

DEPARTMENT OF THE
ATTORNEY GENERAL
OFFICE OF DISPUTE RESOLUTION

2025 DEC 16 PM 2:00 *cr*

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-SY2526-006

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
October 27-28, 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 reference Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended in 1974, codified at 29 U.S.C. §§ 794, et seq.; and the H.A.R. §§ 8-61-1, et seq. in their claims and requests for relief.

II. INTRODUCTION

On August 18, 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 22, 2025, Respondents filed a response to Petitioners’ Complaint.

On September 8, 2025, Petitioners filed Correction/Additions to Resolution Session Summary².

On September 12, 2025, a Notice of Prehearing Conference; Subjects to be Considered was issued to the parties, setting a prehearing conference for September 18, 2025.

On September 18, 2025, a prehearing conference was held with Keith H.S. Peck, Esq. (“Mr. Peck”) appearing on behalf of Petitioners, and Deputies Attorney General Jonathan N. Marchuk (“Mr. Marchuk”) 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 October 27-29, 2025.

Following the prehearing conference, on September 18, 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.

² The Office of Dispute Resolution did not receive a copy of the Resolution Session Summary, nor was one required to be submitted.

On October 8, 2025, Petitioners filed Petitioners' Motion for Partial Summary Judgment; Memorandum in Support of Motion; Declaration of Keith H.S. Peck; Declaration of Parent; Exhibits "A"—"C" ("MPSJ"). On October 15, 2025, Respondents filed Department of Education, State of Hawaii and Keith T. Hayashi's Memorandum in Opposition to Petitioner's Motion for Partial Summary Judgment, filed on October 8, 2025; Declaration of SPED Teacher; Declaration of SSC; Exhibits 1-3. On October 16, 2025, Petitioners filed Petitioners' Reply Memorandum in Support of Motion; Supplemental Declaration of Parent; Declaration of Keith H.S. Peck; Exhibits "D" & "E".

On October 17, 2025, Petitioners submitted their witness list, exhibit list, and exhibits, and an Opening Brief³.

On October 20, 2025, an Order Denying Petitioners' Motion for Partial Summary Judgment; Memorandum in Support of Motion; Declaration of Keith H.S. Peck; Declaration of Parent; Exhibits "A"—"C", filed October 8, 2025, was issued.

Also on October 20, 2025, Respondents submitted their witness list, exhibit list, and exhibits.

The due process hearing took place on October 27-28, 2025, using Zoom, a videoconferencing platform⁴. All participants in the due process hearing appeared remotely via video and audio⁵. The undersigned Hearings Officer presided over the matter. Petitioners were represented by Mr. Peck, and Respondents were represented by Mr. Marchuk. Ms. Wong and

³ Opening Briefs were not required.

⁴ The due process hearing was completed on October 28, 2025, and October 29, 2025 was set aside.

⁵ Parent was the first witness on October 27, 2025. Parent appeared by video and audio during Parent's testimony. After testifying, Parent participated in the remainder of the hearing by audio only. Respondents did not object to Parent appearing by audio only. Tr. Vol. I, 65:12-21.

the Department of Education District Educational Specialist (“DES”) were present on behalf of Respondents.

Petitioners called Parent as their only witness during the due process hearing.

Respondents called SPED Teacher and SSC as their witnesses 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 001-018), Exhibit 2 (pages 019-039, 053-056), and Exhibit 3 (pages 040-050, 057-059, 060-063). Tr. Vol. II, 98:16-99:8.

The following Respondents’ exhibits were admitted into evidence during the hearing:

Exhibits 4, 9, 14, 17, 20-23, 25-29, 32-33, and 37-38. Tr. Vol. II, 124:21-125:11.

On November 28, 2025, the parties submitted their closing briefs⁶.

The deadline for which a decision in this matter must be issued is December 16, 2025, 2025. See Order Granting Respondents’ Request to Extend the 45-Day Decision Deadline from November 1, 2025, to December 16, 2025; Declaration of Jonathan N. Marchuk, dated September 22, 2025, issued on September 24, 2025.

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

⁶ Although Petitioners’ First Amended Closing Brief was filed by the Office of Dispute Resolution on December 1, 2025, the closing brief was submitted before the deadline on November 28, 2025.

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 DOE denied Student a FAPE by failing to implement the 5/20/2025 IEP’s explicit placement requirement that Student receive social studies and science instruction in a separate special education setting.
- Issue 2 – Whether DOE violated the IDEA by unilaterally changing Student’s educational placement that was in Student’s 5/20/2025 IEP without convening an IEP meeting.
- Issue 3 – Whether DOE violated the IDEA by predetermining Student’s placement in inclusion classes without meaningful IEP team input during the 2025-2026 school year.

