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OFFICE OF DISPUTE RESOLUTION
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAII

In the Matter of:
Parent, individually and on behalf of Parent's
child, STUDENT¹,

Petitioners,

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAII and KEITH T. HAYASHI,
Superintendent of Hawaii Public Schools,

Respondents.

DOE-SY2425-009

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
January 14-17, 2025

Hearings Officer: Charlene S.P.T. Murata

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

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, et seq.; the federal regulations implementing IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and the Hawaii Administrative Rules ("H.A.R.") §§ 8-60-1, et seq. Additionally, Petitioners reference

¹ Personal identifiable information is provided in the Legend.

Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended in 1974, codified at 29 U.S.C. §§ 794, et seq.; and the H.A.R. §§ 8-61-1, et seq. in their claims and requests for relief.

II. INTRODUCTION

On August 22, 2024, the Department of Education, State of Hawaii and Keith T. Hayashi, Superintendent of the Hawaii Public Schools (“Respondents” or “DOE”) received a Complaint and Resolution Proposal from Parent, individually and on behalf of Parent’s child, Student (collectively “Petitioners”) (“August 2024 Complaint”).

On August 29, 2024, Respondents filed a response to Petitioners’ August 2024 Complaint.

On September 16, 2024, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for September 23, 2024.

On September 23, 2024, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners, and Deputy Attorney General Bradford K. Chun (“Mr. Chun”) appearing on behalf of Respondents. The prehearing conference was furthered to October 21, 2024, so that the parties could engage in a resolution meeting.

On October 21, 2024, Mr. Peck, Mr. Chun and the undersigned participated in a further prehearing conference. During the prehearing conference, the parties agreed to have the due process hearing on January 14-17, 2025.

On October 23, 2024, a Prehearing Order was issued to the parties, setting forth the issues and procedures for the due process hearing, and deadlines for submission of substantive motions, witness and exhibit lists, and exhibits. The parties timely submitted their witness list, exhibit list, and exhibits on January 7, 2025.

On January 7, 2025, Petitioners submitted an Opening Brief and Petitioners' Motion in Limine; Memorandum in Support of Motion; Exhibits [sic] "A"; Declaration of Counsel. On January 10, 2025, Respondents submitted Respondents' Opposition to Petitioners' Motion in Limine. On January 10, 2025, Petitioners submitted Petitioners' Reply to DOE's Opposition to Motion in Limine. On January 13, 2025, an Order Denying Petitioners' Motion in Limine was issued.

The due process hearing took place on January 14-17, 2025, using Zoom, a videoconferencing platform. All participants in the due process hearing appeared remotely via video and audio. Parent testified on January 14, 2025 via video and audio. After Parent's testimony, Parent's presence was waived for the remainder of the hearing. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Mr. Chun. The Department of Education District Educational Specialist ("DES") and Deputy Attorney General Hsin-Ya Tribbey were present on behalf of Respondents.

Petitioners called Parent, Vice Principal ("VP"), President, Private Special Education Teacher ("Private SPED") and Private [REDACTED] as their witnesses during the due process hearing. Respondents called the following witnesses during the due process hearing: DES, Special Education Vice Principal ("SPED VP") and DOE [REDACTED]. Petitioners did not call any rebuttal witnesses.

The following Petitioners' exhibits were admitted into evidence during the hearing: Exhibit 1 (pages 1-33, 38-72), Exhibit 2 (pages 118-122, 123-125, 126-128, 129-130, 131-132, 133-135, 136-139, 141-143, 146-147, 150, 151, 154-156, 158), and Exhibit 3 (pages 159-194,

195-210, 211-306, 307, 314, 369-402, 403-406, 407-433, 434-548, audio file of IEP meeting dated August 22, 2024²). Transcript, Vol. IV³, p. 608.

The following Respondents' exhibits were admitted into evidence during the hearing: Exhibits 1-4, 6-7, 9-18, 20, 22, 24-27, 29-34, 36-39, 41-45, 48-49, 51⁴, 52-56, 60-61, 63-64, 68-72, 73 (pages 291, 299 only), and 77-81. Transcript Vol. III, p. 400; Transcript Vol. IV, pp. 491, 609.

On February 14, 2025, the parties timely submitted their closing briefs⁵.

The deadline by which a decision in this matter must be issued is May 4, 2025. See Order Granting Respondents' Request to Extend the 45-Day Decision Deadline from November 5, 2024 to December 20, 2024; Declaration of Bradford K. Chun, dated October 31, 2024, issued on November 4, 2024; Order Granting Respondents' Second Request to Extend the 45-Day Decision Deadline from December 20, 2024 to February 3, 2025; Declaration of Bradford K. Chun, dated December 11, 2024, issued on December 11, 2024; Order Granting Respondents' Third Request to Extend the 45-Day Decision Deadline from February 3, 2025 to March 20,

² Petitioners submitted an audio recording and Respondents submitted a video recording of the 8/22/2024 IEP meeting. Petitioners also submitted an unofficial transcript of the 8/22/2024 IEP meeting, as ordered in the Prehearing Order. Although Petitioners' unofficial transcript was admitted into evidence during the hearing, the transcript is not evidence as it was created by counsel or at counsel's behest for the hearing. Petitioners' audio recording and Respondents' video recording of the 8/22/2024 IEP meeting are the evidence. It is noted that the timestamp on Petitioners' unofficial transcript is ten (10) seconds faster than the timestamp on Respondents' video recording. Respondents' video recording is cited in this decision as the video shows who is speaking, which makes it easier to follow and understand.

³ Transcript Volume I is a transcription of the January 14, 2025 due process hearing; Transcript Volume II is a transcription of the January 15, 2025 due process hearing; Transcript III is a transcription of the January 16, 2025 due process hearing; and Transcript IV is a transcription of the January 17, 2025 due process hearing.

⁴ There is an error in the transcript, Respondents' Exhibit 51 is in evidence, not Exhibit 50.

⁵ Respondents' closing brief was submitted on February 14, 2025, and filed by the Office of Dispute Resolution on February 18, 2025.

2025, dated January 21, 2025, issued on January 29, 2025; and Order Granting Respondents' Request to Extend the 45-Day Decision Deadline from March 20, 2025 to May 4, 2025, dated March 12, 2025, issued on March 18, 2025.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision. Although all the evidence was considered, only evidence relevant to the resolution of the issues are stated in the findings.

III. ISSUES PRESENTED

In their August 2024 Complaint, Petitioners allege that Respondents denied Student a free and appropriate public education ("FAPE"). Petitioners raise the following issues:

Issue 1 – Whether the failure of the DOE to attempt to involve and/or to involve Student's private service providers in the 8/22/2024 IEP development process resulted in a denial of FAPE by causing lost educational opportunity, as established in Doug C. v. Hawaii Dept. of Education.

Issue 2 – Whether failing to discuss during the 8/22/2024 IEP meeting whether Student should continue to receive or continued to need the [REDACTED] supports Student was receiving before they ended abruptly, particularly when determining what Student needed to return to a public placement after a period where Student was not provided Student's IEP program, denied Student a FAPE.

Issue 3 – Whether failing to discuss behavior interventions and/or review Student's [REDACTED] and instead stating during the 8/22/2024 IEP meeting that this would be handled outside of the IEP process and by reference to a [REDACTED] denied Student a FAPE.

