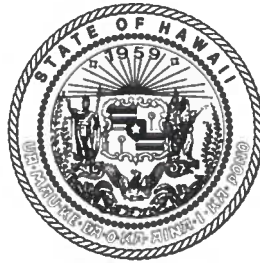


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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

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

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE  
OF HAWAI'I, and KEITH T. HAYASHI,  
Superintendent of the Hawai'i Public  
Schools,

Respondents.

DOE-SY2425-029

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing:  
April 7, 8, 10, 2025

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

**I. INTRODUCTION**

Petitioners bring forth this case under the Individuals with Disabilities Education Act (hereinafter "IDEA") to allege that during the development of Student's Individualized Education Program (hereinafter "IEP"), several areas of concern to Parent were not discussed adequately, thereby denying Petitioners a free appropriate public education (hereinafter

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

“FAPE”). Petitioners seek a finding of a denial of FAPE to Student, an award of compensatory education, and reimbursement or private school tuition to address the alleged denial of a FAPE by the Department of Education, State of Hawai‘i.

## **II. JURISDICTION**

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

## **III. ISSUES PRESENTED**

Petitioners assert five issues in their Complaint and Resolution Proposal (hereinafter “Complaint”) to be addressed at the Hearing regarding the December 11, 2024 and February 5, 2025 IEP meetings.

1. Whether Student’s February 5, 2025 IEP meeting discussions were legally sufficient in addressing Student’s eligibility for extended school year (hereinafter “ESY”) services.
2. Whether Student’s February 5, 2025 IEP sufficiently specifies the supports the IEP team agreed were necessary for Student regarding the individual aide.
3. Whether the discussion regarding Student’s behavior interventions was sufficient.
4. Whether the discussions regarding Student’s placement with regard to Student’s least restrictive environment (hereinafter “LRE”) were sufficient.
5. Whether Student should be entitled to compensatory education for regression Student suffered during Student’s [REDACTED] grade year program (school year 2023-2024).

Petitioners also requested the following remedies if a denial of FAPE is found:

1. Find that the DOE denied Student a FAPE for the violations asserted.
2. Order the DOE to address the violations found.
3. Order the DOE to reimburse and/or directly fund Parent for any privately funded programs and/or services related to a denial of FAPE.
4. Order the DOE to directly fund any private services (including private related services such as transportation and necessary expenses related to the provision of private services).
5. Order compensatory education for lost educational and related skills due to the past harm.
6. Order such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

#### **IV. BACKGROUND**

On February 25, 2025, the Department of Education, State of Hawai'i (hereinafter "Respondents" or "DOE") received a Complaint under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the IDEA and Section 504 of the Rehabilitation Act of 1973 (hereinafter "Section 504"), from Student, by and through Parent (hereinafter "Petitioners"). Respondents submitted a response to Petitioners' Complaint on March 7, 2025.

On March 21, 2025, a prehearing conference was held with Hearings Officer Chastity T. Imamura; Keith H.S. Peck, Esq. (hereinafter "Mr. Peck") on behalf Petitioners; and Bradford K. Chun, Esq. (hereinafter "Mr. Chun") and Jonathan N. Marchuk, Esq. on behalf of Respondents. The due process hearing (hereinafter "Hearing") was scheduled for April 7-8, 10-11, and 14, 2025.

Prior to the start of the Hearing, the parties stipulated to the Hearing being conducted via video conferencing pursuant to Hawai'i Revised Statutes Section 91-9(c). Both parties agreed to the following: a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting. An Order Regarding Video Conference Due Process Hearing was filed on March 24, 2025, which set forth the parameters of the video conference due process hearing.

The Due Process Hearing began on April 7, 2025. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; District Educational Specialist (hereinafter "DES") and Mr. Chun, on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Private Center Director (hereinafter "PCD") and Parent to testify. Parent's

testimony was not completed by the end of the day, and Parent returned to testify again on April 8, 2025. After Parent's testimony was completed, Petitioners rested their case-in-chief. Respondents began their case on April 8, 2025 with Special Education Teacher (hereinafter "SPED"), but due to illness and technical difficulties, SPED's testimony was continued to April 10, 2025. Respondents called Speech-Language Pathologist (hereinafter "SLP") on April 8, 2025 and SLP's testimony was completed on that date. Respondents recalled SPED on April 10, 2025 and thereafter called Principal to testify. Principal's testimony was completed on that date, and Respondents rested their case-in-chief. Petitioners had no rebuttal witnesses and the Hearing was concluded.

Prior to the Hearing, this Hearings Officer had informed the parties that written briefs with transcripts would not likely be allowed in this case, so the parties were allowed to file opening briefs. Petitioners filed Petitioners' Opening Brief by the deadline of April 3, 2025, and later submitted Petitioners' Amended Opening Brief on April 4, 2025 to correct some errors in their original filing. Respondents did not submit an opening brief. During the Hearing, it became evident that it would expedite the Hearing process if the parties were allowed to provide a written document with the notable time-stamps of the recording submitted and the other importance of other exhibits that were submitted. This Hearings Officer allowed both parties to submit written documents with the highlights of the exhibits that they wanted reviewed carefully in the Decision writing process, and the document could include legal arguments if they chose to include that. The parties were informed that the transcripts would not be obtained prior to the filing of this Decision, so their briefs should focus on the exhibits that were submitted. The deadline for the written briefs was set for April 17, 2025.

