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

In the Matter of:
STUDENT, by and through Student's Mother,
Parent¹,

Petitioners,

vs.

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

Respondents.

DOE-SY2425-032

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:

May 14, 2025 and
June 9, 17, 23, 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

¹ Personal identifiable information is provided in the Legend.

Hawaii Administrative Rules (“H.A.R.”) §§ 8-60-1, et seq. Additionally, Petitioners allege violation of 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.

II. INTRODUCTION

On March 6, 2025, 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 Student, by and through Student’s Mother, Parent (“Complaint”). On March 11, 2025, Petitioners filed an Errata to Due Process Complaint, correcting Student’s name.

On March 13, 2025, Respondents filed a response to Petitioners’ Complaint.

On March 14, 2025, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for March 28, 2025.

On March 28, 2025, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners, Deputy Attorney General Anne T. Horiuchi (“Ms. Horiuchi”) appearing on behalf of Respondents, and administrative hearings officer Chastity T. Imamura. During the prehearing conference, the parties agreed to have the due process hearing on May 12-15, 2025.

On March 28, 2025, 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. An Order Regarding Video Conference Due Process Hearing was also issued to the parties on March 28, 2025.

On April 8, 2025, Petitioners filed Petitioners’ Motion for Partial Summary Judgment; Memorandum in Support of Motion for Partial Summary Judgment; Exhibits [sic] “A”;

Declaration of Counsel; Declaration of Parent (“MPSJ”). On April 15, 2025, Respondents filed Respondents Department of Education, State of Hawaii and Keith T. Hayashi’s Memorandum in Opposition to Petitioners’ Motion for Partial Summary Judgment, filed on April 8, 2025; Declaration of Principal; Exhibits “1”-“6”; Declaration of Anne T. Horiuchi; Exhibit “A.” On April 22, 2025, Petitioners filed Petitioners’ Reply Memorandum in Support of Motion for Partial Summary Judgment.

On April 22, 2025, a status conference was held with Mr. Peck, Ms. Horiuchi, and the undersigned administrative hearings officer in attendance². On April 25, 2025, an Amended Prehearing Order was issued to reflect what was discussed during the April 22, 2025 status conference, including the new hearing dates of May 12, 14 and 29, 2025.

On May 5, 2025, a hearing was held for Petitioners’ MPSJ. The undersigned presided over the hearing. The parties also timely submitted their witness list, exhibit list, and exhibits on May 5, 2025.

On May 7, 2025, an Order Granting Petitioners’ Motion for Partial Summary Judgment; Exhibits “A”-“B” was issued to the parties. The Order held that the DOE cannot require an [REDACTED] student to attend Charter School, a conversion charter school, based on the student residing within the former geographic service area of the school.

On May 8, 2025, Respondents filed Respondents Department of Education, State of Hawaii and Keith Hayashi’s Motion for Reconsideration, or in the alternative, Motion to Stay Proceedings; Memorandum in Support of Motion; Declaration of Anne T. Horiuchi; Exhibit “1” (“Motion for Reconsideration”). On May 9, 2025, Petitioners filed Petitioners’ Opposition to Respondents’ Motion for Reconsideration or, in the alternative, Motion to Stay Proceedings. On

² The case was reassigned to the undersigned hearings officer on or about April 15, 2025.

May 12, 2025, Respondents filed Respondents Department of Education, State of Hawaii and Keith Hayashi's Reply Memorandum in Support of their Motion for Reconsideration, or in the alternative, Motion to Stay Proceedings, filed on May 8, 2025; Appendix.

The due process hearing, scheduled for May 12, 2025, was sua sponte set aside by the undersigned Hearings Officer, over Petitioners' objections, in order to address Respondents' Motion for Reconsideration.

On May 13, 2025, an Order Denying Respondents Department of Education, State of Hawaii and Keith Hayashi's Motion for Reconsideration, or in the alternative, Motion to Stay Proceedings; Memorandum in Support of Motion; Declaration of Anne T. Horiuchi; Exhibit "1", dated May 8, 2025, was issued.

The due process hearing took place on May 14, 2025, and June 9, 17 and 23, 2025, using Zoom, a videoconferencing platform. All participants in the due process hearing appeared remotely via video and audio³. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Ms. Horiuchi. The Department of Education District Educational Specialist ("DES") was present on behalf of Respondents.

Petitioners called Parent and Contracted [REDACTED] as their witnesses during the due process hearing. Respondents called the following witnesses during the due process hearing: Contracted [REDACTED], Contracted [REDACTED], SPED Teacher, and Principal. Petitioners did not call any rebuttal witnesses.

³ Parent was not present on May 14, 2025, but was present during the remainder of the due process hearing. During the hearing on June 17 and 23, 2025, Parent sporadically stepped out of the hearing and returned. On June 9, 2025, both Petitioners and Respondents had observers at the hearing. On June 17 and 23, 2025, Respondents had observers at the hearing. The parties did not object to the opposing side's observer(s).

The following Petitioners' exhibits were admitted into evidence during the hearing: Exhibit 1 (pages 001-019), Exhibit 2 (pages 020-053), and Exhibit 3 (pages 054-272, 275-339, 343). Tr. Vol. IV, 285:14-286:6.

The following Respondents' exhibits were admitted into evidence during the hearing: Exhibits 1, 2, 4, 5, 7, 8, 10, 11, 13, 14, 16-23, 32-42, 48-68, 73, 74, 83, 94, 95, and 99-109. Tr. Vol. IV, 286:15-288:1.

On July 21, 2025, the parties timely submitted their closing briefs.

The deadline by which a decision in this matter must be issued is August 13, 2025. See Order Granting Respondents' Request to Extend the 45-Day Decision Deadline from May 20, 2025 to July 4, 2025; Declaration of Anne T. Horiuchi, dated May 7, 2025, issued on May 13, 2025; Order Granting Respondents' Second Request to Extend the 45-Day Decision Deadline from July 4, 2025 to August 13, 2025; Declaration of Anne T. Horiuchi, dated June 27, 2025, issued on June 27, 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 Complaint, Petitioners allege that Respondents denied Student a free and appropriate public education ("FAPE"). Petitioners raise the following issues:

Issue 1 – Whether Home School violated Student's rights when Parent was told that Parent would have to find another DOE school for Student, disrupting Student's access to education.

Issue 2 – Whether Home School violated Student's rights when Home School retaliated against Parent for advocating for Student, under Section 504, by

informing Parent that Parent had to move Student to a new school.

Issue 3 – Whether Student’s Individualized Instructional Support services have been implemented in accordance with the 1/23/2025 IEP.

Issue 4 – Whether the 1/23/2025 IEP adequately addresses Student’s safety needs.

Issue 5 – Whether Student’s Parent has been denied sufficient parental participation in determining the behavior interventions Student’s IEP affords.

Petitioners request the following remedies:

Remedy 1 – Find that the DOE denied Student a FAPE for the violations asserted.

Remedy 2 – Order the DOE to address the violations found.

Remedy 3 – Order the DOE to reimburse Parent for any privately funded programs and/or services related to a denial of FAPE.

Remedy 4 – Order compensatory education for lost educational and related skills due to the past harm.

Remedy 5 – Order such other relief that is appropriate and justified in equity and/or in the law under the circumstances.

IV. FINDINGS OF FACT

Student

1. Student is currently [REDACTED] old. 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].
Pet. Ex. 1 at 002.
3. Student was medically diagnosed with [REDACTED].
Parent, Tr. Vol. II, 61:20-62:2.
4. Student engages in the following challenging behaviors: [REDACTED]
[REDACTED] Student displays frustration when Student does not get Student’s way.
Pet. Ex. 1 at 002.

5. Student's learning is significantly delayed in the areas of communication, speech/language, cognitive and social, daily living, adaptive, and academic skills. These delays adversely impact Student's ability to communicate with peers and teachers and comprehend and participate fully in learning opportunities. Pet. Ex. 1 at 002.
6. [REDACTED]. Parent, Tr. Vol. II, 140:7-19.
7. Student lived at Address-1 with Parent and other family members until the lease to Address-1 expired in December of 2024. The family then moved to Address-2 in January of 2025. Parent, Tr. Vol. II, 62:3-64:18.
8. Home School is the assigned [REDACTED] school for Address-1 and Charter School is the assigned [REDACTED] school for Address-2.

