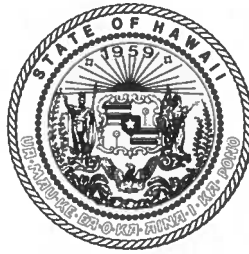


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OFFICE OF DISPUTE RESOLUTION
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAII

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

Petitioners,

vs.

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

Respondents.

DOE-SY2526-003

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
September 25, 2025

Hearings Officer: Charlene S.P.T. Murata

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

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, et seq.; the federal regulations implementing IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and the

¹ Personal identifiable information is provided in the Legend.

Hawaii Administrative Rules (“H.A.R.”) §§ 8-60-1, et seq. Additionally, Petitioners allege violation of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended in 1974, codified at 29 U.S.C. §§ 794, et seq.; and the H.A.R. §§ 8-61-1, et seq.

II. INTRODUCTION

On August 8, 2025, the Department of Education, State of Hawaii and Keith T. Hayashi, Superintendent of the Hawaii Public Schools (“Respondents” or “DOE”) received a Complaint and Resolution Proposal from Student, by and through Student’s Mother, Parent (“Complaint”).

On August 18, 2025, Respondents filed a response to Petitioners’ Complaint.

On August 18, 2025, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for September 8, 2025.

On August 20, 2025, an Amended Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, rescheduling the prehearing conference to September 10, 2025.

On August 28, 2025, Petitioners filed Correction/Additions to Resolution Session Summary².

On September 10, 2025, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners; Deputies Attorney General Anne T. Horiuchi (“Ms. Horiuchi”) and Turner M.Y. Wong appearing on behalf of Respondents; and the undersigned Administrative Hearings Officer. During the prehearing conference, the parties agreed to have the due process hearing on September 25-26, 2025.

² The Office of Dispute Resolution (“ODR”) did not receive a copy of the Resolution Session Summary, nor were the parties required to provide one to ODR.

On September 11, 2025, a Prehearing Order was issued to the parties, setting forth the issues and procedures for the due process hearing, and deadlines for submission of substantive motions, witness and exhibit lists, and exhibits.

On September 14, 2025, Petitioners submitted Petitioners' Witness List, Exhibit List, and Exhibits.

On September 17, 2025, an Amended Prehearing Order was issued to reflect changes requested by Respondents.

On September 18, 2025, Respondents filed Respondents Department of Education, State of Hawaii and Keith Hayashi's Witness List, Exhibit List, and Exhibits.

The due process hearing took place on September 25, 2025, using Zoom, a videoconferencing platform. All participants in the due process hearing appeared remotely via video and audio. The undersigned Administrative Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Ms. Horiuchi. Parent, Ms. Wong, and the Department of Education District Educational Specialist ("DES") were also present. The hearing was completed on September 25, 2025. The hearing date scheduled for September 26, 2025 was taken off the calendar.

Petitioners called Parent as their only witness during the due process hearing. Respondents called Principal as their only witness during the due process hearing. Petitioners did not call any rebuttal witnesses.

The following Petitioners' exhibits were admitted into evidence during the hearing: Exhibit 1 (pages 001-017), Exhibit 2 (pages 018-033, 093-094³), and Exhibit 3⁴ (pages 034-196). Tr. 82:21-83:19.

The following Respondents' exhibits were admitted into evidence during the hearing: Exhibits 1, 3, 4, 11-15, 17-18, 19 (page 074 only), 20-25, 28, 30-31, 51, 61, 63, and 74-75⁵. Tr. 83:20-85:14.

On October 15, 2025, the parties submitted their closing briefs.

The deadline for which a decision on this matter must be issued is November 7, 2025. See Order Granting Respondents' Request to Extend the 45-Day Decision Deadline from October 22, 2025 to November 7, 2025; Declaration of Anne T. Horiuchi, dated September 29, 2025, issued on September 29, 2025.

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

³ Petitioners orally requested the amendment of their Exhibit List. Petitioners requested that Exhibit 2, document dated 08/22/2025, be amended to reflect pages 031-032 and pages 093-094 as the attachment and not 033. Petitioners also requested that document date-stamped 033 be an independent exhibit dated 8/21/2025 and described as Letter from DES to Parent, under Exhibit 2. Petitioners' requests were granted. After the oral amendments, Petitioners' exhibit list has four (4) entries under "Communication." Tr. 31:21-32:14.

⁴ Pet. Ex. 3 at 147-150 is an informal transcription of portions of the 6/30/2025 IEP meeting created by counsel pursuant to the Amended Prehearing Order issued in this matter.

⁵ DOE Ex. 74 is an informal transcription of portions of the 6/30/2025 IEP meeting created by counsel pursuant to the Amended Prehearing Order issued in this matter.

III. ISSUES PRESENTED

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

Issue 1 – Whether the DOE’s failure to discuss and/or describe accommodations related to Student’s medically-related absences at the June 30, 2025 IEP meeting constitutes a denial of FAPE, under the totality of then-existing circumstances.

