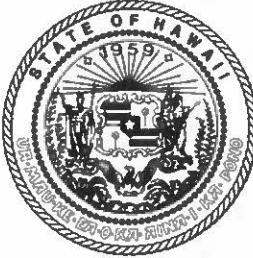


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OFFICE OF DISPUTE RESOLUTION  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE OF HAWAI'I

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

Petitioners,

vs.

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

Respondents.

DOE-SY2526-001

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

Due Process Hearing:  
August 26, 2025; August 29, 2025;  
and September 5, 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 C.F.R. Part 300; and the Hawaii Administrative Rules §§ 8-60-1, et seq. Additionally, Petitioners allege violation of Section 504 of the Rehabilitation Act of

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

1973 (“Section 504”), as amended in 1974, codified at 29 U.S.C. §§ 794, et seq.; and the Hawaii Administrative Rules §§ 8-61-1, et seq.

## **II. INTRODUCTION**

On July 7, 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, dated July 3, 2025 (“Complaint”), from Student, by and through Student’s Parent (collectively “Petitioners”).

On July 21, 2025, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for August 7, 2025.

On July 23, 2025, Respondents filed Department of Education’s Response to Petitioners’ Complaint and Resolution Proposal filed July 7, 2025.

On August 7, 2025, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners; and Deputies Attorney General Hsin-Ya Tribbey (“Ms. Tribbey”) and Turner M.Y. Wong (“Ms. Wong”) appearing on behalf of Respondents. During the prehearing conference, the parties agreed to have the due process hearing on August 26 and 29, 2025. Unable to finish the hearing on August 29, 2025, a third day, September 5, 2025, was added. Tr. Vol. II, 423. The hearing was completed on September 5, 2025.

Following the prehearing conference, a Prehearing Order was issued to the parties on August 7, 2025, setting forth the issues and procedures for the due process hearing, and deadlines for submission of witness and exhibit lists, exhibits, and witness email addresses. The parties timely submitted their witness list, exhibit list, and exhibits. On August, 28, 2025, Petitioners submitted Petitioners’ First Amended Witness List and Exhibit List to correct the dates and a

page number in the Exhibit List. On September 4, 2025, both parties submitted supplemental exhibits to be considered for the hearing.

The due process hearing took place on August 26 and 29, 2025 and September 5, 2025, using Zoom, a videoconferencing platform. All participants appeared remotely via video and audio for all days of the due process hearing except for Parent. Parent testified on August 26, 2025 using the video and audio functions of Zoom. After Parent's testimony, Parent's presence was waived for the remainder of the hearing. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Ms. Tribbey. The Department of Education District Educational Specialist ("DES") and Ms. Wong were present on behalf of Respondents.

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

All of Petitioners' exhibits listed in Petitioners' First Amended Witness List & Exhibit, filed on August 28, 2025, were admitted into evidence during the hearing: Exhibit 1 (pages 001-044), Exhibit 2 (pages 045-060), Exhibit 3 (pages 061-128), and Exhibit 4 (pages 129-243, 03/06/2025 Audio File, and 05/30/2025 Audio File). In addition, Petitioners' Supplemental Exhibit SX-1 (pages 001-007) was admitted into evidence<sup>2</sup>. Tr. Vol. III, 593:7-594:15.

The following Respondents' exhibits were admitted into evidence during the hearing: Exhibits 6-9, 14-15, 17-21, 26, 35-36, 38-40, 45-46, 48, 51-53, 56, 58-60, 62, 64-66, 68-70, 72-

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<sup>2</sup> Respondents did not object to Petitioners' Supplemental Exhibit SX-1 (pages 001-007) being admitted into evidence and waived their right to receiving the exhibit five (5) business days before the due process hearing. Tr. Vol. III, 430:20-432:5.

77, 80, 85-86, 89-91, 97-99, 110-114, 116-123, 125, 127, 129-130, 133, 135-136, 138, 143, 147, 150, 152-153, 155, 158<sup>3</sup>, 160-162<sup>4</sup>, and 163<sup>5</sup>. Tr. Vol. III, 593:11-594:15.

The deadline for which a decision on this matter must be issued is November 4, 2025.

See Order Granting Respondents' Stipulation to Extend the 45-Day Decision Deadline from September 20, 2025 to November 4, 2025; Declaration of Hsin-Ya Tribbey, dated August 11, 2025, issued on August 14, 2025.

Petitioners and Respondents timely submitted their closing briefs on October 6, 2025<sup>6</sup>.

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 is stated in the findings.

### **III. ISSUES PRESENTED**

In their Complaint, Petitioners allege procedural and substantive violations of the IDEA and Section 504. Specifically, Petitioners allege that Respondents denied Student a free and appropriate public education (“FAPE”) and raise the following issues:

Issue 1 – Whether the IEP, dated May 30, 2025, denies Student a FAPE by failing to address Student’s known and documented deficit wherein Student has repeatedly demonstrated difficulty accessing educational locations, under

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<sup>3</sup> Respondents’ Exhibit 158 is a transcript of excerpts of IEP meetings that counsel created pursuant to the Prehearing Order to assist in the review of the actual recording, which is in evidence.

<sup>4</sup> Although DOE Ex. 162 is dated 5/31/2025 in the Exhibit List, the IEP meeting occurred on May 30, 2025.

<sup>5</sup> Petitioners did not object to Respondents’ Supplemental Exhibit 163 (pages 1707-1711) being admitted into evidence and waived their right to receiving the exhibit five (5) business days before the due process hearing. Tr. Vol. III, 432:6-24.

<sup>6</sup> Closing briefs were originally due September 30, 2025; however, due to the unavailability of transcripts, Petitioners requested on September 29, 2025, and Respondents agreed, that the due date for closing briefs be October 6, 2025. Petitioners’ request was granted on September 30, 2025.

certain circumstances. “Address” means both insufficiently discussed during the 5/30/2025 IEP meeting and the 5/30/2025 IEP contains insufficient accommodations to address this need.

Issue 2 – Whether the DOE violated Section 504 by failing to provide reasonable accommodations for Student’s disability-related transportation and location access challenges, thereby denying Student meaningful access to educational programming.

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 the DOE to directly fund any private services (including private related services, such as transportation, therapy and other necessary expenses related to the provision of private services);

Remedy 5 – Order compensatory education for lost educational and related skills due to the past harm; and/or

Remedy 6 – Order such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

#### **IV. FINDINGS OF FACT**

##### **Student**

1. During this current 2025-2026 school year, Student is in the [REDACTED] grade at Public Charter School. Pet. Ex. 1 at 001; Pet. Ex. 3 at 106; DOE Ex. 113 at 1034; Parent, Tr. Vol. I, 101:25-102:8.
2. During the 2024-2025 school year, Student was in the [REDACTED] grade at [REDACTED] Home School. DOE Ex. 143 at 1454.
3. Student has a medical diagnosis of [REDACTED]. Pet. Ex. 1 at 002.

4. 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.
5. Areas of concern for Student are speech/language development; delays in academic; and fine-motor, communication, social-emotional, prevocational, and daily living skills. Pet. Ex. 1 at 002.
6. Student attended [REDACTED] Home School from [REDACTED] through [REDACTED] grade. While attending [REDACTED] Home School, Parent usually drove Student to school and Student's attendance rate was extremely good. Parent, Tr. Vol. I, 75:24-76:5; EA, Tr. Vol. III, 484:7-10; DOE Ex. 118 at 1049-1050; DOE Ex. 143 at 1454.
7. Whenever Parent had difficulty with Student in the morning, Parent would call SPED Teacher or EA and one of them would meet Parent and Student at school to help when Parent dropped off Student. This occurred about once every couple of weeks. EA, Tr. Vol. III, 485:1-486:12, 505:12-507:13.
8. SPED Teacher has been a teacher with the DOE for [REDACTED] years. SPED Teacher was Student's special education teacher at [REDACTED] Home School for the 2024-2025 school year. During the 2023-2024 school year, SPED Teacher became Student's special education teacher in January of 2024. Before becoming Student's special education teacher, SPED Teacher would see Student around campus. SPED Teacher, Tr. Vol. II, 277:10-279:5.
9. EA was Student's educational assistant at [REDACTED] Home School. EA started working with Student when Student was in [REDACTED] until Student graduated from [REDACTED] school in the [REDACTED] grade. EA saw Student daily since [REDACTED] through [REDACTED]

█ grade. EA would routinely put Student in the car at the end of the school day when Parent came to pick up Student. EA, Tr. Vol. III, 472:21-476:6; SPED Teacher, Tr. Vol. II, 278:16-279:5.

10. EA and SPED Teacher are the two (2) most trusted and familiar adults to Student. EA, Tr. Vol. III, 485:21-486:6.

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█ Parent, Tr. Vol. I, 34:12-35:22; 103:5-104:19, 106:1-17;  
DOE Supplemental Exhibit 163 at 1707-1711; DOE Ex. 152 at 1594 (para. 11).

#### Facts of Case

12. On a few occasions when Student was in the █ grade, Student went on field trips on the bus with classmates and teachers. Student was able to handle the bus ride during these field trips. Pet. Ex. 4 at 137-138; DOE Ex. 152 at 1586-1621.

13. On May 25, 2023, an IEP meeting was held, where Parent informed the school members of the IEP team that Parent did not want Student to attend summer extended school year (“ESY”) at █ because Student would not be able to handle the distance from Student’s home to █ Parent wanted Student to receive ESY services at █ Home School. The IEP meeting resulted in an IEP with the same date (“5/25/2023 IEP”). DOE Ex. 17 at 0109; DOE Ex. 152 at 1598, 1601 (para. 34, 46).

14. [REDACTED]-1 and [REDACTED] Home School are approximately 5–6-minute drive apart and are in Town-1. Principal, Tr. Vol. II, 267:17-22, 269:16-270:8.

15. On May 30, 2023, DOE received a due process complaint, designated case number [REDACTED], alleging various violations of the IDEA, including Student's 5/25/2023 IEP denying Student a FAPE because Parent was not provided adequate opportunity to discuss Parent's concerns regarding the frequency, duration, location and/or least restrictive environment for Student's ESY services for the upcoming summer, and the 5/25/2023 IEP failing to "provide[ ] Student an appropriate program where: (a) ESY services not to be provided in a location that will afford Student access that won't cause Student behavior problems due to the distance Student would have to travel." DOE Ex. 152 at 1588, 1591-1592.