Each party submitted their exhibits for the Hearing by the disclosure deadline of March

31, 2025. The parties reviewed the exhibit and witness lists provided by the opposing party and neither party had any objections to each other's exhibits. Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case and that prior to the conclusion of the Hearing, this Hearings Officer would review the exhibits that had been received into evidence. On April 11, 2025, a List of Exhibits Received at Due Process Hearing was filed with the final list of exhibits submitted and received by the parties for consideration in this Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-047; Exhibit 2, pages 048-050; and Exhibit 3, pages 051-073, and two audio recordings dated December 11, 2024 and February 5, 2025.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-007; Exhibit 4, pages 016-019; Exhibit 12, pages 047-061; Exhibit 14-15, pages 064-084; Exhibits 18-24, pages 087-134; Exhibit 25, pages 135-144; Exhibit 48, pages 175-176; Exhibit 57, page 206; Exhibits 59-61, pages 208-210; Exhibits 63-64, pages 212-216; Exhibits 66-67, pages 218-219; Exhibits 69-76, pages 224-300; Exhibit 78, pages 312-319; Exhibit 80, pages 322-341; Exhibit 82, pages 343-344; Exhibits 92-94, pages 371-394; and Exhibit 95, a video recording dated December 11, 2024.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding,<sup>2</sup> the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision.

## **V. FINDINGS OF FACT**

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<sup>2</sup> Although all evidence presented in this case were reviewed, only relevant information is included in this Decision. Transcripts of the proceedings were not obtained prior to the filing of this Decision.

### Student's background

1. Student is [REDACTED] years old and was in the [REDACTED] grade at Home School for the 2024-2025 school year. Testimony of Parent; Petitioners' Exhibit 1, page 001 (hereinafter referenced as "P-Ex.1, p.001"); Respondents' Exhibit 20, page 089 (hereinafter referenced as "R-Ex.20, p.089").
2. Student has been diagnosed with [REDACTED] and currently receives [REDACTED] (hereinafter "[REDACTED]") services through medical insurance at Private Center. Testimony of PCD; Testimony of Parent.
3. [REDACTED] services that are provided through medical insurance are designed to allow students to learn functional daily life skills, whereas [REDACTED] services provided in the school setting are designed to address behaviors that would impact a student's ability to access their education. [REDACTED] insurance service providers are not typically allowed to provide educational services through insurance services. Testimony of PCD.
4. When Student first started receiving insurance-based [REDACTED] services, Student initially did not do well, [REDACTED]  
[REDACTED] Student's behaviors were bad initially, but Student participated in [REDACTED] treatment more successfully when Student was in a smaller room. Testimony of Parent.
5. Student has trouble initiating conversations or play with other children [REDACTED]  
[REDACTED]. Testimony of Parent.
6. Student also has trouble following verbal instructions to do multi-step tasks but can

perform tasks when they are written. Testimony of Parent.

7. A functional behavior assessment conducted with Student in 2022 determined that while Student had demonstrated tantrum behavior, typical classroom-wide interventions and an educational assistant could be used to address Student's behaviors and Student did not need a higher level of behavioral intervention in the school setting to access Student's education. R-Ex.25, p.142-144.
8. Parent's belief that Student does not receive Student's IEP services at Home School is based on unconfirmed statements by people at the school or other parents<sup>4</sup> that tell Parent things that they observe at school. Testimony of Parent.

Background regarding Private Center

9. Student began receiving insurance-based services at Private Center some time before Student's [REDACTED] grade school year (2023-2024). Testimony of PCD, Testimony of Parent.
10. PCD had assisted Parent in making requests of the IEP team for Student's program, such as putting in structured breaks for Student, a structured curriculum, and some other programming ideas. The IEP team was receptive to PCD's suggestions and included them in Student's IEP. Testimony of PCD.
11. Parent reached out to PCD to see if PCD's company could provide educational services for Student because Parent was worried that a typical school education would not be useful to Student based on Student's disability. Testimony of PCD; Testimony of Parent.
12. Prior to that request, Parent had asked if Student could attend Private Center for

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<sup>4</sup> At the Hearing, Parent refused to disclose names of people who provided the information to Parent and/or the specific details of incidents that they told Parent about.

insurance services from an earlier start time each day. Testimony of PCD.

13. Upon speaking with Parent about the request for Private Center to provide educational services to Student, PCD began to put together an [REDACTED] program for Student and began to research curricula that could be beneficial for students with [REDACTED]. Testimony of PCD.
14. Student began attending Private Center for academic services as of April 2, 2025 and the agreement for Student to attend Private Center was reached between PCD and Parent on March 31, 2025. Testimony of PCD.
15. Since starting school at Private Center in April 2025, Student has demonstrated the ability to follow a schedule, work for [REDACTED] minutes without needing a break or engaging with Student's [REDACTED] or [REDACTED], continue learning math and technical reading skills, and engage in social activities. Testimony of PCD.
16. At the time of the Hearing, Private Center had not completed any academic assessments with Student due to Private Center still researching appropriate placement tests and the curriculum that they intend to use with Student. Private Center did find a reading program to use with Student, but not for other academic subjects. Testimony of PCD.
17. Private Center had never provided academic services to any student prior to having Student attend on April 2, 2025. Testimony of PCD.
18. At Private Center, Student receives services of a [REDACTED] (hereinafter [REDACTED]) throughout Student's academic school day as well as a [REDACTED] [REDACTED] (hereinafter "[REDACTED]") to supervise the [REDACTED] and oversee Student's program. Testimony of PCD.
19. Private Center has not retained services for occupational therapy or speech-language therapy for Student since Student has not demonstrated a need for those services outside



of the [REDACTED] programming that Student is receiving at Private Center. Testimony of PCD.