Issue 2 – Whether the DOE violated Section 504 by failing to provide reasonable accommodations for Student’s medical condition, thereby discriminating against Student and denying meaningful access to educational programming.

Petitioners request the following remedies in their Complaint:

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 any delay in providing services; 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. Student is currently [REDACTED] years old. Pet. Ex. 1 at 001.
2. Student is eligible for special education and related services pursuant to the IDEA and Hawaii Administrative Rules Chapter 60 under the category of [REDACTED]. Pet. Ex. 1 at 002.

3. Student was medically diagnosed with [REDACTED].
Pet. Ex. 3 at 158, ¶3.
4. Student engages in the following challenging behaviors: elopement, tantrums, and mouthing/biting. Student displays frustration when Student does not get Student's way. Student has difficulty following directions in class, verbally expressing Student's wants and needs, following classroom routines, and starting and completing tasks. Pet. Ex. 1 at 002.
5. Student's learning is significantly delayed in the areas of communication, speech/language, cognitive and social, daily living, adaptive, and academic skills. These delays adversely impact Student's ability to communicate with peers and teachers, and comprehend and participate fully in learning opportunities. Pet. Ex. 1 at 002.
6. Student is currently in a fully self-contained ("FSC") classroom where Student receives support from a special education teacher and a registered behavior technician ("RBT").
Pet. Ex. 1 at 002.
7. Students in an FSC classroom do not typically do grade level work. Students in an FSC classroom work on goals and objectives in their respective IEPs and work at their own pace. Principal, Tr. 72:15-73:13.

Facts of Case

8. During the 2024-2025 school year, which ran from August 5, 2024 to May 30, 2025, Student was in [REDACTED] at Home School. Home School is in City-1. Pet. Ex. 3 at 152, 163 at ¶24.

9. On October 7, 2024, Parent informed Home School that Student would be out of school from October [REDACTED] 2024 to November [REDACTED] 2024 because a family member had passed away. Pet. Ex. 3 at 164, ¶29; Principal, Tr. 61:17-62:8.
10. In the evening of December 9, 2024, Parent informed SPED Teacher that Student had a fever for a few days and was healing. Pet. Ex. 3 at 165, ¶31.
11. On December 15, 2024, Parent signed a rental agreement to reside at Address-2 in City-2, from January 1, 2025 to December 31, 2025. Pet. Ex. 3 at 139-146.
12. On December 16, 2024, Parent informed Student's special education teacher that Parent was not sure when Parent should send Student back to school, and that Student's fever had gone down, and Student was feeling much better. Pet. Ex. 3 at 165, ¶33.
13. December 23, 2024 to January 6, 2025 was winter break and there was no school for students who were attending a DOE school⁶.
14. On or about January 5, 2025, Parent, Student and the rest of the family moved out of Address-1 in City-1 and stayed in a hotel or with other family members until Parent was able to get the keys to Address-2 in City-2 on January 14, 2025. Pet. Ex. 3 at 165, ¶35.
15. On January 5, 2025, Parent informed SPED Teacher that Student had no symptoms and would be back in school on January 6, 2025. SPED Teacher in turn told Parent that the first day back to school for students after the start of the new year was January 7, 2025. Pet. Ex. 3 at 165, ¶36.

⁶ The undersigned takes judicial notice of the Hawaii State Department of Education 2024-2025 Official School Calendar. <chrome-extension://efaidnbmnnnibpcajpcgiclfindmkaj/https://hawaiipublicschools.org/DOE%20Forms/2024-25calendar.pdf>

16. On [REDACTED], 2025, Student injured [REDACTED] at school. [REDACTED]
[REDACTED]
[REDACTED]. Pet. Ex. 3 at 166, ¶39. The injury was the result of an accident and not maladaptive behavior.
17. Due to Student's injury, Student did not return to school and waited for a doctor to medically clear Student to return to school. Pet. Ex. 3 at 166, ¶40.
18. On January 23, 2025, an annual review of Student's IEP was held, resulting in an IEP with the same date ("1/23/2025 IEP"). Pet. Ex. 3 at 167, ¶42.
19. [REDACTED]
[REDACTED] The doctor provided Student with a note indicating that Student should not return to school until January 28, 2025. DOE Ex. 24 at 466; Pet. Ex. 3 at 170, ¶55.
20. On January 28, 2025, Parent informed SPED Teacher that Student would not be in school that day because Parent was sick and could not get Student to school. Pet. Ex. 3 at 170, ¶56.
21. On January 29, 2025, Parent informed SPED Teacher that Student would not be going to school that day because Parent was feeling worse; however, Student would be in school on January 30, 2025, as Student's [REDACTED] would be taking Student to school. Pet. Ex. 3 at 171, ¶57.
22. On February 12, 2025, Parent informed SPED Teacher that Student had a fever the day before and was still not well on February 12, 2025. Pet. Ex. 3 at 171, ¶58.