Petitioners request the following remedies:

Remedy 1 – Find that the DOE denied Student a FAPE for some or all of the reasons alleged;

Remedy 2 – Order the DOE fund and/or reimburse Parents for any privately obtained services they incur for Student after August 22, 2024;

Remedy 3 – Award compensatory educational services as determined appropriate;

and

Remedy 4 – Order such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

IV. FINDINGS OF FACT

Student

1. Student is currently [REDACTED] years old⁶ and in the [REDACTED] grade. Pet. Ex. 1 at 001.
2. Student is eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of [REDACTED]. Student has a medical diagnosis of [REDACTED] and has deficits in academics, cognitive functioning, social skills, safe behavior skills, speech/language skills, functional skills, fine motor skills, and visual motor skills, which negatively impact Student's ability to work towards grade level standards. Student therefore requires specially designed instruction and related services to help Student access Student's curriculum. Pet. Ex. 1 at 002.
3. Student currently receives educational services at Private Center.
4. [REDACTED]
[REDACTED]. Parent, Tr. Vol. I, 97:11-14, 119:8-13.
5. [REDACTED]. Parent, Tr. Vol. I, 109:22-23.
6. [REDACTED]. Pet. Ex. 1 at 002; Pet. Ex. 3 at 375-376; Parent, Tr. Vol. I, 39:1-6, 86:6-21.
7. Caregiver is a registered [REDACTED] and operations manager at Private Center. Pet. Ex. 3 at 186; SPED VP, Tr. Vol. 476:21-23.

⁶ At the time of the due process hearing, Student was [REDACTED] years old.

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8. Student started attending Private Center when Student was [REDACTED] years old. During the past [REDACTED] years, Student alternated between Private Center and a Hawaii public school. During the years when Student was attending Private Center, DOE paid for at least some of the tuition and expenses. Pet. Ex. 3 at 376; President, Tr. Vol. I, 152:3-21.
9. From December [REDACTED] to sometime in April of [REDACTED], Student attended Public Charter School. Pet. Ex. 1 at 002, 004.
10. On April 20, 2023, Public Charter School revised Student's [REDACTED] [REDACTED]. DOE Ex. 4 at 046; DOE Ex. 69 at 266-280.
11. Some time in April of [REDACTED], Student returned to Private Center. Pet. Ex. 1 at 002, 004.
12. In March of [REDACTED], Student enrolled at Home School. Pet. Ex. 1 at 002.
13. President is the president of Private Center. President has been Parent's advocate in many IEP meetings. President, Tr. Vol. I, 162:13-25; Pet. Ex. 2 at 141.
14. On March 6, 8, and 15, 2024, an annual IEP meeting for Student was held. Parent, Student and Caregiver participated in all three (3) days of the IEP meeting, while President participated in two (2) days. As a result of the three (3) day meeting, an annual IEP with the same dates was developed ("3/15/2024 IEP"). Pet. Ex. 1 at 003-004, 038, 070-072.
15. The 3/15/2024 IEP contains twenty-one (21) annual goals and accompanying short-term objectives. Of the twenty-one (21) annual goals, eleven (11) are aimed at enhancing behaviors and reducing health risks (such as decreasing precursor behaviors, elopement,

- physical aggression, property destruction, throwing items; safely navigating transportation with adult support; and increasing independence). Pet. Ex. 1 at 046-066.
16. The 3/15/2024 IEP provides Student with the following Special Education and Related Services: [REDACTED] minutes per week of special education; two (2) times per day of transportation; [REDACTED] minutes per quarter of speech/language therapy; and [REDACTED] minutes per quarter of occupational therapy. Pet. Ex. 1 at 067.
17. The 3/15/2024 IEP will provide Student with the following Supplementary Aids and Services, Program Modifications and Supports for School Personnel: [REDACTED] [REDACTED] Services; Individual Instructional Support (“IIS”); [REDACTED]; Occupational Therapy consultation; Speech/Language consultation; Frequent rest, movement, and/or sensory breaks throughout the day; Access to an adaptive pencil grip; Access to low and/or no-tech communication system; Safety identification card; Visual supports; Communication log between school and Parent; and Transition plan. Pet. Ex. 1 at 067.
18. The 3/15/2024 IEP provides the following clarification on the services and supports being offered to Student: (a) “[REDACTED] Services include those of an [REDACTED] professional to conduct the following activities, including but not limited to designing, monitoring, and updating the [REDACTED], supervising the individual(s) implementing the [REDACTED], monitoring data collection and analyzing data, preparing reports and other documents, and attending meetings”; and (b) “Individual Instructional Support will be provided by an [REDACTED] paraprofessional for the purpose of implementing the [REDACTED] during normal HIDOE school hours...” Pet. Ex. 1 at 068.

19. According to the 3/15/2024 IEP, “[Student] will not participate with nondisabled students in the general education class, extracurricular and other non-academic activities during the school day, including transportation times.” Pet. Ex. 1 at 069.
20. Immediately after the 3/15/2024 IEP meeting, a transition meeting took place where the team developed a transition plan to transition Student from Private Center to Home School. Pet. Ex. 3 at 381-382, ¶¶28-30. President was present at the transition meeting and participated in the development of the transition plan. President, Tr. Vol. II, 206:19-207:14, 264:4-22.
21. On May 3, 2024, a more detailed transition plan was developed (“May 2024 TP”)⁷. According to the May 2024 TP, “[t]he goal of this transition plan is to guide the team in supporting [Student] as [Student] transitions to [Student’s] Least Restrictive Environment (LRE) as described in [Student’s] IEP.” Pet. Ex. 2 at 123-125; Pet. Ex. 3 at 382, ¶32; DOE Ex. 70 at 281-286.
22. While the May 2024 TP contains many provisions, of significance are the following: (a) “[Private Center] [REDACTED] will fade presence at [Home School] during transition of pairing to DOE staff when [Student] is able to attend [Home School] successfully for 120 minutes without [Private Center] [REDACTED] intervention”; (b) “All phases to include [Private Center] [REDACTED] transporting student to [Home School]”; (c) “The IEP team will determine

⁷ Both parties submitted a copy of the May 2024 TP. Both copies are in “draft” form. See Pet. Ex. 2 at 123-125 (3 pages) and DOE Ex. 70 at 281-286 (6 pages). It is not necessary to reconcile which draft is more recent as both contain the information that is relevant to resolving the issues in this due process hearing. It is noted that although DOE’s version is longer with more detail, it also contains typographical errors that do not exist in Petitioners’ version. Compare Pet. Ex. 2 at 123 and DOE Ex. 70 at 281 (under Phase 1, paragraph 3) and Pet. Ex. 2 at 124 and DOE Ex. 70 at 282 (DOE’s exhibit states, “Days 2-14:” and has a paragraph 6 to Phase 2, both of which are missing from Petitioners’ version).

whether it is time to move forward in the transition plan, or take steps back based on [Student's] needs"; (d) "The transition plan will continue beyond the end of the school year. In order to address emerging skills, [Student] will not have a break in service"; and (e) during all phases of the transition, "adjustments may be made depending on [Student]." Pet. Ex. 2 at 123.