16. During the summer of 2023, Student was offered ESY services at [REDACTED]-1, however, when the bus went to pick up Student at home on June 14, 2023, Parent told the bus company that Student was upset and would not be attending ESY that day. For the next ten (10) school days, the bus company attempted to pick up Student in the morning to take Student to [REDACTED]-1 for ESY, but every morning Parent informed the bus company that Parent was having difficulties with Student and that Student would not be attending school that day. On June 20, 2023, the school offered to send a teacher and an educational assistant to Parent's house to help Student get comfortable with attending ESY at [REDACTED]-1. Parent declined and responded that Parent would no longer be able to get Student on the bus to attend ESY and that Parent instead would try to get Student into a program that Parent could attend with Student. On June 27, 2023, the bus company informed Parent that if Parent wanted to continue bus services, Parent

would have to contact the bus company. DOE Ex. 152 at 1607 (para. 67, 68, 70, 71, 72, 73, 76).

17. On September 22, 2023, a decision in [REDACTED] was issued, finding a denial of FAPE on several grounds, including but not limited to, failing to provide Parent with an adequate opportunity to discuss concerns regarding the location for ESY; and the 5/25/2023 IEP failing to address the location of the ESY services and the additional accommodations that would be provided for Student to attend ESY at [REDACTED]-1. DOE Ex. 152 at 1610-1616.
18. On October 20, 2023 and November 20, 2023, IEP meetings were held, resulting in an IEP with the same dates (“Oct./Nov. 2023 IEP”). DOE Ex. 18 at 0110-0134.
19. On December 26, 2023, DOE received a due process complaint, designated case number [REDACTED], alleging violations of the IDEA on various grounds, including but not limited to, the Oct./Nov. IEP denying Student a FAPE regarding ESY services on procedural and substantive grounds. DOE Ex. 153 at 1625, 1627-1628.
20. On April 19, 2024, a decision in case number [REDACTED] was issued. It was determined that Student was denied a FAPE when the Oct./Nov. IEP conditioned Student’s access to a setting with nondisabled peers on a “when available” basis during ESY. DOE Ex. 153 at 1624-1679.
21. On May 22 and 24, 2024, August 23, 2024, and September 11, 2024, IEP meetings were held, resulting in an IEP with the same dates. According to this IEP, the IEP Annual Review Date was September 11, 2025, and the Reevaluation Date was July 1, 2025. During this IEP meeting, Parent requested that if ESY was not at [REDACTED] Home School, Student’s transportation would need to be addressed. On September 11, 2024,

the IEP team finalized Student's annual IEP. DOE Ex. 19 at 0135-0169; DOE Ex. 20 at 0170-0171.

22. On November 26, 2024, Petitioners filed a due process complaint, designated [REDACTED] [REDACTED]. Pet. Ex. 3 at 061-068.
23. On December 12, 2024, SPED Teacher informed Parent that [REDACTED] Home School would be starting Student's reevaluation after the Christmas Break. SPED Teacher asked Parent if Parent could attend a meeting on January 14, 2025 to determine what additional data and assessments were needed. Parent agreed to meet on January 14, 2025. DOE Ex. 135 at 1300.
24. On January 13, 2025, observation data was taken of Student's ability to ride the bus from [REDACTED] Home School to Destination-1 and then back to [REDACTED] Home School. Observation data was taken on the following skills: wait for the bus safely; board the bus safely; greet the bus driver; sit in a seat; remain seated; follow safety rules; prepare belongings; identify stop; exit bus; and transitioning. It was determined that Student met mastery criteria during these observations. DOE Ex. 122 at 1067-1068; DOE Ex. 150 at 1567-1568.
25. On January 14, 2025, the IEP team met to discuss what additional data and assessments were needed for the reevaluation.
26. On January 16, 2025, SPED Teacher acknowledged Parent's concern that transportation assessments were not specifically discussed during their meeting on January 14, 2025, and that Parent wanted to address Student's transportation needs. SPED Teacher informed Parent that [REDACTED] Home School would like to continue the reevaluation discussion at their upcoming meeting on January 21, 2025, which would include

discussing Student's transportation needs. Pet. Ex. 3 at 069-070; DOE Ex. 40 at 0411; DOE Ex. 35 at 401-402.

27. On January 21, 2025, Parent canceled the IEP meeting scheduled for that day because Mr. Peck was ill and could not participate. DOE Ex. 38 at 408.
28. On February 3, 2025, in preparation for a meeting that was scheduled for February 13, 2025, Parent sent an email to Principal and SPED Teacher, which states in part: "The following Assessments are necessary to assess [Student's] travel-related deficits: (I do not find Socially Savvy to be an appropriate assessment for evaluating [Student's] transportation needs)[.] 1. Functional Behavioral Assessment (FBA)[.] This assessment should analyze [Student's] behaviors, triggers, and responses during travel. The FBA should include direct observations of [Student's] reactions in real-life or simulated travel scenarios (e.g., a trial ride in a school bus to the new school at the same time [Student] would be traveling next school year). The focus should be on identifying behaviors that indicate distress or discomfort, as well as environmental factors contributing to those behaviors (e.g., noise level, duration of the ride, proximity to other passengers, seating position, or unpredictability of the route)." DOE Ex. 45 at 422-423 (underline in original).
29. On February 7, 2025, Parent and DOE entered into a Compromise and Settlement Agreement to resolve case no. [REDACTED]. The parties agreed to continue the reevaluation meeting; conduct necessary assessments to determine Student's transportation needs; and incorporate any aids and/or supports into Student's IEP to address Student's transportation needs based on the assessment results. Pet. Ex. 3 at 061-068.

30. On February 13, 2025, the meeting scheduled for that day was canceled. DOE Ex. 52 at 480.

31. On February 20, 2025, Student participated in a class field trip to the [REDACTED] [REDACTED]. Student was dropped off at [REDACTED] a.m. at EA's house, who then drove Student to the [REDACTED] in Town-2, which was approximately [REDACTED] miles away. DOE Ex. 120 at 1055-1059. Student did not have any problem during the car ride to the [REDACTED] with EA and had very minimal problems during the [REDACTED] ride. While in [REDACTED], Student boarded the bus with no problem and sat in Student's seat. During the ride, Student was excited and engaged. While on the bus, Student needed reminders about personal space as Student attempted to touch peers. At the end of the excursion, Student and Student's classmates walked back to the bus and Student boarded the bus and took Student's seat with no problem. Student expressed to EA several times how much Student loved the bus, and stated, "[EA], bus so fun!" Student boarded the [REDACTED] around 8:00 p.m. for the return [REDACTED] home. DOE Ex. 122 at 1085-1086; DOE Ex. 138 at 1404-1406.

32. On February 20, 2025, during the excursion to the [REDACTED], observation data was taken of Student's ability to ride the bus from the [REDACTED] to [REDACTED] and from [REDACTED] back to the [REDACTED]. The ride from [REDACTED] to [REDACTED] was approximately thirty (30) minutes. EA, Tr. Vol. III, 481:3-18. It was determined that Student met mastery criteria for these observations. DOE Ex. 122 at 1087-1088; DOE Ex. 150 at 1569-1570.

33. On February 21, 2025, SPED Teacher informed Parent that an IEP meeting was scheduled for March 5, 2025. DOE Ex. 6 at 0019-0020; DOE Ex. 53 at 481-482; DOE Ex. 122 at 1089.
34. On March 3, 2025, observation data was taken of Student's ability to ride the bus from [REDACTED] Home School to Destination-1, and then back to [REDACTED] Home School. It was determined that Student met mastery criteria during these observations. DOE Ex. 122 at 1094; DOE Ex. 150 at 1571-1572.
35. On March 4, 2025, observation data was taken of Student's ability to ride the bus from [REDACTED] Home School to an event in Town-2, and then from Town-2 back to [REDACTED] Home School. It was determined that Student met mastery criteria for these observations. DOE Ex. 122 at 1095-1096; DOE Ex. 150 at 1573-1574.
36. On March 5, 2025, an IEP team meeting was held to determine what assessments were needed for Student's reevaluation. Parent, Mr. Peck, Principal, Ms. Tribbey, DES, SPED Teacher, [REDACTED] Supervisor, OT, and other individuals were present at the meeting. Pet. Ex. 4 at 03/06/2025 Audio File; DOE Ex. 160 at 3/6/2025 IEP Meeting Recording<sup>7</sup>. At this IEP meeting, the IEP team agreed that more data was needed to determine Student's needs. Pet. Ex. 4 at 03/06/2025 Audio File, 00:24:45-00:28:21. The IEP team discussed, among other things, getting data on Student's ability to use transportation. Parent shared that Parent was aware that the school says that Student does great on the bus, and that Parent tells Student that Student is going on the bus and doing something fun with EA. Parent also shared that sometimes Parent found it

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<sup>7</sup> Although Petitioners and Respondents' Exhibit Lists indicate that the IEP meeting was March 6, 2025, the IEP meeting actually took place on March 5, 2025.

challenging to get Student in the car. Parent shared concerns about the length of the ride, needing to stop somewhere for Student to use the restroom, and loud noises. A school member of the IEP team shared that they have not had an opportunity to transport Student from school to the ‘[REDACTED]’, and that they needed more information on what may or may not trigger Student when riding a bus, what behaviors the school may or may not see on the bus, and how to best support Student. Pet. Ex. 4 at 03/06/2025, Audio File, at 00:29:05-00:39:20. The school members of the IEP team asked if they could add an addendum to the IEP to include transportation services because the transportation department will not transport Student without it. Mr. Peck suggested that the addition be done through a Prior Written Notice and a consent form to amend instead of convening another IEP meeting. Pet. Ex. 4 at 03/06/2025, Audio File, at 00:42:15-00:44:05. During the meeting, the IEP team agreed to do various assessments, including a transportation assessment and observations. The IEP team agreed to meet on April 22, 2025 for an eligibility meeting. Pet. Ex. 4 at 03/06/2025, Audio File at 00:59:30-1:01:25; Pet. Ex. 1 at 043-044.

