica T. Morris	David H. Karlen 1/9/2014	<p>1. Predetermination of public school placement.</p> <p><u>OUTCOME:</u> <b>For DOE</b></p> <p><u>REASONING:</u> (1) Evidence did not show that DOE had predetermined placement, although language in form letter could be interpreted that it had; (2) predetermination of placement violates the IDEA only when the school district fails to consider alternatives at the IEP meeting.</p> <p><u>ON APPEAL:</u> <i>A.S.L. v. DOE</i>, D. Haw. Civ. No. 14-71 BMK – pending.</p>
DOE-SY1112-020	Keith H.S. Peck	Monica T. Morris	Haunani H. Alm 3/23/2012	<p>1. No IEP in effect at start of school year; 2. Reimbursement for private placement; 3. Stay put rights</p> <p><u>OUTCOME:</u> <b>For DOE</b> (based upon denial of remedy).</p> <p><u>REASONING:</u> (1) DOE's failure to have an IEP in effect at the beginning of the school year was a denial of FAPE; (2) DOE agreed to pay for private placement until May 27, 2010, and Petitioners' decision to maintain Student's placement at the Private School after May 27, 2010, resulted in a unilateral placement at the Private School. Request for reimbursement filed in August 2011 is untimely because it was filed more than 180 days after the unilateral placement; (3) private school was not the stay put placement because while DOE agreed to pay tuition for a specific period, there was no agreement or order</p>

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				<p>that placed student there.</p> <p><u>ON APPEAL</u>: <i>Lofisa S. v. DOE</i>, D. Haw. Civ. No. 12-213 SOM-BMK (Badger Arakaki, co-counsel) – <b>reversed and remanded, Doc. 27, 2/13/2013</b>: (1) DOE's failure to have an IEP in effect was not raised by the due process request, and the issue was not, therefore, before the hearings officer; (2) due process request must be filed within 180 days of the period for which reimbursement is sought (SY2011-12), not necessarily the date of placement; (3) H.O. did not decide whether DOE conditioned its offer of FAPE on placement in public school and case is remanded for that purpose.</p>
DOE-SY1112-018	Keith H.S. Peck	Berton Kato	Haunani H. Alm 1/23/2012	<p>1. Parent's right to participate in IEP process; 2. Adequacy of special education and related services.</p> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) DOE informed parent of need for IEP meeting within 30 days and confirmed meeting on date suggested by parent; parent sought to change date at last minute without explaining work or family issues that prevented him from attending as previously agreed; (2) occupational therapy services were discontinued because Student had functionally mastered the majority of necessary gross motor and fine motor skills and tasks that Student needs to function appropriately in the school setting; speech-language services was not an issue raised by the due process complaint, but services were adequate in any event.</p>
DOE-SY1112-017	Keith H.S. Peck	Michelle Pu`u	Richard A. Young 1/3/2012	<p>1. Transfer plan from private to public school; 2. Duration of ESY services.</p> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) DOE prepared an appropriate transfer plan as a supplement to the IEP and therefore addressed student's unique needs; (2) duration of ESY services need not be stated in IEP; in any event, parties entered into a settlement</p>

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				<p>agreement that specified what ESY services would be provided through Summer 2011, subject to review at that time.</p> <p><u>ON APPEAL</u>: <i>Donna S. v. DOE</i>, D. Haw. Civ. No. 12-69 JMS-KSC – <b>Affirmed</b>, Doc. #20 (9/12/2012), 2012 WL 4017449.</p>
DOE-SY1112-014	Jerel D. Fonseca	Carter Siu	Richard A. Young 3/14/2012	<ol style="list-style-type: none"> <li>1. DOE's failure to implement out-of-state IEP pending development of new IEP;</li> <li>2. Adequacy of 2010 IEP;</li> <li>3. Private school placement.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) the credible evidence showed that the DOE was able to implement Student's out-of-state IEP at the home school and offered to do so on several occasions; (2) IEP team considered out-state IEP as well as evaluations of student, noted needs in PLEPs and prepared goals addressing those needs; evidence showed services were sufficient and equal or greater than those offered in out-of-state IEP; (3) home school special education classes are an appropriate placement in view of the severity of student's disability.</p>
DOE-SY1112-012	Keith H.S. Peck	Jerrold G.H. Yashiro	Richard A. Young 1/10/2012	<ol style="list-style-type: none"> <li>1. Annual IEP review in cases of unilateral private school placements;</li> <li>2. Whether private school is a proper placement;</li> <li>3. Statute of limitations on reimbursement claim.</li> </ol> <p><u>OUTCOME</u>: <b>For Student</b></p> <p><u>REASONING</u>: (1) failure to have a current IEP or to conduct an annual review results in the loss of educational opportunity or seriously infringes on the parents' opportunity to participate in the IEP formulation process; parents who unilaterally place child in private school are entitled to receive an annual offer of FAPE; (2) Based upon Father's testimony that Student is progressing behaviorally, socially, and in student's communication abilities at the current private school, and with no evidence to the contrary, the Hearings Officer concludes</p>

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				that the current private school continues to be an appropriate placement for Student; (3) 180-day period for requesting reimbursement was tolled because DOE misinformed parent that FAPE would be provided only in public school; reimbursement granted until parent declined to attend new IEP meeting.
DOE-SY1112-009	Keith H.S. Peck	Michelle Pu`u	Haunani H. Alm 12/5/2011	<ol style="list-style-type: none"> <li>1. Inclusion of ABA therapy in IEP;</li> <li>2. Qualifications of paraprofessional replacing skills trainer;</li> <li>3. Description of 1:1 adult aide services in IEP;</li> <li>4. Transition from middle school to high school</li> <li>5. Videotaping of services.</li> </ol> <p><b>OUTCOME: For Student.</b></p> <p><b>REASONING:</b> (1) ABA therapy for severely disabled student should have been included in IEP because the IEP Team agreed to provide the services; (2) given student's numerous and profound disabilities, it was reasonable for parents to request information about the qualifications of educational aides (education and ABA training); (3) IEP team agreed to discuss transition to high school; discussions should have taken place at IEP meeting; (4) DOE's denial of parent's request for raw data and videotaping of ABA therapy should have been by prior written notice and denied FAPE.</p>
DOE-SY1112-008	Keith H.S. Peck	Toby Tanaki	Richard A. Young 1/24/2012	<ol style="list-style-type: none"> <li>1. Whether math goal in IEP should have benchmarks and short-term objectives;</li> <li>2. Need for goal for planning activities;</li> <li>3. Placement at public school.</li> </ol> <p><b>OUTCOME: For DOE.</b></p> <p><b>REASONING:</b> (1) the procedural inadequacy of failing to have short-term objectives or benchmarks for the math goal did not result in a loss of educational opportunity in light of student's B grades; (2) IEP addressed planner needs; (3) public school was appropriate placement based upon student's high functioning.</p>

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DOE-SY1112-007	Keith H.S. Peck	Berton T. Kato	Haunani H. Alm 2/17/2012	<p>1. ESY; 2. Whether reading services are adequate.</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) Even though the DOE wrongly reduced ESY services by finding that Student must recoup learned skills prior to an ESY period, there was no evidence that Student lost educational opportunity; (2) Due process request alleging that reading instruction is ineffective and that IEP objectives are minimal and insufficient did not raise an issue of whether reading program was defective, whether IEP goals are too broad, or whether Student requires a step-by-step approach to reading that allows Student to understand and distinguish vowel sounds.</p> <p><u>ON APPEAL:</u> <i>Annette K. v. DOE</i>, D. Haw. Civ. No. 12-154 HG-BMK – <b>Reversed and remanded, Doc. 24 (3/22/2013):</b> (1) Court does not give high deference to hearings officer's decision because it does not explain why denial of ESY was procedural and not substantive; (2) rapid regression and technical problems with Kurzweil System show that failure to continue ESY services denied FAPE; (3) attorney's fees denied for administrative hearing but awarded for appeal; (4) case is remanded to determine appropriate relief.</p>
DOE-SY1112-005	Matthew C. Bassett	Monica T. Morris	Haunani H. Alm 5/21/2012	<p>1. Independent educational evaluation ("IEE"); 2. Predetermination of placement; 3. Identification of placement; 4. Change of placement to public school.</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) assessments used to craft an educational plan are not evaluations, so parent has no right to an IEE; (2) evidence showed that meeting of DOE personnel preparing for IEP did not predetermine matters discussed at the IEP; (3) failure to identify location of placement in PWN was a</p>

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				<p>procedural violation of the IDEA, but it did not deprive student of a FAPE because parents were informed of location during IEP meeting; IDEA requires that type, not physical placement location, be specified; (4) lack of structure in private school and student's increasing behavioral problems made private school an inappropriate placement; IEP team had sufficient evidence to change placement without an assessment.</p> <p><u>ON APPEAL</u>: <i>Jason E. v. DOE</i>, D. Haw. Civ. No. 12-354 ACK-BMK (plaintiff <i>pro se</i>) – pending.</p>
DOE-SY1112-003	Susan Dorsey	Jerrold G.H. Yashiro Michelle Pu`u	Haunani H. Alm 3/13/2012	<ol style="list-style-type: none"> <li>1. Adequacy of IEPs for 2009-2011;</li> <li>2. Parental participation in IEP process</li> <li>3. Evaluation of student's needs;</li> <li>4. ESY services;</li> <li>5. Private school placement;</li> <li>6. Compensatory education</li> </ol> <p><u>OUTCOME</u>: <b>For Student.</b></p> <p><u>REASONING</u>: (1) Student with Rett Syndrome was provided with the same or very similar IEP goals and objectives from 2009-2011 and consistently made minimal academic progress; (2) DOE's failure to advise parent of teacher's concerns that Student was reaching a plateau in Student's learning deprived parent of the opportunity to adequately participate in the IEP formulation process; (3) triennial re-evaluation was too limited to determine Student's needs given minimal progress noted in PLEPs and suspicions of Rett Syndrome; (4) the IEP team did not consider Student's individual needs in all respects when considering Student's need for ESY services; (5) denials of FAPE and appropriate private school program warrant placement of Student in private school; (6) extent and nature of FAPE denials warrant an award of compensatory education of two years at private school.</p>
DOE-SY1112-002	Susan K. Dorsey	Gary S. Suganuma	Haunani H. Alm 7/25/2012	<ol style="list-style-type: none"> <li>1. Compensatory education</li> </ol> <p><u>OUTCOME</u>: <b>For Student.</b> Reimbursement of private school</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p>tuition for 1 year + ESY ordered.</p> <p><u>REASONING:</u> DOE denied FAPE for two years by failing to address student's needs in IEPs and copying same goals from one year to the next. Student exhibited serious behavioral problems in public school, but has made impressive gains in private school. Reimbursement of tuition for an additional year is reasonable in order to allow student to catch up for prior loss of services.</p> <p><u>ON APPEAL:</u> <i>DOE v. R.H.</i>, D. Haw. Civ. No. 12-481 HG-RLP – <b>Affirmed</b>, Doc. 22 (7/2/13)</p>
DOE-SY1011-138	Keith H.S. Peck	Gary S. Suganuma	David H. Karlen 11/29/2011	<ol style="list-style-type: none"> <li>1. Parent's participation in IEP process;</li> <li>2. Lack of behavioral support plan;</li> <li>3. ESY;</li> <li>4. Transition plan for change of schools</li> </ol> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) Parent was not denied opportunity to attend IEP meeting where DOE sought to meet the statutory annual review requirement, parent could attend a subsequent meeting prior to the beginning of the school year to voice concerns, and parent was uncooperative in scheduling mutually acceptable dates; (2) DOE intended to prepare a behavioral support plan when student enrolled in the new school; (3) ESY after one day was adequate; (4) IEP need not include transition plan from private to public school.</p> <p><u>ON APPEAL:</u> <i>Rachel L. v. DOE</i>, D. Haw. Civ. No. 11-756 LEK-BMK – <b>Affirmed</b>, Doc. # 32 (9/25/2012).</p>
DOE-SY1011-137 (unpublished)	John P. Dellera	Michelle Pu`u	Richard A. Young 5/15/2012	<ol style="list-style-type: none"> <li>1. Eligibility for FAPE to age 22</li> <li>2. Stay put</li> </ol> <p><u>OUTCOME:</u> <b>For DOE.</b></p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p><u>REASONING:</u> (1) Due process request dismissed because student is not eligible to attend public school after age 20, student failed to prove that special education and related services were reasonable accommodations in GED and CBASE programs, and estoppel claim was "not proven"; (2) student not eligible for IDEA rights, including stay put, after age 20.</p> <p><u>ON APPEAL:</u> <i>A.D. v. DOE</i>, D. Haw. Civ. No. 12-307 JMS-KSC (Milton S. Tani for DOE) – denial of stay put from August 1, 2011 is <b>reversed</b>, Doc. #31 (10/25/2012) – (1) Plaintiff, a member of the class in <i>RPK v. DOE</i>, D. Haw. Civ. No. 10-436 DAE-KSC, raises "plausible and genuine arguments" that he is not bound by the class judgment and that he is entitled to a FAPE to age 22 based upon a factual record that differs from the class action; (2) the DOE's refusal to pay Loveland Academy after student became 20 is a change of placement that violates IDEA's stay put clause.</p> <p><u>FURTHER APPEAL:</u> <i>A.D. v. DOE</i>, 9<sup>th</sup> Cir. No. 12-17610 (Gary Sukanuma for DOE) – <b>Affirmed</b> 8/14/2013, 727 F.3d 911: (1) Stay Put Order is a collateral order subject to interlocutory appeal; appeal not moot even though student had reached 22 because issue of age eligibility was capable of repetition, yet evading review; (2) stay put applies after state age limit where student challenged the legality of the age limit itself.</p>
DOE-SY1011-135	Carl M. Varady	Carter Siu	Haunani H. Alm 7/17/2012	<p>1. Eligibility for FAPE to age 22</p> <p><u>OUTCOME For DOE</u></p> <p><u>REASONING:</u> Court's judgment in <i>R.P.-K. Class Action</i>, D. Haw. Civ. No. 10-436 DAE-KSC, that FAPE ends at age 20 is binding on class members under the doctrines of res judicata, collateral estoppel, and law of the case.</p>
DOE-SY1011-132	Keith H.S. Peck	Kris Murakami	Haunani H. Alm 12/30/2011	<p>1. ESY period too long; 2. Speech language therapy not specified;</p>