Facts of Case

9. Contracted [REDACTED] is a [REDACTED] ([REDACTED]) and works for Agency-1. Through Agency-1, Contracted [REDACTED] was permanently assigned to provide [REDACTED] ([REDACTED]) services to [REDACTED] Doe⁴ at Home School since March 26, 2024 to present. During the Spring of 2024, [REDACTED] Doe was in SPED Teacher's fully self-contained ("FSC") classroom. Pet. Ex. 1 at 019; DOE Ex. 94 at 562; Contracted [REDACTED], Tr. Vol. III, 196:18-199:4.
10. Contracted [REDACTED] works for Agency-2 as a [REDACTED], through which Contracted [REDACTED] provides [REDACTED] services to Home School. Contracted [REDACTED] supervised all the [REDACTED]s in SPED Teacher's FSC classroom, including Contracted [REDACTED],

⁴ This is a fictitious name.

during the 2024-2025 school year. Contracted [REDACTED], Tr. Vol. III, 199:5-9; Contracted [REDACTED], Tr. Vol. I, 22:11-23:25, Tr. Vol. III, 155:16-17, 159:12-160:1.

11. In February of 2023, upon the family relocating to Home School's district, Parent requested that Former Home School release Student and submitted paperwork to enroll Student at Home School for [REDACTED]. DOE Ex. 58 at 196-200; Parent, Tr. Vol. II, 99:13-100:12.
12. On April 27, 2023, Home School, inclusive of Parent, developed an individualized education program ("IEP") for Student while Student was in [REDACTED] to address Student's needs in pre-readiness, behavior, social/emotional, and speech language skills ("4/27/2023 IEP"). The 4/27/2023 IEP provided Student with special education services, transportation, speech/language therapy, and use of a visual schedule to aide in routines and transitions. DOE Ex. 10 at 034-036; DOE Ex. 11 at 037.
13. On August 11, 2023, Home School developed a Behavioral Support Plan ("8/11/2023 BSP") for Student to help Student in the areas of self-control, attention, and safety. The 8/11/2023 BSP contains interventions/instructional strategies to address Student's behavioral concerns. The 8/11/2023 BSP also notes that the school team would develop a "Crisis Plan," if one is warranted. DOE Ex. 18 at 070-074.
14. On November 21, 2023, a Student Focus Team meeting was held wherein the team proposed that a reevaluation be conducted on behalf of Student and that a [REDACTED] ([REDACTED]) be a part of the reevaluation. This proposal was made because the team found that "[Student] exhibits many behaviors that are a danger to [Student] and others, is not aware of situations that could be potentially dangerous, has

difficulty navigating campus on [his/her] own, and is unable to communicate [his/her] wants and needs.” DOE Ex. 4 at 017.

15. On November 27, 2023, Parent signed a Consent for Assessment as Part of a Reevaluation form, which indicated that Contracted [REDACTED] would be reviewing Student’s confidential folder. DOE Ex. 5 at 018.
16. On January 12, 2024, Contracted [REDACTED] completed the [REDACTED]. In conducting the [REDACTED], Contracted [REDACTED] reviewed Student’s 4/27/2023 IEP and 8/11/2023 BSP; interviewed Student’s teacher and Parent; used the “Questions About Behavior Function” questionnaire and the “Verbal Behavior Milestones Assessment and Placement Program” and analyzed the resulting data; conducted two (2) one-hour observation of Student on November [REDACTED] 2023 and December [REDACTED] 2023; and conducted one (1) fifty-five (55) minute observation of Student on December [REDACTED] 2023. [REDACTED]
[REDACTED]
[REDACTED] DOE Ex. 19 at 075-091.
17. After the [REDACTED] was completed, in January of 2024, Contracted [REDACTED] presented the results to the IEP team at an eligibility meeting. At the eligibility meeting, the IEP team discussed the graphs, information found, and the data collected on the targeted behaviors. Contracted [REDACTED], Tr. Vol. III, 157:2-159:1. Based on the results of the [REDACTED], Contracted [REDACTED] recommended to the IEP team, which included Parent, that Student receive [REDACTED] instructional programming and support designed by a [REDACTED] [REDACTED] and implemented by an [REDACTED] throughout the school day. Contracted [REDACTED] also recommended that a [REDACTED] ([REDACTED]) be developed, and that the [REDACTED] should include goals and objectives for behavior reduction and skill

- acquisition, data collection, and strategies for success. DOE Ex. 7 at 021. The IEP team agreed that Student continued to be eligible for special education and related services under the category of [REDACTED], that Student needed [REDACTED] services, and that the services should be implemented by an [REDACTED]. DOE Ex. 8 at 022.
18. On February 1, 2024, an IEP meeting was held to revise Student’s IEP, resulting in an IEP with the same date (“2/01/2024 IEP”). Among the participants were Parent, Contracted [REDACTED], SPED Teacher, and others. According to the 2/01/2024 IEP, an annual review of the IEP should be held by February 1, 2025. DOE Ex. 13 at 040-048.
19. The 2/01/2024 IEP provides Student with special education; transportation; speech/language therapy; supervision during all activities; cueing to refrain from putting things in Student’s mouth; [REDACTED] minutes per week of Individual Instructional Support (“IIS”); a [REDACTED]; 30 hours a quarter of [REDACTED] Services; and use of a communication device. According to the 2/01/2024 IEP, the IIS services will be provided by [REDACTED]. DOE Ex. 13 at 040-048; DOE Ex.14 at 049.
20. During the 2/01/2024 IEP meeting, the IEP team also discussed a draft [REDACTED] developed by Contracted [REDACTED]. The IEP team reviewed the [REDACTED] and discussed the goals and strategies and how the team would collect data on the goals for the targeted behaviors. Contracted [REDACTED], Tr. Vol. III, 157:2-159:1.
21. On February 1, 2024, after the IEP meeting, the draft [REDACTED] was sent to the IEP team for their final review and approval. On the same day, Parent signed the [REDACTED], indicating acceptance of the [REDACTED] (“2/01/2024 [REDACTED]”). DOE Ex. 20 at 106; DOE Ex. 21 at 107-108.
22. According to the 2/01/2024 [REDACTED], Student engages in the following challenging behaviors: [REDACTED]

[REDACTED]

[REDACTED] The 2/01/2024 [REDACTED]

contains skill acquisition goals, such as attentive behavior, independently request items using preferred mode of communication, respond to instructions pertaining to safety (stop, come here, wait, etc.), and independently complete 70% of the steps of daily routines (bathroom, hanging book bag, etc.); and behavior reduction goals, such as decrease occurrences of [REDACTED]. The 2/01/2024

[REDACTED] also contains strategies and [REDACTED] interventions on how school staff could interact with Student to prevent the behavior of concern from occurring and increase appropriate behaviors. The 2/01/2024 [REDACTED] also lists the following types of data that would be collected: [REDACTED] behaviors.

DOE Ex. 20 at 092-106; DOE Ex. 21 at 107-108.

23. While in [REDACTED] in 2024, when [REDACTED] services first started, Student had a permanent [REDACTED] assigned to Student. Contracted [REDACTED], Tr. Vol. I, 24:9-25:18, Tr. Vol. III, 182:3-13.
24. During the 2024-2025 school year, which runs from August 5, 2024 to May 30, 2025⁵, Student was in [REDACTED] at Home School. Pet. Ex. 1 at 002.
25. While in [REDACTED], Student was placed in SPED Teacher's FSC classroom. Pet. Ex. 1 at 002; Contracted [REDACTED], Tr. Vol. III, 159:2-11.