23. In an undated handwritten note, Parent asked Home School to excuse Student's absences for February 11-14, 18, and 20, 2025 because Student was ill and had appointments during those dates. Pet. Ex. 3 at 171, ¶59; DOE Ex. 25 at 467.
24. On March 24, 2025 at 10:13 a.m., Principal sent an email to Parent, attaching a "transition letter" and a copy of Student's 1/23/2025 IEP. In the email and transition letter, Principal informed Parent that based on Parent's current address being Address-2, Student's new home school was Charter School, which is located in City-2. Principal asked Parent, before enrolling Student at Charter School, to notify Home School so that Home School could officially release Student from Home School and prepare a withdrawal packet for Parent to take with Parent when registering Student at Charter School. Principal advised Parent that to enroll Student at Charter School, Parent would need to visit Charter School during their registration hours, and once Student was enrolled at Charter School, Charter School would request all of Student's records to be sent there. Principal advised that once this was done, Home School would then coordinate a transition meeting with Student's new IEP team. Pet. Ex. 3 at 174, ¶68; DOE Ex. 11 at 059; DOE Ex. 13 at 064.
25. On March 24, 2025 at 10:24 a.m., Parent replied to Principal's 3/24/2025 email and stated that Student's home school should be [REDACTED] School-2 as they had discussed during a resolution meeting for a pending due process complaint, designated case no. [REDACTED].⁷ Parent informed Principal that Parent did not want Student to attend any type of charter school. Additionally, Parent expressed concern that Student had missed a significant amount of school due to family circumstances, including

⁷ Mr. Peck represented Petitioners in [REDACTED].

- dealing with a death on the [REDACTED] and Student's [REDACTED], which required them to return twice for thirty (30) days each time; and therefore, Student should not be placed in a charter school. Pet. Ex. 3 at 174, ¶69; DOE Ex. 11 at 059.
26. On March 25, 2025, Principal responded to Parent's email explaining that during the resolution meeting the representatives for DOE were under the mistaken impression that [REDACTED] School-2 was Student's designated home school and that they realized after the resolution meeting that Student's home school was Charter School. Principal explained that a child's home school was strictly based on the geographic boundaries assigned to their residential address. Principal informed Parent that permission to attend another school may be granted by the DOE through a geographic exception ("G.E.") process and provided a copy of the G.E. form to Parent. Acknowledging that Student missed a lot of school for various reasons, Principal asked Parent to either enroll Student at Student's home school or complete the G.E. paperwork as soon as possible. Pet. Ex. 3 at 175, ¶70; DOE Ex. 12 at 060-063.
27. On April 1, 2025, Parent sent an email to Principal stating that Mr. Peck had informed Parent that Student was eligible to attend Home School for the remainder of the 2024-2025 school year. Parent alleged that Parent was "forced to withdraw" Student from Home School and would now like to return Student to Home School. Parent wanted confirmation from Principal that Student would be allowed to remain at Home School through the end of the school year before Parent "re-register" Student at Home School on Monday (April 7). Pet. Ex. 3 at 175, ¶71; DOE Ex. 17 at 072.
28. On April 2, 2025, Principal replied to Parent's 4/01/2025 email, stating that Student was never withdrawn from Home School and that to withdraw Student from Home School,

Parent would have needed to complete paperwork. Since Parent did not complete the necessary paperwork, Student was still enrolled at Home School. Principal also confirmed that while due process complaint [REDACTED] was pending, Student had “stay put” rights to continue Student’s educational placement until the dispute was worked out, and that once the due process complaint was resolved, Student’s “stay put” rights would cease⁸. Principal then stated that Principal would inform SPED Teacher that Student was returning to class, and that Student could return to school tomorrow if Parent wished. Pet. Ex. 3 at 175, ¶¶72; DOE Ex. 18 at 073.

29. On April 7, 2025, Student was absent from school because Student was not feeling well. Pet. Ex. 3 at 176, ¶¶74.
30. On April 8-10, 2025, Student did not attend school. Pet. Ex. 3 at 176-177, ¶¶75, 76, 77.
31. On April 20, 2025, Parent sent an email requesting an IEP meeting be held before the end of the school year to address concerns Parent had with Student’s 1/23/2025 IEP. Parent stated that “[w]e would like to update [Student’s] PLEPS⁹ and also discuss our concerns about [Student’s] aide and behavior interventions that allowed [Student] to be injured at [Home School] this year. We also want to discuss [Student’s] ESY program, [Student’s] other supports and accommodations.” Parent informed Home School that Student had been sick, and Parent anticipated that Student would be able to return to school on or about May 1, 2025. DOE Ex. 20 at 457.

⁸ Due process complaint [REDACTED] is currently being appealed before the United States District Court for the District of Hawaii. Pet. Ex. 2 at 033; DOE Ex. 61 at 606-604.