37. Since Parent shared during the 3/05/2025 IEP meeting that Parent prepared Student for class trips by telling Student that Student was getting on a bus and doing something fun, [REDACTED] Home School created a “social storybook” for Student after that meeting to help Student prepare for the transportation assessment. Pet. Ex. 3 at 089-090; DOE Ex. 85 at 707-708.
38. On March 10, 2025, SPED Teacher gave to Parent a Prior Written Notice proposing to conduct a triennial reevaluation (“3/10/2025 PWN”) and a Consent for Assessment as

Part of a Reevaluation form for Parent to complete. Pet. Ex. 3 at 071-074; DOE Ex. 56 at 489-492; DOE Ex. 122 at 1097.

39. On March 11, 2025, SPED Teacher gave to Parent to sign a Consent to Amend the Annual IEP form to add transportation services to Student's IEP without convening an IEP meeting; a draft IEP; and a Prior Written Notice to add transportation services to the IEP in order for the transportation assessment to take place. DOE Ex. 58 at 0497-0530; DOE Ex. 122 at 1098; DOE Ex. 135 at 1311-1312.
40. On March 13, 2025, Principal asked Parent if Parent was able to review the two (2) consent forms SPED Teacher had given to Parent--one for Student's reevaluation and the other to add transportation services to Student's IEP. On the same day, Parent informed Principal that Mr. Peck was traveling to Hawaii and was not yet able to get back to Parent, but Parent was hopeful that Parent would be able to return the consent forms to [REDACTED] Home School by March 14, 2025. Pet. Ex. 3 at 075; DOE Ex. 59 at 0531.
41. On March 14, 2025, Parent informed Principal that Parent and Mr. Peck found the 3/10/2025 PWN language inaccurate and not what the IEP team had agreed upon. Parent also informed Principal that Mr. Peck would be rewriting the 3/10/2025 PWN. Pet. Ex. 3 at 075, 077.
42. On March 18, 2025, Mr. Peck emailed to Parent a revised Prior Written Notice, which states: "PWN, Revised Version: A transportation assessment will be conducted to evaluate [Student's] ability to ride the school bus between home and [REDACTED] Home School]. The purpose of this assessment is to determine Student's actual ability to tolerate the expected transportation conditions so that the IEP team can develop

appropriate Goals & Objectives, accommodations, and modifications. This assessment is not intended to temporarily alter or improve Student's behavior for the purpose of obtaining misleading data, but rather to establish a true baseline of Student's current abilities and deficits in this area of suspected need. To ensure accuracy and reliability, the assessment will: • Take place only under normal and expected conditions (e.g., usual route, duration, and schedule). • Exclude the use of incentives, special reinforcers, or non-routine aides that are not part of the standard transportation arrangement.... • Occur only once to prevent conditioning effects that could distort the results....” Pet. Ex. 3 at 076<sup>8</sup>.

43. On March 28, 2025, SPED Teacher emailed to Parent a revised 3/10/2025 PWN. Parent forwarded the email to Mr. Peck the same day. Pet. Ex. 3 at 080-082; DOE Ex. 60 at 0532-0534<sup>9</sup>.
44. On March 31, 2025, observation data was taken of Student's ability to ride a bus from [REDACTED] Home School to Destination-1, and then back to [REDACTED] Home School. It was determined that Student met mastery criteria for these observations. DOE Ex. 122 at 1102-1103; DOE Ex. 150 at 1575-1576.
45. Also on March 31, 2025, Principal asked Parent whether Parent and Mr. Peck were able to review the revised 3/10/2025 PWN. Pet. Ex. 3 at 083; DOE Ex. 62 at 536.
46. On April 1, 2025, Parent replied to Principal's inquiry with the following email:  
“Compromise language for the Transportation Assessment portion of the PWN: A

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<sup>8</sup> It is unclear from the record if this email was forwarded to [REDACTED] Home School.

<sup>9</sup> Note: The Prior Written Notices attached to Petitioners and Respondents' exhibits are different. Which PWN was actually attached to SPED Teacher's email to Parent is not material to resolving the issues in this due process hearing.

transportation assessment will be conducted to evaluate [Student's] current ability to access, ride, tolerate, and transition on/off the bus between home and [REDACTED] Home School]. The purpose of this assessment is to gather accurate baseline data in the area of suspected need so the IEP team can determine whether transportation can be added as a related service and what supports, if any, are necessary to ensure access. To ensure validity, the following conditions will apply: • The assessment will occur only under routine and expected transportation conditions, including the usual bus route, schedule, and staffing. • The assessment is not a transition plan or training program, and will occur only once, unless data is inconclusive or incomplete. • The student will not receive non-routine aides, external reinforces, or conditioning protocols that are not part of the current IEP or standard bus services....” Pet. Ex. 3 at 083-084.

47. On April 4, 2025, Principal emailed to Parent three (3) documents, one of which was a revised 3/10/2025 PWN. According to this version of the 3/10/2025 PWN, [REDACTED] Home School “created [a] transportation assessment which will evaluate [Student's] ability to access, ride, tolerate, and transition on/off the bus from home to [REDACTED] Home School] and from [REDACTED] Home School] to home” and “[t]he team ha[d] discussed and affirmed that the aforementioned is for the sole purpose of assessing [Student's] ability to access, ride, tolerate, and transition on/off the bus to/from home to [REDACTED] Home School]....” DOE Ex. 64 at 570-607.
48. On April 8, 2025, SPED Teacher asked Parent whether Student would be participating in [REDACTED] Home School’s annual visit to [REDACTED] Home School on May 14, 2025 for students with special needs transitioning to [REDACTED] Home School. SPED Teacher informed Parent that the visit would give Student a chance to meet staff, tour the

campus, and experience a day at the [REDACTED] school. Families were welcome to attend. The next day, Parent informed SPED Teacher that Student “doesn’t need to participate” in the visit to [REDACTED] Home School. SPED Teacher in turn asked Parent whether Parent wanted SPED Teacher to look into setting up a transition visit with Public Charter School. On April 14, 2025, Parent relied “yes” to SPED Teacher’s offer. DOE Ex. 65 at 608; DOE Ex. 69 at 617; DOE Ex. 122 at 1110, 1113.

49. Also on April 8, 2025, a signed Consent for Assessment form was received by [REDACTED] Home School, which meant that the evaluation had to be done by May 23, 2025. DOE Ex. 66 at 610-613; DOE Ex. 68 at 0615-0616; DOE Ex. 122 at 1116.
50. On or about April 13, 2025, Parent signed the Consent to Amend the IEP form. DOE Ex. 72 at 621. Student’s IEP was subsequently amended, resulting in an IEP dated April 13, 2025 (“4/13/2025 IEP”). The 4/13/2025 IEP provides Student with transportation three (3) times per quarter from March 24, 2025 to September 11, 2025, which would allow DOE to conduct the transportation assessment. The 4/13/2025 IEP also provides the following information regarding transportation services in the “Clarification of Services and Supports” section: “3/10/2025 – Transportation services will be utilized for the sole purpose of assessing [Student’s] ability to access, ride, tolerate, and transition on/off the bus to/from home to [REDACTED] Home School], and is to be distinguished from transition or acclimation plan. The transportation assessment will take place from home to [REDACTED] Home School] on the normal [REDACTED] school transportation route, schedule, and duration. The Department predicts 3 transportation observations to be sufficient to collect adequate data.... During the assessments, appropriate accommodations will be provided according to [Student’s] current IEP.” DOE Ex. 98 at 0902-0932.

51. On April 24, 2025, SPED Teacher emailed to [REDACTED] Supervisor and another individual a copy of a social storybook entitled “The Bus Ride” that EA had been using with Student for field trips. DOE Ex. 74 at 0657; DOE Ex. 75 at 0658-0660.
52. Also on April 24, 2025, SPED Teacher again informed Parent that on May 14, 2025 there would be an optional class field trip to [REDACTED] Home School for those who were interested in visiting the campus, to which Parent again declined to let Student participate. DOE Ex. 76 at 661; DOE Ex. 122 at 1121-1122.
53. On May 5, 2025, observation data was collected regarding Student’s ability to ride the bus from [REDACTED] Home School to Destination-1, and then back to [REDACTED] Home School. It was determined that Student met mastery criteria during these observations. DOE Ex. 122 at 1123-1124; DOE Ex. 150 at 1577-1578.

**Transportation Assessment on May 8, May 9, and May 20, 2025**

54. Before May 8, 2025, EA and SPED Teacher read a social storybook with Student multiple times to prepare Student for the transportation assessment. The last time SPED Teacher read the social storybook with Student was on May 7, 2025, at the end of the school day. Student seemed happy and excited about taking a bus ride to [REDACTED] Home School the next day after reading the social storybook. Pet. Ex. 3 at 089-090; DOE Ex. 77 at 0662-0665; DOE Ex. 85 at 707-708; Pet. Supplemental Ex. SX-1 at 001-007.
55. The bus company provides services to the DOE, and the bus is a special education bus that services various schools in the [REDACTED] complex. [REDACTED] Supervisor, Tr. Vol. II, 401:1-5.

56. The bus company determines the bus route and arranges the pick-up and drop-off dates, times, and locations with families it is servicing. Pet. Ex. 3 at 089-090; DOE Ex. 85 at 707-708; Principal, Tr. Vol. I, 189:14-190:8.
57. The bus company arranged with Parent to pick-up Student at the [REDACTED] and the time of pick-up. Pet. Ex. 3 at 089-090; DOE Ex. 85 at 707-708; DES, Tr. Vol. I, 147:20-24.
58. Prior to May 8, 2025, Principal asked Parent whether the bus company had contacted Parent to make arrangements for the pick-up, and Parent confirmed that Parent had spoken to the bus company. Parent did not voice any concerns to Principal at that time. Pet. Ex. 3 at 089-090; DOE Ex. 85 at 707-708; Principal, Tr. Vol. I, 186:23-187:21.
59. On May 7, 2025, Principal reminded Parent about the transportation assessment, and again, Parent did not express any concerns. Pet. Ex. 3 at 089-090; DOE Ex. 85 at 707-708.
60. On May 8, 2025, the first day of the transportation assessment, Student was not at the [REDACTED] to ride the bus. Instead, Parent drove Student to [REDACTED] Home School and arrived at school on time. When Student got out of Parent's [REDACTED] and walked up to SPED Teacher, SPED Teacher asked Student, "What happened? Why didn't you get on the bus and go to the [REDACTED] school?" Student replied, "[REDACTED]." DOE Ex. 122 at 1126. Student was no more stressed than on a typical day. Principal, Tr. Vol. I, 180:21-182:17. After Parent dropped off Student, Principal approached Parent to speak with Parent. Parent expressed that Student had given Parent a hard time. Pet. Ex. 3 at 089-090; DOE Ex. 85 at 707-708. Parent was a little stressed and said Parent would try again on May 9th. Principal, Tr. Vol. I, 180:21-182:17. Principal offered to send SPED Teacher to Parent's home in the morning to support Student

getting on the bus. Later in the afternoon, Principal sent an email to Parent reiterating Principal's offer to send SPED Teacher to Parent's home in the morning to support Student getting on the bus. Pet. Ex. 3 at 088; DOE Ex. 80 at 678; DOE Ex. 86 at 711-712.