⁵ The undersigned takes judicial notice of the Hawaii State Department of Education 2024-2025 Official School Calendar. <chrome-extension://efaidnbmnnnibpcajpcgklclefindmkaj/https://hawaiipublicschools.org/DOE%20Forms/2024-25calendar.pdf>

26. SPED Teacher has worked at Home School for fourteen (14) years and has been a special education teacher in a FSC classroom for four (4) years. During the 2024-2025 school year, SPED Teacher had [REDACTED] students. Of the [REDACTED] students, [REDACTED] students received [REDACTED] services. In addition to the [REDACTED]s assigned to the [REDACTED] students who receive [REDACTED] services, SPED Teacher's FSC classroom also had [REDACTED] educational assistants ("EA"). Student was one of the [REDACTED] students who received [REDACTED] services. SPED Teacher, Tr. Vol. III, 228:11-229:12, 240:19; Contracted [REDACTED], Tr. Vol. III, 159:8-160:1, 191:7-24.
27. When Student was in SPED Teacher's FSC classroom, Student always had either a substitute [REDACTED] or an EA assigned to Student. Contracted [REDACTED], Tr Vol. III, 159:2-11, 169:11-170:15; SPED Teacher, Tr. Vol. III, 240:8-241:10; Pet. Ex. 1 at 002.
28. When an [REDACTED] is not available and Student is assigned an EA, the EA is able to implement the interventions or antecedent strategies that are in place for Student to lessen the likelihood of a behavior occurring. Contracted [REDACTED], Tr. Vol. I, 38:12-40:14.
29. On October [REDACTED] 2024, Parent informed Home School that Student would be out of school from October [REDACTED] 2024 to November [REDACTED] 2024 [REDACTED] [REDACTED] DOE Ex. 32 at 134.
30. Due to Student's excessive absences and the shortage of [REDACTED]s in the district, Home School had difficulty finding a permanent [REDACTED] for Student because [REDACTED]s are paid only when they provide services to students. Contracted [REDACTED], Tr. Vol. III, 167:19-169:10, 187:7-188:5; Contracted [REDACTED], Tr. Vol. III, 211:8-12; SPED Teacher, Tr. Vol. III, 240:3-16.

31. In the evening of December █ 2024, Parent informed SPED Teacher that Student had a fever for a few days and was healing. DOE Ex. 33 at 138.
32. On December 15, 2024, Parent signed a one (1) year rental agreement to reside at Address-2 from January 1, 2025 to December 31, 2025. Pet. Ex. 3 at 275-282.
33. On December █ 2024, Parent informed SPED Teacher that Parent was not sure when Parent should send Student back to school, and that Student's fever had gone down, and Student was feeling much better. DOE Ex. 34 at 139.
34. On December 17, 2024, Principal attempted to send Parent a notice regarding Student's absences, but the letter was returned to Home School as "Not Deliverable as Addressed." DOE Ex. 35 at 140-141.
35. On or about January █ 2025, Parent, Student and the rest of the family moved out of Address-1 █ Parent was able to get the keys to Address-2 on January █ 2025. Parent, Tr. Vol. II, 62:21-64:18.
36. Also on January █ 2025, Parent informed SPED Teacher that Student had no symptoms and would be back in school on January █ 2025. SPED Teacher in turn told Parent that the first day back to school for students after the start of the new year was January 7, 2025. DOE Ex. 36 at 142.
37. On January 14, 2025, Contracted █ was temporarily reassigned to Student for the day because █ Doe was absent. Contracted █, Tr. Vol. III, 200:18-24, 201:15-23.
38. In preparation for working with Student, Contracted █ reviewed Student's binder, which contained Student's IEP and behavior plan. Contracted █, Tr. Vol. III, 200:4-14, 201:24-202:6.

39.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Parent, Tr. Vol. II, 63:7-21;

Contracted [REDACTED], Tr. Vol. III, 160:15-25; SPED Teacher, Tr. Vol. III, 236:11-237:19;
Pet. Ex. 1 at 019; DOE Ex. 58 at 398; DOE Ex. 94 at 562; DOE Ex. 95 at 563.

40.

Due to Student's injury, Student did not return to school and waited for a doctor to medically clear Student to return to school. DOE Ex. 32 at 135-136; DOE Ex. 37 at 143; DOE Ex. 38 at 144.

41. On January [REDACTED] 2025, Principal and Home School's vice principal conducted a home visit to the address listed in Student's file, but Student and Student's family were not at that residence. Principal spoke to the resident at that address who stated that [REDACTED] had lived at that address for some time. Pet. Ex. 3 at 295.
42. On January 23, 2025, an annual IEP meeting was held with the following individuals: Parent, Parent-2, Principal, Contracted [REDACTED], SPED Teacher, a general education teacher, and a speech/language pathologist. An IEP with the same date was developed at the IEP meeting ("1/23/2025 IEP"). Pet. Ex. 1 at 016; DOE Ex. 16 at 067.
43. During the 1/23/2025 IEP meeting, the IEP team discussed Student's attendance and the need for Student to attend school regularly; how the school could maintain Student's safety [REDACTED]; and the accident on January [REDACTED] 2025. During the IEP meeting, Contracted [REDACTED] presented new behavioral goals for a revised [REDACTED] and the reasons behind the new goals. Contracted [REDACTED] also recommended that the interventions/strategies in the previous [REDACTED] remain in place and explained them to the IEP team again. Contracted [REDACTED] asked for understanding about the behavioral goals, and there were no questions at that time. While Parent did not have questions about the behavioral goals, Parent did ask for increase minutes for speech/language therapy and specific goals to improve Student's fine motor skills. The speech/language therapist denied the request for more minutes because Student had unused minutes that were "banked," and Student could still use those minutes. A goal was added to address Student's fine motor skills as Parent had requested. Contracted [REDACTED] Tr. Vol. I, 36:5-10, 40:21-41:13; Contracted [REDACTED], Tr. Vol. III, 161:22-166:9, 185:13-186:12.

44. During the 1/23/2025 IEP meeting, Parent asked SPED Teacher to explain to Parent-2 what had happened during the accident on January [REDACTED] 2025. SPED Teacher offered to go with Parent and Parent-2 to SPED Teacher's FSC classroom and show them what had happened during the accident. Parent declined the offer. The IEP team discussed [REDACTED] to prevent similar accidents. After the IEP meeting, the [REDACTED]. SPED Teacher, Tr. Vol. III, 237:20-240:2.
45. To prevent further injuries, SPED Teacher also planned on moving Student to another area of the classroom [REDACTED]. SPED Teacher, Tr. Vol. III, 239:17-240:2.
46. During the 1/23/2025 IEP meeting, the IEP team discussed and addressed concerns about Student's behavior, [REDACTED]
[REDACTED] Parent did not bring up any other concerns that Parent wanted the IEP team to address. Parent, Tr. Vol. II, 107:13-109:17.
47. Student's 1/23/2025 IEP contains six (6) annual goals and accompanying short-term objectives. Pet. Ex. 1 at 007-012; DOE Ex. 16 at 058-063.
48. Of the six (6) annuals goals, two (2) target enhancing behavior and health. The behavioral goal will work on helping Student decrease [REDACTED]
[REDACTED] Student will also work on independently requesting preferred items using a preferred mode of communication (e.g., pointing, tapping, "AAC," approximation); remaining seated at Student's desk for up to [REDACTED] minutes before requiring a break; responding to instructions pertaining to safety (stop, come here, wait, etc.); and independently complete 80% of the steps of daily routines (bathroom, hanging

book bag, etc.). Pet. Ex. 1 at 007; DOE Ex. 16 at 058; Contracted [REDACTED], Tr. Vol. III, 164:18-165:3.

49. Another annual goal in the 1/23/2025 IEP is to enhance Student's health by improving interpersonal communication skills. The goal is for Student to improve attentiveness and interaction with adults and peers, show more responsibility when caring for him/herself and routines, and increase the use of functional communication methods to express basic needs and wants. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Pet. Ex. 1 at 011; DOE Ex. 16 at 062.