⁹ “PLEPS” refers to the Present Levels of Educational Performance section of an IEP. See Pet. Ex. 1 at 002.

32. On April 21, 2025, Principal acknowledged Parent’s request for an IEP meeting and asked Parent if Parent was available on April 28 or 29, 2025. If Parent was not available, Principal asked Parent to suggest a date and time. Pet. Ex. 3 at 177, ¶79; DOE Ex. 21 at 459.
33. On May 1, 2025, Parent emailed to Home School a “Return to school note,” dated April 28, 2025. The note reads: “I am writing to formally excuse my [child], [Student], from school from January 29, 2025, to April 28, 2025, due to a serious injury [Student] sustained while at school. On January 29, [Student] suffered a [REDACTED] injury [REDACTED] [REDACTED]. Since then, [Student] has been recovering at home and experiencing [REDACTED] related to the incident. Following the advice of [Student’s] medical providers and considering [Student’s] condition, we felt it was in [Student’s] best interest to allow [Student] the necessary time to heal [REDACTED]. As of today, April 28, 2025, [Student] has shown signs of improvement, and we believe [Student] is ready to begin transitioning back to school...” Pet. Ex. 2 at 029-030; Pet. Ex. 3 at 177, ¶81; DOE Ex. 22 at 461-463.
34. On May 2, 2025, Principal replied to Parent’s May 1, 2025 email stating that the accident occurred on [REDACTED], and not [REDACTED]. Principal further wrote that based on Parent’s “Return to school note,” Home School would excuse Student’s absences from January 29, 2025 to April 28, 2025 but noted that Student was in school for thirteen (13) days¹⁰ during that time period. Principal stated that the only

¹⁰ Principal noted that Student was present at school on February 3-7, 10, 17, 19, 21, and 24-27, 2025; however, February 17, 2025 was Presidents’ Day and there was no school. See Hawaii State Department of Education 2024-2025 Official School Calendar.

- doctor's note Home School had on file states that Student could return to school on January 28, 2025, and that if Parent had other doctor's notes, to submit them to Home School so that they could be added to Student's cumulative file. Later that evening, Parent replied, "I was only writing the note to excuse any absence that I had not excused because I wasn't aware of all the dates." Pet. Ex. 2 at 027-028; DOE Ex. 23 at 464.
35. Student was present at Home School on May 1 and 2, 2025, and a couple of days during the last week of school in May. On May 5, 2025, Student was ill and did not attend school. It is unclear why Student did not attend school during the other days in May. Pet. Ex. 3 at 178, ¶¶80, 83; DOE Ex. 28 at 471.
36. On May 20, 2025, having not received a response to Principal's 4/21/2025 email suggesting dates for an IEP meeting, Principal sent a follow up email to Parent, asking Parent if Parent was still interested in having an IEP meeting or if Parent wanted Principal to set up a transition meeting with Charter School. DOE Ex. 30 at 473.
37. On May 21, 2025, Parent apologized to Principal for not responding sooner and stated that the family had been dealing with upper respiratory infections and secondary viral infections of the throat for the past few weeks. Parent asked for dates towards the end of May or early June to have an IEP meeting to reassess any issues or concerns regarding Student's educational support. Parent also reiterated that Student would not be attending Charter School, so there was no need for a transition meeting with Charter School. DOE Ex. 31 at 476.
38. During the 2024-2025 school year, Home School had approximately one hundred seventy-nine (179) school days. Student was absent for approximately [REDACTED]

██████████ days, of which ██████████ were officially reported to the school office by Parent as due to Student being ill. Pet. Ex. 3 at 179, ¶86; DOE Ex. 3 at 083.

39. On June 30, 2025, an IEP meeting was held to revise Student’s IEP, resulting in an IEP with the same date (“6/30/2025 IEP”). Pet. Ex. 1 at 001-016. According to the 6/30/2025 IEP, the IEP Annual Review Date is January 23, 2026. Pet. Ex. 1 at 001

40. During the 6/30/2025 IEP meeting, Parent explained that Parent wanted to update Student’s IEP so that Student would not be penalized if Student has extended absences. Parent explained that due to Student being born premature, Student gets sick very easily and when Student gets sick, Student tends to stay sick longer than an average child. Principal explained that information about Student’s illnesses can be added to the PLEP section of the IEP and that penalties were up to a school to determine. Parent reiterated that Parent did not want whichever school Student might be attending to penalize Student for missing school and that the school understands that it is part of Student’s “disability” to be prone to sickness. Parent stated that Parent understood what Principal was saying. Parent asked the rest of the IEP team to let Parent know what they were capable of doing with respect to the concerns Parent had listed in Parent’s 4/20/2025 email. DOE Ex. 75 at 0:02:00-00:05:15. Parent later asked for “remote” or “at-home school” accommodations when Student is sick for an extended period of time. Principal informed Parent that Home School did not offer distance learning, but they could handle it on a case-by-case basis. Principal then stated that if Student is out for an extended period of time, Student’s teacher could get some material and send it home. Parent understood Principal’s explanation and stated that Student was “thriving” at the moment. DOE Ex. 75 at 00:08:35-00:09:57. The IEP team also discussed personalized binders