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				<p>3. Individual aide services.</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) Evidence did not show why ESY services were inadequate; student did not attend ESY 2011 classes that were offered; (2) evidence did not show that 1080 minutes per quarter of speech therapy in individual or small group settings was inadequate; (3) evidence did not show that IIS (aide) services were inadequate.</p> <p><u>ON APPEAL:</u> <i>Dale W. v. DOE</i>, D. Haw. Civ. No. 12-61 SOM-KSC – <b>Affirmed</b>, Doc. #24 (9/25/2012). Counsel are ordered to provide copies of Court's decision to their respective clients.</p>
DOE-SY1011-130	Jerel D. Fonseca & Denise W.M. Wong	Carter Siu	David H. Karlen 2/10/2012	<ol style="list-style-type: none"> <li>1. Objection to testimony of psychologist;</li> <li>2. Evaluation of student's disabilities;</li> <li>3. Eligibility for IDEA or 504 services;</li> </ol> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) expert testimony is inadmissible if report is not provided to adverse party five days before hearing; (2) the evidence established that the DOE sought to evaluate student for special education and did not require parent to obtain an evaluation herself; (3) in any event, complaint regarding failure to evaluate is time-barred because it was filed more than two years after facts were known; (4) IDEA services could not be provided because parent did not consent to evaluation for special education.</p>
DOE-SY1011-128	Jerel D. Fonseca	Kris Murakami	Richard A. Young 8/21/2012	<ol style="list-style-type: none"> <li>1. Adequacy of IEP PLEPs and Goals;</li> <li>2. ESY break of 3 weeks too long;</li> <li>3. Private Placement</li> <li>4. Compensatory education</li> </ol> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) DOE staff testified PLEPs and Goals over</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p>two school years were sufficient; parent's experts met student well after IEPs were written and lacked first-hand knowledge of needs at that time; DOE progress notes show student has made some progress; (2) special education teacher testified student "thrived" in her class in each of two years at issue: student could remain focused for up to 15 minutes, pick up her toys and wash her hands; principal testified that student chewed less on inappropriate objects and did not take off her clothes as often; (3) home school placement was least restrictive environment because it allowed student to observe regular education students as "role models."</p> <p><u>ON APPEAL</u>: <i>S.C. v. DOE</i>, D. Haw. Civ. No. 12-524 ACK-KSC – <b>affirmed</b>, Doc. 23 (5/16/2013): (1) Court lacks jurisdiction over issues not raised in the due process complaint; issues must be specified with particularity; (2) assessments performed months or years after the IEP do not prove that the IEP was inadequate when drafted; (3) DOE's use of term "mentally retarded" was inappropriate, but the evidence did not show IEP goals and objectives were inappropriate; (4) evidence did not show that the DOE failed to implement IEP materially; (5) progress in private school does not show that DOE failed to offer a basic floor of opportunity.</p>
DOE-SY1011-126	Matthew C. Bassett	Michelle Pu`u	Richard A. Young 4/9/2012	<ol style="list-style-type: none"> <li>1. Whether description of proposed placement was adequate and whether home school is appropriate;</li> <li>2. Adequacy of IEP services;</li> <li>3. Whether placement at home school was predetermined.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) The fact that eight meetings were needed to prepare IEP and parent's departure from a meeting before placement was decided show that placement was not predetermined; (2) petitioner failed to prove that the wide range and quantity of services offered by the IEP was inadequate; (3) IEP provision calling for placement in a small group setting in a special education classroom at the home school with opportunities to socialize with non-disabled students was</p>

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				<p>adequate.</p> <p>Stay Put Order, 10/12/2011 -- Order in DOE-SY0809-030 approving tuition reimbursement made Loveland Academy the stay put placement. Stay put only applies, however, while a due process proceeding is pending. Therefore, stay put protections do not apply from the date the prior written notice changed placement until the due process complaint was filed.</p> <p><u>ON APPEAL</u>: <i>F.K. v. DOE</i>, D. Haw. Civ. No. 12-240 ACK-RLP – <b>affirmed</b>, Doc. 41 (12/11/2012).</p> <p><u>FURTHER APPEAL</u>: <i>F.K. v. DOE</i>, 9<sup>th</sup> Cir. No. 13-15071 – pending.</p> <p><u>RELATED PROCEEDING</u>: <i>F.K. v. DOE v. Loveland Academy</i>, D. Haw. Civ. No. 12-136-ACK-RLP – suit for enforcement of stay put order and declaration that Act 129, SLH 2011 is preempted by IDEA; DOE third party complaint against Loveland Academy and Patricia Dukes to enforce Act 129; Loveland and Dukes counterclaim for damages against DOE – pending; <b>preliminary injunction granted enforcing stay put and enjoining enforcement of HRS § 302A-443(i) (DOE's right to withhold payment to private school)</b>, Doc. # 33 (6/22/12).</p>
DOE-SY1011-120	Keith H.S. Peck	Kris Murakami	Haunani H. Alm 8/31/2011	<ol style="list-style-type: none"> <li>1. Adequacy of 1:1 paraprofessional support for student with autism;</li> <li>2. Need for transition plan before student moved from private school to home school;</li> <li>3. Parent's participation in IEP meeting;</li> <li>4. Tuition reimbursement for private school</li> </ol> <p><u>OUTCOME</u>: <b>For Student</b>. DOE ordered to reimburse and/or pay private school tuition.</p> <p><u>REASONING</u>: (1) In order to meet Student's unique needs, as IDEA requires, the DOE must discuss transition issues as parents requested and prepare a transition plan for student</p>

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				<p>with autism who needs routine and predictability in areas such as assignment of different aides, moving between programs, and transferring from private to public school; (2) qualifications of paraprofessional aide and frequency and consistency of services were relevant to child's unique needs and thus subjects the DOE must address in the IEP; (3) parent's right to participate in IEP process was seriously impaired by DOE's failure to consider issues raised by parents; (4) reimbursement of private school tuition is ordered until an appropriate IEP is developed for student because (i) the DOE denied a FAPE and (ii) the private school's program is appropriate.</p> <p><u>ON APPEAL</u>: <i>DOE v. C.B. by Donna and Scott B.</i>, D. Haw., Civ. No. 11-576 SOM-RLP (Carter Siu for appellant); Defendant counterclaims for enforcement of stay put.</p> <p>Stay put counterclaim is REMANDED. Doc. # 52 (3/29/2012) - - The hearings officer is requested to clarify whether she found the private school to be an appropriate placement (triggering stay put) or only that it conferred some educational benefit (resulting in reimbursement of tuition for a specified period).</p> <p>Decision on appeal -- <b>Reversed</b>, Doc. # 57, 5/1/2012: "(1) the DOE was not required under the IDEA to address C.B.'s transition needs or develop a transition plan in the IEP...; (2) the AHO erred by considering the substance of C.B.'s paraprofessional services when C.B. complained about only the frequency of those services in his impartial due process hearing complaint; (3) any failure of the IEP of October 28, 2010, to sufficiently state the frequency of the one-to-one paraprofessional services was a procedural violation of the IDEA that did not deny C.B. a FAPE."</p> <p><b>Stay Put Granted</b>, Doc. # 65, 6/26/2012: Hearings Officer found that AMS was an appropriate placement and it is, therefore, student's placement for purposes of stay put. The DOE is therefore ordered to pay the costs of AMS from the date of the hearings officer's decision to the conclusion of all legal proceedings related to the IEP in question.</p>

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DOE-SY1011-118	Denise W.M. Wong	Gary Suganuma	David H. Karlen 9/26/2011	<ol style="list-style-type: none"> <li>1. Whether student's hearing problems, not raised in due process request, may be considered;</li> <li>2. Lack of current speech evaluation;</li> <li>3. Lack of behavior support plan to address increases in disruptive behavior;</li> <li>4. Inadequate speech services;</li> <li>5. ESY services inadequate;</li> <li>6. Child abuse by the DOE and failure to implement IEP;</li> <li>7. Private placement;</li> <li>8. Compensatory education;</li> <li>9. Reimbursement for psychological evaluation.</li> </ol> <p><b>OUTCOME: For Student.</b></p> <p><b>REASONING:</b> (1) Although hearing problem was mentioned in an exhibit offered by DOE and raised during cross-examination of a witness, it would be excluded because notice was not included in request for hearing; (2) reduction of speech services for student with severe speech and language deficits from 560 minutes per quarter to 360, without a reevaluation, denied FAPE; (3) cut of speech services to 180 minutes because of disruptive behavior was a denial of FAPE; (4) DOE's argument that additional services would not benefit student did not refute petitioner's evidence that it would; (5) petitioner did not prove that increased behavioral problems were related to breaks in education; (6) removal of special education teacher and educational aide because of child abuse allegations being investigated by the Attorney General and their indefinite replacement by unskilled caretaker without notice to parent denied FAPE; (7) DOE ordered to reimburse cost of private placement through 12/31/2011 based upon appropriate program it offers and progress student is making; (8) compensatory education should be awarded for loss of speech services at home school, but no award is made because private school does not offer speech services; (9) parent did not request independent psychological evaluation, and cost of report is therefore an unrecoverable expert witness fee.</p>