50. According to the 1/23/2025 IEP, Student qualifies for extended school year ("ESY") services on breaks longer than [REDACTED] days [REDACTED]

[REDACTED] Student will continue to work on and maintain life, adaptive, academic and behavior skills. Student also qualifies for transportation during ESY [REDACTED]

[REDACTED] Pet. Ex. 1 at 013; DOE Ex. 16 at 064.

51. According to the 1/23/2025 IEP, Student will receive the following Special Education and Related Services: special education ([REDACTED] minutes per week); speech/language therapy ([REDACTED] minutes per quarter); and transportation (daily). Pet. Ex. 1 at 013; DOE Ex. 16 at 064.

52. According to the 1/23/2025 IEP, Student will receive the following Supplementary Aids and Services, Program Modifications and Supports for School Personnel: provide a visual schedule to help with transitions; first and then visual; direction given with

simplified vocabulary; chunking of work; movement break; visual aids and supports; transportation assistance; [REDACTED] assistance at all times; [REDACTED] assistance; communication log; [REDACTED] services; IIS by an [REDACTED] at a rate of [REDACTED] minutes per week; [REDACTED]; and communication devices. Pet. Ex. 1 at 013-014; DOE Ex. 16 at 064-065.

53. The [REDACTED] services provided in the 1/23/2025 IEP will include, but is not limited to, supervision of an [REDACTED] by a qualified [REDACTED] professional; and a qualified [REDACTED] professional will attend meetings, create data collection systems, analyze data and disseminate data analysis, collaborate with other professionals servicing Student, prepare reports, and monitor and update the [REDACTED] as needed. Pet. Ex. 1 at 014; DOE Ex. 16 at 065.

54. According to the 1/23/2025 IEP, Student will receive speech therapy and specially designed instruction for academic, communication, adaptive, and behavioral skills in a special education setting. Student will participate in physical education, library, assemblies, lunch, field trips, and all other school-based activities in a general education classroom with a one-on-one adult support who will be an [REDACTED]. Pet. Ex. 1 at 015; Pet. Ex. 1 at 017; DOE Ex. 16 at 066; DOE Ex. 17 at 068.

55. On January [REDACTED] 2025, Student returned to the doctor [REDACTED] [REDACTED] Parent, Tr. Vol. II, 114:4-20. The doctor provided Student with a note indicating that Student should not return to school until January [REDACTED] 2025. DOE Ex. 102 at 571.

56. On January [REDACTED] 2025, Parent informed SPED Teacher that Student would not be in that day because Parent was sick and couldn't get Student to school. DOE Ex. 39 at 145; DOE Ex. 40 at 146.

57. On January [REDACTED] 2025, Parent informed SPED Teacher that Student would not be going to school that day because Parent was feeling worse; however, Student would be in school on January [REDACTED] 2025, [REDACTED] DOE Ex. 41 at 147.
58. On February [REDACTED] 2025, Parent informed SPED Teacher that Student had a fever the day before and was still not well on February [REDACTED] 2025. DOE Ex. 42 at 148.
59. In an undated handwritten note from Parent, Parent asked Home School to excuse Student's absences for February [REDACTED] 2025 because Student was ill and had appointments during those days. DOE Ex. 106 at 579.
60. On February 20, 2025, a revised [REDACTED] ("2/20/2025 [REDACTED]") that incorporated the behavioral goals discussed and approved during the 1/23/2025 IEP meeting, was sent to the IEP team members for their review and signature. Upon receiving the 2/20/2025 [REDACTED] on February 20, 2025, Parent signed the 2/20/2025 [REDACTED] on the same day, indicating acceptance of the 2/20/2025 [REDACTED]. Contracted [REDACTED], Tr. Vol. III, 164:18-165:10, 166:10-167:6; DOE Ex. 22 at 123; DOE Ex. 23 at 124-125.
61. The 2/20/2025 [REDACTED] addresses the following challenging behaviors: [REDACTED]
[REDACTED] To address the challenging behaviors, the 2/20/2025 [REDACTED] contains long-term goals and short-term objectives. The long-term goals include independently requesting preferred items using a preferred mode of communication (e.g., pointing, tapping, "AAC," approximation); remaining seated at a desk for up to [REDACTED] minutes before requiring a break; responding to instructions pertaining to safety (stop, come here, wait, etc.); independently completing 80% of the steps of daily routines (bathroom, hanging book bag, etc.); and decreasing

the number of [REDACTED] The 2/20/2025 [REDACTED] contains a list of instructional strategies, curriculum and activities to use with Student, such as, planning frequent breaks into the daily schedule; using First-Then language; clearly stating expectations using clear and concise statements; using visual aids; reminding Student that Student can use his/her device; and using chunking. The 2/20/2025 [REDACTED] also lists the following [REDACTED] interventions that can be used to prevent the challenging behaviors from occurring: pairing; preference assessments; positive and negative reinforcement; non-contingent reinforcement; provide access to sensory stimulating activities/items; teach Student how to request for available items; remove items that are not available to Student; allow breaks and model how to escape appropriately; and provide direct attention for adaptive classroom behaviors. Pet. Ex. 2 at 037-053.

62. On February [REDACTED] 2025, Parent and Principal had a telephone discussion about where Student lived, and Principal referenced the undeliverable letter sent to Parent on December [REDACTED] 2024. Parent informed Principal that Parent lived at Address-1, but mail to Address-1 may have been undeliverable because the unit number may have been wrong. Parent also stated that Parent-2 lives in the area where Address-2 is located. Principal informed Parent that Student had to register with the school that is assigned to the area where Student “sleeps” or get a geographic exception (“G.E.”). Parent then asked Principal if Student could get a G.E. to attend Home School, and Principal replied that Parent’s G.E. application would be denied because the class was full. Parent then informed Principal that Parent would need to figure something out. Principal, Tr. Vol. IV, 271:12-273:18.

63. [REDACTED]
- [REDACTED] When Home School receives G.E. applications for an upcoming school year, decisions are made about two (2) weeks before the school year starts because Home School needs to know how many students are in a classroom or grade level before accepting any G.E. requests. Principal, Tr. Vol. IV, 273:19-274:15.
64. Shortly after speaking with Principal, Parent called [REDACTED] School-2, which Parent believed was the closest DOE school to Address-2, to figure out how to enroll Student at [REDACTED] School-2. An employee at [REDACTED] School-2 informed Parent that based on the location of Address-2, [REDACTED] School-2 was not Student's assigned public school. Parent then found out that Student's assigned public school was Charter School. Parent, Tr. Vol. II, 76:21-79:5.
65. On March 6, 2025, the instant Complaint and Resolution Proposal ("Complaint") was filed. Principal received confirmation through the Complaint that Student did not live at Address-1 as the Complaint has Address-2⁶ on it. Principal, Tr. Vol. IV, 274:20-24.
66. On March 13, 2025, Parent informed Principal that the correct address to mail DOE's response to the Complaint was Address-2 and not Address-1. DOE Ex. 49 at 162.
67. On March 14, 2025, a resolution meeting was held to discuss and attempt to resolve the issues alleged in the Complaint. During the resolution meeting, representatives of the DOE were informed that Parent wanted Student to attend [REDACTED] School-2. During the resolution meeting, representatives of the DOE were under the impression that [REDACTED] School-2 was Student's designated home school. After the resolution

⁶ Address-2 in the Complaint contains two (2) errors: the street number contains an extra "8" and the last digit of the zip code is wrong.

meeting, a representative from DOE contacted [REDACTED] School-2 to get information about their registration process. During this communication, the representative was informed that based on Parent's address being Address-2, [REDACTED] School-2 was not Student's designated home school. The representative then confirmed with Charter School that Charter School was Address-2's designated home school. Pet. Ex. 2 at 021; DOE Ex. 52 at 182.