20. PCD believes that Student belongs in a special education setting because of the significant modifications that are required for Student to learn the materials that are being taught and that Student being in a general education setting while learning the significantly modified materials would not be beneficial to Student. Testimony of PCD.
21. PCD was informed by Parent that Parent wanted Student to be more in the special education setting than the general education setting at Home School. PCD was unaware that Parent had asked the IEP team to place Student in the general education setting instead of special education. Testimony of PCD.
22. No nondisabled students attend Private Center and no other students attend Private Center for academic services during the school day. Other clients at Private Center attend from around 12:00 p.m. to 5:30 p.m. for insurance-based services. Testimony of PCD.
23. Private Center and Parent agreed on a price of Nineteen Thousand Dollars (\$19,000) per month for Student to receive academic services at Private Center. Parent has not made any payments toward Student's attendance at Private Center for April 2025. Testimony of PCD, Testimony of Parent.

#### Home School's IEPs and meetings

24. In April 2024, Student's IEP team at Home School developed an IEP for Student (hereinafter referenced as IEP-04/18/2024") that included five language arts annual goals, two mathematics annual goals, and three health annual goals. The three health annual goals centered around Student learning to self-advocate by asking for a break when Student was feeling overwhelmed; Student working independently on a task without needing more than one prompt to refocus; and Student learning to create a plan to execute

a multi-step academic task. R-Ex.14, p. 069-078.

25. The IEP-04/18/2024 provided Student with special education services and speech-language services, as well as a number of supplementary aids and services, program modifications, and supports for school personnel (hereinafter referenced as “supplementary aids and supports”), including “close adult supervision, graphic organizers, word banks, visual aids/supports, math manipulatives, midline paper, illustrated texts, extended time for assignments/tasks, chunked assignments, modified amounts of problems to show mastery, positive reinforcement system, sensory strategies/tools/activities, frequent checks for understanding, gain[ing of Student’s] attention before giving directions, and structured breaks/play.” R-Ex.14, p.079.
26. The IEP-04/18/2024 determined that Student was not eligible for ESY services and that Student’s LRE would be in the general education setting “for all subjects and activities except for when Student receives pull-out services for [REDACTED] per week for additional support in reading, writing, and math goals and objectives, as determined by the general education and special education teacher. Student will also not participate with nondisabled peers for no more than [REDACTED] per quarter for pull-out speech/language therapy services. Student will participate in the general education setting for 40-79% or more of the school day.” R-Ex.14, p.081.
27. Some time before December 11, 2024, Parent requested that the IEP team hold a meeting to discuss some concerns that Parent had regarding Student’s IEP. Testimony of Parent; Testimony of SPED.
28. Prior to the December 11, 2024 meeting, SPED reached out to Parent multiple times to ask that Parent provide the team with some of the concerns that Parent had so that the

team would be able to properly address them during the meeting. Testimony of SPED; R-Ex.95, video recording dated 12/11/24, approximate time stamp [52:46-52:51] (hereinafter referenced as R-Ex.95, 12/11/24 [52:46-52:51]).<sup>5</sup>

29. Parent never responded to SPED's request to provide information about why Parent wanted the IEP meeting and the Home School team learned of Parent's concerns at the meeting itself. Testimony of SPED; R-Ex.95, 12/11/24 [01:36-01:46], [53:38-53:51].
30. Parent's concerns raised at the December 11, 2024 meeting were Student's need for more social interaction with peers, working on multi-step tasks, ESY, Student's support aide, Student's behavior issues and the school's successful interventions, and LRE. [REDACTED]  
[REDACTED]  
[REDACTED]. See R-Ex.95, 12/11/24.
31. The IEP team discussed Parent's concern with Student's goals and objectives not including a social interaction goal and agreed to include that in Student's IEP. R-Ex.95, 12/11/24 [07:00-16:49].
32. The IEP team also discussed Parent's request to qualify Student for ESY services. SPED and Vice Principal (hereinafter "VP") provided Parent with information on the eligibility requirements for students to receive ESY services and that the IEP team's data that they had from the fall break did not show a need for Student to have ESY. To address Parent's concerns, the IEP team agreed to take data over the winter break to see if Student needed ESY services. R-Ex.95, 12/11/24 [16:55-38:18].

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<sup>5</sup> This Hearings Officer notes that while both Petitioners and Respondents provided a recording of the December 11, 2024 meeting, Respondents' copy is a video recording while Petitioners' copy is an audio recording only. For ease of reference, this Hearings Officer will solely be referencing Respondents' copy based on the ability to clearly see who is talking during the meeting recording.

33. At the time Parent raised the request for ESY services, Parent did not provide the team with any information about Student regressing or losing skills over breaks or having additional behavioral concerns or diagnoses that the IEP team could examine to determine if Student required ESY. Parent's primary concern was that Student was behind academically and socially, but not that Student had lost academic or social skills over a break from school. At the December 11, 2024 meeting, Parent did not raise any concerns about any prior ESY regression concerns from past summer breaks (such as the summer of 2023). R-Ex.95, 12/11/24 [16:55-38:18].
34. The IEP team members expressed concerns with Parent's request to take Student out of school early and how it seemed to contradict Parent's request for Student to attend ESY. Parent's response was that "If you guys don't qualify [Student] for extended school, then [Student is] going to be stuck in the house." R-Ex.95, 12/11/24, [58:40-58:44].
35. The IEP team also discussed Parent's concerns that Student have a one-to-one aide for the school day and the team confirmed that Student's educational assistant was assigned just to Student for the entire school day. R-Ex.95, 12/11/24 [38:19-39:33].
36. At the December 11, 2024 meeting, Parent inquired with the IEP team about behaviors that Student demonstrates at school and what interventions are used by the team to successfully address Student's behaviors. Parent did not raise any specific behaviors that Parent was concerned about Student displaying. SPED provided information about Student previously having behaviors of crying, but that Student did not cry any longer and just had the occasional behavior of giggling, which Student would stop immediately when prompted. The IEP team also reviewed all the supplementary aids and supports that they use with Student, as well as Student's daily schedule. R-Ex.95, 12/11/24

[38:36-43:14].