23. The May 2024 TP had a flexible end date as the end was based on Student's needs and performance while Student attended Home School with the assistance of Private Center. Once the transition ends, the 3/15/2024 IEP would be fully implemented. SPED VP, Tr. Vol. III, 437:4-438:25.
24. From May ■, 2024 to July ■, 2024, Student transitioned to Home School with the assistance of Private Center services⁸. Pet. Ex. 3 at 383, ¶¶40-41, 49, 51, 59, 60; DOE Ex. 63 at 180; DOE Ex. 64 at 194, 195, 196.
25. Later in the afternoon on July 9, 2024, Private Center suspended their services, including Caregiver driving Student to school, as DOE did not extend the contract for Private Center's services. Pet. Ex. 3 at 386, ¶¶59-61.
26. On July ■ 2024, Student stopped attending Home School. Pet. Ex. 3 at 389, ¶75; DOE Ex. 64 at 233-235.
27. Once Student stopped going to Home School, Student went back to Private Center on or about July ■ 2024. Parent, Tr. Vol. I, 28:1-30:17.
28. On July 11, 2024, Respondents received a due process complaint alleging that Student was denied a FAPE for the 3/15/2024 IEP ("July 2024 Complaint"). Pet. Ex. 3 at 372.

⁸ Student receives extended school year services ("ESY"). Pet. Ex. 1 at 067.

29. Also on July 11, 2024, Parent informed Home School that Parent wanted to cancel a revision IEP meeting that was scheduled for July 12, 2024, because Parent wanted Mr. Peck to be at the IEP meeting. Parent also informed Home School that Parent would contact Home School with Mr. Peck's availability. DOE Ex. 6 at 055-056.
30. On August 1, 2024, DES informed Parent that Home School would like to reschedule the revision IEP meeting that Parent had canceled on July 11, 2024, as Home School would like to discuss Student's status and needs, and transition back to Home School, including Student's transportation to Home School. Pet. Ex. 2 at 146, 151.
31. On August 2, 2024, Mr. Peck, Mr. Chun, Ms. Tribbey, and an administrative hearings officer participated in a prehearing conference to discuss the July 2024 Complaint. Pet. Ex. 3 at 373.
32. On August 2, 6, and 7, 2024, Home School contacted Parent, through email, certified mail and leaving voicemail, to reschedule the revision IEP meeting. Pet. Ex. 3 at 387-388, ¶¶67-69; DOE Ex. 9 at 061, Ex. 10 at 062, Ex. 11 at 063, Ex. 12 at 064, Ex. 13 at 065.
33. On August 8, 2024, Mr. Peck and Mr. Chun discussed Mr. Peck's availability for the revision IEP meeting. DOE Ex. 18 at 072-075.
34. On August 9, 2024, Home School contacted President via email to arrange for Caregiver to ride curb-to-curb on a school bus with Student as part of the transition to Home School. Home School also asked to schedule a transition meeting with President and Parent, suggesting either August 12 or 14, 2024. DOE Ex. 14 at 066. On August 12, 2024, President replied to Home School's August 9, 2024 email but did not respond to Home School's request for a transition meeting. Instead, President informed Home

- School that Private Center will not be providing Home School with any services and suggested that Home School schedule an IEP meeting if DOE believed that the 3/15/2024 IEP was no longer appropriate. DOE Ex. 15 at 068-069.
35. On August 14, 2024, Home School again contacted Parent to schedule the revision IEP meeting, using dates when Mr. Peck was available. DOE Ex. 16 at 070.
 36. On August 15, 2024, Parent asked Home School to communicate directly with Mr. Peck. DOE Ex. 17 at 071.
 37. On August 19, 2024, Mr. Chun informed Mr. Peck that Parent wanted Home School to communicate with him to schedule the revision IEP meeting. Mr. Peck indicated that he was available on August 22, 2024, and he would confirm the date with Parent. DOE Ex. 18 at 072, Ex. 20 at 084.
 38. Private SPED is a special education teacher at Private Center. Pet. Ex. 3 at 184.
 39. On August 20, 2024, Private SPED conducted an academic assessment with Student. Pet. Ex. 3 at 175-177. The academic assessment consisted of assessing Student's academic functional levels in reading, spelling, math, science and social studies. The academic assessment with Student took place at Private Center and lasted for an hour and a half. Without using formal evaluative tools, Private SPED built a program for Student using the academic assessment, reviewing Student's 3/15/2024 IEP, using Private SPED's personal knowledge from working with Student in the past, and doing "research." Private SPED signed Student up to participate in physical exercise. Private SPED, Tr. Vol. II, 272:9-274:13, 283:20-285:23, 292:5-295:6.
 40. On August 22, 2024 an IEP meeting was held to revise Student's IEP. Present at the August 22, 2024 IEP meeting were Parent, Mr. Peck, Mr. Chun, Ms. Tribbey, SPED VP,

DOE [REDACTED], a special education teacher, a student services coordinator, and a general education teacher. The August 22, 2024 IEP meeting resulted in an IEP with the same date (“8/22/2024 IEP”). Pet. Ex. 1 at 001-033.

41. Parent did not invite anyone from Private Center to the 8/22/2024 IEP meeting and did not ask Home School to invite anyone from Private Center to the 8/22/2024 IEP meeting. Parent, Tr. Vol. I, 34:4-35:19; President, Tr. Vol. II, 205:1-25.
42. Mr. Peck did not invite President to the 8/22/2024 IEP meeting. President, Tr. Vol. II, 205:24-25.
43. Home School did not invite President or anyone from Private Center to the 8/22/2024 IEP meeting. President, Tr. Vol. I, 163:1-7; SPED VP, Tr. Vol. III, 434:13-435:1.
44. President acknowledged during the due process hearing that President was not a mandatory member of Student’s IEP team. President, Tr. Vol. II, 205:12-17.
45. Parent instructed Home School that Parent wanted Mr. Peck at the IEP meeting and August 22, 2024 was selected to accommodate Mr. Peck’s availability. SPED VP, Tr. Vol. III, 436:14-24; Parent, Tr. Vol. I, 32:7-33:17; DOE Ex. 6 at 055, Ex. 16 at 70, Ex. 17 at 71, Ex. 18 at 72-75.
46. Although no one from Private Center was present at the 8/22/2024 IEP meeting, Mr. Peck was present and served as Parent’s advocate⁹. President, Tr. Vol. I, 162:13-25; SPED VP, Tr. Vol. III, 436:14-24.

⁹ Mr. Peck was an assertive advocate for Parent and informed the rest of the IEP team at the beginning of the 8/22/2024 IEP meeting that he would be speaking on behalf of Parent. DOE Ex. 80 at 00:04:45-00:06:00, 00:15:45-00:16:35. While Parent was present at the 8/22/2024 IEP meeting, Parent said little as Mr. Peck spoke for Parent, even when Parent was asked to provide input by another IEP team member. DOE Ex. 80 at 00:19:26-00:20:45, 00:43:44-00:44:24, 00:51:05-00:51:41, 1:13:11-1:13:50.