68. On March [REDACTED] 2025, Principal sent an email to Parent, attaching a "transition letter"⁷ and a copy of the 1/23/2025 IEP. In the email and transition letter, Principal informed Parent that based on Parent's current address being Address-2, Student's home school was Charter School. Principal asked Parent, before enrolling Student at Charter School, to notify Home School so that Home School could officially release Student from Home School and prepare a withdrawal packet for Parent to take with Parent when registering Student at Charter School. Principal advised Parent that to enroll Student at Charter School, Parent will need to visit Charter School during their registration hours, and once Student was enrolled at Charter School, Charter School would request all of Student's records to be sent there. Principal advised that once this was done, Home School would then coordinate a transition meeting with Student's new IEP team. Pet. Ex. 2 at 020; DOE Ex. 50 at 163-180.
69. Also on March 24, 2025, Parent replied to Principal's 3/24/2025 email and stated that Student's home school should be [REDACTED] School-2 as they had discussed during the resolution meeting. Parent informed Principal that Parent did not want Student to attend any type of charter school. Additionally, Parent expressed concern that Student had

⁷ The letter is dated March [REDACTED] 2025. DOE Ex. 50 at 164.

missed a significant amount of school due to family circumstances, [REDACTED]

[REDACTED] and therefore, Student should not be placed in a charter school. Pet. Ex. 2 at 020; DOE Ex. 51 at 181.

70. On March [REDACTED] 2025, Principal responded to Parent's email explaining that during the resolution meeting the representatives for DOE were under the mistaken impression that [REDACTED] School-2 was Student's designated home school and that they realized after the resolution meeting that Student's home school was Charter School. Principal explained that a child's home school was strictly based on the geographic boundaries assigned to their residential address. Principal informed Parent that permission to attend another school may be granted by the DOE through the G.E. process and provided a copy of the G.E. form to Parent. Citing Student's excessive absences from school, Principal asked Parent to either enroll Student at Student's home school or complete the G.E. paperwork as soon as possible. Pet. Ex. 2 at 020-021; DOE Ex. 52 at 182-185.
71. On April [REDACTED] 2025, in the evening, Parent sent an email to Principal stating that Mr. Peck had informed Parent that Student was eligible to attend Home School for the remainder of the 2024-2025 school year. Parent alleged that Parent was "forced to withdraw" Student from Home School and would now like to return Student to Home School. Parent wanted confirmation from Principal that Student would be allowed to remain at Home School through the end of the school year before Parent "re-register" Student at Home School on Monday [REDACTED]. Pet. Ex. 2 at 026; DOE Ex. 56 at 190.
72. On April [REDACTED] 2025, Principal replied to Parent's 4/01/2025 email, stating that Student was never withdrawn from Home School and that to withdraw Student from Home School,

Parent would have needed to complete paperwork. Since Parent did not complete the paperwork, Student was still enrolled at Home School. Principal also confirmed that while the instant Complaint was pending, Student did have “stay put” rights to continue Student’s educational placement until the dispute was worked out. Principal then stated that Principal would inform SPED Teacher that Student was returning to class, and that Student could return to school tomorrow if Parent wished. Pet. Ex. 2 at 026; DOE Ex. 57 at 191.

73. On April 4, 2025, Permanent [REDACTED] from Agency-3 was assigned to Student as Student’s permanent [REDACTED], starting on [REDACTED] April [REDACTED] 2025. Contracted [REDACTED] would be there on [REDACTED] morning to help Permanent [REDACTED] get started. Agency-3 was given copies of Student’s daily class schedule, the 1/23/2025 IEP, and the 2/20/2025 [REDACTED]. DOE Ex. 59 at 399; DOE Ex. 60 at 400-401; DOE Ex. 61 at 402-436; DOE Ex. 62 at 437-439; DOE Ex. 62 at 440.
74. On April [REDACTED] 2025, Student was absent from school because Student was not feeling well. Contracted [REDACTED] asked DOE if Permanent [REDACTED] could be a substitute [REDACTED] for another student that day. DOE Ex. 62 at 437; DOE Ex. 99 at 567.
75. On April [REDACTED] 2025, Permanent [REDACTED] was in school, but Student did not attend school. DOE Ex. 63 at 442; DOE Ex. 65 at 452.
76. On April [REDACTED] 2025, Agency-3 sent an email to Home School, informing them that Student was not in school again, and requested clarification on Permanent [REDACTED]’s assignment. DOE informed Agency-3 that DOE did not have any updated information about whether Student would be in school, and that DOE would seek a substitution assignment for Permanent [REDACTED]. DOE Ex. 63 at 442; DOE Ex. 64 at 447; DOE Ex. 100 at 568.

77. On April [REDACTED] 2025, DOE asked Agency-3 if Permanent [REDACTED] could be reassigned as a permanent [REDACTED] to another student since Student had not been in school for the whole week. [REDACTED] DOE Ex. 65 at 452; DOE Ex. 66 at 453.
78. On April 20, 2025, Parent requested that an IEP meeting be held before the end of the school year to address concerns Parent had with Student’s current IEP, including the ESY program, and other supports and accommodations, and updating the “PLEPS.” Parent also wanted to discuss Student’s aide and behavior interventions that were in place during the [REDACTED] accident. Parent informed Home School that Student had been sick, and Parent anticipated that Student would be able to return to school on or about May [REDACTED] 2025. Pet. Ex. 2 at 025; DOE Ex. 67 at 459.
79. On April 21, 2025, Principal acknowledged Parent’s request for an IEP meeting and asked Parent if Parent was available on April 28 or 29, 2025. If Parent was not available, Principal asked Parent to suggest a date and time. Pet. Ex. 2 at 025; DOE Ex. 68 at 461.
80. On May [REDACTED] 2025, Parent informed SPED Teacher that Student would be in class that day. DOE Ex. 109 at 582.
81. In the evening of May 1, 2025, Parent emailed to Home School a “Return to school note,” dated April 28, 2025. The note reads: “I am writing to formally excuse [Student] from school from January [REDACTED] 2025, to April [REDACTED] 2025, due to a [REDACTED] injury [Student] sustained while at school. [REDACTED]
[REDACTED]
[REDACTED]”

██████████ Following the advice of [Student's] medical providers and considering [Student's] condition, we felt it was in [Student's] best interest to allow [Student] the necessary time to heal both physically and emotionally. As of today, April █████ 2025, [Student] has shown signs of improvement, and we believe [Student] is ready to begin transitioning back to school....” DOE Ex. 103 at 573-574.

82. On May 2, 2025, Principal replied to Parent's May 1, 2025 email stating that the accident occurred on January █████ 2025, and not January █████ 2025. Principal further wrote that based on Parent's note, Home School would excuse Student's absences from January █████ 2025 to April █████ 2025 but noted that Student was in school for █████ days⁸ during that time period. Principal stated that the only doctor's note Home School had on file states that Student could return to school on January █████ 2025, and that if Parent had other doctor's notes, to submit them to Home School so that they could be added to Student's cumulative file. Later that evening, Parent replied, "I was only writing the note to excuse any absence that I had not excused because I wasn't aware of all the dates.” DOE Ex. 104 at 575; DOE Ex. 105 at 577.
83. Student was present at school on May █████ and █████, 2025, and a couple of days during the last week of school in May of 2025⁹. Tr. Vol. III, Contracted █████, 174:17-22; DOE Ex. 109 at 583-584.
84. In May of 2025, Contracted █████ worked with Student on two or three occasions. Contracted █████ was assigned to Student either because █████ Doe was absent or SPED

⁸ Student was present at school on February █████ 2025.

⁹ On May █████ 2025, Student was ill and did not attend school. DOE Ex. 107 at 580; DOE Ex. 108 at 581; DOE Ex. 109 at 585. It is unclear why Student did not attend school during the other days in May.

Teacher temporarily reassigned Contracted [REDACTED] to Student despite [REDACTED] Doe being present. SPED Teacher temporarily reassigned Contracted [REDACTED] to Student because Student was absent from school for a very long time and the school didn't have time to prepare another [REDACTED] for Student. When Contracted [REDACTED] was temporarily reassigned to Student, [REDACTED] Doe was assisted by EAs. Contracted [REDACTED], Tr. Vol. III, 208:8-210:17.