61. On May 9, 2025, the bus arrived at the designated pick-up area on time. [REDACTED] Supervisor and two (2) other assessors were on the school bus. Parent and Student were not at the bus pick-up location. The bus aide then messaged Parent, who responded at 6:56 a.m. stating, "Thank you we are doing our best, it is challenging, so I will let you know." The bus waited until [REDACTED] a.m. and then departed to take the assessors back to [REDACTED] Home School. [REDACTED] [REDACTED] The bus then resumed its normal route to drop off the other students to their respective schools. DOE Ex. 122 at 1128. After returning to [REDACTED] Home School, [REDACTED] Supervisor saw Parent drop off Student at school. [REDACTED] Supervisor saw Principal approach Parent's vehicle, and Student giving Principal a high-five. Student walked past [REDACTED] Supervisor and waved and said something that sounded like "■" to [REDACTED] Supervisor. Pet. Ex. 2 at 058-060; DOE Ex. 26 at 0251-0253; DOE Ex. 122 at 1127; SBBH Supervisor, Tr. Vol. II, 400:17-401:25.
62. Parent testified that on May 8 and 9, 2025, the situation at home was the same as other mornings as Parent tried to get Student into the car to drive to the [REDACTED] but Student refused to get into the car. Parent, Tr. Vol. I, 81:8-24.
63. In the morning of May 10, 2025, SPED Teacher asked Parent to meet for a team meeting to discuss how the IEP team could support Student's bus transportation assessment to

█████ Home School and discuss why Student did not participate in the transportation assessment on May 8 and 9, 2025 and was instead dropped off at █████ Home School by Parent. SPED Teacher explained that this impacted not only the transportation assessment team but also other students with special needs who were part of the process. SPED Teacher further explained that it was important for the IEP team to come together to support Student's ability to transition smoothly from home to the bus and then to █████ Home School as Student would be doing this during Student's upcoming summer ESY. Pet. Ex. 3 at 096-097; DOE Ex. 85 at 709.

64. In the afternoon of May 10, 2025, Parent explained to SPED Teacher why Student was not at the bus stop on May 8, 2025. Parent informed SPED Teacher that Parent was not given clear or complete information about the transportation plan, including who would be on the bus; what exactly Student was expected to do; where Student would be taken; what the day would look like once Student got there; or when Student would be returned to █████ Home School. Parent explained that Parent told Student that a bus would be picking up Student and that Student would not be going to █████ Home School but to a different school. According to Parent, Student became confused and frightened and when Parent could not answer Student's questions, Student became upset and resistant. Pet. Ex. 3 at 090-091; DOE Ex. 85 at 708. Parent did not explain why Student was not at the pick-up location on May 9, 2025.
65. On May 12, 2025, SPED Teacher acknowledged Parent's concerns and stated, among other things, that the transportation assessment to █████ Home School was set up as agreed upon during the 3/05/2025 IEP meeting, and in the manner that Mr. Peck had suggested because Mr. Peck had asked that the transportation assessment follow the

condition of a normal bus ride on a normal school day so as not to skew or affect the transportation assessment. SPED Teacher informed Parent that, to date, all the school's observations and data regarding Student riding on a bus, in private vehicles, and on [REDACTED] [REDACTED] indicated that Student was able to use transportation successfully. SPED Teacher told Parent that [REDACTED] Home School created a social storybook for Student after the 3/05/2025 IEP meeting to help Student prepare for the transportation assessment and used the social storybook with Student as recently as May 7, 2025. Pet. Ex. 3 at 089-090; DOE Ex. 85 at 707-708.

66. On May 13, 2025, Parent again informed SPED Teacher that [REDACTED] Home School did not provide sufficient information to Parent to prepare Student for the transportation assessment and asked similar questions as those posed on May 10, 2025. Parent also informed SPED Teacher that Parent had never seen the data SPED Teacher was claiming to have taken on Student's ability to take the bus. Pet. Ex. 3 at 088; DOE Ex. 86 at 711-712.
67. On May 16, 2025, SPED Teacher placed a hard copy of Riding the Bus Social Story in Student's daily school home planner. DOE Ex. 122 at 1132. SPED Teacher also answered the questions Parent asked on May 10, 2025. SPED Teacher also informed Parent that the next transportation assessment will be on May 20, 2025. DOE Ex. 90 at 721-722.
68. Later in the day on May 16, 2025, Principal confirmed with Parent that the next transportation assessment would be May 20, 2025, and Student would be picked up at 6:55 a.m. Principal also informed Parent that the bus company would be reaching out to Parent with the same information. DOE Ex. 91 at 723.

69. On May 20, 2025, Student was not at the [REDACTED] and the transportation assessment could not be conducted. Pet. Ex. 2 at 058-060; DOE Ex. 26 at 0251-0253. Upon arriving at the pickup location, the bus waited for approximately five (5) minutes and then left. The assessors were taken back to [REDACTED] Home School. Student was later dropped off on time at [REDACTED] Home School by Parent. Student was not in distress and was able to go into Student's daily routine. [REDACTED] Supervisor, Tr. Vol. II, 406:4-19.

70. On May 21, 2025, the IEP team agreed to hold an IEP meeting right after the eligibility meeting on May 27, 2025. DOE Ex. 98 at 899-932. Principal offered to meet with Parent to review the data prior to the eligibility and IEP meetings. DOE Ex. 99 at 0934.

71. On May 21-23, 2025, Student participated in a [REDACTED] at Destination-2 with the [REDACTED] grade class. DOE Ex. 122 at 1134; DOE Ex. 135 at 1319-1320. Destination-2 is [REDACTED] [REDACTED]. On May 23, 2025, at the end of the [REDACTED], SPED Teacher drove Student from Destination-2 to the [REDACTED] where the pick-up for the transportation assessment was supposed to have occurred. SPED Teacher waited at the [REDACTED] with Student for Student's classmates to walk there. Student walked through the [REDACTED], got on the bus, and rode the bus to Destination-1. Student later took the bus back to [REDACTED] Home School with Student's classmates. DOE Ex. 120 at 1055-1059; SPED Teacher, Tr. Vol. II, 298:12-301:21.

72. On May 23, 2025, observation data was taken of Student's ability to ride the bus from Destination-2 to Destination-1, and from Destination-1 back to [REDACTED] Home School. For both trips, Student was given the option to ride in a [REDACTED] with SPED Teacher or take the bus with Student's class. In both instances, Student chose to take the bus with Student's class. It was determined that Student met mastery criteria during

these observations. DOE Ex. 150 at 1579-1580. During these two (2) bus rides, Student was able to ride the bus without SPED Teacher or EA being present. Observations were taken by two (2) [REDACTED] grade teachers. DOE Ex. 150 at 1581. Based on these and previous observations, it was determined that Student consistently mastered the skills of boarding the bus safely, greeting the driver, sitting and remaining seated, exiting the bus, and transitioning. Skills that Student showed mixed performance were following safety rules, waiting safely, preparing belongings, and identifying stop. DOE Ex. 150 at 1581.

73. Based on school data collected by [REDACTED] Home School, Student is able to board and ride a bus successfully. Student is also able to tolerate riding long distances, approximately [REDACTED] miles, in a car. DOE Ex. 120 at 1055-1059.
74. Also on May 23, 2025, SPED Teacher emailed to Parent copies of various assessment reports, including a “Transportation Assessment,” dated May 27, 2025, prepared by [REDACTED] Supervisor, that would be reviewed during 5/27/2025 IEP meeting and offered to go over the information with Parent before the meeting. DOE Ex. 97 at 0735-0898.
75. According to the Transportation Assessment report, [REDACTED] Supervisor deemed the assessment to be incomplete. The Transportation Assessment report states that “A transportation assessment was requested by [Student’s] IEP team on March 5th, 2025 to determine [Student’s] ability to transport from home to [REDACTED] Home School] via the Special Education school bus. [Parent] expressed concerns with [Student’s] ability to tolerate potentially loud sounds on the school bus, managing toileting needs, and overall tolerate a [REDACTED] mile commute to and from [REDACTED] Home School]. The transportation assessment was scheduled for May 8th, 9th, and 20th 2025 which sought to assess [Student’s] ability to transport from the bus stop...to [REDACTED] Home School].” [REDACTED]

Supervisor recommended that “the IEP team discuss the transportation concern further to determine how to proceed with assessing this area of concern.” Pet. Ex. 2 at 058-060; DOE Ex. 26 at 0251-0253.

76. On May 26, 2025, Parent informed Principal that Parent disagreed with the Transportation Assessment being considered incomplete and believed that the Transportation Assessment was completed. According to Parent, “The fact that [Student] did not progress past the first step in the bus-taking process is not evidence of an incomplete assessment—it is data the assessment generated.” Parent wanted the IEP team to use the data “to inform the IEP team’s decisions going forward, especially regarding ESY placement this summer.” DOE Ex. 99 at 0933-0934.
77. Also on May 26, 2025, Parent sent an email to Principal with input Parent wanted the IEP team to consider for the IEP meeting on May 27, 2025. Parent wrote, among other things: “Extended School Year (ESY) Recommendations[:] • [Student’s] ESY services must be provided at a location within [REDACTED] minutes from [Student’s] home by bus to prevent regression due to transportation barriers. • The ESY program must include non-disabled peers...” Pet. Ex. 3 at 098-100.
78. On May 27, 2025, an eligibility meeting was held wherein Student was found to continue to be eligible for special education and related services under the eligibility category of [REDACTED]. Immediately after the eligibility meeting, the IEP meeting was held. The IEP team stopped at the ESY portion of the IEP and agreed to reconvene on May 30, 2025. Pet. Ex. 1 at 042, 043-044; DOE Ex. 98 at 0900-0901; DOE Ex. 122 at 1139.