that SPED Teacher provided to Parent when Student was not in school. DOE Ex. 75 at 00:15:45-00:17:00. Principal explained that Parent's concerns about Student being sick would be added under the "Parent's Concerns" part of Student's 1/23/2025 IEP so that any school reading the IEP would be aware of Parent's concerns, which Parent understood. 00:20:49-00:22:34. Parent was satisfied with the discussion and felt that Parent's concerns were addressed. DOE Ex. 75 at 00:16:56-00:00:19:42, 00:22:04-00:22:35, 00:25:00-00:25:45.

41. Prior to the 6/30/2025 IEP meeting, Parent did not inform Home School that Student had a "medical condition," and besides being born premature and prone to sickness, Parent did not state during the 6/30/2025 IEP meeting that Student has a "medical condition." DOE Ex. 75; Principal. Tr. 67:22-68:18.
42. As a result of the 6/30/2025 IEP meeting, the following statement was added to the PLEP section of the IEP: "PARENTS CONCERN: [Parent], [Student's] [Parent], shared that when [Student] gets sick, it takes a long time to recoup. [Parent] requests that the school accommodate [Student's] chronic illness and disability, ensuring absences don't lead to penalties. [Parent] asks for home-based learning resources while [Student] is sick at home." Pet. Ex. 1 at 002.
43. Following the 6/30/2025 IEP meeting, a Prior Written Notice, dated July 1, 2025, was issued by Principal ("7/01/2025 PWN"). According to the 7/01/2025 PWN, "On Monday, June 30, 2025, the department met to propose the following revision to [Student's] Individualized Education Program (IEP): No change will be made to the PLEP regarding [Student's] goals." According to the 7/01/2025 PWN, this proposal was made "[d]ue to [Student's] chronic illness and insufficient data, we're continuing to

work on the same goals and objectives. This approach was decided upon during the IEP meeting review on June 30, 2025.” Under the “Description of other options considered” section of the PWN, the following statement is written: “We considered providing additional modifications and accommodations in the supplementary aids....” Under the “Reasons these options were rejected” section of the PWN, the following statement is written: “The option was rejected because [Student] continued to maintain the current modifications and accommodations, which allowed for accurate progress evaluation....” Pet. Ex. 1 at 017.

44. On August 8, 2025, the instant due process complaint was filed.
45. On August 13, 2025, the Findings of Fact, Conclusions of Law and Decision in case no. [REDACTED] was issued, finding DOE denied Student a FAPE. Pet. Ex. 3 at 151-196.
46. On August 13, 2025, SPED Teacher emailed to Parent an updated IEP to reflect the correct IEP members who attended the 6/30/2025 IEP meeting. SPED Teacher also emailed blank “Consent for Release of Information” forms for Parent to fill out which would allow Home School to receive information from Student’s physician and release information to Student’s physician. DOE Ex. 51 at 573-591.
47. On August 18, 2025, DOE filed a response to Petitioners’ instant due process complaint. In the response, DOE wrote, among other things, that “Parent did not disclose any specific medical condition beyond stating that Student was premature and frequently gets sick. Without detailed medical information, the DOE could not identify or address specific accommodations related to these absences in the IEP.... Parent submitted one doctor’s note to excuse Student’s absences relating to an injury, but other than that note,

Parent has not submitted any medical documentation to substantiate these alleged illness-related absences.” Pet. Ex. 3 at 083-084; DOE Ex. 3 at 013-014.

48. On August 21, 2025, DES sent a letter to Parent regarding Student’s placement. DES informed Parent that DOE had filed an appeal in the United States District Court for the District of Hawaii, relating to decisions rendered in case no. [REDACTED]. DES further stated that during the pendency of this appeal, the DOE recognized Home School as Student’s stay-put placement and that Home School had been advised to allow Parent to enroll Student at that school. However, if Parent wanted to enroll Student in another public school, DES asked Parent to contact DES. If the requested school can accommodate Student’s enrollment, then Parent and the DOE could agree to have Student enrolled at that school. Pet. Ex. 2 at 033; DOE Ex. 61 at 606-607.
49. On August 22, 2025, Parent, Principal, DES, Mr. Peck, Ms. Horiuchi, Ms. Wong, and two (2) other DOE employees participated in a resolution meeting for the instant due process complaint. During the resolution meeting, DOE asked questions regarding the medical condition or diagnosis that Student had, but Parent did not provide the information to the DOE and Mr. Peck informed DOE that Parent would eventually provide the information. Pet. Ex. 3 at 090-092; DOE Ex. 4 at 016-019; Pet. Ex. 3 at 086-088; Pet. Ex. 3 at 090-092; DOE Ex. 4 at 016-019.
50. At the due process hearing, Parent testified that the medical condition that causes Student to get sick easily is being born premature at [REDACTED] weeks. Parent, Tr. 51:16-52:10.
51. According to Home School’s written attendance policy, excused absences include, but are not limited to, illness or injury; death in the family; medical or dental appointment