47. During the 8/22/2024 IEP meeting, the IEP team discussed Student's transition to Home School, including transitioning from Caregiver driving Student to school to providing Student with an [REDACTED] to ride a school bus with Student; Student's past experiences and behaviors during transportation; Student's ability to pair with a DOE registered [REDACTED] [REDACTED] on a bus and in school; and involvement of a Private Center staff in the transition process. DOE Ex. 80 at 00:17:22- 00:27:48, 00:34:45-00:36:26, 00:38:06-00:51:05; SPED VP, Tr. Vol. III at 436:25-453:11.
48. During the 8/22/2024 IEP meeting, the IEP team discussed Student's [REDACTED], including the six (6) behaviors (precursor, elopement, physical aggression, throwing items, property damage, screaming) that are targeted for reduction in the [REDACTED]; interventions that are effective with Student; a [REDACTED] plan in Student's [REDACTED]; and the general process to change a [REDACTED] and the interventions in the [REDACTED]. DOE Ex. 80 at 00:04:45-00:13:10, 00:17:00-00:17:32, 00:20:45-00:22:14, 00:48:54-00:49:45, 1:01:20-1:02:53.
49. At the time of the 8/22/2024 IEP meeting, the behavior goals and objectives in the [REDACTED] were appropriate to meet Student's needs. The interventions in the [REDACTED] were also appropriate to meet Student's needs. DOE [REDACTED], Tr. Vol. IV, 526:2-528:8.
50. The behavior goals and objectives in the [REDACTED] (spontaneous mands; independently choose an alternative reinforcer; independently ask for a break; independently gain staff/peers attention; and decreasing precursor behavior, elopement, physical aggression, property destruction, throwing items) are also in Student's 8/22/2024 IEP. DOE [REDACTED], Tr. Vol. IV, 529:10-12; Pet. Ex. 1 at 015-023; DOE Ex. 69 at 267-269.

51. At the end of the 8/22/2024 IEP meeting, Mr. Peck rejected DOE’s offer of FAPE and informed DOE that Parent would find a private placement and seek reimbursement. DOE Ex. 80 at 1:22:25-1:26:23.
52. The 8/22/2024 IEP contains the same twenty-one (21) annual goals and accompanying short-term objectives as the 3/15/2024 IEP. Pet. Ex. 1 at 009-029.
53. The 8/22/2024 IEP provides Student with the same Special Education and Related Services as the 3/15/2024 IEP, except that Student will receive [REDACTED] [REDACTED] minutes per week of special education, instead of [REDACTED] [REDACTED] minutes called for in the 3/15/2024 IEP¹⁰. Pet. Ex. 1 at 030.
54. The 8/22/2024 IEP provides Student with the same Supplementary Aids and Services, Program Modifications and Supports for School Personnel as the 3/15/2024 IEP, except that the number of minutes for [REDACTED] Services and IIS decreased. Pet. Ex. 1 at 030.
55. The clarifications on the services and supports in the 3/15/2024 IEP carried over to the 8/22/2024 IEP¹¹ but the 8/22/2024 IEP also included two (2) additional clarifications: (a) “Access to low and no-tech communication systems when frustrated with typing...” and (b) “Individual Instructional Support will extend to transportation services in order to implement [REDACTED] to and from school on the bus.” Pet. Ex. 1 at 030-031.
56. According to the 8/22/2024 IEP, “[Student] will not participate with non-disabled students while receiving instruction in [Student’s] fully self contained [sic] class,

¹⁰ There is no allegation contesting the change in minutes between Student’s 3/15/2024 IEP and 8/22/2024 IEP. The change in minutes may be the result of Home School going to a “block schedule,” which changed the number of minutes per school day. DOE Ex. 80 at 00:30:30-00:31:26.

¹¹ “Normal HIDEOE school hours” are different between the 3/15/2024 IEP and 8/22/2024 IEP. Pet. Ex. 1 at 031, 068.

receiving OT services, receiving PT services, or during transport to and from school. [Student] will have access to non-disabled peers during recess, lunch, and elective courses.” Pet. Ex. 1 at 032.

57. On August 22, 2024, Respondents received the instant August 2024 Complaint, alleging that Student was denied a FAPE for the 8/22/2024 IEP.
58. Petitioners objected to consolidating the July 2024 Complaint and August 2024 Complaint for hearing. Pet. Ex. 3 at 393, FN13.
59. On August 23, 2024, Parent signed a contract with Private Center for Student to attend Private Center from August ■, 2024 to August ■ 2025. Pet. Ex. 3 at 389-390, ¶78; Pet. Ex. 3 at 159-161.
60. On August 30, 2024, DES contacted Parent to schedule a resolution meeting for the August 2024 Complaint. DOE Ex. 22 at 090.
61. On September 10-12, 2024, a hearing was held for the July 2024 Complaint. The hearing did not finish at this time. Pet. Ex. 3 at 371, 373-374.
62. On September 18, 2024, SPED VP sent an email to Parent to “schedule a revision IEP meeting in order to discuss the transition plan in [Student’s] IEP.” DOE Ex. 24 at 092. Parent responded on September 19, 2024, directing SPED VP to contact Mr. Peck, and to inform SPED VP that Parent “will be on [the] mainland for treatment till October ■[.]” DOE Ex. 25 at 093; DOE Ex. 26 at 094.
63. On September 20, 2024, SPED VP sent an email to Parent, informing Parent that it would not be appropriate for Home School to communicate directly with Mr. Peck as the school’s obligation is to work with Parent. SPED VP also informed Parent that after further consideration, Home School would like to schedule a transition meeting on

- September 25 or 27 to discuss Student's status and needs and that Home School would be inviting Private Center to the transition meeting. DOE Ex. 27 at 095.
64. On September 21, 2024, Parent replied to SPED VP, reiterating that Parent was on the mainland for medical treatment and will be back to Hawaii in the middle of October. DOE Ex. 29 at 097.
65. Parent was not interested in attending a transition meeting and consented to DOE holding a transition meeting without Parent so long as someone from Private Center was present. Parent, Tr. Vol. I, 55:22-63:7.
66. On September 23 and 24, 2024, Mr. Peck and Mr. Chun discussed scheduling a resolution meeting for the August 2024 Complaint to a time convenient for Parent as Parent was in [REDACTED]. They agreed to October 8, 2024, at 2:00 p.m. HST [REDACTED] [REDACTED]. The DOE Ex. 30 at 098-102.
67. On September 25, 2024, SPED VP confirmed with Parent that Parent had decided on September 21, 2024 to not participate in a transition meeting for Student, and confirmed that Home School would schedule a transition meeting with Private Center. DOE Ex. 31 at 103.
68. On October 3, 2024, SPED VP emailed President to schedule a transition meeting and proposed several dates and times. DOE Ex. 32 at 104.
69. Also on October 3, 2024, the hearing on Petitioners' July 2024 Complaint resumed and concluded. Pet. Ex. 3 at 371, 373-374.
70. On October 7, 2024, President informed SPED VP that Parent had changed Parent's mind and would like to participate in the transition meeting in person. President also informed SPED VP that Parent was out of the country, would be returning in early

November, and that President would get back to SPED VP with dates and times for the transition meeting when Parent returns. DOE Ex. 33 at 105.