79. On May 30, 2025, the IEP team continued the IEP meeting, resulting in an IEP with the same date (“5/30/2025 IEP”). Parent, Mr. Peck, Ms. Tribbey, [REDACTED] Supervisor, Principal, DES, SPED Teacher, EA, OT, a general education teacher, a physical therapist, a speech/language pathologist, and a representative from Public Charter School were present at the 5/30/2025 IEP meeting. Pet. Ex. 1 at 039; DOE Ex. 14 at 0044-0082.

80. During the 5/30/2025 IEP meeting, Parent did not feel comfortable sharing details of the difficulties Parent was having with Student at home that made it impossible for Parent to get Student into the car to drive to the [REDACTED]. Although Mr. Peck offered to speak with Parent outside the presence of the other IEP team members and then relay the information back to the rest of the IEP team, Parent chose not to speak with Mr. Peck privately during the 5/30/2025 IEP meeting, nor did Parent share with Mr. Peck the difficulties Parent was experiencing with Student after the 5/30/2025 IEP meeting. Parent, Tr. Vol. I, 46:8-50:11; DOE Ex. 162, 5/31/2025 IEP Meeting Recording<sup>10</sup> at 1:28:00-1:33:42.

81. During the 5/30/2025 IEP meeting, DOE offered to change the transportation services from three (3) times, which was solely for the transportation assessment, to a daily service for ESY and the upcoming school year. While Parent did not indicate whether Parent wanted transportation services for Student, Parent was informed that when the transportation company calls Parent, Parent can tell the transportation company at that time whether Parent wanted the service. (DOE Ex. 162, 5/31/2025 IEP Meeting

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<sup>10</sup> Although DOE’s Exhibit 162 indicates a 5/31/2025 IEP Meeting Recording, the IEP meeting actually took place on May 30, 2025.

Recording at 00:46:52-00:49:00, 1:07:10-1:08:55). Mr. Peck informed the DOE members of the IEP team that they were open to having someone who Student knows, such as EA, on the bus. SPED Teacher then offered to be on the bus in June for a period of time until SPED Teacher had to leave for the summer to help Student transition to riding a bus to [REDACTED] Home School for ESY and then SPED Teacher would fade out. Mr. Peck replied that they would need to see if it works but they were willing to try something. DOE Ex. 162, 5/31/2025 IEP Meeting Recording 1:33:42-1:37:42; SPED Teacher, Tr. Vol. II, 301:22-302:6. SPED Teacher volunteered to do this without pay. SPED Teacher, Tr. Vol. II, 348:1-16. Later, Ms. Tribbey sought clarification and asked Mr. Peck and Parent if [REDACTED] Home School were able to have someone on the bus, either EA or SPED Teacher, would Parent be willing to allow [REDACTED] Home School to go through the [REDACTED] to help Parent with getting Student to the bus. Mr. Peck accepted the offer but stated that they still rejected the necessity of doing that. Mr. Peck also stated that they were willing to try it but that it was still not an offer of FAPE. Ms. Tribbey confirmed that [REDACTED] Home School was willing to do that, and Mr. Peck accepted. DOE Ex. 162, 5/31/2025 IEP Meeting Recording, 1:39:05-1:41:20.

82. According to the 5/30/2025 IEP, Student will receive the following Special Education and Related Services during the school year: special education; speech/language therapy; occupational therapy services; and transportation (three times per quarter from March 24, 2025 to June 5, 2025, then daily from June 6, 2025 to September 11, 2025). Pet. Ex. 1 at 035.
83. According to the 5/30/2025 IEP, Student will receive the following Supplementary Aids and Services, Program Modifications and Supports for School Personnel: physical

therapy consultation; individualized instructional support (“IIS”); SBBH consultation services; prompting and redirection; social stories; simplified language and directions; modified assignments; pre-teaching concepts and routines; priming behavioral/academic expectations; communication between home and school; behavioral support plan; provide clear and concise instructions with minimal language; use if/then, or first/then prompts; visual schedule; use of a timer to support transitions; use of choice board for rewards/playtime/recess; access to multiple modes of communication; occupational therapy consult; and a toileting plan. Pet. Ex. 1 at 036.

84. According to Student’s 5/30/2025 IEP, Student qualifies for ESY services. Student will receive the following accommodations and modifications during ESY: behavior support plan; toileting plan; multi-modal communication; visual aids and supports; prompting and redirection; simplified language directions; modified assignments; pre-teaching concepts and routines; and priming behavioral/academic expectations. Pet. Ex. 1 at 033-035.
85. The 5/30/2025 IEP contains a section entitled “Clarification of Services and Supports,” which reads in part: “5/2025:...[Student] will receive transportation services for ESY from home to school for Extended School Year Services, from 6/20/2025 to 7/14/2025 and services will continue for the 2025-2026 school year.” Pet. Ex. 1 at 036-037.
86. On June 4, 2025, Parent was provided a copy of an evaluation summary report and a Prior Written Notice for the eligibility meeting held on May 27, 2025. Pet. Ex. 2 at 045-057; DOE Ex. 122 at 1147.

**Summer 2025 Extended School Year**

87. Student's summer 2025 ESY program was scheduled for June [REDACTED] 2025 to July [REDACTED] 2025, at [REDACTED] Home School from 8:00 a.m. to 12:00 p.m. [REDACTED] Home School is Student's assigned home school for the 2025-2026 school year; however, Parent is choosing to send Student to Public Charter School instead. Pet. Ex. 3 at 101; Principal, Tr. Vol. II, 247:10-12.

88. Although Student would be going to Public Charter School for the 2025-2026 school year, Student was provided ESY services at [REDACTED] Home School because Public Charter School was a new charter school and had not yet open for business. Public Charter School began operations in August of 2025. DOE Ex. 122 at 1150; Principal, Tr. Vol. II, 227:25-228:16; SPED Teacher, Tr. Vol. II, 346:12-23. [REDACTED] Home School was not an appropriate location for ESY for Student because [REDACTED] Home School only had a [REDACTED] program that summer and did not have age-appropriate general education students that would satisfy Student's least restrictive environment requirement. Principal, Tr. Vol. II, 233:6-234:10, 263:5-265:24.

89. On June 5, 2025, SPED Teacher informed Parent through email that SPED Teacher wanted to help with Student's bus transportation to [REDACTED] Home School for ESY during the summer. SPED Teacher asked Parent to let SPED Teacher know how [REDACTED] Home School could support Parent. SPED Teacher offered to ride the bus with Student from Student's identified pick-up location to [REDACTED] Home School; help Student transition to Student's new routine for the first week; then the IEP team could reconvene after the first week to discuss if Student needed any additional support. SPED Teacher offered a second suggestion to have Student get on the bus at [REDACTED]

Home School with SPED Teacher for the first few days and ride to [REDACTED] Home School. Then, they could transition to bus pick-up at Student's identified location. SPED Teacher gave Parent another copy of Student's bus ride social storybook. Pet. Ex. 3 at 101-102; Pet. Supplemental Exhibit SX-1 at 001-007; DOE Ex. 113 at 1036-1037.

90. On June 6, 2025, SPED Teacher emailed to Parent a copy of the IEP and Prior Written Notice from the 5/30/2025 IEP meeting. DOE Ex. 122 at 1149.
91. A Prior Written Notice, dated June 6, 2025, states, among other things, that on May 30, 2025, the "The parent expressed concerns about [Student's] home-to-school transportation. Despite requests for specific information, the parent did not elaborate on the nature of these concerns or any difficulties [Student] encounters when leaving the home to board the bus. When invited to offer additional ideas to support transportation during the meeting, the parent did not respond. The school team outlined potential strategies and will initiate contact with the parent to formulate a plan for [Student's] ESY travel. Proposed ideas from the IEP meeting included: a special education teacher, with whom [Student] has a familiar relationship, visiting the home; reviewing the Transportation Social Story with the parent; and the possibility of initially meeting the parent at [REDACTED] Home School], a familiar location for [Student], for transport, with a gradual transition to home pickup as a new routine is established." Pet. Ex. 1 at 040-042; DOE Ex. 15 at 0083-0085.
92. On June 11, 2025, Parent replied to SPED Teacher's June 5, 2025 email stating, "At the IEP meeting we did agree to have some means to help [Student] get on the bus and get familiar with traveling to the new program. That's not in the IEP documents, but we agreed to it. We also said that it's not going to work but we'll try. We still believe that

because of this the IEP is not an offer of FAPE.” Pet. Ex. 3 at 101, 108; DOE Ex. 113 at 1036.

93. On June 13, 2025, SPED Teacher replied to Parent’s June 11, 2025 email, stating that “While the specific support for bus familiarization might not be detailed word-for-word in the IEP document, it was part of our shared conversation about implementing [Student’s] services and can be found in the Prior Written Notice, in the last paragraph under ‘Other Relevant Factors.... The suggestions I offered, like riding the bus with [Student] or starting from [REDACTED] Home School], are intended to be a flexible part of that support, addressing the very concerns we talked about.... Could we schedule a meeting to discuss your current thoughts and what specifically might help you feel more comfortable about [Student’s] bus transportation and participation?” Parent declined to have another meeting. Pet. Ex. 3 at 103-104, 107; DOE Ex. 113 at 1035-1036.
94. On June 16, 2025, SPED Teacher sent an email to Parent reiterating the two (2) options for transportation to [REDACTED Home School] for summer ESY: “Option 1: Home Pick-Up with Support[.] Transportation will pick up [Student] at the location near [Parent’s] home. [SPED Teacher] will ride the bus with [Student] from Friday, June 20, through Thursday, June 26....[REDACTED] Home School] strongly recommend[s] this option, as it aligns with [Student’s] pick-up location for [Public Charter School] in the fall. Option 2: Temporary [REDACTED Home School] Pick-Up[.] On Friday, June 20, and Monday, June 23, please meet transportation and [SPED Teacher] at [REDACTED Home School]. [SPED Teacher] will ride with [Student] to [REDACTED Home School] for ESY. Starting Tuesday, June 24, transportation will transition to picking up [Student] at the location near [Parent’s] home. [SPED Teacher] will ride the bus on Tuesday, Wednesday, and

Thursday of that week....pick-up from [REDACTED] Home School] is temporary for transitional purposes and will shift to [ ] home pick-up location on Tuesday, June 24.” SPED Teacher requested that Parent select an option by Wednesday at noon so that [REDACTED] Home School could notify transportation. SPED Teacher informed Parent that if SPED Teacher did not hear from Parent, transportation would pick up Student at the location near Parent’s home starting June 20, 2025. Pet. Ex. 3 at 106-107; DOE Ex. 113 at 1035.