that cannot be scheduled before or after school; and family emergency. All other reasons (such as family events/vacations, sports trips, personal reasons) will be considered unexcused. A student is considered chronically absent after missing fifteen (15) or more days in a school year, regardless of whether the absences are excused or unexcused. Chronic absenteeism may result in truancy interventions and/or referral to social services. Teachers are not required to provide work missed due to unexcused absences. Pet. Ex. 3 at 061, 072. Whether Home School will pursue truancy interventions or referral to social services for chronic absenteeism is discretionary. Principal, Tr. 65:16-20.

52. In applying Home School's attendance policy, Home School was very lenient. As long as Parent turned in a note, written either by Parent or a doctor, Home School would excuse Student's absences. Student had a "handful" of absences that were unexcused because Home School did not receive any kind of note or notification from Parent. Principal, Tr. 62:25-63:8, 76:2-77:12. Although Student had more than fifteen (15) absences, Home School did not consider Student truant nor did Home School refer the family to social services because Parent was in constant contact with Home School. Principal, Tr. 65:15-66:25.

53. At the due process hearing, Parent testified that Parent has chosen to keep Student out of school and Student has not attended school this fall semester. Parent testified that Parent chose to keep Student out of school because there was "no stability or closure from last semester" since DOE could still force Student to go to Charter School, even though DOE said that it was allowing Student to stay at Home School or another school through "stay-put." Parent, Tr. 14:19-16:3.

V. CONCLUSIONS OF LAW

A. BURDEN OF PROOF

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

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

B. IDEA REQUIREMENTS

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

Special education means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” and related services are the supportive

services required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34; 34 C.F.R. § 300.39; 20 USC § 1401(26) and (29). To provide FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.” Dept. of Educ. of Hawaii v. Leo W., 226 F.Supp.3d 1081, 1093 (D. Haw.2016).

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

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

The school is not required to “maximize the potential” of each student; rather, the school is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” Rowley, 458 U.S. at 200. However, the United States Supreme Court in Endrew F. v. Douglas County Sch. Dist. held that the educational benefit must be more than *de minimus*. The

Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas County Sch. Dist., 137 S. Ct. 988, 1001 (2017). See also, Blake C. v. Hawaii Dept. of Educ., 593 F.Supp.2d 1199, 1206 (D. Haw.2009).

The mechanism for ensuring a FAPE is through the development of a detailed, individualized instruction plan known as an Individualized Education Program (“IEP”) for each child. 20 U.S.C. §§ 1401(9), 1401(14), and 1414(d). The IEP is a written statement, prepared at a meeting of qualified representatives of the local educational agency, the child’s teacher(s), parent(s), and where appropriate, the child. The IEP contains, among other things, a statement of the child’s present levels of academic achievement and functional performance, a statement of the child’s annual goals and short-term objectives, and a statement of specific educational services to be provided for the child. 20 U.S.C. § 1414(d). The IEP is reviewed and, if appropriate, revised, at least once annually. 20 U.S.C. § 1414(d). The IEP is, in effect, a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Burlington v. Dept. of Educ. of the Commonwealth of Massachusetts, 471 U.S. 359, 368, 105 S. Ct. 1996, 2002 (1985). An IEP must be evaluated prospectively as of the time it was created. Retrospective evidence that materially alters the IEP is not permissible. R.E. v. New York City Dept. of Educ., 694 F.3d 167 (2nd Cir.2012).

C. ISSUES FOR DETERMINATION

- 1. Whether the DOE’s failure to discuss and/or describe accommodations related to Student’s medically-related absences at the June 30, 2025 IEP meeting constitutes a denial of FAPE, under the totality of then-existing circumstances¹¹.**

¹¹ The wording in this issue is copied verbatim from Petitioners’ Complaint. DOE Ex. 1, p. 005.

In this issue, Petitioners are making two (2) allegations: (1) DOE failed to discuss accommodations for Student's medically-related absences at the 6/30/2025 IEP meeting; and (2) the 6/30/2025 IEP does not contain appropriate accommodations for Student's medically-related absences¹². Petitioners' Complaint, pp. 5-6. Petitioners fail to meet their burden in showing that Student was denied a FAPE with respect to this issue.

(1) DOE Did Not Fail to Discuss Accommodations

On April 20, 2025, Parent sent an email to Home School asking for an IEP meeting to address concerns Parent had about Student's 1/23/2025 IEP, including the ESY program and supports and accommodations; to update the PLEPS; and discuss the aide and behavior interventions that were in place during the [REDACTED] accident. (FOF 31). The IEP meeting was eventually scheduled for June 30, 2025. (FOF 32, 36, 37).