37. The full IEP team was not present at the time Parent raised concerns about the Student's LRE during the December 11, 2024 meeting, since the meeting was scheduled with short notice and some members needed to leave early. R-Ex.95, 12/11/24 [50:25-55:01].
38. SPED and VP, who were present at the December 11, 2024 meeting, agreed to include additional goals and objectives to Student's IEP-04/18/2024 based on Parent's concerns and scheduled a continued meeting on January 29, 2025 to follow up with the rest of Parent's concerns, including ESY and LRE. SPED also noted that data would be collected for Student's ESY eligibility over the winter break. *See generally* R-Ex.95, 12/11/24.
39. The IEP revised the IEP-04/18/2024 after the December 11, 2024 meeting (hereinafter "IEP-12/11/2024") and included one additional health annual goal to address Student's social interaction. P-Ex.1, p.017; R-Ex.20, p.105.
40. A continued IEP meeting was scheduled for January 29, 2025, but was rescheduled to February 5, 2025. The team had already scheduled a meeting for February 5, 2025 for a discussion of Student's triannual reevaluation, so the continued IEP meeting was scheduled for the same date. Testimony of Parent; Testimony of SPED; R-Ex.57, p.206.
41. At the February 5, 2025 reevaluation meeting, SPED and SLP provided information about Student's current performance and skill acquisition, as well as data that they collected regarding Student's abilities before and after the winter break. P-Ex.3, audio recording dated February 5, 2025 [00:08-23:05] (hereinafter referenced as "P-Ex.3, 2/5/25 [00:08-23:05]").
42. After the reevaluation meeting concluded, the team discussed the data that had been

collected regarding Student's possible regression/recoupment of skills over the winter break. Testimony of SLP; Testimony of SPED; P-Ex.3, 2/5/25 [23:39-37:58].

43. SPED also informed Parent that SPED had noticed some discrepancy between Student's data for reading speed between Student's [REDACTED] grade and [REDACTED] grade IEPs and told Parent that they can later discuss possibly providing Student with compensatory education based on the discrepancy. SPED told Parent that SPED noticed that SPED would have to investigate Student's records to see what may have occurred to cause the discrepancy for the testing scores and then determine with the team how to compensate Student for anything that Student may have lost over the periods between [REDACTED] and [REDACTED] grade. Testimony of SPED; P-Ex.3, 2/5/25 [32:51-37:30].
44. Parent, for the first time, provided the team with information that during a month-long trip in the summer of [REDACTED] to a foreign country where a language other than English is the primary language, Student lost some communication skills and had increased behaviors. Parent admitted that during that trip, Parent did not do much work with Student, nor did Student have any therapy or treatment. Testimony of SLP; Testimony of SPED; P-Ex.3, 2/5/25 [38:10-40:48].
45. SLP and SPED provided Parent with data to show that Student had been tested on mastered skills prior to and after the winter break and had demonstrated that Student had not lost any skills during the break. Testimony of SLP; Testimony of SPED; R-Ex.82, p.343-344.
46. Parent continued to insist on Student being given ESY without providing any data or information to the team besides the information about the [REDACTED] summer trip. The Home School team members then offered to collect data over a longer period of time to see if

Student would struggle over the summer break, despite Student not having shown any signs of regression or recoupment during prior school breaks. Testimony of SLP; Testimony of SPED; P-Ex.3, 2/5/25.

47. Parent also did not provide any new information to the team about any new diagnoses or troubles that Student had been experiencing due to Student's disability that could provide a basis for Student to be eligible for ESY. Despite the team explaining the qualification procedures for ESY, Parent continued to disagree with the team and insisted on having ESY put into Student's IEP. P-Ex.3, 2/5/25.
48. Parent also raised concerns about Student's aide and whether Student's aide was assigned just to Student or also assisted other students in school. The Home School team again assured Parent that Student was receiving a regular one-to-one aide throughout the school day and when Student's regular aide was not available, someone would substitute to be Student's aide for the day. Home School also informed Parent that they would check with the school district personnel to inquire what specific language to use to assure Parent in Student's IEP that Student's aide would be a one-to-one aide, although "Close Adult Supervision" was the appropriate term for the service provided to Student. P-Ex.3, 2/5/25 [48:01-58:50].
49. Parent inquired multiple times during the February 5, 2025 meeting whether the team would be revising the IEP to provide the ESY for Student and each time, the team told Parent that they would not be changing Student's ESY eligibility at that meeting, but that they would meet again to discuss it. Testimony of SLP; Testimony of SPED; P-Ex.3, 2/5/25.
50. Throughout the IEP meeting on February 5, 2025, the Home School team made it clear

that they intended to meet again to work on collecting data, reviewing Student's assessments from the reevaluation, having further discussions, and revising or developing a new IEP to address Parent's additional concerns. *See* P-Ex.3, 2/5/25.