71. On October 8, 2024, Mr. Peck, Parent, Mr. Chun and DES participated in a resolution meeting for the August 2024 Complaint and did not come to a resolution. DOE Ex. 2 at 009-011.
72. On October 9, 2024, SPED VP sent an email to Parent to get confirmation and clarification as to whether Parent would like to participate in the transition meeting in light of President's representations. DOE Ex. 34 at 106.
73. On October 17, 2024, having not received a response from Parent, SPED VP sent a follow up email to Parent. DOE Ex. 36 at 108.
74. On October 21, 2024, having not received a response from Parent, SPED VP sent another email to Parent, informing Parent that Home School still did not know whether Parent wanted to participate in the transition meeting. SPED VP informed Parent that the transition meeting would be held on October 28, 2024 and Parent could provide any data Parent would like Home School to consider in the development of the transition plan. DOE Ex. 37 at 109.
75. On October 22, 2024, President informed SPED VP that Mr. Peck had informed President that "the IEP team of August 22, 2024, did not renew the transition plan that had expired for [Student]." President also stated that "[h]olding a transition plan meeting now, after the IEP has been rejected and [Student] is attending a private program...seems to be to [sic] fixing something only for show...." President also stated that Parent will contact SPED VP directly. DOE Ex. 38 at 110.

76. On October 28, 2024, Student's transition plan was revised ("10/28/2024 TP"). The purpose of the 10/28/2024 TP was "to guide the team in supporting [Student] as [Student] transitions to [Student's] Least Restrictive Environment (LRE) as described in [Student's] IEP." Parent did not attend the transition meeting. President was invited to the transition meeting but declined to attend. Pet. Ex. 2 at 155-156; DOE Ex. 39 at 111; President, Tr. Vol. II, 207:23-208:16.
77. On November 7, 2024, a decision to the July 2024 Complaint was issued. Petitioners met their burden of proof for some of the issues in the July 2024 Complaint. Petitioners' request to be awarded tuition for the 2024-2025 school year for the denial of FAPE from July 10, 2024 to August 22, 2024 was denied; however, Petitioners were awarded the following compensatory educational services: [REDACTED] ([REDACTED]) minutes of IIS services; [REDACTED] hours of [REDACTED] or [REDACTED] [REDACTED] services; [REDACTED] of occupational therapy services; and [REDACTED] [REDACTED] minutes of speech-language therapy services. All the compensatory educational services will be available to Student until [REDACTED] [REDACTED] Pet. Ex. 3 at 369, 400-401.
78. On November 12, 2024, SPED VP emailed to Parent a copy of the 10/28/2024 TP. Pet. Ex. 2 at 154; DOE Ex. 39 at 111.
79. On December 11, 2024, Parent informed SPED VP that Student was currently being educated at Private Center, for which Parent was seeking reimbursement through the due process procedures, and therefore Student did not need transportation to Home School. DOE Ex. 54 at 131; DOE Ex. 55 at 132.

80. On December 15, 2024, Parent requested a copy of the 10/28/2024 TP, which SPED VP resent to Parent on December 16, 2024. Pet. Ex. 2 at 154-156.

Private Center

81. At Private Center, Student receives special education from a certified special education teacher; speech-language therapy; services from a [REDACTED] and [REDACTED]; and transportation. Pet. Ex. 3 at 220-224, 239-245, 256-265, 276-283; Pet. Ex. 3 at 390, ¶79.

82. Private SPED uses visual supports, such as a timer, to facilitate transitions with Student, and often takes breaks during Student’s educational day. Pet. Ex. 3 at 390, ¶80.

83. Private Center uses “spelling to communicate” or “letter boarding” to practice communication with Student. President, Tr. Vol. II, 210:16-212:21; Private SPED, Tr. Vol. II, 302:5-25; Pet. Ex. 3 at 390, ¶81.

84. Tuition at Private Center for September 1, 2024 to December 31, 2024 was \$100,947.09. Pet. Ex. 3 at 222, 243, 263, 281.

V. CONCLUSIONS OF LAW

A. BURDEN OF PROOF

Pursuant to Hawaii Administrative Rules § 8-60-66(a)(2)(A), “the party initiating the due process complaint has the burden of proof.” The Hawaii Administrative Rules also state that “[t]he burden of proof is the responsibility of the party initiating and seeking relief in an administrative hearing under the IDEA or this chapter is to prove, by a preponderance of the evidence, the allegations of the complaint.” H.A.R. § 8-60-66(a)(2)(B).

The Supreme Court held in Schaffer that “[t]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” Schaffer v. Weast,

546 U.S. 49, 126 S. Ct. 528, 163 L.Ed.2d 387 (2005). The Court “conclude[d] that the burden of persuasion lies where it usually falls, upon the party seeking relief.” Id. at 535. Neither Schaffer nor the text of the IDEA supports imposing a different burden in IEP implementation cases than in formulation cases.

B. IDEA REQUIREMENTS

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs.” Bd. of Educ. v. Rowley, 458 U.S. 176, 179-91, 102 S. Ct. 3034, 3037-3043 (1982); Hinson v. Merritt Educ. Ctr., 579 F.Supp.2d 89, 98 (2008)(citing 20 U.S.C. § 1400(d)(1)(A)). A free and appropriate public education (“FAPE”) includes both special education and related services. H.A.R. § 8-60-1; H.A.R. § 8-60-3; 20 U.S.C. § 1401(9); 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 34 C.F.R. § 300.101.

Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 20 USC § 1401(26) and (29). To provide FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.” Dept. of Educ. of Hawaii v. Leo W., 226 F.Supp.3d 1081, 1093 (D. Haw.2016).

In Bd. of Educ. v. Rowley, the Court set out a two-part test for determining whether the school offered a FAPE: (1) whether there has been compliance with the procedural requirements of the IDEA; and (2) whether the IEP is reasonably calculated to enable the student to receive educational benefits. Rowley, 458 U.S. 176, 206-207, 102 S. Ct. at 3050-3051 (1982). “A state

must meet both requirements to comply with the obligations of the IDEA.” Doug C. v. Hawaii Dept. of Educ., 720 F.3d 1038, 1043 (9th Cir.2013) (quoting Rowley). See also, Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001).

Procedural violations do not necessarily constitute a denial of FAPE. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir.2001). If procedural violations are found, a further inquiry must be made to determine whether the violations: (1) resulted in a loss of educational opportunity for Student; (2) significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or (3) caused Student a deprivation of educational benefits. Amanda J., 267 F.3d 877, 892 (9th Cir.2001).

The school is not required to “maximize the potential” of each student; rather, the school is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” Rowley, 458 U.S. at 200. However, the United States Supreme Court in Endrew F. v. Douglas County Sch. Dist. held that the educational benefit must be more than *de minimus*. The Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas County Sch. Dist., 137 S. Ct. 988, 1001 (2017). See also, Blake C. v. Hawaii Dept. of Educ., 593 F.Supp.2d 1199, 1206 (D. Haw.2009).

The mechanism for ensuring a FAPE is through the development of a detailed, individualized instruction plan known as an Individualized Education Program (“IEP”) for each child. 20 U.S.C. §§ 1401(9), 1401(14), and 1414(d). The IEP is a written statement, prepared at a meeting of qualified representatives of the local educational agency, the child’s teacher(s), parent(s), and where appropriate, the child. The IEP contains, among other things, a statement of

the child's present levels of academic achievement and functional performance, a statement of the child's annual goals and short-term objectives, and a statement of specific educational services to be provided for the child. 20 U.S.C. § 1414(d). The IEP is reviewed and, if appropriate, revised, at least once annually. 20 U.S.C. § 1414(d). The IEP is, in effect, a "comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." Burlington v. Dept. of Educ. of the Commonwealth of Massachusetts, 471 U.S. 359, 368, 105 S. Ct. 1996, 2002 (1985). An IEP must be evaluated prospectively as of the time it was created. Retrospective evidence that materially alters the IEP is not permissible. R.E. v. New York City Dept. of Educ., 694 F.3d 167 (2nd Cir.2012).