85. During the 2024-2025 school year, Home School attempted to find a permanent [REDACTED] assigned to Student; however, Home School encountered difficulties due to Student's frequent absences and the school not knowing when Student would be present at school. Contracted [REDACTED], Tr. Vol. III, 187:7-12, 188:25-189:2; Contracted [REDACTED], Tr. Vol. III, 211:8-16; SPED Teacher, Tr. Vol. III, 240:3-7; Principal, Tr. Vol. IV, 266:4-6.
86. During the 2024-2025 school year, Home School had approximately one hundred seventy-nine (179) school days, and Student was present for approximately [REDACTED] of those days. Principal, Tr. Vol. IV, 267:19-25.

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 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 Home School violated Student’s rights when Parent was told that Parent would have to find another DOE school for Student, disrupting Student’s access to education.

In this allegation, Petitioners are alleging that Home School violated Student’s rights when Principal told Parent that if Student lives outside of Home School’s district, Parent will have to find another DOE school for Student, and that Petitioners are not alleging actual disenrollment. Pet. Closing Brief, p. 3. Respondents argue that Principal never told Parent that Student was disenrolled or could no longer attend Home School but told Parent that “if” they no longer lived in Home School’s district then Student would need to go to a new home school. DOE Closing Brief, p. 18. Based on the evidence, Petitioners met their burden of proof with respect to this issue.

The District Court of Hawaii has held that “the physical location where a placement will be implemented is an administrative decision made by the DOE....” N.S. v. State of Hawaii, Dept. of Educ., Civil No. 09-00343 SOM/KSC, 2010 WL 2348664, *8 (D.Haw. June 9, 2010).

See also, Oliver C. v. State of Hawaii, Dept. of Educ., 762 Fed.Appx. 413, 415 (9th Cir.2019)

(Upon student moving from Kuhio Elementary School in the Honolulu District to Benjamin Parker Elementary School in the Windward District, it was within DOE's authority to determine that the school in the Windward District would implement student's IEP, against Parents' wishes.) Since it is within DOE's authority to decide the location of where Student's services would be implemented, informing Parent that Student had to attend the home school assigned to the district where Student lives would not have been a violation of Student's rights to receive a FAPE if DOE had provided Student a DOE school to attend; however, the home school that DOE assigned to where Student lives is not a DOE school, but a charter school. Enrollment at a charter school is optional, and Parent cannot be compelled to enroll Student at Charter School. See Order Granting Petitioners' Motion for Partial Summary Judgment Issued on May 7, 2025.

Parent wants Student to attend [REDACTED] School-2, which may be the nearest DOE school to Address-2. (FOF 64). In fact, Parent testified during the hearing that Parent did not want Student to attend any charter school and wanted Student to attend a DOE school with no demands on which DOE school. Parent, Tr. Vol. II, 87:8-89:12. Due to DOE not giving Student the option of going to a DOE school, Parent was placed in a position where Parent had to choose between a charter school that Parent believed was not a good fit for Student or find a DOE school through the G.E. process or apply to a private school. (FOF 69). If Parent submits G.E. applications to other DOE schools, there is no guarantee that any of these G.E. applications would be accepted, just like if Parent had submitted a G.E. application to Home School, the G.E. application would have been denied¹⁰. (FOF 62).

¹⁰ "After communicating with the home school principal, the principal of the receiving school shall approve or disapprove geographic exceptions based on established criteria and procedures consistent with this chapter. The geographic exception shall be approved based on the ability of

Principal's use of the word "if" is irrelevant, because the message to Parent was clear: Parent having moved could no longer send Student to Home School, regardless of whether Principal had confirmation at the time that Student had moved. What is relevant is that the conversation between Principal and Parent exposed a situation wherein Student was being denied a FAPE based on where Student lives. Although Principal did not know on February 28, 2025 or during the resolution meeting that Charter School was the assigned home school for Address-2, other DOE employees were aware of this fact. (FOF 64, 67). Parent was never given the option to enroll Student at a DOE school and was told to find a DOE school through means that were less than certain, viz., the G.E. process. (FOF 62). Since enrollment at Charter School¹¹ should

a school to accommodate the request." H.A.R. § 8-13-4(a). "Priority consideration for a geographic exception shall be given to applicants requesting an exception because of any of the following reasons: (1) Authorized physical residence in the receiving school's geographic attendance area; (2) Program of study of the receiving school that is not available at the home school; (3) Siblings of students currently enrolled in the receiving school...; or (4) Children of staff at the receiving school....An exceptional student may apply for a geographic exception, including priority consideration, as long as the receiving school is capable of providing reasonable accommodations for that student. All other requests for geographic exceptions shall be considered only after priority requests have been accommodated." H.A.R. § 8-13-7(c). An "exceptional student" means any student who is found eligible for special education and related services." H.A.R. § 8-13-2.

¹¹ There is insufficient evidence to establish that Charter School, which is run by a board of directors and is allowed to establish its own curriculum; instructional approach; and length of school day, week and/or year, without DOE oversight, can implement Student's IEP. H.R.S. 302D-1. See Order Granting Petitioners' Motion for Partial Summary Judgment; Exhibits "A"- "B," issued on May 7, 2025. Home School's offer to have an IEP meeting between Home School and Charter School after Student enrolls in Charter School is not a guarantee that Charter School can implement Student's IEP. (FOF 68). If Parent had enrolled Student at Charter School and the IEP team could not agree on whether Charter School could implement Student's IEP, Student would be "stuck" because Student would have already withdrawn from Home School to enroll at Charter School. While Hawaii law requires Charter School to implement Student's IEP in its entirety, and if Charter School is unable to provide all of the required services then DOE would be responsible for providing the services, this is an additional hurdle in the IEP process that Petitioners can choose to overcome, but they should not be subjected to this additional hurdle to attend a school that may have an alternative administrative and educational framework that they do not even want. H.R.S. § 302D-30(b).

be optional and not a requirement, Student's access to an education was disrupted by DOE not providing Student with a DOE school where Student can receive Student's special education services.

DOE denied Student a FAPE when Student was denied access to a DOE school, resulting in loss educational opportunity. The fact that Parent was not honest¹² while speaking with Principal on February 28, 2025 does not change the outcome that Student, regardless of what Parent may or may not have said, did not have a DOE school to attend when Student moved to Address-2. DOE has an obligation to provide Student (not Parent) with a FAPE in a DOE school--unless Parent opts to send Student to a charter school or private school—which DOE cannot do if DOE does not assign Student a DOE school to attend.

As for the parties' disagreement about the status of Student's enrollment or disenrollment at Home School, Student's enrollment status does not cure the IDEA violation. While Student may not have been disenrolled from Home School, Principal, who is in a position of authority at Home School, coupled with DOE's authority to decide the location of where Student's services would be implemented, placed Parent in a difficult situation. To be clear, what Principal said was not wrong; however, unbeknownst to Principal at the time, DOE's failure to assign Address-2 to a DOE school caused a deprivation of educational opportunity for Student. Student's continued attendance at Home School was due to the actions of Parent who refused to withdraw Student from Home School and invoked Student's "stay put" rights. (FOF 68, 69, 71, 72). Absent "stay put," for Student to continue going to school, Parent would have had to capitulate to DOE's assignment of Address-2 to Charter School or ignore the rules and continue to send

¹² Parent intentionally misled Principal during their February 28, 2025 telephone call by telling Principal that perhaps the mail was sent to the wrong unit when in fact Parent and Student had already moved out of Home School's district in early January of 2025. (FOF 32, 35, 41, 62).

Student to Home School knowing that Student was not entitled to attend Home School¹³.

Parent's actions in response to this difficult situation, although dishonest, does not erase DOE's IDEA violation.

Based on the foregoing, DOE violated Student's IDEA rights by not assigning a DOE school for Student to attend and left it up to Parent to find a DOE school for Student through a process that was less than certain, resulting in a loss of educational opportunity for Student.

2. Whether Home School violated Student's rights when Home School retaliated against Parent for advocating for Student, under Section 504, by informing Parent that Parent had to move Student to a new school.