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DOE-SY1011-115	Denise W.M. Wong	Michelle Pu`u	Haunani H. Alm 11/8/2011	<p>1. Qualification for IDEA services</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> Diagnosis of Asperger's syndrome, ADHD, and other disabilities does not qualify student for special education unless other eligibility standards are met. Student failed to prove that impairments interfered with ability to learn and that she needed special education and related services to benefit from her education. Emotional impairments qualified student for 504 accommodations, however.</p>
DOE-SY1011-111	Susan K. Dorsey	Jerrold G.H. Yashiro	Haunani H. Alm 5/7/2012	<p>1. Failure to evaluate suspected disabilities;</p> <p>2. Parental participation in IEP process;</p> <p>3. Inadequate PLEPs and Goals in IEP;</p> <p>4. ESY;</p> <p>5. Abuse of student by sped teacher and EA;</p> <p>6. Unilateral parental placement;</p> <p>7. Compensatory education</p> <p><u>OUTCOME:</u> <b>For Student</b> – DOE ordered to pay private school tuition plus cost of psychological evaluation.</p> <p><u>REASONING:</u> (1) Failure of DOE to evaluate student for distractible, off-task behavior and hearing impairment denied a FAPE; (2) Parent was denied meaningful participation in IEP process by DOE's failure to notice language barrier and to provide interpreter; failure to include reasons for denial of services in a Prior Written Notice in parent's native language also violated parental rights that amounted to a denial of FAPE; (3) PLEPs repeated evaluation summary but did not show how Student's disability affected involvement and progress in the general education curriculum; annual goals were not measurable because the PLEP lacked adequate baseline information; (4) IEP team denied FAPE by denying ESY services without considering factors other than regression; (5) DOE placed sped teacher and EA on administrative leave, but evidence of abuse of student was</p>

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				insufficient; (6) public school was not an appropriate placement because EA lacked experience with severe disabilities and student needed an intensive program of support in a small group setting; (7) private school tuition for one school year and two ESY periods awarded as compensatory education.
DOE-SY1011-110	Keith H.S. Peck	Kris Murakami	Richard A. Young 10/13/2011	<p>1. ESY services; 2. Parent's participation at IEP meetings.</p> <p><b>OUTCOME: For DOE.</b></p> <p><b>REASONING:</b> (1) evidence showed that low-functioning student did not lose skills during breaks of 21 days, and ESY sooner than that was not necessary; (2) IEP team considered student's disability level in considering ESY as requested by parent.</p>
DOE-SY1011-109	Keith H.S. Peck	Steve Miyasaka	Haunani H. Alm 8/15/2011	<p>1. Right to IEP of private school student; 2. Reimbursement of private school tuition</p> <p><b>OUTCOME: For Student.</b> DOE ordered to reimburse and/or pay private school tuition.</p> <p><b>REASONING:</b> (1) DOE erroneously advised parent that child must enroll in public school before an IEP meeting may be held. As a result, preparation of IEP was delayed for 6-1/2 months, which denied FAPE; (2) AMS, a private school for children with autism, is an appropriate placement.</p>
DOE-SY1011-108	Keith H.S. Peck	Berton Kato	Richard A. Young 9/1/2011	<p>1. Whether DOE is required to prepare IEPs for student enrolled in private school; 2. Reimbursement of private school tuition</p> <p><b>OUTCOME: For Student.</b> DOE ordered to reimburse private school tuition.</p> <p><b>REASONING:</b> (1) DOE is required to provide a FAPE to all age-eligible students with disabilities, including those in private school; DOE's offer to prepare IEP for education in public</p>

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				school was inadequate; (2) private school's program was appropriate as student made meaningful educational progress.
DOE-SY1011-105R***	Susan K. Dorsey	Carter K. Siu	Haunani H. Alm 12/27/2013	<p>1. Whether allegations of abuse denied FAPE; 2. Remedy for any denial of FAPE.</p> <p><b>OUTCOME: For Student</b></p> <p><b>REASONING:</b> (1) Allegations by a paraprofessional tutor of physical and verbal abuse of a disabled student by an educational aide ("EA") were credible, and the testimony of the EA and sped teacher were not credible (decision at 48); (2) physical and psychological abuse having been established, the DOE denied a FAPE; (3) student is placed in private school as compensatory education, including reimbursement for past tuition.</p> <p><b>ON APPEAL:</b> <i>DOE v. Ria L.</i>, D. Haw. Civ. No. 14-34 DKW-RLP – pending.</p>
DOE-SY1011-105	Susan K. Dorsey	Carter Siu	Haunani H. Alm 11/29/2011	<p>1. Provision of FAPE to student with limited English proficiency; 2. Improper evaluation by unqualified staff; 3. Placement in private school; 4. ESY.</p> <p><b>OUTCOME: For Student.</b></p> <p><b>REASONING:</b> (1) DOE should have provided Tagalog interpreter for parent at IEP meetings; (2) inconsistencies in testings indicate student should have been reevaluated for moderate autism rather than mental retardation; (3) unskilled aides did not provide proper support in public school; (4) PLEPs and goals and objectives were inadequate in light of autism classification and because they remained virtually the same from year to year with minimal progress; (5) parent is entitled to reimbursement for tuition after unilateral placement at private school plus transportation costs as compensatory education; (6) ESY was not determined in light of student's</p>



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				<p>unique needs but solely on the basis of a winter break; (7) parents are entitled to reimbursement for a neuropsychological evaluation because it is a related expense to the private placement.</p> <p><u>ON APPEAL</u>: <i>SOH v. Ria L.</i>, Haw. 1<sup>st</sup> Cir. Ct. No. 11-1-3187, removed to D. Haw. Civ. No. 12-007 DAE-KSC – <b>Vacated and remanded</b>, Doc.27 (7/31/2012): (1) Due process request did not raise issues of (a) Tagalog interpreter; substance of ESY services; (2) court shall consider additional evidence on review that is non-cumulative, relevant and admissible; ; (3) failure to evaluate is time-barred, although events outside the 2-year limitations period may be considered in assessing events within that period; (3) IEP was adequate because student was making progress; (4) on remand, hearings officer is to determine whether allegations of abuse denied FAPE, and if so, what the remedy should be.</p>
DOE-SY1011-104	Susan K. Dorsey	Jerrold G.H. Yashiro	David H. Karlen 10/2/2011	<ol style="list-style-type: none"> <li>1. Evidentiary effects of the invocation of Fifth Amendment rights (self-incrimination) by special education teacher regarding allegations of child abuse;</li> <li>2. Failure to provide autism-specific services;</li> <li>3. Speech-language services;</li> <li>4. Private placement;</li> <li>5. ESY services after 18 days;</li> <li>6. Compensatory education</li> <li>7. Reimbursement for private evaluation.</li> </ol> <p><u>OUTCOME</u>: <b>For Student.</b></p> <p><u>REASONING</u>: (1) Special education teacher's pleading of the 5<sup>th</sup> Amendment would not be taken as proof of child abuse; (2) services were not intensive enough; (3) functional behavior assessments did not show how to deal with behavior in a way that would teach Student rather than punish; (4) there was no evidence that DOE personnel had sufficient training to adequately deal with Student's behavior problems; (5) speech-language services resulted in significant educational progress; (6) unilateral private placement was reasonable and</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				appropriate in view of allegations of child abuse and evidence that private placement was proper; (7) the DOE's low expectations for the student are unjustified, and a break of 7 rather than 18 days should trigger ESY services; (8) two years of compensatory education at private school is appropriate; (9) the cost of the private psychological evaluation is reimbursed because it was necessary before student was placed at the private school.
DOE-SY1011-103R**	John P. Deller	James Raymond	David H. Karlen 6/7/2013  (First remand)	<p>1. Compensatory education; 2. Rule-out for CAPD</p> <p><b>OUTCOME: For DOE</b></p> <p><b>REASONING:</b> (1) Compensatory education in the form of payment of Loveland Academy's tuition for prior years is denied because Court previously denied statutory reimbursement and Loveland failed to "diagnose" student's mental disabilities; (2) mental health counseling for one year recommended by evaluation conducted jointly by parties is ordered, not as FAPE, but as compensatory education.</p> <p><b>ON APPEAL:</b> <i>J.T. v. DOE</i>, D. Haw. Civ. No. 11-612 LEK-BMK – <b>reversed and remanded in part</b>, ECF Doc. 87 (3/24/14): (1) denial of statutory reimbursement did not preclude a compensatory education award of past tuition; (2) Loveland's tuition would not be reimbursed because student did not need intensive mental health services; speech-language services were needed, but they could not be separated from unneeded mental health services; (3) hearings officer on remand could issue a preliminary decision and retain jurisdiction over the issue of CAPD rule-out; (4) case is remanded to decide whether DOE's tests are sufficient to rule-out central auditory processing disorder in this case.</p> <p><b>FURTHER APPEAL:</b> <i>J.T. v. DOE</i>, 9<sup>th</sup> Cir. No. 14-16143 – pending.</p>
DOE-SY1011-103	Denise M.W. Wong	Steve Miyasaka	David H. Karlen	1. Failure to include parent in IEP meetings in 2009 and