95. In the afternoon of June 18, 2025, having not received a response from Parent, SPED Teacher emailed Parent to inform Parent that starting June 20, 2025, transportation services would be provided pursuant to Option 1. SPED Teacher informed Parent that SPED Teacher would be at the bus stop to meet Student and will ride with Student to [REDACTED] Home School and that transportation would be calling Parent with Student’s pick-up and drop-off times. Pet. Ex. 3 at 106; DOE Ex. 113 at 1034.
96. In the evening of June 18, 2025, Parent asked SPED Teacher to send the bus to Parent’s home to take Student to the ESY program. Pet. Ex. 3 at 106, 111; DOE Ex. at 1034.
97. On June 19, 2025, at 2:20 p.m., SPED Teacher informed Parent that the bus company determines the pickup location, so they should have called Parent to give Parent the exact location and time. SPED Teacher asked Parent to let SPED Teacher know if the bus company had not notified Parent about the exact location and time. SPED Teacher reiterated to Parent that SPED Teacher would be on the bus to support Student and suggested that Parent tell Student that SPED Teacher will be on the bus to help with the transition. SPED Teacher asked Parent to text or call SPED Teacher if Parent was

having difficulties getting Student to the bus as SPED Teacher was willing to help. Pet. Ex. 3 at 111; DOE Ex. 114 at 1039.

98. On June 19, 2025, the bus aide texted Parent at 6:18 p.m. to let Parent know that pick up on June 20, 2025, was at [REDACTED] a.m. DOE Ex. 116 at 1045-1046.
99. On June 20, 2025, at [REDACTED] a.m. the bus aide sent a message to Parent to let Parent know that the bus was on its way to pick up Student. The bus picked up SPED Teacher at [REDACTED] a.m. at [REDACTED] Home School. The bus and SPED Teacher drove to the [REDACTED] and waited. Parent replied to the bus aide's text message and stated that Parent was having difficulties and that they would not be coming out. SPED Teacher exited the bus and walked back to [REDACTED] Home School. DOE Ex. 116 at 1045-1046; DOE Ex. at 122 at 1156.
100. Parent testified that on June 20, 2025, the same things that happened every morning for the past several years when getting Student ready to go to [REDACTED] Home School occurred that morning, and Parent could not get Student to the bus. Parent, Tr. Vol. I, 56:8-57:3.
101. On June 20, 2025, at 1:53 p.m., Principal suggested to Parent that SPED Teacher and the bus pick up Student from [REDACTED] Home School on June 23, 2025, and drive Student to [REDACTED] Home School for ESY. And then for the remainder of the week, starting on June 24, 2025, the bus and SPED Teacher could pick up Student from the home location. Principal asked that if Parent wanted to try this option, to let Principal know so that transportation could be notified. Pet. Ex. 3 at 116-117; DOE Ex. 117 at 1047.
102. On June 23, 2025, at 6:29 a.m., Parent replied to Principal's June 20, 2025 suggestion with "Thank you [Principal], I am trying." Pet. Ex. 3 at 116; DOE Ex. 120 at 1061.

103. On June 23, 2025, at [REDACTED] a.m., the bus picked up SPED Teacher at [REDACTED] Home School. The bus drove to the [REDACTED] and waited until [REDACTED] a.m. The bus driver called Parent twice and left messages, while SPED Teacher texted Parent at [REDACTED] a.m. to let Parent know that SPED Teacher was at the [REDACTED] on the bus. Parent did not respond to the bus driver or SPED Teacher's messages. SPED Teacher got off the bus at [REDACTED] a.m. and walked back to [REDACTED] Home School. DOE Ex. 122 at 1157.

104. On June 23, 2025, at 2:40 p.m., Principal informed Parent that the bus had attempted to pick up Student that morning, but Student was not present at the [REDACTED] and that the bus driver and SPED Teacher had left messages for Parent while they were waiting. Principal suggested that since Parent was having difficulty getting Student from home to [REDACTED] Home School and/or to the [REDACTED] where the bus was waiting, [REDACTED] Home School was open to suggestions on how the school could assist Parent. Principal confirmed that they would try again tomorrow. Principal again asked Parent to let Principal know by the end of the day if Parent wanted to drop off Student at [REDACTED] Home School or meet the bus at the [REDACTED]. Pet. Ex. 3 at 116; DOE Ex. 120 at 1061.

105. In the morning of June 24, 2025, Parent emailed Principal twice before the bus arrived. Once at 5:41 a.m. to inform Principal that Parent wanted the bus to be sent to Parent's home. Pet. Ex. 3 at 116. And another email at 6:49 a.m. to inform Principal that Parent wanted to "stick with the plan from the IEP." Parent also informed Principal that Parent prepares Student every day for a trip that starts at the "curb" and goes to Student's new school and tells Student that SPED Teacher is on the bus. Parent explained that if Parent doesn't answer the phone in the morning, it is because Parent is struggling to get Student

to the curb and Student is refusing to go to [REDACTED] Home School. Pet. Ex. 3 at 123; DOE Ex. 120 at 1061.

106. On June 24, 2025, the bus and SPED Teacher drove to the [REDACTED] and waited, but Student did not show up. SPED Teacher got off the bus and walked back to [REDACTED] Home School. DOE Ex. 122 at 1158.
107. On June 24, 2025 at 3:02 p.m., Principal informed Parent that the school will make another attempt on June 25, 2025. Principal asked Parent to provide specific details about the challenges Parent is encountering in getting Student to the pick-up location so that the school could provide targeted support. Principal recounted the accommodations offered by [REDACTED] Home School thus far, which included accommodating Student's drop off location that mirrored a familiar routine; offering SPED Teacher on the bus to assist with transporting Student; offering to meet with Parent to discuss Parent's concerns regarding transportation prior to ESY transportation starting; and providing a social storybook about riding a school bus. Principal further informed Parent that pursuant to DOE's transportation policy, if Student does not get on the bus tomorrow, transportation services would be suspended until Parent contacts transportation to resume the service. Pet. Ex. 3 at 122-123; DOE Ex. 120 at 1060-1061.
108. On June 24, 2025, at 4:48 p.m., Parent informed Principal that Parent "did everything [Parent] could to tell [Principal] what is happening with the Bus." Parent also informed Principal that Parent had asked for accommodations this year, but [REDACTED] Home School did not provide any. Pet. Ex. 3 at 122; DOE Ex. 120 at 1060.

109. On June 25, 2025, the bus and SPED Teacher waited at the [REDACTED], but Student did not show up. SPED Teacher got off the bus and walked back to [REDACTED] Home School. DOE Ex. 122 at 1159.

110. On June 25, 2025, at 7:09 p.m., Principal replied to Parent's comment that Parent had asked for accommodations and [REDACTED] Home School had failed to provide those accommodations. Principal disagreed that Parent requested accommodations and reiterated that while Parent shared that Student gave Parent a hard time and it was challenging to get Student to the pick-up location, Parent had not provided specific information about the challenges and the accommodations Parent needed. Principal again recounted the various solutions offered by [REDACTED] Home School, which included (1) having SPED Teacher on the bus to assist Student; (2) offering an alternative pick-up location at a place Student was familiar with; (3) providing social stories; (4) providing details about the bus prior to pick-up; and (5) SPED Teacher offering to go past the [REDACTED] to Parent's house to provide direct assistance, which Parent declined<sup>11</sup>. Principal recognized that the transition from Parent's house to the bus pick-up location was different and the school lacked data on that specific transition. Principal informed Parent that transportation services will be paused until Parent and Student are ready to try again. Pet. Ex. 3 at 126-127; DOE Ex. 119 at 1051-1052.

111. Student did not attend any days of ESY during the summer of 2025. Parent, Tr. Vol. I, 104:20-22.

112. On July 7, 2025, the instant Complaint was filed.

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<sup>11</sup> It is unclear from the record if Principal is referring to a written or oral communication from Parent declining the offer, or if Parent's nonresponse to [REDACTED] Home School's offer is being construed as Parent declining.

113. Student is currently attending Public Charter School for the 2025-2026 school year.

Parent drives Student to Public Charter School every day. Parent continues to experience difficulty every morning when getting Student ready for school. The challenge differs from day to day. For example, Student may throw a tantrum or may run into another room. The difficulty Parent experiences getting Student ready to go to Public Charter School is the same as when Parent tried to get Student to the [REDACTED] for the transportation assessment. Parent, Tr. Vol. I, 42:19-45:4.

**V. CONCLUSIONS OF LAW**

**A. BURDEN OF PROOF**

Pursuant to Hawaii Administrative Rules (“H.A.R.”) § 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.” Schaffer, 126 S. Ct. at 535. Neither Schaffer nor the text of the IDEA supports imposing a different burden in IEP implementation cases than in formulation cases.

**B. IDEA REQUIREMENTS**

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related

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

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

In Bd. of Educ. v. Rowley, the Court set out a two-part test for determining whether the school offered a FAPE: (1) whether there has been compliance with the procedural requirements of the IDEA; and (2) whether the IEP is reasonably calculated to enable the student to receive educational benefits. Rowley, 458 U.S. 176, 206-207, 102 S. Ct. at 3050-3051 (1982). “A state must meet both requirements to comply with the obligations of the IDEA.” Doug C. v. Hawaii Dept. of Educ., 720 F.3d 1038, 1043 (9th Cir. 2013) (quoting Rowley). See also, Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir. 2001).