Home School did not retaliate against Parent by informing Parent that Parent had to move Student to a new school. To establish a *prima facie* Section 504 retaliation claim, Petitioners must show: (1) Parent engaged in a protected activity; (2) DOE knew Parent was involved in the protected activity; (3) an adverse action was taken against Parent; and (4) a causal connection exists between the protected activity and the adverse action¹⁴. Alex G. ex rel. Dr. Steven G. v. Board of Trustees of Davis Joint Unified Sch. Dist., 387 F.Supp.2d 1119, 1127-1128 (U.S.D.C. E.D. CA, Aug. 19, 2005).

For the first element, Petitioners argue that Parent engaged in the following protected

¹³ Respondents' closing brief describes Principal's discussion with Parent in the following manner: "[Principal] further explained to [Parent] that this is based upon the school's obligation to educate the students living in their community. This is an obligation based in statute: 'A person of school age shall be required to attend the school of the service area, as determined by the department, in which the person resides[.]' Haw. Rev. Stat. § 302A-1143." DOE's Closing Brief, p. 20.

¹⁴ When no direct evidence of retaliation is shown, Petitioners' retaliation claim is analyzed under the McDonnell-Douglas burden-shifting framework. Under this framework, if Petitioners establish a *prima facie* case of retaliation, the burden shifts to the DOE to set forth a legitimate, non-retaliatory reason for the actions taken. If DOE can do so, the burden then shifts back to Petitioners to show that the DOE's proffered reason is a pretext for retaliation. To establish pretext, Petitioners must show that DOE's proffered reason is unworthy of credence or that retaliation was the more likely motivation. Alex G., 387 F.Supp.2d at 1127-1128.

activities: demanded answers to the safety needs of Student after the [REDACTED] accident and advocated for Student's placement and services. Pet. Closing Brief, p. 8. [REDACTED]

[REDACTED] (FOF 39). Parent also asked SPED Teacher about the accident during the 1/23/2025 IEP meeting and the IEP team discussed ways to prevent another accident from occurring. (FOF 43, 44). Parent advocated for Student's placement and services by requesting additional speech/language therapy and a goal to address fine motor skills during the 1/23/2025 IEP meeting; speaking with Principal on February 28, 2025 about where Student could go to school; and filing the instant Complaint. (FOF 43, 62, 65). Petitioners have identified protected activities engaged in by Parent.

For the second element, Petitioners do not address whether DOE was aware of Parent being engaged in the protected activities; however, the individual employees—Principal, SPED Teacher, and/or school members of the IEP team—were involved in the protected activities. (FOF 42, 62, 65).

For the third element, Petitioners allege that the following adverse actions were taken against Parent: (1) in January of 2025, "if you moved from this District you must find your child's home school"; (2) in February of 2025, Petitioners were "denied geographic exception citing 'no capacity'"; and (3) in March of 2025, "failure to provide DOE school to implement IEP other than through 'stay-put.'" Pet. Closing Brief, p. 8. While there is insufficient evidence to establish that adverse action #1 occurred in January of 2025, there is sufficient evidence to establish adverse actions #2 and #3. (FOF 62, 67-72).

For the fourth element, "causation can be inferred from timing alone where the adverse

action follows closely on the heels of the protected activity.” Alex G., 387 F.Supp.2d at 1129.

The accident and IEP meeting took place in [REDACTED] January of 2025. The alleged adverse actions took place in February and March of 2025. Although an inference of a causal connection gets weaker as the period between the protected activity and adverse action grows, a one-month period between the protected activity and adverse action is sufficiently close to create an inference of a causal connection. Alex G., 387 F.Supp.2d at 1129.

While Petitioners have established a *prima facie* case of retaliation, Petitioners fail to overcome Respondents’ legitimate, nondiscriminatory reason. Respondents argue that Home School “had evidence demonstrating that Student did not live in the [Home School] community, which prompted Principal [] to question [Parent] about Student’s residency” and “speaking to [Parent] about enrolling in a new geographic home school, if the family had moved away from the [Home School] community.” DOE Closing Brief, p. 20. As discussed *supra*, DOE has the authority to determine the location of where Student would receive Student’s special education services. Principal had reasons to believe that Student may not be living in Home School’s district. (FOF 41, 62). Based on the information available to Principal, it was reasonable for Principal to inform Parent that if Student had moved, Student must attend the home school in the new district where Student lives. Principal informing Parent that if Parent were to submit a G.E. application, the G.E. application would be denied due to Home School being at full capacity is a legitimate reason as decisions on G.E. applications are made two (2) weeks before the school year starts, and Parent would be submitting a G.E. application well after the 2024-2025 school year had started or well before the 2025-2026 school year will start. (FOF 24, 62, 63). And not providing a DOE school to Student to implement Student’s IEP is based on Address-2 being assigned to Charter School long before Student moved to Address-2. DOE’s policy to require all

students, disabled and non-disabled, who reside within the former geographical service area of Charter School to attend Charter School is not retaliatory. The location of where Student would receive Student's services is an administrative decision for DOE to make. In exercising this administrative authority, Home School initially thought that [REDACTED] School-2 was Student's new home school based on Student living at Address-2. (FOF 67). When trying to effectual the transfer of Student from Home School to [REDACTED] School-2, Home School discovered that Student's new home school was Charter School and not [REDACTED] School-2. (FOF 67). The clear disagreement between counsel regarding DOE's authority to make Student attend a charter school played out in Petitioners' Motion for Partial Summary Judgement, concluding with the undersigned's Order Granting Petitioners' Motion for Partial Summary Judgment, ordering that the DOE did not have authority to make students who live within the former geographical service area of Charter School, before it converted to a charter school, to attend Charter School. The evidence does not support a claim of retaliation in this situation, but a misapplication of the law by DOE that affected all disabled and nondisabled students who live within the former geographical service area of Charter School.

Petitioners fail to overcome Respondents' legitimate, nondiscriminatory reason because Petitioners could not establish that DOE's proffered reasons are pretext for retaliation. Petitioners failed to show that DOE's proffered reasons are unworthy of credence or that retaliation was the more likely motivation for DOE's actions¹⁵. Based on the foregoing, Petitioners fail to meet their burden of proof with respect to this issue.

¹⁵ "[M]ere temporal proximity is generally insufficient to show pretext." Brooks v. Capistrano Unified Sch. Dist., 1 F.Supp.3d 1029, 1038 (U.S.D.C. California, Feb. 20, 2014).

3. Whether Student's Individualized Instructional Support services have been implemented in accordance with the 1/23/2025 IEP.

Student's Individualized Instructional Support ("IIS") services were implemented in accordance with the 1/23/2025 IEP. The Ninth Circuit Court of Appeals in Van Duyn v. Baker School Dist. 5J held that "when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 815 (9th Cir.2007). "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." Van Duyn, 502 F.3d at 822.

The term FAPE means special education and related services that are provided in conformity with an IEP. 20 U.S.C. § 1401(9)(D). Special education and related services "need only be provided 'in conformity with' the IEP. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education." Van Duyn, 502 F.3d at 821.

To properly apply the *Van Duyn* standard, the Hearings Officer must analyze whether the DOE failed to implement specific provisions of C.J.'s IEP. *See Van Duyn*, 502 F.3d at 822. If the DOE has failed to implement specific provisions of C.J.'s IEP, the Hearings Officer must decide whether the failure was material. *Id.* In doing so, the Hearings Officer is required to determine whether "there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Id.* In this case, the Hearings Officer must determine whether the DOE materially failed to implement specific provisions of C.J.'s IEP despite its efforts after furloughs began.