At the IEP meeting on June 30, 2025, Parent explained that Parent wanted to update Student's IEP so that Student would not be penalized if Student had extended absences because Student was born premature and this causes Student to get sick easily and stay sick longer than an average child. Principal explained that information about Student's health condition could be added to the PLEP section of Student's IEP and that penalties are at the discretion of the school that Student is attending. Parent understood Principal's explanation. (FOF 40). When Parent asked for an accommodation in the form of "remote" or "at-home school," Principal informed Parent that Home School did not offer distance learning, and that they could address it on a case-by-case basis each time Student is sick for an extended period of time. Principal also informed Parent that material could be sent home for Student and the IEP team later discussed

¹² Petitioners are not asserting, and the evidence does not support, that Student's absences are related to Student's behavior. Petitioners' Second Amended Closing Brief, p. 13.

personalized binders that SPED Teacher had prepared for Student when Student was not in school¹³. Parent understood Principal's explanation, was satisfied with the discussion and felt that Parent's concerns were addressed. (FOF 40).

Parent was afforded the opportunity to ask questions and Parent's requests and concerns were addressed. Although the flow of the conversation between the IEP team members, in particular between SPED Teacher and Parent, was not smooth at times, there was no intent to cut off Parent or prevent Parent from speaking¹⁴. 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 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.") "[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). Here, Parent expressed satisfaction with Home School's responses and there was nothing that would lead the school members of the IEP team to believe that they did not address Parent's concerns. (FOF 40).

(2) DOE Did Not Fail to Provide Accommodations

An IEP team must revise an IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; the results

¹³ Due to Student not being in school for various reasons, it is unclear from the record if the personalized binders prepared by SPED Teacher were made when Student was not in school due to an illness or for other reasons, such as a trip.

¹⁴ Petitioners' Second Amended Closing Brief, p. 19.

of any reevaluation; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters. 20 U.S.C. § 1414 (d)(4)(ii).

According to Petitioners' Second Amended Closing Brief, the accommodations that Petitioners want are (1) "excusal of medically-related absences with parental notification"; (2) homework/distance learning during health absences; (3) "an accommodation that shields Student from truancy a [sic] designation for disability-related absences"; and (4) extended time for makeup work upon return from illness. Petitioners' Second Amended Closing Brief at p. 56.

First, Petitioners fail to meet their burden of proof in establishing that Student has a medical condition or disability that makes Student susceptible to getting sick or affects Student's recovery time when Student is ill. Student was medically diagnosed with [REDACTED]. (FOF 3). There is no credible evidence to show that these medical diagnoses cause Student to get sick easily or affect Student's recovery time. Parent shared with the IEP team on June 30, 2025 that due to Student being born premature¹⁵, Student gets sick easily and takes longer to recovery and reiterated this belief during the due process hearing. (FOF 40, 50). There is no corroborating evidence—either testimonial or documentary—that supports Parent's statement that being born premature causes Student to get sick easily and recover slowly¹⁶.

Second, there is insufficient evidence to establish that when Student was out of school due to an illness during the 2024-2025 school year, Student's absences were due to a medical

¹⁵ There is no corroborating testimonial or documentary evidence supporting Parent's statement that Student was born premature.

¹⁶ Parent is not credible as Parent is willing to be dishonest to advance Parent's position. See Petitioners' Exhibit 3, pp. 165 (FOF 32, 34, 35), 167 (FOF 41), 172 (FOF 62), 185. Another example of Parent being dishonest is saying that Parent thought Student was withdrawn from Home School when Principal had told Parent what Parent needed to do to withdraw Student from Home School and Parent did not go through with the process. (FOF 24, 27, 28).

condition or disability. As the evidence shows, Student missed a concerning amount of school during the 2024-2025 school year: [REDACTED] school days out of one hundred seventy-nine (179). (FOF 38). Majority of the missed school days were due to reasons unrelated to Student being ill, such as [REDACTED] for almost two (2) months due to family obligations (FOF 9, 25); Parent not being able to take Student to school (FOF 20, 21); and Parent's mistaken belief that Student was "withdrawn" from Home School. (FOF 27). Of the [REDACTED] days that Student was not in school, only [REDACTED] were officially reported to the school office by Parent that it was due to Student being ill. (FOF 38). Of the [REDACTED] days that Student missed school, [REDACTED] days¹⁷ were due to the [REDACTED] injury Student sustained on [REDACTED]. (FOF 16, 17, 19). Other than the [REDACTED] injury, Home School did not receive any other doctor's notes from Parent excusing Student from school due to an injury or illness and relied on Parent's reporting that Student was ill. (FOF 34). On days when Parent did report that Student was ill, it is questionable if Student was actually ill because Parent has been inconsistent in what Parent has told Home School regarding why Student was not in school. For example, although Parent told Principal on April 1, 2025 that Parent was "forced to withdraw" Student from Home School and that Parent would now like to return Student to Home School, Parent later told Home School that Student was at home healing from the [REDACTED] injury between January 29, 2025 to April 28, 2025. (FOF 27, 34). Even though Student's doctor cleared Student to return to school on January 28, 2025, Parent did not provide a doctor's note to indicate that it was medically necessary for Student to remain out of school until April 28, 2025. (FOF 19, 33, 34).