C. ISSUES FOR DETERMINATION

- 1. Whether the failure of the DOE to attempt to involve and/or to involve Student's private service providers in the 8/22/2024 IEP development process resulted in a denial of FAPE by causing lost educational opportunity, as established in Doug C. v. Hawaii Dept. of Education.**
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In this allegation, Petitioners allege that the DOE failed to invite a representative from Private Center to the 8/22/2024 IEP meeting, causing lost educational opportunity for Student, because Private Center staff provided transition-related services from May to July 2024 and their knowledge about Student's progress and challenges was essential, particularly for developing a transition plan. Pet. Closing Brief, p. 5. Petitioners fail to meet their burden of proof in this issue.

When an IEP meeting is held for a child, the DOE must ensure that the IEP team includes the parents, a regular education teacher, a special education teacher, a representative of DOE, an individual who can interpret the instructional implications of evaluation results, and when

appropriate, the child with a disability. 34 C.F.R. § 300.321(a). These individuals are mandatory participants. The IDEA also allows for discretionary participants:

At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.

The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

34 C.F.R. §§ 300.321(a)(6), (c)¹². The IDEA defines “related services” as “transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education....” 34 C.F.R. § 300.34(a). Based on the evidence, President, Caregiver, or anyone else from Private Center are not mandatory participants. A representative from Private Center may be included in the 8/22/2024 IEP meeting if Parent or DOE had invited him/her to the IEP meeting, but no one did. (FOF 40-44). It would not be reasonable to penalize DOE for not knowing that Parent wanted a representative from Private Center at the 8/22/2024 IEP meeting when Parent did not express such a desire to DOE, even though Parent did express that Parent wanted Mr. Peck at the 8/22/2024 IEP meeting¹³. (FOF 33, 35-37, 45).

¹² Haw. Admin. Rule § 8-60-49 and 34 C.F.R. § 300.325 do not apply as DOE was not placing Student at Private Center.

¹³ It is noted that Mr. Peck asked Mr. Chun, “Will [Private Center] be a part of the IEP?” when the attorneys were discussing Mr. Peck’s availability. DOE Ex. 18 at 72-75. Mr. Peck’s question could be construed as will Private Center be a part of the IEP meeting or will Private Center services be included in Student’s IEP. DOE personnel were not part of the communication, and it does not appear that Mr. Chun responded to Mr. Peck’s question. Assuming that Mr. Peck was asking if someone from Private Center will be at the IEP meeting, Mr. Peck’s inquiry does not make Private Center a mandatory IEP member nor does DOE become responsible for ensuring the attendance of a Private Center staff as there is no evidence

Furthermore, Petitioners' argument that Private Center should have been invited to the 8/22/2024 IEP meeting because Private Center staff provided transition-related services from May to July 2024, making Private Center essential in the development of a transition plan¹⁴, is not persuasive as the IEP team was not required to discuss the transition plan during the IEP meeting, as discussed *infra*.

Lastly, Doug C. v. Hawaii Dept. of Educ. does not support Petitioners' argument¹⁵. The undersigned does not read Doug C. to mean that a representative from a private school is mandatory at an IEP meeting. Whether a staff from a child's private school is necessary to an IEP meeting is case specific and depends on a parent or DOE making that determination. Although it is unclear from the text of the case whether [REDACTED] was invited by [REDACTED] or DOE or if [REDACTED] had informed DOE that he wanted [REDACTED] present at the IEP meeting, the Ninth Circuit Court's mention of the absence of a [REDACTED] staff was to emphasize that the merits of continuing [REDACTED] placement at [REDACTED] were not adequately considered because not only did DOE not have [REDACTED] present but it also did not have a [REDACTED] staff present. [REDACTED] 720 F.3d at 1047. The situation in the case at bar is different because Parent was present at the 8/22/2024 IEP meeting. As such, Petitioners fail to meet their burden of proof with respect to this issue.

that Mr. Peck told Mr. Chun that Parent wanted Private Center at the IEP meeting and this information was then communicated to DOE.

¹⁴ Pet. Closing Brief, p. 5.

¹⁵ Petitioners' Closing Brief quotes the Ninth Circuit Court as stating: "The Ninth Circuit noted, 'Although the ultimate placement decision may not have changed, the presence of [REDACTED] staff at the IEP meeting could have facilitated a more thorough consideration of the student's needs and the benefits of the current placement.' (Doug C., 720 F.3d at 1046.)" Pet. Closing Brief, p. 6. This quote does not exist in Doug C. v. Hawaii Dept. of Educ.

2. Whether failing to discuss during the 8/22/2024 IEP meeting whether Student should continue to receive or continued to need the Transition Plan supports Student was receiving before they ended abruptly, particularly when determining what Student needed to return to a public placement after a period where Student was not provided Student's IEP program, denied Student a FAPE.

In this issue, Petitioners are alleging that “the DOE failed to discuss...the Transition Plan services previously provided by [Private Center] from May to early July 2024, which the team had determined necessary for Student’s reintegration into a public-school setting...” Pet. Closing Brief, p. 7. Petitioners further allege that “the August 22, 2024 IEP meeting did not address whether these [Transition Plan] services were still necessary, nor did it discuss the impact of their sudden cessation.” Pet. Closing Brief, pp. 7-8. Based on the evidence, Petitioners fail to meet their burden in showing that the 8/22/2024 IEP team failed to discuss transition supports to address Student’s needs associated with transitioning from a private school setting to a public-school setting.

Pursuant to the Hawaii Administrative Rules, an IEP shall include the following:

- (1) A statement of the student’s present levels of academic achievement and functional performance;
- (2) A statement of measurable annual goals, including academic and functional goals and a description of short-term objectives or benchmarks;
- (3) A description of how the student’s progress toward meeting the annual goals will be measured; and when periodic reports on the progress the student is making toward meeting the annual goals will be provided;
- (4) A statement of the special education and related services and supplementary aids and services, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel;
- (5) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class;
- (6) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on statewide assessments; and if the IEP team determines that the student shall take an alternate assessment instead of a particular regular State assessment of student achievement, a statement of why the student cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the student; and

- (7) The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.

H.A.R. § 8-60-44(a). See also, 20 U.S.C. § 1414(d)(1)(A). The Haw. Admin. Rules do not require a transition plan from a private program to a public-school program to be included in an IEP. As stated by the Hawaii District Court, “the DOE is not required to include a transition plan in an IEP whenever a child moves from a private institution to a public school.” Dept. of Educ., Hawaii v. C.B., Civil No. 11-00576 SOM/RLP, 2012 WL 1537454, at *5 (D.Haw. May 1, 2012) (citing to L.I. v. Hawaii, Dept. of Educ., Civil No. 10-00731 SOM/BMK, 2011 WL 6002623, at *6 (D.Haw. Nov. 30, 2011); M.N. v. Hawaii, Dept. of Educ., Civil No. 11-00121 SOM/BMK, 2011 WL 6020861, at *4 n.1 (D.Haw. Dec. 1, 2011)). See also James M. v. State of Haw., Dept. of Educ., 803 F.Supp.2d 1150, 1163-1164 (D. Haw.2011) (holding that a school district was under no obligation to provide transition services for a student moving from a private school to a public school); B.B. v. Haw. Dept. of Educ., 486 F.Supp.2d 1042, 1056-1057 (D. Haw.2006) (holding that the IDEA requires an IEP to have a statement of needed transition services in some circumstances but does not mandate such services when a transition from private to public school takes place).