51. At the end of the February 5, 2025, meeting the team noted that they would contact Parent with a date for a future meeting where Principal would be present to provide insight into both Parent's concerns with ESY and compensatory education. Testimony of SPED; P-Ex.3, 2/5/25 [1:02:32-1:07:43].
52. After the February 5, 2025 IEP meeting, a prior written notice (hereinafter "PWN") dated February 13, 2025, was prepared regarding Student's reevaluation assessments that would be conducted. No revised IEP or PWN were prepared based the discussions during the IEP meeting revision portion of the meeting until a PWN was issued on around February 25, 2025. Testimony of SPED; *see* P-Ex.1, p.024-025; R-Ex.23, p.113-114; R-Ex.64, p.215; R-Ex.69, p.227-228;
53. Home School attempted to schedule a meeting with Parent to follow up with the February 5, 2025 IEP revision. One meeting was scheduled for February 19, 2025, but Parent cancelled the meeting shortly before it was to begin. R-Ex.61, p.210; R-Ex.66, p.218.
54. After Parent cancelled the February 19, 2025 meeting, Home School continued to make numerous attempts to schedule the meeting with Parent, including telling Parent that if Parent continued to not respond to the team's proposed meeting dates or provide proposed dates, the team would meet without Parent. Testimony of SPED; Testimony of Principal; *see also* R-Ex.66, p.218; R-Ex.69, p.224-226; R-Ex.70, p.252-261; R-Ex.71, p.262-265.
55. As the date of the meeting approached where the team indicated to Parent that they would



meet without Parent, Parent responded to the team and provided dates and times where Parent's attorney could attend. These dates did not work, since the Home School IEP team members were not available to meet during those times.<sup>6</sup> Testimony of Principal; R-Ex.72, p.266-269; R-Ex.73, p.270-271; R-Ex.74, p.272-275; R-Ex.75, p.276; R-Ex.76, p.298-300.

56. After many communications, a meeting was finally scheduled for April 7, 2025 at 12 pm and April 14, 2025 at 12:00 p.m. Testimony of Principal; R-Ex.75, p.298-299.

57. Prior to the April meeting dates, Parent had agreed for the team to close the discussions on the IEP revisions from February 5, 2025 and work on developing Student's new IEP if Student continued to be eligible for special education and related services after the reevaluation. Testimony of Principal.

## **VI. CONCLUSIONS OF LAW**

### **Burden of Proof**

As the party seeking relief in an administrative hearing challenging an IEP under IDEA, Petitioners have the burden of proving the allegations of a denial of FAPE. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 819-820 (9<sup>th</sup> Cir. 2007). The IDEA's procedural safeguards have addressed the DOE's natural advantage in information and expertise in IDEA cases and, as such, do not require a burden-shifting provision in administrative proceedings for the school districts to prove that the IEPs designed for students are appropriate.

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<sup>6</sup> During the Hearing, both Principal and SPED testified that the IEP team could not meet outside the teachers' scheduled work hours, which was 7:45 a.m. to 2:45 p.m. per contract. This Hearings Officer finds that while this is not an ideal schedule, it is a reasonable request of the schools to conduct meetings during working hours, as any other profession would require.

*Schaffer*, 546 U.S. at 60-61, 126 S.Ct. at 536-537, 163 L.Ed.2d 387.

### IDEA framework

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

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

The IEP is used as the “centerpiece of the statute’s education delivery system for disabled children.” *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 598, 98 L.Ed.2d 686 (1988). It is “a written statement for each child with a disability that is developed, reviewed, and revised” according to specific detailed procedures contained in the statute. H.A.R. §8-60-2; 20 U.S.C. §1401(14); 34 C.F.R §300.22. The IEP is a collaborative education plan created by parents and educators who carefully consider the child’s unique circumstances and needs. H.A.R. §8-60-45; 20 U.S.C. §1414; 34 C.F.R §300.321-300.322.

The DOE is not required to “maximize the potential” of each student; rather, the DOE is

required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048. However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*, held that the educational benefit must be more than *de minimus*. 137 S.Ct. 988, 197 L.Ed.2d 335 (2017). 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.*, 137 S.Ct. at 1001, 197 L.Ed.2d 335; *see also, Blake C. ex rel. Tina F. v. Hawai‘i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai‘i 2009).

In deciding if a student was provided a FAPE, the two-prong inquiry is limited to (a) whether the DOE complied with the procedures set forth in IDEA; and (b) whether the student’s IEP is reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051. “A state must meet both requirements to comply with the obligations of the IDEA.” *Doug C. v. Hawai‘i Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013); *see also, Amanda J. ex rel. Annette 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.*, 267 F.3d at 892. 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. *Id.*

- A. Petitioners have not proven that the DOE did not have sufficient discussions at the December 11, 2024 and February 5, 2025 IEP meetings

Petitioners' first four issues raise concerns with whether the discussions at the December 11, 2024 and February 5, 2025 IEP meetings were legally sufficient regarding ESY, student's support of an individual aide, behavioral interventions, and least restrictive environment. Based on the evidence presented at the Hearing, this Hearings Officer finds that while the discussions at the February 5, 2025 were not complete, it is clear that the IEP team intended on continuing the meeting to further discuss the concerns raised by Parent. Any procedural violations that may have been committed by Respondents by failing to complete the discussions at the meeting or offering a completed IEP to Petitioners did not rise to a denial of FAPE to Student.

The evidence presented at the Hearing supports Respondents' contention that the IEP team did not complete the discussions at the February 5, 2025 meeting due to one of the IEP team members needing to leave the meeting at the scheduled end time. *FOF 49, 50, 51, 53, 54.* The evidence also supports that the IEP team's discussions with Parent at the end of the February 5, 2025 meeting demonstrated an intent for the team to meet with Principal at the soonest possible date. *FOF 51.* While Petitioners claim that Parent only understood that a meeting would occur with Parent and Principal, any misunderstanding that Parent may have had with the continued meeting would have been cleared up if Parent had timely responded to the Home School's communications regarding setting up the next meeting.