Procedural violations do not necessarily constitute a denial of FAPE. Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 892 (9th Cir. 2001). If procedural violations are found, a further inquiry must be made to determine whether the violations: (1) resulted in a loss of educational opportunity for the student; (2) significantly impeded a parent’s opportunity to

participate in the decision-making process regarding the provision of FAPE to the student; or (3) caused the student a deprivation of educational benefits. Amanda J., 267 F.3d 877, 892 (9th Cir.2001).

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

The mechanism for ensuring a FAPE is through the development of a detailed, individualized instruction plan known as an Individualized Education Program (“IEP”) for each child. 20 U.S.C. §§ 1401(9), 1401(14), and 1414(d). The IEP is a written statement, prepared at a meeting of qualified representatives of the local educational agency, the child’s teacher(s), parent(s), and where appropriate, the child. The IEP contains, among other things, a statement of the child’s present levels of academic achievement and functional performance, a statement of the child’s annual goals and short-term objectives, and a statement of specific educational services to be provided for the child. 20 U.S.C. § 1414(d). The IEP is reviewed and, if appropriate, revised, at least once annually. 20 U.S.C. § 1414(d). The IEP is, in effect, a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Burlington v.

Dept. of Educ. of the Commonwealth of Massachusetts, 471 U.S. 359, 368, 105 S. Ct. 1996,

2002 (1985). An IEP must be evaluated prospectively as of the time it was created.

Retrospective evidence that materially alters the IEP is not permissible. R.E. v. New York City

Dept. of Educ., 694 F.3d 167 (2nd Cir.2012).

### **C. ISSUES FOR DETERMINATION**

- 1. Whether the IEP, dated May 30, 2025, denies Student a FAPE by failing to address Student's known and documented deficit wherein Student has repeatedly demonstrated difficulty accessing educational locations, under certain circumstances. "Address" means both insufficiently discussed during the 5/30/2025 IEP meeting and the 5/30/2025 IEP contains insufficient accommodations to address this need.**

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In this issue, Petitioners are alleging two IDEA violations: (a) the IEP team, on May 30, 2025, failed to sufficiently discuss Student's known and documented difficulty in accessing educational locations; and (b) the 5/30/2025 IEP does not have sufficient accommodations to address Student's difficulty in accessing educational locations. Based on the evidence, Petitioners fail to meet their burden of proof in showing that the discussion during the 5/30/2025 IEP meeting was insufficient but met their burden of proof in showing that the 5/30/2025 IEP does not have sufficient accommodations to address Student's difficulty in accessing educational locations.

- (a) The IEP team sufficiently discussed Student's known and documented difficulty in accessing educational locations during the 5/30/2025 IEP meeting**

On February 3, 2025, in preparation for an IEP meeting to discuss Student's reevaluation, Parent sent an email to Principal and SPED Teacher expressing that in order to evaluate Student's transportation needs, an assessment should be done to "analyze [Student's] behaviors, triggers, and responses during travel" and "environment factors contributing to those behaviors

(e.g., noise level, duration of the ride, proximity to other passengers, seating position, or unpredictability of the route).” (FOF 28).

On March 5, 2025, while discussing what assessments needed to be done for Student’s reevaluation, Parent shared with the rest of the IEP team, with respect to Student’s ability to use transportation, that Parent sometimes found it challenging to get Student into the car and that Parent was concerned about the length of the ride, Student needing to use the restroom, and loud noises. (FOF 36). After the 3/05/2025 IEP meeting, Parent and [REDACTED] Home School negotiated the language for the Prior Written Notice that would document the purpose of the transportation assessment. Initially, Parent wanted a “transportation assessment [that would]...evaluate [Student’s] ability to ride the school bus...[and] determine Student’s actual ability to tolerate the expected transportation conditions....” (FOF 42). Parent later wanted a “transportation assessment [that would]...evaluate [Student’s] current ability to access, ride, tolerate, and transition on/off the bus....” (FOF 46). On April 13, 2025, Parent signed a consent form to allow Student’s IEP to be amended without an IEP meeting. The amendment, which was to include transportation, would allow the transportation assessment to take place. The 4/13/2025 IEP indicated that Student would be assessed on “[Student’s] ability to access, ride, tolerate, and transition on/off the bus to/from home to [REDACTED] Home School]....” (FOF 50).

The transportation assessment was scheduled to take place on May 8, 9 and 20, 2025. DOE attempted to assist Parent in getting Student to the [REDACTED] so that the transportation assessment could be done by offering to send SPED Teacher to the house to help Parent; preparing Student with a social storybook and providing a copy to Parent; answering all the questions that Parent had regarding the transportation assessment; and offering to meet with Parent to discuss how the IEP team could support Student’s bus transportation assessment when

Student failed to get to the [REDACTED] on May 8 and 9, 2025. (FOF 54, 60, 63-65, 67). Parent did not respond to Principal's offer to have SPED Teacher go to the house to help Student get to the [REDACTED] nor did Parent respond to the offer to have an IEP meeting. The transportation assessment was not completed because Student was not at the [REDACTED] to board the bus<sup>12</sup>.

During the 5/30/2025 IEP meeting, the school members of the IEP team repeatedly asked Parent to share Parent's experience with getting Student from the house to the [REDACTED] where Student could board the bus so that a transportation assessment could be conducted. Parent did not want to share details about what occurred in the house that made it difficult for Parent to get Student to the [REDACTED]. (FOF 80). Mr. Peck tried to get Parent to share information that only Parent was privy to, but Parent declined. (FOF 80). “[P]arents must talk, or complain, when given the chance. Timely input can allow a school district to respond meaningfully to parental requests.” Schoenbach v. D.C., 309 F.Supp.2d 71, 89 (U.S.D. Dist. of Columbia March 25, 2004). Based on [REDACTED] Home School's experience with Student riding the bus and the data collected during these bus rides, the school members of the IEP team believed that Student was not only capable of riding the bus but preferred and enjoys it. (FOF 12, 24, 31, 32, 34, 35, 44, 53, 71-73). Parent, having a different experience, was afforded the opportunity to share information that only Parent had with the other IEP team members but declined to do so. The IEP team was respectful towards each other and there is no evidence that the DOE members of the IEP team prevented Parent from talking. See Dept. of Educ., Hawaii v. C.B., Civil No. 11-00576 SOM/RLP, 2012 WL 1537454, \*11 (D.Haw. May 1, 2012) (“The court declines to place upon a school the burden

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<sup>12</sup> In Petitioners' Closing Brief, Petitioners argue that “DOE's transportation assessment tested whether Student could board and ride a bus—skills never in dispute.... The assessment ignored the actual barrier: Student's documented difficulty getting from [Student's] home to the pickup point.” Pet. Closing Brief, pp. 17-18. The evidence contradicts this argument because Student's ability to board and ride a bus were concerns that Parent had. (FOF 28, 42, 46, 50, 65, 66).

of recognizing a parent's concern about the inadequacy of a school's response to the parent's inquiry when the parent has given no indication of concern.") Based on the evidence and a review of the recording of the 5/30/2025 IEP meeting, Petitioners fail to meet their burden of proof with respect to this allegation.

**(b) The 5/30/2025 IEP does not have sufficient accommodations to address Student's difficulty in accessing educational locations**

Under the IDEA, a FAPE includes special education and related services, such as transportation and other supportive services, required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34(a) (2006). "The [D]epartment [of Education] may provide suitable transportation to and from school and for educational field trips for all children in grades kindergarten to twelve and in special education classes." H.R.S. § 302A-406(a).

Student does not have difficulty getting on and riding a bus while at school and during class field trips. (FOF 12, 24, 31, 32, 34, 35, 44, 53, 71-73). For unknown reasons, during the transportation assessment days, Parent was unable to get Student into the car at home to drive to the [REDACTED] where Student could board the bus, but was able to get Student into the car, drive pass the [REDACTED], and drive to [REDACTED] Home School on time for school<sup>13</sup>. (FOF 60, 61, 69). Parent testified that the difficulty Parent encountered during the transportation assessment period was the same difficulty that Parent encountered other mornings when trying to get Student to school. (FOF 62, 100, 113).

During the 5/30/2025 IEP meeting, Mr. Peck was present to represent and speak on behalf of Parent and Ms. Tribbey was present to represent the DOE. (FOF 79). During the 5/30/2025 IEP meeting, the IEP team discussed numerous matters relating to Student's needs and

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<sup>13</sup> Parent is also able to drive Student to Public Charter School, which is a new school for Student. (FOF 113).

the services and accommodations that Student may need. One of the topics of discussion was Student's need for transportation. DOE offered to change the transportation services from three (3) times, which was solely for the transportation assessment, to a daily service for ESY and the upcoming school year. While Parent did not indicate whether Parent wanted transportation services for Student, Parent was informed that when the transportation company calls Parent, Parent can tell the transportation company at that time whether Parent wanted the service. (FOF 81). The DOE members of the IEP team also tried to get information from Parent to help Parent get Student to the [REDACTED]. Parent replied that Parent felt uncomfortable sharing what the challenges were in the morning getting Student to the [REDACTED]. (FOF 80). Mr. Peck informed the rest of the IEP team that they were open to having someone who Student knows, such as EA, on the bus. SPED Teacher volunteered to help Student get on the bus to go to ESY and then fade out. SPED Teacher offered to help Student transition in June until SPED Teacher had to leave for the summer. Mr. Peck replied that they were willing to try something. (FOF 81). Ms. Tribbey later sought clarification and asked Mr. Peck and Parent if DOE were able to have someone on the bus, either EA or SPED Teacher, would Parent be willing to let DOE go through the [REDACTED] to help Parent. Mr. Peck agreed to this proposal but stated that they rejected the necessity of needing to do this and that it was still not an offer of FAPE. (FOF 81). This agreement between the parties' representatives during the IEP meeting was not included in the 5/30/2025 IEP.