The Hawaii District Court reiterated that the DOE is not required to include a transition plan in an IEP for a child moving from a private program to a public school in Dept. of Educ., Hawaii v. L.S., Civil No. 18-CV-00223 JAO-RT, 2019 WL 1421752 (D.Hawaii 03/29/2019).

The L.S. Court wrote:

DOE challenges the Decision’s conclusion that DOE violated the IDEA when it failed to provide a sufficient transition plan for Student to transition back to public school after several months at the [redacted] [citation omitted]. The Court agrees that the AHO erred in this regard.

The Decision correctly noted that the IDEA does not specifically require a plan to ease the transition between placements [citation omitted]. The IDEA lists requirements to be included in an IEP and states that no additional information is required to be included in an IEP that is not “explicitly required in this section.” 20 USC §1414(d)(1)(A)(ii). The question of whether the IDEA otherwise requires transition plans to be included in an IEP is unsettled.

L.S., 2019 WL 1421752, at *8¹⁶. The Ninth Circuit Court of Appeals in June of 2024 confirmed that “[t]ransition services are not required to be included in an IEP.” E.W. v. Hawaii Dept. of Educ., D.C. No. 1:21-cv-00486-JMS-WRP, 2024 WL 3102040, at *2 (9th Cir. June 24, 2024).

Petitioners’ reliance on R.E.B. v. State of Hawaii Dept. of Educ., 870 F.3d 1025 (9th Cir.2017) is not persuasive as a rehearing was held in R.E.B. and the Ninth Circuit Court of Appeals held that “DOE sufficiently addressed R.E.B.’s concerns about J.B.’s transition services....Further, while R.E.B. and DOE worked together to develop J.B.’s IEP, DOE listened to R.E.B.’s concerns about J.B.’s transition and tried to address them at a ‘transfer plan meeting’ held on June 13, 2012.” R.E.B. v. Dept. of Educ., 770 Fed.Appx. 796, 798 (9th Cir.2019).

Petitioners also allege that the DOE was untimely in developing a new transition plan for Student when the new transition plan was completed during a “non-IEP meeting” in November or December of 2024¹⁷. Pet. Closing Brief, p. 8. First, the new transition plan was not untimely. DOE made reasonable attempts to schedule a transition meeting but was not able to due to the

¹⁶ Haw. Admin. Rules § 8-60-44 states:

- (d) Construction. Nothing in this section shall be construed to require:
 - (1) That additional information be included in a student’s IEP beyond what is explicitly required in section 614 of the Act; or
 - (2) The IEP team to include information under one component of a student’s IEP that is already contained under another component of the student’s IEP.

¹⁷ Student’s transition plan was revised on October 28, 2024. (FOF 76).

confusion caused by President. (FOF 62-65, 67-68, 70, 72-76). While Parent is entitled to have advocates help Parent, the ensuing confusion with having too many cooks in the kitchen cannot be attributed to DOE. Second, “the fact that DOE elected to address the transition services at a separate meeting with Parent would at most constitute a procedural violation.” L.S., 2019 WL 142752, at *9. Petitioners fail to show how this procedural violation resulted in lost educational opportunity or significantly infringed upon Parent’s participation rights. Petitioners did not provide any persuasive evidence or legal authority to establish that postponing the transition plan discussion to a later date resulted in lost educational opportunity for Student. Petitioners also fail to show how postponing the transition plan discussion to a later date significantly infringed upon Parent’s right to participate when Parent was not interested in participating in the transition meeting. (FOF 64, 65, 67, 76).

Therefore, the undersigned finds that Petitioners fail to meet their burden in showing that Student was denied a FAPE when the 8/22/2024 IEP team did not discuss Student’s transition needs to transfer from Private Center to Home School.

3. Whether failing to discuss behavior interventions and/or review Student’s [REDACTED] [REDACTED] and instead stating during the 8/22/2024 IEP meeting that this would be handled outside of the IEP process and by reference to a [REDACTED] denied Student a FAPE.

In this allegation, Petitioners are alleging that Respondents committed a procedural violation because the IEP team, on August 22, 2024, did not discuss behavioral interventions or Student’s [REDACTED]. As explained below, Petitioners fail to show by preponderance of the evidence that Respondents committed a procedural violation in formulating Student’s 8/22/2024 IEP with respect to behavioral interventions or Student’s [REDACTED].

There was no procedural violation as the IEP team discussed Student’s behavioral needs and behavioral interventions during the 8/22/2024 IEP meeting. The video recording of the

8/22/2024 IEP meeting shows that the IEP team, inclusive of Parent and Mr. Peck, discussed Student's [REDACTED], including the six (6) behaviors (precursor, elopement, physical aggression, throwing items, property damage, screaming) that are targeted for reduction in the [REDACTED]; interventions that are effective with Student; a crisis plan in Student's [REDACTED]; and the general process to change a [REDACTED] and the interventions in the [REDACTED]. (FOF 48). Furthermore, the behavior goals and objectives in the [REDACTED] are also in Student's 8/22/2024 IEP. (FOF 50).

Even assuming that the discussion about behavioral interventions was deficient in some way, Petitioners fail to show that the procedural violation significantly impeded Parent's opportunity to participate in the decision-making process or deprived Student of an educational opportunity or benefit. Parent was present and accompanied by Parent's counsel, Mr. Peck, during the 8/22/2024 IEP meeting. Parent and Mr. Peck were not prevented from speaking or asking questions. Parent was provided ample opportunities to participate in the discussion. Petitioners fail to show how not discussing behavioral interventions to the satisfaction of Petitioners resulted in a loss of educational opportunity to Student.

In addition, Petitioners allege in their closing brief that "DOE's failure to include behavioral interventions within the IEP resulted in significant Lost Educational Opportunity (LEO) for Student,"¹⁸ Petitioners fail to allege this in their due process complaint. An impartial due process hearing is limited to issues that are raised in a due process hearing complaint and "[t]he party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise." 20 U.S.C. §1415(f)(3)(B). See Dept. of Educ., Hawaii v. C.B., Civil No. 11-00576 SOM/RLP, 2012 WL 1537454, at *8 (D.Haw. May 1, 2012). There was no

¹⁸ Pet. Closing Brief, p. 12.

agreement to hear the issue of whether the 8/22/2024 IEP has sufficient behavioral interventions.