1. Petitioners have not proven that the discussions at the December 2024 and February 2025 meetings were insufficient regarding ESY eligibility for Student

Petitioners argue that the discussions at the February 5, 2025 meeting were legally insufficient regarding Student's eligibility for ESY. The IEP team thoroughly discussed Parent's concerns regarding Student's eligibility for ESY services at the December 2024 and February 2025 meeting by first providing Parent with the standards required for schools to provide ESY to

students and then discussing the data that the school has regarding breaks for Student to examine the need for Student for ESY services. *FOF* 32, 33, 41, 42, 45.

A school must provide ESY services only if the child's IEP team determines that the services are necessary 'for the provision of FAPE to the child.' *N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County Mont.*, 541 F.3d 1202, 1211 (9<sup>th</sup> Cir. 2008). To qualify for extended school year services, "a claimant seeking an ESY must satisfy an even stricter test, because 'providing an ESY is an exception and not the rule under the regulatory scheme.'" *N.B.*, 541 F.3d at 1211, *quoting Bd. of Educ. of Fayette County v. L.M.*, 478 F.3d 307, 315 (6<sup>th</sup> Cir. 2007) *quoting Cordrey v. Euckert*, 917 F.2d 1460, 1473 (6<sup>th</sup> Cir. 1990), *cert. denied*, 552 U.S. 1042, 128 S.Ct. 693, 169 L.Ed.2d. 513 (2007); *see also Dep't of Educ. v. L.S. by C.S.*, 74 IDELR 71, 2019 WL 1421752 \*7 (D. Hawai'i 2019) (holding that ESY is "educational instruction beyond the normal academic year provided to students who need the additional instruction to retain information during a break in regularly scheduled classes, such as during the summer."). The standard for ESY is higher than the standard for the provision of special education and related services due to the requirement to show that the benefits the student gains during the regular school year will be significantly jeopardized if he or she is not provided with an educational program during school breaks. *Id.*, *quoting MM ex rel. DM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537-538 (4<sup>th</sup> Cir. 2002); *see also K.K. ex rel. K.S.K. v. Hawai'i*, 66 IDELR 12, 2015 WL 4611947; *Kenton County Sch. Dist. v. Hunt*, 384 F.3d 269, 279 (6<sup>th</sup> Cir. 2004) (confirming that "it is the proponent of ESY that bears the burden of proof either through the use of data or the use of expert testimony.").

During the IEP meetings in December 2024 and February 2025, Parent continued to demand that Student be eligible for ESY services, however, Parent did not present any current

data or information for the IEP team to understand why Student would be eligible for ESY. *FOF 33, 34, 46*. Parent's initial demand in December 2024 for ESY was related specifically to Student being academically behind and not due to regression of Student's skills over breaks. *FOF 33*. At the February 5, 2025 meeting, Parent raised for the first time that was that during a three to four-week trip with Student's family to a foreign country, Student had difficulty communicating with Parents and family members. *FOF 44*. Both during December 2024 meeting, as well as the initial part of the February 5, 2025 meeting when Student's assessments and reevaluation was being discussed and the IEP meeting discussion, the IEP team very thoroughly discussed the data that that IEP team had for the breaks from the 2024-2025 school year, which showed that Student did not have any regression or extended period of recoupment time over the breaks from school. *FOF 32, 42, 45*. Parent continued to disagree with the team and continued to insist that the ESY be included. The IEP team also offered to discuss the ESY after collecting additional data for a longer break to see if Student showed any regression or recoupment issues that would make Student eligible for ESY and informed Parent that they could meet again to discuss that data possibly during the same meeting when they discussed Student's reevaluation results. *FOF 46*. At the end of the IEP meeting on February 5, 2025, the IEP team offered to have Principal attend the next meeting to discuss ESY further with Parent, as Parent was unsatisfied with the answers that were given to Parent by the IEP team. *FOF 51*. Parent agreed with the team that they could continue the discussions with the IEP team and Principal at the next meeting before the meeting concluded, although Parent still expressed dissatisfaction with the fact that Student continued to not be eligible for ESY in Student's current IEP.

The IDEA envisions that the school IEP team members will collaborate with parents to develop a Student's IEP, however this does not give parents the right to dictate the terms of the

IEP process, or the final decision on the IEP itself. *Timothy O.*, 822 F.3d at 1112; *Ventura de Paulino v. New York City Department of Education*, 959 F.3d 519, 533-534 (2<sup>nd</sup> Cir. 2020) (holding that the school district, not parents, had authority to decide how child's agreed upon educational program was provided pending resolution of an IEP dispute); *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373, 380 (5<sup>th</sup> Cir. 2003) (holding that even assuming parents had a right to provide input as to the location where services would be provided, it does not grant parents 'veto' power over the IEP team's site selection decisions).

The IEP team in this case made the efforts to try to address Parent's concerns regarding Student's need for ESY and continued to collaborate with Parent to collect data and have additional meetings to further discuss ESY. However, throughout the meetings Parent simply insisted on having ESY made a part of Student's IEP without providing any information or actual data to support Student's need for ESY.<sup>7</sup>

Based on the evidence presented at the Hearing, Petitioners have failed to prove that the discussions at the December 2024 and February 2025 IEP meetings were insufficient regarding the determination of Student's eligibility for ESY services. Additionally, the evidence presented by Respondents support that Student has correctly not been made eligible for ESY services and Petitioners have not provided sufficient evidence to show that Student should be eligible for ESY services.