Dept. of Educ., Hawaii v. C.J., 2011 WL 6002621, CV. No. 10-00257 AWT-BMK, at *4

(D.Haw. Nov. 29, 2011). According to the 1/23/2025 IEP, Student would receive IIS services

from an [REDACTED]. (FOF 52, 54). During the 2024-2025 school year, Student was frequently absent from school: Student was in school only [REDACTED] days out of the one hundred seventy-nine (179) school days. (FOF 86). When Student was hurt on January [REDACTED] 2025, Student stayed home to recover. (FOF 40). When the 1/23/2025 IEP was developed, Student was still out due to the injury. (FOF 55). Student returned to school on January [REDACTED] 2025. (FOF 57). Between January [REDACTED] to April [REDACTED] Student was in school [REDACTED] days. (FOF 81, 82). Student was in school on May [REDACTED] and a couple of days during the last week of school in May of 2025. (FOF 83). As such, after the 1/23/2025 IEP was developed, Student was in school for less than [REDACTED] days. While it is unclear how many of those days Student had a substitute [REDACTED] or an EA, Student was never alone. (FOF 27, 28, 84). In fact, on one day when Student was in school, Contracted [REDACTED] was taken from [REDACTED] Doe and was temporarily reassigned to work with Student that day. (FOF 84). [REDACTED] Doe was then assisted by EAs. (FOF 84).

Home School was able to obtain a permanent [REDACTED] for Student on April [REDACTED] 2025. (FOF 73). However, due to Student's frequent absences, the permanent [REDACTED] was reassigned to another student. (FOF 74-77).

Since the 1/23/2025 IEP states that IIS services will be provided by an [REDACTED], on days when Student was supervised by an EA was a deviation from the 1/23/2025 IEP; however, the deviation did not rise to the level of a material failure. For the reasons stated above, the undersigned Hearings Officer finds that Petitioners have not met their burden in showing that DOE failed to materially implement Student's 1/23/2025 IEP by having an EA instead of an [REDACTED] provide services to Student.

4. Whether the 1/23/2025 IEP adequately addresses Student's safety needs.

The 1/23/2025 IEP adequately addresses Student's safety needs. During the 1/23/2025 IEP meeting, at the request of Parent, SPED Teacher explained to Parent-2 what had occurred during the [REDACTED] accident. SPED Teacher offered to go with Parent and Parent-2 to Student's FSC classroom and show them what had happened. Parent declined the offer. (FOF 44). During the 1/23/2025 IEP meeting, Parent was provided the opportunity to ask questions and make requests. Parent asked for an increase in minutes for speech therapy and specific goals to improve Student's fine motor skills. (FOF 43). There is no evidence to suggest that Parent asked for specific accommodations or services to address Student's safety needs, but the IEP team failed to consider those requests. There is also no evidence that there are specific accommodations or services that should have been in the 1/23/2025 IEP that would address Student's safety needs but were not included. The undersigned declines to guess what is missing from the 1/23/2025 IEP that would render it ineffective in addressing Student's safety needs.

While not in the 1/23/2025 IEP, to address Student's safety after the [REDACTED] accident, [REDACTED] to prevent future injuries. (FOF 43, 44). SPED Teacher also planned on moving Student to an area of the classroom [REDACTED] [REDACTED] (FOF 45). Based on the foregoing, Petitioners fail to meet their burden in showing that the 1/23/2025 IEP does not adequately address Student's safety needs.

5. Whether Student's Parent has been denied sufficient parental participation in determining the behavior interventions Student's IEP affords.

Parent was not denied sufficient parental participation in determining the behavior interventions in Student's IEP. On April 27, 2023, while Student was in [REDACTED], Home School, with Parent's participation, developed an IEP for Student to address Student's needs in pre-readiness, behavior, social/emotional, and speech language skills. (FOF 12). On August 11,

2023, Home School developed a behavior support plan for Student that addressed concerns regarding Student's self-control, attention, and safety. (FOF 13).

In November of 2023 when it was suspected that Student's behavior may be impeding Student's learning, the IEP team proposed conducting a reevaluation, which would include an [REDACTED]. (FOF 14). Parent consented to Contracted [REDACTED] reviewing Student's confidential folder and conducting the [REDACTED]. (FOF 15). In January of 2024, Contracted [REDACTED] completed the [REDACTED], which included interviewing Parent. (FOF 16). After Contracted [REDACTED] completed the [REDACTED], the results were presented to the IEP team, which included Parent, at an eligibility meeting. (FOF 17). The IEP team agreed that Student would benefit from [REDACTED] services, and as such, Contracted [REDACTED] developed a [REDACTED] for Student. (FOF 20). On February 1, 2024, the [REDACTED] was presented to the IEP team at a revision IEP meeting, which Parent attended. (FOF 18, 20). During the 2/01/2024 IEP meeting, the IEP team discussed the proposed [REDACTED] and its strategies, goals, and data collection. (FOF 20). On February 1, 2024, Parent signed the 2/01/2024 [REDACTED], indicating acceptance of the 2/01/2024 [REDACTED]. (FOF 21).

Parent attended Student's annual IEP meeting on January 23, 2025, where the IEP team discussed and addressed Student's behavior, [REDACTED] [REDACTED] (FOF 42, 46). Contracted [REDACTED] presented new behavioral goals for a revised [REDACTED] and the reasons behind the new goals. Contracted [REDACTED] also recommended that the interventions/strategies in the previous [REDACTED] remain in place and explained them to the IEP team again. (FOF 43). During the 1/23/2025 IEP meeting, Contracted [REDACTED] asked the IEP team whether they understood the behavioral goals, and no one had any questions at that time. (FOF 43). While Parent did not have any questions about the behavioral goals, Parent requested an increase in minutes for speech therapy and specific goals to improve fine motor skills. (FOF 43).

Parent's request for additional speech therapy minutes was rejected and request for goals that addressed fine motor skills was agreed to and added to the 1/23/2025 IEP. (FOF 43).

The resulting 1/23/2025 IEP contained one (1) behavioral goal that addressed decreasing [REDACTED] (FOF 48); and one (1) health goal that addressed improving attentiveness and interaction with adults and peers, show more responsibility when caring for him/herself and routines, and increasing the use of functional communication methods to express basic needs and wants. (FOF 49). Some of the supplementary aids and services that will be provided to Student through the 1/23/2025 IEP include [REDACTED] services, IIS by an [REDACTED], and a [REDACTED]. (FOF 52).

After the 1/23/2025 IEP meeting, the approved behavioral goals were added to a revised [REDACTED] and the revised [REDACTED] was then sent to the IEP team, including Parent, for their approval. (FOF 60). Parent signed the revised [REDACTED] on February 20, 2025. (FOF 60).

There is no evidence that Parent was denied parental participation in determining the behavior interventions in Student's IEP. Petitioners do not argue what behavior interventions are missing from Student's IEP or that Parent requested a particular behavior intervention, but the IEP team declined to include it in the IEP. Based on the foregoing, Petitioners fail to meet their burden of proof with respect to this issue.

D. ISSUES NOT RAISED IN COMPLAINT ARE PRECLUDED FROM DETERMINATION

Petitioners' closing brief alleges that (1) the 1/23/2025 IEP fails to "incorporate an accommodation to address Student's attendance problems left [Student] vulnerable to this exact situation where a new school's attendance policies come [sic] effect [Student's] access to an education"; and (2) Student was subjected to disability discrimination when DOE failed "to accommodate disability-related absences." See Pet. Closing Brief, pp. 6, 7. Both allegations are

outside the scope of the Complaint. An impartial due process hearing is limited to issues that are raised in a due process hearing complaint:

The 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, *8 (D.Haw. May 1, 2012). There was no agreement to hear the issue of whether the 1/23/2025 IEP has sufficient accommodations to address Student's attendance problems related to Student's illness. DOE's Closing Brief, pp. 23-24. The undersigned is also not aware of any agreement to hear issues of disability discrimination in the due process hearing. As such, the undersigned declines to address these two (2) additional allegations brought forth for the first time in Petitioners' closing brief.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have proven a denial of FAPE when Parent was told to look for another DOE school, disrupting Student's access to an education.

For the reasons stated above, IT IS HEREBY ORDERED that within five (5) school days¹⁶, DOE shall determine, consistent with H.A.R. § 8-60-17(2)(C), which DOE school Student may attend and allow Student to attend that school.

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

¹⁶ The date of the filing of this Findings of Fact, Conclusions of Law and Decision is excluded from the five (5) school days computation.

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, August 13, 2025.

/s/ Charlene S.P.T. Murata
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