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
			9/12/2011	<p>2010;</p> <ol style="list-style-type: none"> <li>2. IEPs did not address auditory processing deficits, speech therapy, or mental health needs;</li> <li>3. Unilateral parental placement in private school;</li> <li>4. Compensatory education.</li> </ol> <p><u>OUTCOME:</u> <b>For DOE.</b> Student deemed to be prevailing party to the extent that speech therapy was awarded as compensatory education if (i) child is diagnosed as having a receptive language disorder and (ii) additional speech therapy is found to be appropriate at that time.</p> <p><u>REASONING:</u> (1) Failure to notify parent of IEP meeting in 2009 denied FAPE; failure to include parent in 2010 IEP meeting is excused because DOE had to meet its annual deadline and parent attended subsequent meetings; (2) there was no need for DOE to assess child's mental health needs because psychiatrist's report was one-sidedly based on information provided by mother, DOE teachers were not aware of any behavioral problems, behavioral problems at private school were not known at the time of the IEP meeting, and they were caused by private school frustrating student by underestimating his ability; (3) student should have been assessed for communication deficits, but there was no denial of FAPE because DOE was willing to make an assessment after parent enrolled student in private school; (4) reimbursement of private school tuition denied because placement was based on nonexistent mental health needs; (5) compensatory education denied because cost of speech-language services was not proven.</p> <p><u>ON APPEAL:</u> <i>J.T. v. DOE</i>, D. Haw. Civ. No. 11-612 LEK-BMK (John P. Deller for student, James Raymond for DOE) – <b>reversed and remanded</b>, Doc. # 27, 5/31/2012: (1) DOE's failure to include parent in IEP meetings and its failure to consider parent's comments and psychologist's report regarding suspected disabilities denied FAPE; (2) reimbursement for unilateral placement denied because (i) child's behavioral outbursts show placement was</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				inappropriate; and (ii) due process complaint was not filed within 180 days of "de facto" placement; (3) case is remanded for determination of compensatory education after parties jointly select and pay for neutral evaluation of mental health and communication needs; parties to bear own attorney's fees on remand.
DOE-SY1011-101	Keith H.S. Peck	Kris Murakami	Haunani H. Alm 10/19/2011	<ol style="list-style-type: none"> <li>1. Failure of DOE to have IEP in effect at beginning of school year;</li> <li>2. Validity of Act 129, SLH 2011;</li> <li>3. Private placement.</li> </ol> <p><b>OUTCOME: For Student.</b></p> <p><b>REASONING:</b> (1) DOE conceded that its failure to have an IEP in effect for four days at beginning of school year was a denial of FAPE; (2) private placement was proper, and given denial of FAPE, DOE is required to pay private school tuition for SY 2011-12 and ESY 2012; (3) validity of Act 129 does not involve placement or other issues within subject matter jurisdiction of hearings officer.</p>
DOE-SY1011-100	Denise Wong	Steve K. Miyasaka	Richard A. Young 10/28/2011	<ol style="list-style-type: none"> <li>1. Inadequate IEP (no ABA therapy, skills trainer, 1:1 speech pathologist, mental health services, OT/PT);</li> <li>2. ESY for any break in education;</li> <li>3. Private school tuition reimbursement;</li> <li>4. Reimbursement of psychological evaluation.</li> </ol> <p><b>OUTCOME: For Student.</b></p> <p><b>REASONING:</b> (1) the March 3, 2009 IEP failed to accurately describe Student's behavioral and mental health needs; (2) it was inappropriate to reduce Student's OT services to 90 minutes per quarter as Student had sensory processing issues; (3) Student's progress at the current private placement has been described as phenomenal, with tremendous gains academically, socially, and physically; (4) Petitioners shall be awarded as compensatory education the costs of placement at the current private placement for one year.</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
DOE-SY1011-099	Susan K. Dorsey	Gary S. Suganuma	Haunani H. Alm 6/20/2011, amended 6/30/11	<ol style="list-style-type: none"> <li>1. IEP meeting requirements;</li> <li>2. Evaluation of suspected disability;</li> <li>3. Participation in IEP meeting by guardian with limited English proficiency;</li> <li>4. Criteria for ESY;</li> <li>5. Compensatory education</li> </ol> <p><b>OUTCOME: For Student.</b></p> <p><b>REASONING:</b> (1) meeting of guardian, sped teacher, and principal was not a proper IEP meeting that could revise goals and objectives; (2) DOE was required to provide interpreter for non-English-speaking guardian; (3) DOE did not evaluate student in all suspected areas of disability because it failed to order a visual evaluation; (4) IEP goals were inappropriate because visual deficits were not considered; (5) DOE improperly limited ESY analysis to consideration of regression and recoupment; (6) compensatory education is denied without prejudice; Student may renew claim after DOE provides student with a complete eye examination; (7) DOE denied guardian meaningful participation in the IEP process by failing to provide a translator at IEP meetings and by failing to describe procedural safeguards in an easy to understand format and/or in the guardian's language.</p>
DOE-SY1011-098R	John P. Deller	James Raymond	Richard A. Young 6/5/2013	<ol style="list-style-type: none"> <li>1. Compensatory education</li> </ol> <p><b>OUTCOME: For DOE</b></p> <p><b>REASONING:</b> (1) Compensatory education in the form of payment of Loveland Academy's tuition for prior years is denied because award must be prospective; (2) speech-language therapy in weekly one hour pull-out sessions for 78 months is ordered, not as FAPE, but as compensatory education because that is what student needed before he attended Loveland for two years.</p> <p><b>ON APPEAL: I.T. v. DOE, D. Haw. Civ. No. 11-676 LEK-KSC</b></p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p>– <b>reversed</b>, Doc. 68 (12/17/2013): (1) compensatory education is not limited to prospective relief; retroactive reimbursement of \$44,000 in private school tuition is awarded because (a) student made commendable progress; (b) the DOE did not offer a FAPE until after the start of the school year; and (c) current or future services would not compensate for past denials of FAPE; (2) reimbursement is limited to SY 2010-2011 because further attendance was not needed to recoup benefits lost from past denials of FAPE; (3) the DOE did not prove Loveland's rates are unreasonable; Loveland need not comply with DOE standards for speech language professionals; (4) reimbursement is limited to 25% because student did not prove mental health services were needed to provide a FAPE in SY 2010-2011, value of speech-language cannot be severed from other services, and attendance at Loveland could not be limited to speech-language.</p>
DOE-SY1011-098	Denise Wong	James Raymond Jerold G.H. Yashiro	Richard A. Young 10/6/2011	<ol style="list-style-type: none"> <li>1. Evaluation of suspected disabilities;</li> <li>2. Inappropriate IEP goals and objectives</li> <li>3. Least restrictive environment</li> <li>4. Reimbursement for private placement</li> </ol> <p><b>OUTCOME: For DOE</b></p> <p><b>REASONING:</b> (1) DOE was not required to evaluate student's need for mental health services because behaviors at home were not observed at school; (2) DOE was not required to evaluate student for auditory processing deficits in Grade 3 because at the time of the IEP meeting, parent had not yet received a psychologist's report concluding that student had that disability and there was no evidence thereof in the five prior years; (3) PLEPs did not have to address behavioral issues because teacher testified there were none; (4) IEPs were appropriate because student was progressing.</p> <p><b>ON APPEAL: <i>I.T. v. DOE</i></b>, D. Haw. Civ. No. 11-676 LEK-KSC (John P. Deller for student) – (Amended Order) <b>Affirmed in part and vacated and remanded in part</b>, Doc. #31 (9/11//2012): (1) DOE denied FAPE by failing to provide for</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				speech-language services from March 2009 to August 2010; (2) reimbursement for private school denied because IEP that was written after student unilaterally withdrew from public school offered a FAPE; (3) DOE violated its duty to evaluate student for CAPD, but there was no denial of FAPE because it was later determined that student did not have CAPD; (4) DOE had no duty to evaluate student for mental disorder because parent did not specifically request it, psychologist's diagnosis was linked to CAPD, and behavioral issues were not observed at school; (5) case remanded to determine award of compensatory education.
DOE-SY1011-094	Jerel D. Fonseca	Jerrold G.H. Yashiro	Richard A. Young 8/11/2011	<ol style="list-style-type: none"> <li>1. Need for transfer plan from private to public school;</li> <li>2. Adequacy of IEP goals and objectives</li> <li>3. Placement in public school;</li> <li>4. Reimbursement of private school tuition.</li> </ol> <p><u>OUTCOME:</u> <b>For Student.</b> DOE ordered to reimburse and/or pay private school tuition.</p> <p><u>REASONING:</u> (1) Regression and violent, self-injurious behavior caused by prior attempts to transfer low-functioning student with autism required that DOE develop an adequate transfer plan in order to address student's needs; (2) failure to recognize mental health needs in IEP goals and objectives was a denial of FAPE; (3) noisy, crowded environment in public school (fully self-contained class was in main hallway) was inappropriate; (4) private school was an appropriate placement because it offered mental health services and student was progressing in living skills and cognitive skills. Occasional violent behaviors resulted from increased challenges in the program being offered.</p>
DOE-SY1011-093	Keith H.S. Peck	Kris S. Murakami	Haunani H. Alm 10/17/2011	<ol style="list-style-type: none"> <li>1. DOE's failure to have IEP in effect at beginning of school year</li> <li>2. Stay put</li> <li>3. ESY services</li> <li>4. Whether Act 129, SLH 2011 violates Section 504.</li> </ol>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p><u>OUTCOME</u>: <b>For Student.</b> Stay put at private school granted.</p> <p><u>REASONING</u>: (1) IEP in effect at the beginning of the school year was identical to one that denied FAPE per decision in DOE-SY-1011-023, hence no valid IEP was in place at the beginning of the school year; (2) IEPs did not describe ESY services needed until January 2011; (3) decision in DOE-SY1011-023 is treated as an agreement by the DOE to private placement under 34 C.F.R. § 300.518(d); because student aged-out of that pre-school placement, the stay put placement becomes the current private school, which offers a program that approximates the pre-school program; (4) Act 129 issue was not pursued at the administrative hearing.</p> <p><u>ON APPEAL</u>: <i>DOE v. M.E.</i>, Cir. Ct. – <b>affirmed</b>, 4/25/2012.</p>
DOE-SY1011-092	Keith H.S. Peck	Jerrold G.H. Yashiro	Richard A. Young 7/15/2011	<ol style="list-style-type: none"> <li>1. Private school placement;</li> <li>2. Parent's right to participate in IEP meeting</li> </ol> <p><u>OUTCOME</u>: <b>For Student.</b> DOE ordered to reimburse private school tuition.</p> <p><u>REASONING</u>: (1) DOE denied parent the right to participate in IEP meeting by proceeding in absence of mother who could not attend because she was involved in an automobile accident en route to the meeting. Mother arrived one hour late, but summary of meeting concluded in her absence and opportunity to convene another IEP meeting were not adequate substitutes for full participation where parent had material information to provide regarding child's disability and need for private school; (2) private school was an appropriate placement.</p>
DOE-SY1011-087	Jerel D. Fonseca	Gary S. Suganuma	Haunani H. Alm 7/1/2011	<ol style="list-style-type: none"> <li>1. Evaluation of student;</li> <li>2. Extended school year;</li> <li>3. Private school placement.</li> </ol> <p><u>OUTCOME</u>: <b>For Student.</b> DOE ordered to reimburse private school tuition.</p>



DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p><u>REASONING:</u> (1) DOE evaluated student for ADHD but did not confirm or deny Asperger's or bipolar disorder; (2) IEP was inadequate because it was based upon outdated PLEPs; (3) anxiety caused by Asperger's syndrome presented an unfilled need for mental health services; (4) ESY requirement not updated; (5) public school with 1,200 students was inappropriate where student needed small, quiet environment.</p>
DOE-SY1011-084 DOE-SY1011-005 Consolidated	Jerel D. Fonseca	Kris Murakami	Richard A. Young 9/20/2011	<p>1. Inadequate evaluation of disabilities; 2. Inadequate goals and objectives; 3. Lack of autism-specific services; 4. Reimbursement of tuition for private placement.</p> <p><u>OUTCOME:</u> <b>For Student.</b> Reimbursement for private placement ordered.</p> <p><u>REASONING:</u> (1) Although academic skills assessment was incomplete, IEP team had received an adequate evaluation of behavioral and speech language needs that were most important; (2) IEP failed to describe severe behavioral problems and did not contain services needed to deal with them; (3) although the home school offered socialization in the least restrictive environment, student first needed to control behavior and develop communication skills; student regressed while at home school, which is indicative that placement there is inappropriate and that student needs autism-specific services provided by private school; (4) parent could not complain about the lack of an academic skills assessment because private school's report was not provided to the IEP team.</p> <p><u>ON APPEAL:</u> <i>Aaron P. v. DOE</i>, D. Haw. Civ. No. 11-635 ACK-RLP) (consol. <i>DOE v. Puakielenani P.</i>, 1<sup>st</sup> Cir. Ct. No. 11-1-2515, removed to D. Haw. Civ. No. 11-711 ACK-RLP) – <b>affirmed in part and remanded in part</b>, Doc. #100 (9/17/2012) 2012 WL 4321715: (1) administrative exhaustion does not apply to motion for stay put unless the motion is based upon a denial of FAPE; thus, claim that violation of stay</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p>put denied FAPE must be raised first at the administrative level; (2) issue of Act 129's validity is not ripe because stay put payments are being made; (3) DOE's claim for equitable relief could include restitution of funds paid pursuant to stay put; payment does not, therefore, render claim moot; (4) parent's failure to provide data to DOE did not preclude claim that DOE failed to evaluate child; (5) hearings officer's findings regarding denial of FAPE (2009 IEP) and provision of FAPE (2010 IEP) were thorough and thoughtful; (6) case is remanded to determine whether hearings officer used correct standard to determine placement, whether DOE implemented IEP, whether cost of private evaluations should be reimbursed, and whether compensatory education should be awarded; (7) parental placement was appropriate despite lack of licensed staff, and private placement need not be a "school" under state law.</p>
DOE-SY1011-084R DOE-SY1011-005R Consolidated	Jerel D. Fonseca	Kris Murakami	Richard A. Young 5/3/2013	<ol style="list-style-type: none"> <li>1. Standard to determine placement;</li> <li>2. Implementation of IEP;</li> <li>3. Reimbursement for private evaluations;</li> <li>4. compensatory education</li> </ol> <p><b>OUTCOME: For Student</b></p> <p><b>REASONING:</b> 1) Placement factors specified in <i>Sacramento City Unified School District v. Rachel H.</i>, 14 F.3d 1398, 1400-01 (9th Cir. 1994) were based on facts known to the IEP team when the 2010 IEP was prepared; private school placement is justified by the severity of student's disability and inability to succeed in the home school; (2) Student made progress after returning to home school for 2-1/2 months, although self-injurious behaviors increased and progress measured included nine months at private school; DOE implemented IEP despite video-taping by parent for 2 hours per week that distracted Student and made staff uncomfortable; (3) compensatory education denied for 2-1/2 months student attended home school because parent's "excessive" videotaping at school distracted student and intimidated DOE staff; (4) cost of private evaluation denied where DOE conducted its own evaluation.</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
DOE-SY1011-082	Joseph L. Rome	Michelle M.L. Puu	Richard A. Young 6/14/2011	<p>1. Parents' participation in IEP process;  2. Private school's participation in IEP process;  3. Private school placement</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) DOE was justified in holding IEP meeting on date parent was sick because it could not re-schedule a date convenient for DOE participants prior to the annual review date; (2) home school was appropriate placement for high-functioning student with autism; (3) IEP was appropriate even though updated information was not included because parent's consent to provide it was not received until after the IEP meeting.</p> <p><u>ON APPEAL:</u> <i>Doug C. v. DOE</i>, D. Haw., Civ. No. 11-441 KSC (Keith H.S. Peck for appellant), Doc. # 24, 12/12/2011 – <b>affirmed.</b> (1) DOE provided ample opportunities for parent to participate in IEP meeting, either personally or by telephone. Parent attended subsequent IEP review meeting, but had no comments on the IEP. Parent's nonattendance at earlier IEP meeting, therefore, was not a denial of FAPE; (2) IDEA does not require a transition plan to move from private to public school, and record did not show that a plan was required to meet student's unique needs.</p> <p><u>FURTHER APPEAL:</u> 9<sup>th</sup> Cir. No. 12-15079 (Keith Peck for appellant) – <b>Reversed and remanded</b>, 6/13/2013: (1) "The fact that it may have been frustrating to schedule meetings with or difficult to work with [parent] ... does not excuse the [DOE]'s failure to include him in [student]'s IEP meeting when he expressed a willingness to participate"; (2) DOE's argument that IDEA services would "lapse" if a new IEP was not in place by the annual review date is untenable; there is no evidence that continuing prior IEP until parent could attend annual review IEP meeting would not be in student's interest; (3) reimbursement of private school tuition may be ordered during IDEA review proceedings.</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
DOE-SY1011-76R	Keith H.S. Peck	Kris Murakami	Richard A. Young 12/20/2012 (Remand)	<p>1. Need for 1:1 aide</p> <p><u>OUTCOME:</u> <b>For Student</b></p> <p><u>REASONING:</u> Student needed close adult supervision to deal with language delays and behavioral problems. Failure to provide 1:1 aide was a denial of FAPE, and private school was a proper placement. Thus, parent is entitled to reimbursement of one year's tuition at private school.</p> <p><u>ON APPEAL:</u> <i>DOE v. J.G.</i>, D. Haw., Civ. No. 13-29 DKW-BMK (consol. Civ. No. 11-523) (Carter Siu for DOE) – <b>reversed</b>, Doc. 28 (2/24/14): (1) Hearings officer did not cite evidence that student needed 1:1 services; instead, he relied on evidence that Judge Ezra found was insufficient (student needed “close adult supervision,” but that does not necessarily mean 1:1 services). (2) There being no denial of FAPE, reimbursement is denied.</p>
DOE-SY1011-076	Keith H.S. Peck	Kris Murakami	Richard A. Young 8/3/2011	<p>1. DOE's failure to have an IEP in effect at the beginning of the school year;</p> <p>2. Inadequate special education services</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) Inadequate IEP satisfied DOE's obligation to have an IEP in effect at the start of the school year; (2) Student had had only 2 or 3 “meltdowns” in the last six months and might go for “weeks without a meltdown,” so he had no need for specific mental health services.</p> <p><u>ON APPEAL:</u> <i>Howard G. v. DOE</i>, D. Haw. Civ. No. 11-523 DAE-BMK – <b>vacated in part and remanded</b>, Doc. 27 (6/29/2012): remanded to consider student's need for 1:1 services.</p>
DOE-SY1011-058	Jerel D. Fonseca	Steve Miyasaka	Richard A. Young 7/12/2011	<p>1. Termination of special education</p> <p><u>OUTCOME:</u> <b>For DOE.</b></p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p><u>REASONING</u>: IEP team terminated special education services in accordance with 20 U.S.C. § 1414(c) because student's performance showed further services were not needed; further evaluations were conducted by DOE personnel at parent's request.</p>
DOE-SY1011-046	Keith H.S. Peck	Kris Murakami	Richard A. Young 5/31/2010	<p>1. Evaluation for special education; 2. Reimbursement for private school tuition.</p> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: There was no evidence that student has an ADHD diagnosis or that he needs special education and related services. School psychologist testified that student has average ability, based upon WIAT and Woodcock-Johnson III tests.</p> <p><u>ON APPEAL</u>: <i>Scot S. (Lea) v. DOE</i>, D. Haw. Civ. No. 11-373-DAE-KSC – <b>affirmed</b>, Doc. # 22 (1/9/2012).</p>
DOE-SY1011-037	Stanley E. Levin	Steve K. Miyasaka	Richard A. Young 1/21/2011	<p>1. Denial of FAPE; 2. Least restrictive environment.</p> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) Evidence did not show that DOE's evaluation of student's disability was erroneous; (2) no proof that DOE was advised of suspected areas of disability to be assessed; (3) private school had no non-disabled students; public school thus offered least restrictive environment through recess, lunch, and the like.</p> <p><u>ON APPEAL</u>: <i>Nalu Y. v. DOE</i>, D. Haw. Civ. No. 11-67 BMK – <b>reversed in part and remanded, Doc. # 26 (3/9/12)</b>; hearings officer improperly disregarded testimony of parent and private school teacher.</p>
DOE-SY1011-	Stanley E. Levin	Toby Tanaki	Richard A. Young	1. Parental participation in IEP process

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
037R			7/25/2012 (Remand)	<p><u>OUTCOME</u>: <b>For Student</b></p> <p><u>REASONING</u>: Private placement ordered at DOE's expense. The DOE's failure to adequately address or investigate parental concerns regarding Student's fear of the home school is a denial of FAPE as it denied Parents meaningful participation in the IEP process and caused a deprivation of educational benefits to Student.</p>
DOE-SY1011-036	Jerel D. Fonseca	Gary K.H. Kam	Lono P.V. Beamer 1/21/2011	<p>1. Evaluation of central auditory processing disorder; 2. Least restrictive environment</p> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) Student passed auditory hearing tests and further assessment was not needed for central auditory processing disorder; evidence of submucuous cleft palate not brought to the attention of the IEP team could not be considered; (2) lack of audiologist at IEP meeting was not raised as an issue in request for due process and cannot be considered; (3) Student did not prove denial of FAPE.</p> <p><u>ON APPEAL</u>: <i>D.R. v. DOE</i>, D. Haw., Civ. No. 11-116 ACK-KSC. (Matthew C. Bassett counsel for appellant). – <b>affirmed</b> 10/21/11, Doc. # 27: (1) no evidence that hearings officer was biased; deputy attorney general who represents DOE is not disqualified from being IDEA hearings officer; (2) decision was thorough and careful, and will be given substantial deference; (3) parent could not complain that DOE failed to evaluate student for speech disorder where information about cleft palate was not shared with IEP team; (4) DOE screening tests for CAPD were sufficient and no further evaluation was needed.</p>
DOE-SY1011-035	Keith H.S. Peck	Jerrold G.H. Yashiro	Craig H. Uyehara 3/10/11	<p>1. Adequacy of PLEPS 2. Attendance of private school teacher at IEP meeting 3. Whether private school was proper placement.</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p><u>OUTCOME:</u> For <b>DOE</b>.</p> <p><u>REASONING:</u> (1) Evidence did not prove that WIAT test was administered improperly; (2) Failure to invite private school teacher to IEP did not deny FAPE because private school had a policy of not attending IEPs and DOE had acquired sufficient information about student's needs and abilities via testing of student; (3) evidence failed to show student progress at private school.</p> <p><u>ON APPEAL:</u> <i>D.S-S. v. DOE</i>, D. Haw., Civ. No. 11-239 BMK – <b>Affirmed</b>, Doc. # 31, 4/30/2012.</p>
DOE-SY1011-031	Keith H.S. Peck	Gary K.H. Kam	Rodney A. Maile 11/11/2010	<ol style="list-style-type: none"> <li>1. Parent's participation in IEP meeting;</li> <li>2. Participation of private school teachers in IEP meeting.</li> </ol> <p><u>OUTCOME:</u> <b>For DOE</b>.</p> <p><u>REASONING:</u> Principal specifically asked for, and received, permission from parent to complete the IEP after parent left the IEP meeting. 34 C.F.R. § 300.321(e) does not require that a parent be present for the entire meeting, nor does it require written consent to finalize IEP after parent leaves.</p> <p><u>ON APPEAL:</u> <i>L.I. v. DOE</i>, D. Haw. Civ. No. 10-731 SOM-BMK -- <b>Affirmed</b>, Doc. # 28, 11/30/2011, 2011 WL 6002623. Stay put not granted because issue was not briefed on appeal; motion may be made, however, on proper authority.</p>
DOE-SY1011-029	Keith H.S. Peck	Berton T. Kato	Haunani H. Alm 2/7/2011	<ol style="list-style-type: none"> <li>1. Transition planning from private to public school;</li> <li>2. Qualifications of paraprofessional aides;</li> <li>3. Private school teacher's participation in IEP meetings.</li> </ol> <p><u>OUTCOME:</u> <b>For DOE</b>.</p> <p><u>REASONING:</u> (1) Parent did not respond to principal's offer to convene an IEP meeting to discuss transition needs; (2) parent did not raise staff qualifications at IEP meeting; (3) DOE invited private school director to IEP meeting, but parent did not</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p>explain absence.</p> <p><u>ON APPEAL</u>: <i>D.S. v. DOE</i>, D. Haw. Civ. No. 11-161 LEK-KSC – <b>Affirmed</b>, Doc. # 25, 12/27/2011 (Monica Morris for DOE).</p>
DOE-SY1011-028	Susan Dorsey	Gary K.H. Kam	Richard A. Young 12/15/2010	<ol style="list-style-type: none"> <li>1. Suspension of student;</li> <li>2. Adequacy of behavior support plan;</li> <li>3. Manifestation hearing and length of suspension;</li> <li>4. Provision of FAPE.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) DOE adequately addressed student's behavioral problems (including criminal conduct and threats against teachers and other students) through "chunking," breaks, and counseling; (2) there was no proof that the manifestation team erroneously concluded that "setting off a device" that damaged the school bathroom and injured three students was a planned activity not caused by student's disability; (3) one-year suspension was lawful because student's conduct was not caused by his disability.</p> <p><u>ON APPEAL</u>: <i>Danny K. v. DOE</i>, D. Haw. Civ. No. 11-25 ACK-KSC – <b>Affirmed</b>, Doc. # 29 (9/27/2011).</p>
DOE-SY1011-024	Stanley E. Levin	Jerrold G.H. Yashiro	Richard A. Young 7/5/2011	<ol style="list-style-type: none"> <li>1. Failure to evaluate student before transition from private to public school;</li> <li>2. Placement pre-determined by DOE;</li> <li>3. Public school is not restrictive enough;</li> <li>4. Goals of independent living and competitive employment are inappropriate for low-functioning student with autism;</li> <li>5. Transition planning inadequate because DVR did not participate in IEP meetings</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) There is no requirement to evaluate a student before changing placement; (2) placement decision was based on student's needs and was not pre-determined; (3)</p>