Even if Petitioners sufficiently alleged that the 8/22/2024 IEP lacks sufficient behavioral interventions, Petitioners would have failed to meet their burden. In the development of an IEP, the IDEA requires that “in the case of a child whose behavior impedes the child’s learning or that of others, [the IEP team shall] consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 20 U.S.C. § 1414(d)(3)(B)(i). In this case, the 8/22/2024 IEP team considered the use of positive behavioral interventions and supports, and other strategies, to address Student’s behavioral needs. The 8/22/2024 IEP contains eleven (11) annual goals and accompanying short-term objectives aimed at enhancing behaviors and reducing health risks (such as decreasing precursor behaviors, elopement, physical aggression, property destruction, throwing items; safely navigating transportation with adult support; and increasing independence). (FOF 15, 52). Like Student’s 3/15/2024 IEP, the 8/22/2024 IEP provides the same behavioral interventions, “such as the frequent rest, movement, and/or sensory breaks, access to low and/or no-tech communication, and visual supports...all things that Private Center say that are helpful to use with Student.” (Quoting November 7, 2024 Decision)¹⁹ Pet. Ex. 3 at 395. (FOF 17, 54). The 8/22/2024 IEP also provides Student with a [REDACTED]²⁰, [REDACTED]

¹⁹ Although a little over five (5) months have passed between the 3/15/2024 IEP and 8/22/2024 IEP, Petitioners fail to show what additional behavioral interventions or supports Student needs but were not included in the 8/22/2024 IEP. Petitioners’ assertion in their closing brief that the IEP team developed “an IEP that lacked essential supports” and the “DOE’s failure to address and incorporate necessary behavioral interventions within the August 22, 2024, IEP” is vague as to what essential supports or necessary behavioral interventions are missing. Pet. Closing Brief, pp. 12-13.

²⁰ It appears that Petitioners are alleging that Student’s [REDACTED] should have been included in the 8/22/2024 IEP; however, Petitioners fail to cite to any legal authority to support this allegation. Pet. Closing Brief, pp. 12-13. The IDEA delineates what must be included in an IEP and does not require the incorporation of a [REDACTED] into an IEP. H.A.R. § 8-60-44, 34 C.F.R. § 300.320. In fact, in June of 2024, the Ninth Circuit Court stated that “[t]he failure to include E.W.’s [REDACTED] in his IEP did not deny him a FAPE.” E.W. v. Hawaii Dept.

services, and individual instructional support by an [REDACTED] paraprofessional who will implement Student's [REDACTED] in school and on the bus when traveling to and from school. (FOF 17, 54, 55). Lastly, at the time of the 8/22/2024 IEP meeting, the behavior goals and objectives, and interventions in the [REDACTED] were appropriate to meet Student's needs. (FOF 49).

Based on the foregoing, Petitioners fail to meet their burden in showing that the IEP team failed to discuss behavioral interventions and/or review Student's [REDACTED] during the 8/22/2024 IEP meeting. The 8/22/2024 IEP team discussed behavioral interventions that would be given to Student to address Student's behavioral needs and Respondents did not commit a procedural violation.

D. RECOMMENDED REMEDY HAD PETITIONERS SHOWN AN IDEA VIOLATION

In this case, Petitioners have failed to prove that DOE denied Student a FAPE; however, in the event that a reviewing court decides otherwise, the appropriate remedy for the alleged violations is an order to reconvene an IEP meeting with a representative of Private Center present and for the IEP team to discuss Student's transition plan and [REDACTED] during the IEP meeting.

"Compensatory education is an equitable remedy that seeks to make up for 'educational services the child should have received in the first place,' and 'aim[s] to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.'" R.P. ex rel. C.P. v. Prescott Unified School Dist., 631 F.3d 1117, 1125 (9th Cir.2011) (quoting Reid ex rel. Reid v. Dist. of Columbia, 401 F.3d 516, 518 (D.C.Cir.2005)). Student was

of Educ., D.C. No. 1:21-cv-00486-JMS-WRP, 2024 WL 3102040, *1 (9th Cir. June 24, 2024). Petitioners concern that the [REDACTED] can be changed without parental participation is unfounded as a [REDACTED] cannot be changed without Parent's knowledge and input. See E.W. by and through L.W. v. Hawaii Dept. of Educ., et al, 2024 WL 3102040, at *1 (9th Cir. June 24, 2024); DOE Ex. 80 at 00:12:23-00:13:00; DOE [REDACTED] Tr. Vol. IV, 538:13-539:19.

compensated for violations of the IDEA from July 10, 2024 to August 22, 2024 pursuant to an administrative decision on November 7, 2024 for the July 2024 Complaint. (FOF 77). Student was awarded compensatory educational services for the July 2024 Complaint and the compensatory educational services will be available to Student [REDACTED] (FOF 77). Student was made whole for the violations that occurred from July 10, 2024 to August 22, 2024.

“Regarding reimbursement, courts may consider any relevant factor, including the reasonableness of the private tuition, [citation omitted], and the conduct of parents in the IEP formulation process. [Citation omitted]. Parents who ‘unilaterally change their child’s placement...without the consent of state or local school officials, do so at their own financial risk.’” Dept. of Educ., Hawaii v. LS, Civil No. 18-cv-00223 JAO-RT, 2019 WL 1421752, at *14 (D.Hawaii 03/29/2019) (citing Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 247, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009)). In this case, Parent took a financial risk in committing to Private Center the day after the 8/22/2024 IEP meeting without providing DOE the opportunity to correct the errors Petitioners felt the school members of the IEP team committed during the 8/22/2024 IEP meeting. Parent clearly is not interested in sending Student to Home School and is relying on any missteps by DOE to justify sending Student to Private Center at DOE’s expense. Student’s academic level was assessed by Private Center on August 20, 2024, before the 8/22/2024 IEP meeting even took place. (FOF 39). Ordering DOE to reimburse Parent over \$100,000 for four (4) months of private services would not be equitable. (FOF 84). Ordering DOE to reimbursement Parent because the IEP team did not talk about Student’s transition plan and [REDACTED] to the satisfaction of Parent would far exceed putting Student in the same position Student would have occupied but for the alleged violations, especially when Parent was not even

interested in attending a transition meeting and the [REDACTED], which was developed in April of 2023, was appropriate. (FOF 10, 49, 65, 76). Not discussing in depth Student's transition plan and [REDACTED] during the 8/22/2024 IEP meeting, which the IEP team was not required to do, and/or not inviting a non-mandatory member to the IEP meeting, do not warrant reimbursing Parent \$100,947.09 for four (4) months of private school services or placing Student at Private Center. The appropriate remedy is to reconvene an IEP meeting to discuss the transition plan and [REDACTED] and invite a representative from Private Center.

E. PETITIONERS' SECTION 504 OF THE REHABILITATION ACT OF 1974 CLAIM

Petitioners' August 2024 Complaint "assert[s] Student's eligibility for rights and protections under Section 504 of the Rehabilitation Act of 1974." Petitioners' Complaint, p. 2. Petitioners, however, did not present any evidence or argument during the due process hearing and in their closing brief regarding their Section 504 claim. Based on the lack of evidence or argument to support this claim, the undersigned Hearings Officer concludes that Petitioners have effectively abandoned their Section 504 claim and have not met their burden of proof.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not met their burden of proving the issues in the Complaint by a preponderance of the evidence. As Petitioners have failed to prove that DOE denied Student a FAPE, Petitioners' request for the reliefs sought in the August 2024 Complaint are denied.

RIGHT TO APPEAL

The decision issued by this Hearings Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearings Officer shall have thirty (30) days

from the date of the decision to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. § 1415 (i)(2) and § 8-60-70(b).

DATED: Honolulu, Hawaii, May 2, 2025.

/s/ Charlene S.P.T. Murata

CHARLENE S.P.T. MURATA

Hearings Officer

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