2. The IEP team adequately discussed Student's individual aide support, but no IEP was developed from the February 5, 2025 meeting

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<sup>7</sup> It is telling, in fact, that during the December 11, 2024 meeting, Parent expressed that if the team did not qualify Student for ESY then Student would be "stuck in the house," indicating that Parent's desire for Student to attend ESY was more for Parent's benefit (i.e. childcare) than based on an actual need of Student. R-Ex.95, 12/11/2024 [58:40-58:44].

Petitioners also argue that the IEP from the February 5, 2025 meeting does not sufficiently specify the support that the IEP team agreed for Student regarding Student's individual aide. However, no completed revised IEP offer was provided to Petitioners after the February 5, 2025 IEP meeting due to Parent's failure to reasonably communicate with the Home School team to schedule the follow-up meeting to the February 5, 2025 meeting. *FOF 52*. The discussions at the IEP team meetings on December 11, 2024 and February 5, 2025 did adequately address Parent's inquiry regarding Student's individual aide, where the team provided Parent with assurances that Student was receiving the services of a one-to-one aide for the entire school day. *FOF 35, 48*. Parent requested that the IEP team include language that Student's individual aide is only assigned to Student and for the entire school day, as well as information that Student be assigned a substitute aide if Student's regular aide is not available or the day. The IEP team discussed this concern of Parent and agreed to either revise the current IEP or add the appropriate language to Student's new IEP that would be developed after Student's reevaluation was completed. *FOF 48*.

Even, *assuming arguendo*, if the IEP team had failed to revise the IEP-12/11/2024 to include language to clarify the "Close Adult Supervision" at Parent's request, Petitioners have not proven that the failure to do so amounted to a denial of FAPE. In *D.S. v. Hawaii*, 2001 WL 6819060 \*10 (D. Hawai'i 2011), the U.S. District Court found that a statement such as "adult support" was sufficient to define the appropriate support that Student would be receiving as part of Student's educational program. Similar to the facts of *D.S.*, Parent had requested from the IEP team assurances that Student was receiving a one-to-one adult support throughout the school day, even when Student's regular aide was unavailable. The IEP team provided those assurances in addition to the written IEP-12/11/2024 including the term "Close Adult Supervision" in the



supplementary aids and supports based on the school district protocols. Petitioners have not offered any evidence, nor have they argued, that Student was not receiving the support as described by the IEP team members at both the December 11, 2024 and February 5, 2025 IEP meetings. Additionally, since Parent either cancelled or failed to reasonably respond to the DOE's request to hold the follow up meeting to finalize the IEP revisions, no new IEP was developed after the IEP-12/11/2024.

Petitioners have failed to meet their burden of proving that the IEP from the February 5, 2025 meeting did not contain a sufficient description of the service of a one-to-one aide that was discussed at the IEP meetings.

3. Petitioners have not proven that the discussion regarding behavioral interventions was insufficient

Petitioners argue that the IEP team's discussion regarding behavioral interventions for Student at the December 2024 and February 2025 meetings were insufficient. Petitioners offer no argument or evidence that Student was demonstrating behaviors that was impeding Student's learning at school that needed to be discussed or addressed at the meetings. At the December 11, 2024, IEP meeting, Parent requested that the IEP team specify what behavior interventions be included in the IEP so that Parent can see what the behaviors are and what interventions are successful. *FOF 36*. Parent did not raise any specific behavioral issues that Student was having that needed to be addressed by the IEP team. Parent did not raise any specific concerns about behavioral interventions at the February 2025 meeting and was focused solely on ESY services and the issue regarding Student's one-to-one aide.

The evidence presented at the Hearing shows that Student does not demonstrate any behaviors that impede Student's ability to access Student's education that are not currently being addressed by Student's current IEP supplementary aids and supports, such as close adult

supervision, visual aids, extended time, chunking of assignments, positive reinforcement systems, and structured breaks and play. *FOF* 25. The behavioral concerns raised by Petitioners at the Hearing included [REDACTED] in the classroom at Private Center, neither of which were raised at the IEP meetings in December 2024 and February 2025. Testimony of PCD; *see generally* R-Ex.95, 12/11/24; P-Ex.3, 2/5/25. While Petitioners' witnesses noted that these behaviors can impede learning, no evidence has been presented that those behaviors were occurring either at school or at the home, that they impeded Student's ability to engage in academic activities, or that the IEP team was aware of these behaviors of Student at the time of the IEP meetings in December 2024 and February 2025.

4. Student's least restrictive environment was not extensively discussed at the IEP meetings on December 11, 2024 and February 5, 2025 but did not result in a procedural violation rising to a denial of FAPE

Finally, Petitioners argue that the discussions regarding Student's LRE at the December 2024 and February 2025 IEP meetings were insufficient. This Hearings Officer finds that the IEP team did not thoroughly discuss Student's LRE at either of the two revision meetings that were scheduled in December 2024 and February 2025, but that any arguable procedural violation that may have resulted from this incomplete discussion did not rise to a denial of FAPE for Student. As noted above, it is clear from the evidence that both the December 2024 and February 2025 meetings were held solely to address concerns that Parent raised with the IEP team. *FOF* 27-30. The IEP team was able to address several of Parent's concerns at the December 2024 meeting and continued the remainder of the items to discuss at the February 2025 meeting. *FOF* 31-38. The team provided Parent with ample opportunity to discuss the additional concerns that Parent had, while also providing Parent with the information that the team had regarding Student's eligibility for the services that Parent was requesting. Parent

continued to disagree with the information or proposals by the IEP team and the IEP team tried again to schedule meetings with Parent to further discuss Parent's concerns. *FOF 53-56*. The meetings in December 2024 and February 2025 were not annual IEP revision meetings or reevaluation IEP development meetings, so the IEP team was not required to discuss every part of the IEP unless Parent raised specific concerns that needed to be addressed prior to or during the meetings.