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				<p>non-verbal student who is severely disabled with autism would benefit by learning body language and social cues from exposure to non-disabled peers on a 1,200 student public school campus, according to the DOE's autism consulting teacher, an "expert in autism"; (4) Although student is unlikely to live independently, it is not inappropriate to strive for that goal; (5) DOE rules do not require that a DVR representative attend IEP meetings, and listing transition services in IEP without discussing them at the IEP meeting is sufficient.</p> <p><u>ON APPEAL:</u> <i>Carrie I. v. DOE</i>, D. Haw. Civ. No. 11-464 JMS-RLP – <b>reversed</b>, Doc. # 27 (5/31/2012), 2012 WL 2353850: (1) while a change of placement from private to public school requires the DOE to evaluate the student's needs under Section 504 of the Rehabilitation Act of 1973, there is no such requirement under the IDEA ; (2) due process request did not raise an issue of DOE's failure to conduct a triennial evaluation; (3) the location of services does not have to be specified in the IEP, but the type of placement must be – <i>i.e.</i>, home schooling, regular class, special education class, special education school; (4) DOE denied FAPE by failing to consider, at the IEP meeting (not the due process hearing), the harmful effects of a transition from Loveland Academy (a mental health treatment facility for 38 students) to Aiea High School (a public school with 1,200 students); (5) IEP denied FAPE by failing to include provisions for transition to post-secondary vocational programs and by failing to invite DVR representative to IEP meeting; (6) private placement at Loveland is appropriate.</p>
DOE-SY1011-020	Keith H.S. Peck	Steve K. Miyasaka	Lono P.V. Beamer 1/24/2011	<ol style="list-style-type: none"> <li>1. Adequacy of IEP (transition services);</li> <li>2. Right of parent and private school to participate in IEP meeting;</li> <li>3. Reimbursement of private placement.</li> </ol> <p><u>OUTCOME:</u> <b>For DOE.</b></p> <p><u>REASONING:</u> (1) Parent had ample opportunity to participate in IEP despite absence of translator for half of the 2-hour meeting; (2) Although IEP denied FAPE because of lack of</p>

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				<p>transition planning, parent failed to prove that unilateral private placement was appropriate; (3) private school did not allow access to student by DOE and concentrated on functional communication skills rather than social interaction and generalization.</p> <p><u>ON APPEAL:</u> <i>M.N. v. DOE</i>, D. Haw. Civ. No. 11-121 SOM-BMK, Doc. # 31, 12/1/2011 – <b>affirmed</b>. (1) Plaintiff failed to show that Pacific Autism Center provided program meeting student's needs because student failed to make progress in a majority of areas covered by his IEP. Therefore, even though DOE had denied FAPE, reimbursement of tuition was denied; (2) even though DOE did not dispute denial of FAPE, court questioned the finding because IDEA does not require a transition plan from private to public school; (3) reimbursement of tuition would have been denied in any event because school and parent were uncooperative in providing data to the DOE and in scheduling IEP meetings.</p> <p><u>FURTHER APPEAL:</u> <i>Misako Nakamura ex rel. A.B. v. DOE</i>, 9<sup>th</sup> Cir. No. 11-18037 (Timothy A. Adams, Santa Ana, CA for appellant) – <b>affirmed 2/19/2013</b>.</p>
DOE-SY1011-015 & DOE-SY0910-124 (Consolidated)	Jerel D. Fonseca	Steve K. Miyasaka	Richard A. Young 11/18/2010	<ol style="list-style-type: none"> <li>1. Failure to update IEP;</li> <li>2. private school placement;</li> <li>3. compensatory education.</li> </ol> <p><u>OUTCOME:</u> For <b>Student</b>. DOE ordered to reimburse cost of private school for two school years plus a third year as compensatory education.</p> <p><u>REASONING:</u> (1) problem behaviors have been reduced at private school and it is therefore a proper placement; (2) ILC placement (small self-contained room on public school campus) was not appropriate for ADHD student who needed socialization opportunities; (3) compensatory education of one year at Mental health day treatment facility (private school) awarded because of DOE's failure to update IEP from August 2008 to February 2010.</p>

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				<p><u>ON APPEAL</u>: <i>DOE v. M.F.</i>, D. Haw. Civ. No. 11-47 JMS-BMK – <b>affirmed in part and remanded</b>, Doc. #53 (12/29/11): hearings officer is to decide whether Loveland's speech services are severable from other services for purposes of reimbursing costs. Judgment for Plaintiff is vacated on grounds that remand order is not appealable.</p>
DOE-SY1011-015R & DOE-SY0910-124R (Consolidated)	Jerel D. Fonseca	Toby Tonaki	Richard A. Young 3/20/2013 (Remand)	<p>1. Severability of Loveland's speech-language services 2. Compensatory education</p> <p><u>OUTCOME</u>: <b>For Student</b></p> <p><u>REASONING</u>: (1) OT and speech-language services were not necessary parts of student's program and cost, therefore, need not be reimbursed; (2) compensatory education for the entire school year is granted because terminating an award when the school year has not been completed would be disruptive for any child.</p>
DOE-SY1011-014	Keith H.S. Peck	Jerrold G. Yashiro	Rodney A. Maile 11/10/2010	<p>1. Participation of private school teachers in IEP meeting; 2. ESY services; 3. Whether the IEP provided appropriate special education services.</p> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: Student did not prove by a preponderance of the evidence that the IEP was inadequate.</p> <p><u>ON APPEAL</u>: <i>G.A. v. DOE</i>, D. Haw. Civ. No. 10-730 LEK-BMK – <b>affirmed</b> (Aug. 31, 2011): (1) Hearings Officer's decision was thorough and careful; (2) IDEA does not require that private placement teacher attend IEP meetings; in any event, the evidence showed the teacher was invited to the meeting and the IEP team had adequate information about the private school's program; (3) DOE paid for tutoring during ESY.</p>

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DOE-SY0910-144	Roy Benavidez	Kris Murakami	Lono P.V. Beamer 10/26/2010	<p>1. Right to FAPE after age 20.</p> <p><u>OUTCOME</u>: <b>DOE's</b> motion to dismiss granted.</p> <p><u>REASONING</u>: Student is not eligible to attend public high school after age 20 because of Act 163, SLH 2010; (2) hearings officer has no jurisdiction to determine the validity of Act 163.</p> <p><u>ON APPEAL</u>: <i>R.T.D. v. DOE</i>, D. Haw. Civ. No. 10-641 LEK – <b>Affirmed</b>, Doc. # 38, 4/30/2012 (Jennifer Patricio for appellant) – Court agrees with decision in <i>R.P.-K. ex rel. C.K. v. Dep't of Educ.</i>, Haw., Civ. No. 10-00436 DAE-KSC, 2012 WL 1082250, at *8 (D. Hawai'i Mar. 30, 2012).</p> <p><u>FURTHER APPEAL</u>: 9<sup>th</sup> Cir. No. 12-16191 – <b>Reversed 8/28/13</b> per <i>E.R.K. v. DOE</i>, 728 F.3d 982: students with disabilities are eligible to receive a FAPE until age 22 because the State offers a free public education in the GED and CBASE adult programs to students in that age range.</p>
DOE-SY0910-143	Roy Benavidez	Berton Kato	Richard A. Young 10/25/2010	<p>1. Right to FAPE after age 20.</p> <p><u>OUTCOME</u>: <b>DOE's</b> motion to dismiss granted.</p> <p><u>REASONING</u>: (1) Act 163, SLH 2010 reduced age eligibility for admission to high school to 20 years of age; (2) GED and CB high school equivalency programs are open to all students and thus do not discriminate against students with disabilities; (3) DOE is not estopped from denying FAPE to students with disabilities after age 20 because the State may reduce age eligibility under IDEA; (4) hearings officer lacks subject matter jurisdiction over PWNs that did not address parent's request for FAPE after age 20.</p> <p><u>ON APPEAL</u>: <i>R.P.-K. v. DOE</i>, D. Haw. Civ. No. 10-644 LEK-KSC – <b>Reversed and remanded</b>, Doc. #32, 8/1/2011 (John P. Dellera for appellant): (1) Hearings Officer should have considered whether request for FAPE after age 20 was denied</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				(and whether parent's right to participate in the IEP process was impaired) when IEP team failed to address it; (2) hearings officer should have considered whether DOE is estopped from denying FAPE after age 20; (3) Court construes age-out issues as claim that Act 163, SLH 2010, is invalid and finds that issue was not raised in the due process request and was not, therefore, within the hearings officer's jurisdiction.
DOE-SY0910-123	Stanley E. Levin	Gary K.H. Kam	Craig H. Uyehara 5/28/2010	<p>1. Procedural violation of IDEA (timely resolution session; timely due process hearing).</p> <p><b>OUTCOME: For Student.</b> Parent reimbursed for private school placement.</p> <p><b>REASONING:</b> DOE's delay of three months to transmit a due process request to the Office of Administrative Hearings failed to provide a timely due process hearing and constituted a <i>per se</i> violation of IDEA.</p> <p><b>ON APPEAL: <i>DOE v. T.G.</i>, 2011 WL 816808 (D. Haw., 2/28/11), Civ. No. 10-362 LEK-RLP: <b>affirmed in part, reversed and remanded in part.</b></b> (1) "where an educational agency has outright denied a student a timely due process hearing, the student has been deprived of a FAPE and need not show prejudice in order to demonstrate injury"; (2) Hearings Officer's decision was not thorough and careful as to whether the private school was a proper placement because it did not consider whether extra services purchased by parent were needed to make the education appropriate.</p>
DOE-SY0910-123R	Stanley E. Levin	Gary K.H. Kam	Craig H. Uyehara 5/26/2011 (Remand)	<p>1. Appropriateness of private placement</p> <p><b>OUTCOME: For student.</b></p> <p><b>REASONING:</b> Private school, together with related services, addressed some of student's unique needs, and student made progress. Private placement was, therefore, proper.</p>
DOE-SY0910-106	Keith H.S. Peck	Berton T. Kato	Craig H. Uyehara	1. Skills trainer services

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			4/1/2011	<p>2. Multiple denials of FAPE 3. Furlough Fridays</p> <p><b>OUTCOME: For DOE.</b></p> <p><b>REASONING:</b> (1) Student was not deprived of FAPE because skills trainer helped another child who became ill on a field trip; (2) evidence did not show denial of FAPE; (3) there was no evidence that furlough Fridays resulted in a material loss of educational benefits for student.</p> <p><b>ON APPEAL: M.D. v. DOE</b>, D. Haw. Civ. No. 11-289 ACK-RLP – <b>Affirmed</b>, Doc. # 23, 3/29/2012: hearings officer's decision is detailed and legal conclusions are explained with citations to record. It is therefore entitled to deference, and court will not second guess officer's characterization and weighing of the evidence.</p>
DOE-SY0910-104	Irene E. Vasey	Berton T. Kato	Lono P.V. Beamer 11/12/2010	<p>1. Evaluation of student; 2. Adequacy of IEP; 3. Issues not raised in due process request; 4. Parent's right to participate in IEP process.</p> <p><b>OUTCOME: For DOE.</b></p> <p><b>REASONING:</b> (1) IEP Team was given no reason to believe that student should be evaluated for additional disabilities; IEP adequately addressed student's needs; claims accruing more than 2 years before due process request are time-barred; (2) issues not raised in due process request (ESY, transition planning) will not be considered; (3) difference of opinion between parent and rest of IEP team does not show that parent was denied full participation in the IEP process.</p> <p><b>ON APPEAL: Hailey M. v. Matayoshi</b>, D. Haw. Civ. No. 10-733 LEK-BMK – <b>affirmed</b> (Sep. 7, 2011).</p>
DOE-SY0910-102	Keith H.S. Peck	Berton T. Kato	Richard A. Young 4/28/2011	<p>1. No transition plan for move to public school; 2. PLEPs, goals, and behavior support plan not updated;</p>