On June 5, 2025, SPED Teacher made various suggestions to Parent on ways to help Student get to [REDACTED] Home School for ESY, including SPED Teacher riding the bus with Student. (FOF 89). Parent responded to SPED Teacher's various suggestions and stated that the IEP team did agree to have some means to help Student get on the bus at the 5/30/2025 IEP meeting but it was not reflected in the 5/30/2025 IEP document. (FOF 92). SPED Teacher

replied that “[w]hile the specific support for bus familiarization might not be detailed word-for-word in the IEP document, it...can be found in the Prior Written Notice.” (FOF 93). The 6/06/2025 PWN indicating “Proposed ideas from the IEP meeting included: a special education teacher, with whom [Student] has a familiar relationship, visiting the home” does not represent what occurred at the 5/30/2025 IEP meeting because it was not a proposal, but a service Mr. Peck agreed to on behalf of Parent. Also, having this service written in a PWN is not the same as having the service listed in the actual IEP. (FOF 91). A PWN is given to parents/guardians whenever the DOE proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child, or the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(3). The failure to write in the 5/30/2025 IEP that a familiar person will be on the bus and go to the house to help Student transition to [REDACTED] Home School for ESY is a substantive violation and denied Student a FAPE.

The fact that SPED Teacher was on the bus to help Student get to [REDACTED] Home School for ESY does not cure the error of not including this service in the 5/30/2025 IEP. An IEP must contain, among other things, a statement of specific educational services to be provided to a student. 20 U.S.C. § 1414(d). An IEP is 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). By not including the agreed upon service of having a familiar person on the bus and visit the house, there was no guarantee that this service would be provided to Student. SPED Teacher being on the bus and Parent ultimately not using the

service speak to the remedy that Petitioners are entitled to as a result of the FAPE violation but does not cure the violation<sup>14</sup>.

**2. Whether the DOE violated Section 504 by failing to provide reasonable accommodations for Student's disability-related transportation and location access challenges, thereby denying Student meaningful access to educational programming.**

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In this issue, Petitioners are alleging that the DOE violated Section 504 of the Rehabilitation Act because DOE failed to provide or implement the following accommodations: (1) bus aide or familiar peer support (despite proposing SPED Teacher); (2) extended wait window beyond five minutes; (3) advance phone calls; (4) modified cancellation threshold beyond five missed pickups; (5) home visits; (6) social stories; (7) meeting at a familiar site; and (8) "individualized operational procedures of any kind." Pet. Closing Brief, p. 41. Petitioners fail to meet their burden of proof with respect to this issue.

First, in 1984, the United States Supreme Court held "that § 504 is inapplicable when relief is available under the Education of the Handicapped Act to remedy a denial of educational services. Respondents are therefore not entitled to relief under § 504...." Irving Independent Sch. Dist. v. Henri Tatro, 468 U.S. 883, 895, 104 S.Ct. 3371, 3378, 82 L.Ed.2d 664 (1984). In this case, Petitioners will receive relief under the IDEA to remedy the denial of educational services as discussed *supra*. However, in the event that a reviewing body decides otherwise, an analysis of this issue is presented below, and it is determined that Petitioners fail to meet their

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<sup>14</sup> Although Parent testified during the hearing that Parent would not let anyone Parent did not know into Parent's house to help with Student, Parent did not decline the offer during the 5/30/2025 IEP meeting. Parent, Tr. Vol. I, 92:10-99:7. Parent's decision to not use a service should not determine what is written in the IEP when there was an agreement for that service and Parent, at the IEP meeting, allowed Mr. Peck to speak on Parent's behalf and did not object or reject the service of a familiar adult being on the bus and going to the house. This is similar to daily transportation being added to the 5/30/2025 IEP and Parent was allowed to decide later whether Parent wanted transportation services. (FOF 81).

burden of proof with respect to this issue.

Second, the accommodations that DOE allegedly failed to provide or implement, listed above, were either provided by [REDACTED] Home School or not accommodations Parent had asked for: (1) a “bus aide” was provided because SPED Teacher was on the bus (FOF 94, 99, 103, 106, 109); (2) it was reasonable for the bus to wait approximately five minutes after Student did not arrive at the [REDACTED] at the designated time when Parent did not respond to messages or indicate how long the bus should wait (FOF 99, 103, 106, 109); (3) there were advance phone calls and text messages (FOF 56, 57, 98, 99, 103); (4) there was no cancellation threshold beyond five missed pickups—there was a suspension in service until Parent calls to restart the service (FOF 107, 110); (5) home visit was offered but not accepted by Parent (FOF 60, 91, 110); (6) social stories were provided (FOF 37, 54, 67, 83, 89, 107); (7) meeting at a familiar site was offered and rejected by Parent (FOF 89, 94, 101, 104, 107); and (8) it is unclear what “individualized operational procedures” Petitioners are claiming DOE could have provided but did not, and the undersigned declines to guess as to what these are.

Third, Petitioners fail to show that DOE violated Section 504 by failing to provide reasonable accommodations. Section 504 of the Rehabilitation Act of 1973 provides that “[n]o qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.” 34 C.F.R. § 104.4(a). Section 504 is designed to prevent disability discrimination in preschool, elementary, secondary, and adult education programs or activities that receive federal financial assistance. 34 C.F.R. §§ 104.1, 104.31. Public [REDACTED] and [REDACTED] education programs are required to provide a FAPE to qualified handicapped students, regardless of the nature or severity of the students’ handicap. 34

C.F.R. § 104.33(a). “[T]he provision of an appropriate [public] education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.” 34 C.F.R. § 104.33(b). “[U]nlike FAPE under the IDEA, FAPE under § 504 is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met, and focuses on the ‘design’ of a child’s educational program.” Mark H. v. Lemahieu, 513 P.3d 922, 933 (9th Cir.2008).

To establish a violation of Section 504, Petitioners must prove that (1) Student is disabled as defined by the Act; (2) Student is otherwise qualified to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) Student was excluded from participation in, denied the benefits of, or subject to discrimination at the school. 34 C.F.R. § 104.4(a); M.D. v. Colonial School District, 539 F.Supp.3d 380, 396-397 (U.S. Dist. Court, E.D. Penn. May 13, 2021). Section 504 applies to the Hawaii DOE because it is a public school system. Mark H. v. Hamamoto, 620 F.3d 1090, 1097 (9th Cir.2010).

Petitioners have met their burden in establishing elements (1), (2), and (3): Student has [REDACTED]; Student is otherwise qualified to participate in school activities; and Student has an IEP, which DOE provided to Student under the IDEA. Petitioners, however, fail to establish element (4).

Petitioners fail to show that Student was excluded from participation in, denied the benefits of, or subject to discrimination at [REDACTED] Home School. First, there is insufficient evidence to establish that Student has “transportation challenges” or was not able to use transportation at school. The evidence is clear, and Petitioners concede, that Student is capable

of boarding and riding a bus. Pet. Closing Brief, pp. 17-18. (FOF 72, 73). When given the option to ride a bus or ride in a [REDACTED] with SPED Teacher, with whom Student was very comfortable, Student preferred riding the bus with peers. (FOF 72). Student participated in numerous field trips that required riding a bus. The only field trip that Student did not participate in—a class trip to [REDACTED] Home School to prepare [REDACTED] graders with special needs for the transition to that school—was due to Parent's refusal to let Student participate. (FOF 48, 52).

Student not participating in ESY at [REDACTED] Home School from June 20, 2025 to July 14, 2025 was not due to [REDACTED] Home School not providing transportation or services to Student. For unknown reasons, Student was not present at the [REDACTED] to ride the bus to [REDACTED] Home School for ESY. Parent testified that, at least with the first day of ESY, the challenge Parent faced in getting Student to the [REDACTED] was the same challenge Parent faced every morning for several years when getting Student ready for school. (FOF 100). Although [REDACTED] Home School did not know what challenges Parent was encountering in getting Student to the car to drive to the [REDACTED] where Student could board the bus, [REDACTED] Home School offered Parent accommodations to address the amorphous problem Parent was telling the school.

[REDACTED] Home School offered to send SPED Teacher to the house to help get Student to the [REDACTED] so that Student could attend ESY (FOF 81, 91); offered alternative pick-up location at [REDACTED] Home School (FOF 89, 94, 101, 104, 107); and provided social stories (FOF 37, 54, 67, 83, 89, 107). SPED Teacher volunteered, without pay, to accompany Student on the bus to [REDACTED] Home School for ESY and waited on the bus for Student on four (4) separate days but Student did not go to the [REDACTED]. (FOF 81, 99, 103, 106, 109). Although transportation was suspended due to Student's nonappearance at the [REDACTED], Parent had the option of asking for the service to resume. (FOF 16, 107, 110). While Parent has a right to decline the offers made by

██████████ Home School, that does not negate the efforts made by the school. Student not participating in ESY at ██████ Home School was not due to Student being excluded from participation in, denied the benefits of, or subject to discrimination by ██████ Home School. Furthermore, Petitioners fail to adduce any evidence to show that in situations where parents who have difficulty transporting their child from the home to the location where educational benefits can be conferred to the child, Student was treated differently from a nondisabled child.

Based on the evidence, the DOE did not fail to provide reasonable accommodations for Student's disability-related transportation and location access challenges. Therefore, Petitioners fail to meet their burden of proof with respect to this issue.

## **VI. DECISION**

Based upon the above-stated Findings of Fact and Conclusions of Law, the undersigned Hearings Officer concludes that Petitioners have proven that DOE denied Student a FAPE when the 5/30/2025 IEP did not contain sufficient accommodations to address Student's transportation needs.

For the reasons stated above, IT IS HEREBY ORDERED –

1. The IEP team shall, within ten (10) school days of this Order, decide if any additional tests or assessments are necessary to determine Student's current transportation needs and revise Student's IEP. Any assessments are to be scheduled and completed within forty-five (45) calendar days of this Order.
2. An IEP revision meeting shall be held within ten (10) school days of the completion of all aforementioned assessments.
3. Any delay in meeting any of the deadlines in this Order because of an act or acts of Petitioners and/or their representatives, will extend the deadlines set herein by the

number of days attributable to Petitioners and/or their representatives. Respondents shall document in writing any delays caused by Petitioners and/or their representatives.

#### **RIGHT TO APPEAL**

The decision issued by this Hearings Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearings Officer shall have thirty (30) days from the date of the decision to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. § 1415 (i)(2) and Hawaii Administrative Rules § 8-60-70(b).

DATED: Honolulu, Hawaii, November 4, 2025.



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