¹⁷ Between January 14, 2025 and January 28, 2025, there was no school on January 20, 2025 in observance of Martin Luther King Jr. Day.

Third, the 6/30/2025 IEP is reasonably calculated to enable Student to receive educational benefits. The IEP team met on June 30, 2025 to revise Student's 1/23/2025 IEP at Parent's request. At the June 30, 2025 IEP meeting, Parent stated that Student was "thriving," which is an indication that the 1/23/2025 IEP was meeting Student's unique needs, even though Student was rarely in school. The IEP team, on June 30, 2025, decided to keep the same goals and objectives, considered additional accommodations but rejected them, and added information in the PLEP to reflect Parent's concerns about Student's absences. (FOF 40, 42).

Petitioners' argument that the 6/30/2025 IEP fails to have appropriate accommodations for Student's "medically-related absences" is unpersuasive because (1) there is insufficient evidence to establish that Student has a medical condition; (2) there is insufficient evidence to establish that when Student was ill, it was due to a medical condition; and (3) there is insufficient evidence to establish that Student's chronic absences from school were due to illnesses as Parent is not credible. The IEP team addressed Parent's concerns about Student being penalized for extended absences by including Parent's concerns in the PLEP and explained to Parent that Home School did not offer distance learning and Student's teacher could send material home. Home School not agreeing to provide something that Parent wanted does not make the IEP deficient because "the mere existence of a difference in opinion between a parent and the rest of the IEP team is not sufficient to show that the parent was denied full participation in the process, nor that the DOE's determination was incorrect." Laddie C. ex rel. Joshua C. v. Dep't of Educ., 2009 WL 855966 at *4 (D.Haw. Mar. 27, 2009). At the time of the 6/30/2025 IEP meeting, Home School did not know that Student had a "medical condition" or that the absences were related to a medical condition. (FOF 41, 47, 49, 50). It is unreasonable to require Home School to address or provide accommodations for a medical condition or disability that they did not

know existed, and which Petitioners ultimately failed to establish exists¹⁸.

It is Petitioners' burden to show by a preponderance of the evidence the allegations in their Complaint. H.A.R. § 8-60-66(a)(2)(B). Petitioners have not done so. As such, DOE did not fail to provide Student with accommodations related to Student's alleged medically-related absences.

2. Whether the DOE violated Section 504 by failing to provide reasonable accommodations for Student's medical condition, thereby discriminating against Student and denying meaningful access to educational programming¹⁹.

Section 504 of the Rehabilitation Act of 1973 ("Section 504") 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 elementary and secondary 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

¹⁸ There is insufficient evidence to establish that any of the absences were related to or connected with Student's [REDACTED] or Student's documented educational needs. (FOF 3, 4, 5).

¹⁹ The wording in this issue is copied verbatim from Petitioners' Complaint. DOE Ex. 1 at 006.

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).

Petitioners met their burden of proof in establishing elements (1), (2), and (3) because (1) Student was medically diagnosed with [REDACTED]; (2) Student is otherwise qualified to participate in school activities; and (3) Home School developed an IEP for Student pursuant to the IDEA. Petitioners, however, fail to meet their burden of proof in establishing element (4).

There is insufficient evidence to show that Student was excluded from participation in, denied the benefits of, or subject to discrimination at, Home School. According to Petitioners, “The discrimination here is treating disability-caused absences identically to voluntary absences without reasonable accommodation, thereby denying Student equal access to education.” Petitioners’ Second Amended Closing Brief, p. 47. As explained in Issue 1, there is insufficient evidence to establish that Student has a medical condition or disability that causes Student to be prone to illness and slow to recover. While Student is [REDACTED], these disabilities did not cause Student’s illnesses or absences. For the days that Student was absent because Student was ill, Petitioners fail to show (1) that these absences were due to a

medical condition or were disability-related; and (2) DOE treated Student differently from non-disabled students who are absent from school because they are sick.

Even if Petitioners had met their burden of showing that Student had a medical condition or disability that caused Student to get sick easily and recovery slowly, which they did not, Home School provided Student with personalized binders that Parent could use with Student at home when Student was not in school. (FOF 40). Therefore, Student was not excluded from participation in, denied the benefits of, or subject to discrimination by, Home School. Based on the foregoing, Petitioners fail to meet their burden of proof with respect to this issue.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not proven a denial of FAPE.

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 7, 2025.

/s/ Charlene S.P.T. Murata
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