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				<p>3. Improper request for waiver of IDEA claims</p> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) Transition plan provided for gradual increase in public schooling; assuming it was necessary, it was adequate; (2) parents cannot complain about outdated IEP because information needed from private school was not provided; (3) proposed compromise settlement agreement did not improperly require parent to waive IDEA rights.</p> <p><u>ON APPEAL</u>: <i>Scot S. for Scot S., Jr. v. DOE</i>, D. Haw. Civ. No. 11-347 ACK-RLP – <b>affirmed</b>, Doc. # 33-1 (2/27/2012): (1) DOE's failure to update IEP was caused by parents' failure to provide information from Pacific Autism Center pursuant to a settlement agreement; court questions decision in <i>Anchorage School District v. M.P.</i>, 9th Cir. No. 10-36065, 2011 WL 5149140, at *1 (11/1/2011) that "[n]either the IDEA nor its implementing regulations qualifies any duty imposed on a state or local educational agency as contingent upon parental cooperation"; (2) transition plan was adequate as it provided for a transition to [public school] over a period of three weeks, gradually increasing the amount of time Student spent at [the public school] and the time Student spent with other students.</p>
DOE-SY0910-087R*	Matthew C. Bassett	Carter K. Siu	Richard A. Young 6/1/2012 (Remand)	<p>1. Placement in public or private school</p> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: (1) Although public school lacks sufficient staff to meet student's needs, Parent did not show that DOE could not implement OT, ESY, and speech therapy services at the student's home school through contracts with outside agencies; (2) DOE's offer of placement "in the public high school in his home community" was adequate notice that placement would be at the home school.</p> <p><u>ON APPEAL</u>: <i>Marcus I. v. DOE</i>, D. Haw. 10-381 &amp; 12-342 SOM-BMK (consol) –<b>affirmed</b>, Doc. 101 (6/12/2013).</p>

DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p><u>FURTHER APPEAL</u>: <i>Marcus I. v. DOE</i>, 9<sup>th</sup> Cir. No. 13-16434 – <b>affirmed in part, reversed and remanded in part</b>, 7/23/14: affirmed in all respects except that DOE is liable for paying the cost of student's residence on Oahu when stay put was in effect from November 2007 through pendency of these proceedings. Case remanded to hearings officer for determination of amount to be reimbursed.</p>
DOE-SY0910-087	Matthew C. Bassett	Jerrold G.H. Yashiro	Richard A. Young 6/9/2010	<p>1. Whether the DOE discriminated against Petitioners by repeatedly changing placement offers, thereby triggering continual litigation over the issue; 2. Identification of home school placement.</p> <p><u>OUTCOME</u>: <b>For DOE</b>.</p> <p><u>REASONING</u>: (1) DOE did not discriminate by offering frequent placement changes because student's circumstances had changed; (2) IEP did not have to specify the location of home school services, only the level.</p> <p><u>ON APPEAL</u>: <i>Marcus I. v. DOE</i>, D. Haw. Civ. No. 10-381 SOM- BMK, Doc. # 34, 5/9/11, 2011 WL 1833207, <b>vacated in part and remanded</b>: court believes there may be additional facts that might show whether student's IEP could be implemented in public school and whether the placement offered by the DOE was adequately identified. Therefore, the case is remanded for a further administrative hearing because that would be "more efficient" than holding an evidentiary hearing in court and deciding the case on appeal.</p> <p><u>FURTHER APPEAL</u>: <i>Marcus I. v. DOE</i>, 9<sup>th</sup> Cir. No. 11-16439 – <b>dismissed</b> for lack of jurisdiction (case on remand), 9/13/11.</p> <p>Doc. # 68, 4/12/2012 – <b>Order granting stay put</b> at Loveland Academy based upon <i>Marcus I. v. DOE</i>, 9<sup>th</sup> Cir. No. 09-17606, 5/23/11, 2011 WL 1979502 (dismissing as moot appeal from D. Haw. Civ. No. 08-491 DAE (10/21/2009), <i>aff'g</i> DOE-SY0708-054 (Haunani H. Alm, 10/3/2008).</p>



DCCA Docket Number	Student's Attorney	DOE's Attorney	Hearings Officer/ Date	Issue(s)/Outcome/Reasoning
				<p><u>FURTHER APPEAL</u>: <i>DOE v. Marcus I.</i>, 9<sup>th</sup> Cir. No. 12-16149 (Carter Siu for DOE) – <b>affirmed, 1/28/2013</b>, 506 F. App'x. 613.</p>
DOE-SY0910-070R*	Carl M. Varady	Kris Murakami	David H. Karlen 2/4/2014 (Remand)	<p>1. Implementation of IEP.</p> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: Even though the DOE denied a FAPE by failing to implement the IEP, compensatory education is denied because student did not appeal from the decision of 4/3/2010 that denied compensatory education.</p>
DOE-SY0910-070	Carl M. Varady	Christine M. Denton	Haunani H. Alm 4/3/2010	<p>1. Whether Respondent unilaterally changed Student's educational program and placement by proposing and implementing a program other than the IEP on furlough days and thereby denied him a FAPE.</p> <p><u>OUTCOME</u>: <b>For Student.</b></p> <p><u>REASONING</u>: Respondent <i>unilaterally</i> changed Student's educational program and Student was procedurally and substantively denied a FAPE.</p> <p><u>ON APPEAL</u>: <i>DOE v. C.J.</i>, D. Haw. Civ. No. 10-257 AWT-BMK -- <b>Reversed and remanded</b>, Doc. 53, 11/29/2011: Hearings officer is to consider application of <i>Van Duyn ex rel. Van Duyn v. Baker School District 5J</i>, 502 F.3d 811 (9th Cir. 2007) (whether change was material).</p>
DOE-SY0910-069R	Susan Dorsey	Kris Murakami	Richard A. Young 7/11/2012 (Remand)	<p>1. Furlough days as denial of FAPE</p> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: (1) Student's behavior deteriorated after furlough Fridays were implemented, but teachers said no changes were observed in the school environment. Therefore, the loss of Fridays was not more than a minor discrepancy between services promised and delivered; (2) furlough</p>

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				<p>adjustment plan offered one extra hour of school Monday through Thursday plus two hours on Sunday; student made educational progress despite lack of services, and shortfall was not, therefore, material.</p> <p><u>ON APPEAL</u>: <i>Alex U. v. DOE</i>, D. Haw. Civ. No. 12-458 DKW-RLP – <b>Affirmed</b>, Doc. 28, 11/22/2013: Behavioral problems were likely caused by several factors, including changes in skills trainer, medication, and puberty. The DOE did not materially fail to implement the IEP.</p>
DOE-SY0910-069	Susan Dorsey	Kris Murakami	Richard A. Young 1/6/2011	<p>1. Furlough Fridays.</p> <p><u>OUTCOME</u>: <b>For Student.</b></p> <p><u>REASONING</u>: Student needed a consistent environment; DOE's implementation of furlough Fridays was a unilateral change in and failure to implement the IEP that denied FAPE.</p> <p><u>ON APPEAL</u>: <i>DOE v. A.U.</i>, D. Haw. Civ. No. 11-85 BMK – <b>reversed and remanded</b>, Doc. # 30 (11/22/11): (1) Friday furloughs are not a unilateral change in placement under <i>N.D. v. DOE</i>, 600 F.3d 1104, 1117 (9<sup>th</sup> Cir. 2010); (2) case is remanded to determine whether DOE's furlough adjustment plan materially failed to implement student's IEP.</p>
DOE-SY0910-067	Stanley E. Levin	Jerrold G.H. Yashiro	Richard A. Young 4/20/2010	<p>1. Whether Student with speech impairments was denied a FAPE because the implementation of furlough Fridays was a unilateral change in the IEP.</p> <p><u>OUTCOME</u>: <b>For Student.</b></p> <p><u>REASONING</u>: Petitioners have shown that the DOE's implementation of the furlough Friday plan is a <i>unilateral</i> modification of Student's July 30, 2009 IEP, a <i>fundamental change</i> in Student's program and a denial of FAPE.</p> <p><u>ON APPEAL</u>: <i>DOE v. N.D.</i>, D. Haw. Civ. No. 10-297 AWT-BMK</p>

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				<p>– <b>Reversed and remanded</b>, Doc. #46 (12/16/2011): (1) furloughs one day a week were not a unilateral change of student's program; (2) hearings officer failed to conduct <i>Van Duyn</i> inquiry to determine whether there was more than a minor discrepancy between DOE's services and specific IEP requirements; case is remanded for that purpose.</p>
DOE-SY0910 067R	Stanley E. Levin	Jerrold G.H. Yashiro	Richard A. Young 7/11/2012 (Remand)	<p>1. <i>Van Duyn</i> inquiry – materiality of denial of IEP services</p> <p><u>OUTCOME</u>: <b>For DOE</b></p> <p><u>REASONING</u>: Testimony by teachers shows that loss of one day of school per week did not affect student's educational progress; deterioration of behavior at home did not affect educational performance. It cannot be determined that there was more than a minor discrepancy between services promised and delivered because student made educational progress.</p> <p><u>ON APPEAL</u>: <i>Noah D. v. DOE</i>, D. Haw. Civ. No. 12-459 DKW-RLP – <b>Reversed and remanded</b>, Doc. 34 (8/20/2013): (1) DOE failed to implement student's IEP because loss of one furlough day per week was more than a minor discrepancy between services provided and services required by the IEP; (2) failure to implement IEP was material in view of student's autism, his need for continuity and stability in his educational program, and an increase in behavioral regression at home; (3) case is remanded to determine compensatory education.</p>
DOE-SY0910-054	Keith H.S. Peck	Christine M. Denton	Richard A. Young 2/24/2010	<p>1. Whether a valid IEP was provided to ADHD Student prior to the beginning of the school year.</p> <p><u>OUTCOME</u>: <b>DOE</b> is the prevailing party.</p> <p><u>REASONING</u>: Petitioners did not show that the DOE failed to provide Student with a timely IEP. The development of the IEP was delayed due to Petitioners' obstructions and delays, including failure to return telephone messages, failure to follow through with scheduling, late notice of meeting cancellation, pre-determination of private placement, and lack of</p>

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				<p>cooperation.</p> <p><u>ON APPEAL</u>: <i>A.R. v. DOE</i>, 2011 WL 1230403 (D. Haw. Civ. No. 10-174 SOM-RLP, Mar. 31, 2011 – <b>affirmed</b>. (1) Hearings Officer's decision placing student at Horizons Academy in earlier case constituted a placement agreement by the DOE for "stay put" purposes in subsequent due process proceeding; (2) courts have broad discretion to fashion relief in IDEA cases, including orders to pay private school tuition under stay put clause; (3) court would not enforce stay put rule where the sole issue on appeal was the DOE's late offer of an IEP two weeks after the beginning of the school year; court found that parent's actions obstructed and delayed the IEP process and thus caused the procedural defect.</p> <p><u>FURTHER APPEAL</u>: 9<sup>th</sup> Cir. No. 11-16118 (Matthew C. Bassett for appellant) – withdrawn by stipulation.</p>
DOE-SY0910-022	Jennifer Patricio	Joanna B.K.F. Yeh	Richard A. Young 5/6/2010	<p>1. Right to FAPE after age 20</p> <p><u>OUTCOME</u>: Decision for <b>DOE</b></p> <p><u>REASONING</u>: Autistic student was not denied FAPE solely because he was over 20 years of age. The denial was also based on the preponderance of the evidence showing that student had "plateaued" and would never acquire skills needed to find a job in the competitive marketplace.</p> <p><u>ON APPEAL</u>: <i>C.B. v. DOE</i>, D. Haw., Div. No. 10-317 DAE-LEK, Doc. # 39, Dec. 22, 2010, 2010 WL 5389785 (Alston Hunt Floyd &amp; Ing co-counsel) – <b>Affirmed</b>. Student was not entitled to FAPE because he had "achieved [his] goal [to be employed] when he became a member of the non-competitive workforce."</p> <p><u>FURTHER APPEAL</u>: 9<sup>th</sup> Cir. No. 11-15204 – dismissed as moot, 7/11/2011.</p>