Parent did not raise any specific concerns about Student's LRE until near the end of the December 11, 2024 meeting, as the team had already discussed coming back for an additional meeting to address Parent's other concerns. *FOF 37-38*. Parent did not provide any basis for wanting Student in the general education classroom for the majority of the school day nor did Parent provide any information or support to the team to suggest that even with proper supports, Student could be in the general education classroom for the entirety of the school day. Despite Petitioners' argument that if the IEP team had further discussed Student's LRE at the December 2024 or February 2025 meetings the team could have considered additional options for Student, the evidence presented by Petitioners at the Hearing is that Student does not belong in the general education setting for the majority of the school day because the material Student is working on is so significantly modified from the general education materials that Student would receive no benefit from being in the general education classroom. *FOF 20-21*.

While the IEP team did not have a full conversation about Student's LRE placement at the December 2024 and February 2025 IEP meetings, it was not a procedural violation since the IEP team had no basis to change or reconsider Student's LRE and Home School was simply trying to address Parent's concerns. The team also discussed with Parent at the December 11, 2024 meeting that when they had a full IEP team present to consider a change of placement for

Student. Parent was well informed throughout this process that the IEP team would meet several more times to complete both the revision of Student's IEP to address Parent's concerns, as well as to review the results of the reevaluation and complete a new IEP for Student. Petitioners have failed to prove a denial of FAPE on this issue.

B. Petitioners have not proven that Student is entitled to compensatory education for regression suffered during Student's [REDACTED] grade year program

Petitioners' final argument is that Student is entitled to compensatory education for regression suffered during Student's [REDACTED] grade year program. Petitioners submit that based on discussions at the IEP meeting on February 5, 2025, Student should be entitled to compensatory education but that Respondents denied Student a FAPE by indicating that Principal would make the determination of compensatory education and not the IEP team. Petitioners have failed to prove this issue.

As noted above, the evidence presented at the Hearing supports Respondents' contention that the IEP team fully intended to continue the February 5, 2025 meeting discussions to a date to be determined when Principal was available to attend the meeting. *FOF 50-51*. Any alleged miscommunication or misunderstanding on Parent's part was through no fault of Home School. The IEP team consistently informed Parent during the December 11, 2024 and February 5, 2025 meetings that they would need to further discuss Parent's concerns before making any changes to Student's IEP.

At the February 5, 2025 meeting, the evidence presented confirms that SPED told Parent that SPED observed a discrepancy in Student's scores from [REDACTED] grade to [REDACTED] grade, where Student appeared to have a [REDACTED] grade reading score that was equal to or below Student's [REDACTED] grade score. *FOF 43*. SPED told Parent that they would need to figure out the cause of the inconsistent scores and determine whether Student would be eligible for compensatory education

based on that concern. It was clear from the meeting discussion that the IEP team would need to determine what had occurred during the time between the [REDACTED] grade score and the [REDACTED] grade score to see whether Student would be eligible for the compensatory education and how it would be provided to Student. At no time in the meeting did the team tell Parent that Principal would make that determination.

Even if, *assuming arguendo*, Respondents have committed a procedural violation by giving Parent the impression that Principal would make the determination regarding compensatory education for Student, Petitioners have failed to prove that Student should be entitled to compensatory education. Petitioners have not provided any evidence to show any discrepancy in Student's scores, any lack of services provided to Student, or any regression on Student's skill acquisition to support the need for compensatory education during the Hearing. The only evidence presented at the Hearing by Petitioners regarding compensatory education was the February 5, 2025 IEP meeting recording. If the IEP team later determines that based on the information that they have, Student is eligible for compensatory education, then the IEP team can and should determine in what form Student's compensatory education would be provided.

Petitioners have not demonstrated a specific failure of the DOE to provide services to Student for the 2023-2024 school year, nor have they shown any regression or loss of skills during that time period to provide support for this Hearings Officer to order compensatory education. Petitioners have also failed to prove that in this case, Respondents denied Student a FAPE, warranting an award of compensatory education.<sup>8</sup>

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<sup>8</sup> When a child with a disability is deprived of a FAPE in violation of the IDEA, a court and/or hearing officer fashioning appropriate relief may order compensatory education. *See 20 Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 103 LRP 37667 (1985); *see also R.P. ex rel. C.P. v. Prescott Unified School Dist.*, 631 F.3d 1117, 1125 (9<sup>th</sup> Cir. 2011) (*citing Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522-523 (D.C.Cir. 2005); U.S.C. 1415(i)(2)(C)(iii);

## VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have failed to prove that Respondents denied Student a FAPE by failing to sufficiently discuss Parent's requests and/or concerns for Student's need for ESY, individual aide support, behavioral interventions, and LRE. Petitioners have also failed to prove that Student is entitled to compensatory education for regression suffered during the 2023-2024 school year. Petitioners' request for the finding of a denial of FAPE and remedies under the law is respectfully 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 30 days from the date of the decision of the hearings officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2) and §8-60-70(b).

DATED: Honolulu, Hawai'i, April 25, 2025.



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34 C.F.R. 300.516(c)(3). Compensatory education is an equitable remedy that attempts to account for the educational deficit caused by a deprivation of educational services that a student should have received in the first place. *Department of Educ., Hawaii v. R.H. ex rel. K.R.*, 2013 WL 3338581 \*7 (D. Hawai'i 2013) (*citing R.P.*, 631 F.3d at 1125).