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DOE-SY0910-017	Jerel D. Fonseca	Gary K.H. Kam	Rodney A. Maile 12/28/2009	<p>1. Denial of FAPE because IEP failed to address safety issues or provide needed speech therapy. 2. Private school placement.</p> <p><u>OUTCOME</u>: Decision for <b>Respondent</b>.</p> <p><u>REASONING</u>: Although FAPE was denied, private school withheld information requested by DOE for purpose of preparing IEP because of a dispute over unpaid tuition. It would be inequitable to find that FAPE was denied and private placement was justified under the circumstances.</p> <p><u>ON APPEAL</u>: <i>D.S. v. DOE</i>, D. Haw. Civ. No. 10-53 BMK, Apr. 1, 2011. HDRC (Matthew C. Bassett) co-counsel on appeal. Decision <b>affirmed in part</b> and <b>reversed and remanded</b>: (1) Hearings Officer's decision is entitled to little deference because nearly all his conclusions are cursory and fail to cite evidence in the record; (2) Hearings Officer correctly decided that IDEA does not require the DOE to provide a transition plan for student's transfer from private to public school; (3) IEP offered by DOE did not comply with IDEA because it failed to measure present levels of performance, and goals, therefore, did not reflect child's current needs; (4) reimbursement of private school's tuition is reduced by 30% because parent failed to cooperate with DOE in obtaining current information about student's progress at private school. DOE was held partially to blame by not trying to resolve dispute over payments it was withholding from private school or assessing student's needs by means other than monitoring private school and reviewing its records. Case remanded to determine amount due.</p> <p><b>Motion for stay put granted</b> until remand and any appeals are concluded. Doc. #43 (7/31/2012).</p>
DOE-SY0910-014	Jerel D. Fonseca	Joanna B.F.K. Yeh	Haunani H. Alm 9/3/2010	<p>1. Whether the IEP offered Student a FAPE.</p> <p><u>OUTCOME</u>: <b>Respondent</b> is the prevailing party.</p>

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				<p><u>REASONING</u>: By a preponderance of the evidence, Respondent provided Student with an intensive program, primarily consisting of ABA strategies that met Student's unique needs and was reasonably calculated to allow Student to receive educational benefit.</p> <p><u>ON APPEAL</u>: <i>Aaron P. v. DOE</i>, D. Haw. Civ. No. 10-574 LEK-KSC – <b>Affirmed in part, remanded in part</b>: additional IEPs and PWNs were challenged in the due process request but not decided by the hearings officer. Doc. #53 (10/31/11) (Magali Sunderland for parent, Michelle Pu`u for DOE).</p> <p><u>FURTHER APPEAL</u>: 9<sup>th</sup> Cir. No. 11-17861 – dismissed for lack of jurisdiction, 11/14/2012.</p>
DOE-SY0809-068	Keith H.S. Peck	Steve K. Miyasaka	Haunani H. Alm 6/22/2009	<ol style="list-style-type: none"> <li>1. ESY services</li> <li>2. Adequacy of services in IEP</li> <li>3. Identification of placements</li> <li>4. Assessment of behavioral needs</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: Petitioners did not prove any of their claims by a preponderance of the evidence. Placement location need not be specified in the IEP as parents were informed of the physical location one week after the IEP meeting.</p> <p><u>ON APPEAL</u>: <i>N.S. v. DOE</i>, D. Haw. Civ. No. 09-343 SOM-KSC – <b>affirmed</b> 6/9/2010, 2010 WL 2348664.</p>
DOE-SY0809-054	Matthew C. Bassett	Kris S. Murakami	Richard A. Young 4/20/2009	<ol style="list-style-type: none"> <li>1. 504 accommodations for student with ADHD and CAPD;</li> <li>2. Grade inflation, evaluation for all suspected disabilities.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) Preferential seating was sufficient 504 accommodation for student who performed at low-average level and whose reading skills were three grades below age; DOE had no reason to assess emotional problems; (2)</p>

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				<p>eligibility for remedial education classes does not establish eligibility for special education and related services.</p> <p><u>ON APPEAL</u>: <i>C.M. v. DOE</i>, D. Haw. Civ. No. 09-205 SPK-KSC (4/29/2010) – <b>affirmed</b>.</p> <p><u>FURTHER APPEAL</u>: 9<sup>TH</sup> Cir. No. 10-16240 (3/1/2012) – <b>affirmed</b>.</p>
DOE-SY0809-029	Matthew C. Bassett	Berton T. Kato	Richard A. Young 4/3/2009	<ol style="list-style-type: none"> <li>1. Unilateral private school placement;</li> <li>2. Least restrictive environment</li> <li>3. Statute of limitations on reimbursement of tuition;</li> <li>4. Parent's participation at IEP meetings;</li> <li>5. Stay put.</li> </ol> <p><u>OUTCOME</u>: <b>For DOE.</b></p> <p><u>REASONING</u>: (1) Bilateral private school placement becomes unilateral when the student remains in place without DOE consent after the bilateral period has ended; (2) participation with general education peers for lunch, recess, and school-wide assemblies is sufficient to make fully self-contained special education classroom the least restrictive environment; (3) claim for tuition reimbursement must be made within 90 days of date bilateral placement becomes unilateral; (4) parent chose not to attend IEP meetings.</p> <p><u>ON APPEAL</u>: <i>K.D. v. DOE</i>, D. Haw., Civ. No. 09-197 HG, Doc. # 32, 1/29/2010 – <b>affirmed</b>. (1) Parent had ample opportunity to participate in the IEP process but chose not to; (2) public school placement was appropriate; (3) claim for tuition reimbursement had to be filed within 90 days of date student remained in private school after period of bilateral agreement ended; (4) stay put does not apply where no timely request for due process hearing was filed.</p> <p><u>FURTHER APPEAL</u>: 9<sup>th</sup> Cir. No. 09-15454, 12/27/2011 – <b>affirmed</b>. (1) DOE's agreement to pay private school tuition for specific school year was not a placement agreement for</p>

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				<p>purposes of stay put; (2) District court affirmed in all respects. <b>Rehearing en banc denied, 2/1/2012.</b></p>
<p>DOE-SY0809-001 DOE-SY0708-083 (consolidated)</p>	<p>John P. Deller, Matthew C. Bassett</p>	<p>Steve K. Miyasaka</p>	<p>Rodney A. Maile 1/14/2009</p>	<p>1. Student's right to FAPE until age 22; 2. Whether adult foster home was proper residential component of IEP; 3. Compensatory education because of DOE's failure to update 2005 IEP and refusal to implement 2007 IEP for 8 months.</p> <p><u>OUTCOME:</u> <b>For DOE</b> on issues 1 and 3; <b>For Student</b> on issue 2.</p> <p><u>REASONING:</u> (1) Student is not entitled to FAPE after age 20 under DOE's administrative rules; (2) an adult foster home lacks necessary services and is not an appropriate residential component of IEP; (3) compensatory education should be left to court in pending action.</p> <p><u>ON APPEAL:</u> <i>B.T. v. DOE</i>, 676 F. Supp.2d 982 (D. Haw. 2009, Civ. No. 08-356 DAE-BMK, 7/9/09) – <b>issue 1 reversed</b> (student has right to FAPE to age 22 if he would benefit); <b>issue 3 reversed and remanded</b> (hearings officer must decide issue in first instance).</p>
<p>DOE-SY0809-001-R (unpublished)</p>	<p>Matthew C. Bassett</p>	<p>Steve K. Miyasaka</p>	<p>Rodney A. Maile 7/22/2010 (First remand)</p>	<p>1. Compensatory Education</p> <p><u>OUTCOME:</u> <b>For DOE</b></p> <p><u>REASONING::</u> <b>For DOE</b> (7/12/10) – (1) compensatory education denied because Student's current needs result from a medical condition, not past denial of FAPE; (2) failure to update 2005 IEP not considered because it was not raised in the due process complaint; (3) refusal to implement 2007 IEP was justified because parent had challenged placement in DOE-SY0708-083.</p> <p><u>ON APPEAL:</u> <i>B.T. v. DOE</i>, D. Haw. Civ. No. 10-456 SOM-RLP, Doc. # 37, 5/11/11, 2011 WL 1833206, 111 LRP 33910</p>



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				(John P. Dellera for Student) – <b>reversed in part and remanded</b> – (1) failure to update 2005 IEP issue is time barred; (2) DOE's refusal to implement 2007 IEP unjustified; case is again remanded to determine whether student was denied FAPE and whether compensatory education should be awarded; (3) first remand order that Loveland tuition be paid until compensatory education issue is finally decided does not apply to period after Student became 22 years old. <b>Recon denied</b> 8/1/11, 2011 WL 3290593.
DOE-SY0809-001-R2	Matthew C. Bassett	Carter K. Siu	David H. Karlen 10/30/2012 (Second remand)	<p>1. Compensatory Education</p> <p><b>OUTCOME: For Student</b></p> <p><b>REASONING:</b> (1) Student was denied a FAPE by DOE's failure to implement changes in November 2007 IEP until June 2008; (2) student is entitled to six months of compensatory education in a form to be determined; (3) compensatory education award cannot reimburse past tuition at private school because the award must be prospective and take into account student's current needs.</p> <p><b>ON APPEAL:</b> <i>B.T. v. DOE</i>, D. Haw. Civ. No. 12-642 SOM-RLP (Toby Tonaki for DOE) – settled 9/5/2013.</p>
DOE-SY0708-054	Matthew C. Bassett	Joanna B.K.F. Yeh	Haunani H. Alm 10/3/2008	<p>1. Least restrictive environment.</p> <p><b>OUTCOME: For DOE</b></p> <p><b>REASONING:</b> (1) student, a Maui resident, was regressing in program at private school on Oahu while living in a residence the school provided; student needed a residential school in Texas proposed by the DOE that offered services across all settings; parent failed to offer evidence of services provided in the Oahu residence; (2) parent failed to prove that home school on Maui was an appropriate placement.</p> <p><b>ON APPEAL:</b> <i>Marcus I. v. DOE</i>, D. Haw. Civ. No. 08-491 DAE-BMK – <b>affirmed</b> 10/21/2009, 2009 WL 3378589.</p>

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				<p><u>FURTHER APPEAL</u>: 9<sup>th</sup> Cir. No. 09-17606 – dismissed as moot, 5/23/2011, 2011 WL 1979502.</p>
<p>DOE-SY0607-025 DOE-SY0607-042 (consolidated)</p>	<p>Matthew C. Bassett</p>	<p>Jerrold Yashiro</p>	<p>Richard A. Young 11/21/2006 (SJ)</p>	<p>1. Cost of residence as related service.</p> <p><u>OUTCOME</u>: <b>For Student</b> (summary judgment).</p> <p><u>REASONING</u>: Because DOE agreed to place Maui resident at Loveland Academy in Honolulu, cost of Honolulu residence was a related service for which DOE was responsible.</p> <p><u>ON APPEAL</u>: <i>DOE v. Mark I.</i>, 1<sup>st</sup> Cir. Ct. No. 06-1-2204-12 EEH (Ryan Ota for DOE) -- <b>reversed</b> (9/11/2007): DOE was not responsible for the cost of group home in Honolulu because it addressed mental health needs, not education.</p> <p><u>OUTCOME</u>: <b>For Student</b> (after hearing: Circuit Court order construed as reversing summary judgment, not as a decision on the merits).</p> <p><u>REASONING</u>: Same as on summary judgment.</p> <p><u>ON APPEAL</u>: <i>DOE v. Karen I.</i>, D. Haw., Civ. No. 08-255 SOM-KSC (Jerrold Yashiro for DOE) – <b>reversed</b>, Doc. # 29 (4/10/2009): (1) Circuit Judge Hifo clarified that her ruling granted summary judgment that the DOE is not liable for the cost of student's Honolulu residence; the ruling was not appealed and it is, therefore, <i>res judicata</i>.</p> <p><u>FURTHER APPEAL</u>: <i>Karen I. v. DOE</i>, 9<sup>th</sup> Cir. No. 09-15988 – <b>affirmed</b> (6/3/2011).</p>