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. 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 has [REDACTED]
[REDACTED]. Parent, Tr. Vol. I, 12:3-17; Pet. Ex. 1 at 002.
4. Student “requires specialized instruction to address [Student’s] needs in foundational reading, math and math calculation, speech and counseling.” Pet. Ex. 1 at 006; DOE Ex. 14 at 127.
5. Student attended [REDACTED] at Public Charter School. Pet. Ex. 2 at 031.
6. Student transitioned from [REDACTED] school to [REDACTED] school at Home School for the [REDACTED] grade for the 2025-2026 school year.
7. Student started receiving services at Private Academy sometime in September of 2024. Student received tutoring in reading four (4) days a week (30 minutes per day after school) in September until the summer of 2025. During the summer of 2025, Student attended Private Academy five (5) days a week, receiving approximately four (4) hours of tutoring per day. Parent, Tr. Vol. I, 11:7-12:2, 40:18-19.

Facts of Case

8. On September 9, 2024, an IEP meeting was held at Public Charter School, resulting in an IEP with the same date (“9/09/2024 IEP”). According to the 9/09/2024 IEP, the IEP Annual Review Date was September 9, 2025. Parent, [REDACTED] SPED Teacher, two (2) general education teachers, a speech/language pathologist, Public Charter School’s principal, and a behavioral health specialist were present at the 9/09/2024 IEP meeting.

DOE Ex. 9 at 101-115. [REDACTED] SPED Teacher is Student's care coordinator at Public Charter School. SSC, Tr. Vol. II, 106:4-8.

9. According to the 9/09/2024 IEP, "[Student] will participate with [Student's] non-disabled peers for language arts with modifications made to the curriculum. [Student] will have the option to work on [Student's] language arts with [Student's] non-disabled peers if appropriate. [Student] will receive [Student's] math instruction in separate setting. [Student] will remain with [Student's] non-disabled peers for subjects social studies and science."⁷ DOE Ex. 9 at 114.
10. SSC is the student services coordinator at Home School. As a student services coordinator, SSC oversees [REDACTED] students who have IEPs and creates their schedules. SSC, Tr. Vol. II, 106:25-107:12.
11. On January 31, 2025, at the request of Parent, SSC gave Parent and [REDACTED] SPED Teacher a tour of Home School in preparation for Student's transition to [REDACTED] school. DOE Ex. 17 at 143-144. During the tour, Parent asked questions about Home School's schedule, location of classrooms, and [REDACTED] school in general. SSC showed Parent the library, cafeteria, and other common areas in Home School. SSC, Tr. Vol. II, 106:3-106:24.
12. On May 20, 2025, an IEP meeting was held at Public Charter School, resulting in an IEP with the same date ("5/20/2025 IEP"). Parent, [REDACTED] SPED Teacher, a general education teacher, a speech/language pathologist, Public Charter School's principal, and a behavioral health specialist were present at the 5/20/2025 IEP meeting. According to

⁷ Language Arts is also known as English, English Language Arts, and "ELA."

the 5/20/2025 IEP, Student's IEP Annual Review Date is May 20, 2026. Pet. Ex. 1 at 001-018; DOE Ex. 14 at 122-139.

13. During the 5/20/2025 IEP meeting, "[Parent] expressed [Parent's] concern about [Student's] placement in the [REDACTED] grade at the [REDACTED] school setting. [Parent] expressed that this setting may not be the most appropriate setting for [Student] as [Student] has higher life skills and is fearful that [Student] will engage inappropriate behaviors if [Student] is put into a classroom with students that engage in these behaviors." Pet. Ex. 1 at 005; DOE Ex. 14 at 126.
14. During the 5/20/2025 IEP meeting, Student's placement for social studies and science was changed to a special education setting because Student got overwhelmed and stressed in the [REDACTED] grade when he/she was placed in the general education setting due to Student's extremely low reading ability. Parent, Tr. Vol. I, 14:10-25.
15. According to the 5/20/2025 IEP, Student will receive, among other services, 675 minutes per week of special education. Pet. Ex. 1 at 016; DOE Ex. 14 at 137.
16. According to the 5/20/2025 IEP, Student will receive the following "Supplementary Aids and Services, Program Modifications and Supports for School Personnel": reading support; word bank; 100 chart; manipulatives; speech to text; text to speech; breaks; multi-sensory instruction; weekly checklist; and graphic organizer. Pet. Ex. 1 at 016; DOE Ex. 14 at 137.
17. According to the 5/20/2025 IEP, "[Student] will receive [Student's] language arts, math, social studies and science in a separate setting. [Student] will remain with [Student's] general education peers for [Student's] specials/electives." Pet. Ex. 1 at 017; DOE Ex. 14 at 138.

18. In the middle of June 2025, SSC used Student's 5/20/2025 IEP to create Student's schedule for the upcoming 2025-2026 school year. SSC, Tr. Vol. II, 107:13-108:7.
19. SSC created a schedule that placed Student in SPED Teacher's Life Skills class [REDACTED], math class [REDACTED], English Language Arts class [REDACTED], social studies class [REDACTED], and science class [REDACTED]⁸. DOE Ex. 23 at 205⁹.
20. On or about July 30, 2025, Parent received a copy of Student's schedule. Parent, Tr. Vol. I, 15:4-16, 56:21-57:3.
21. SSC, being in possession of Student's 9/09/2024 IEP and 5/20/2025 IEP, accidentally gave SPED Teacher a copy of Student's 9/09/2024 IEP. SPED Teacher, Tr. Vol. I, 85:17-19; SSC, Tr. Vol. II, 108:20-23.
22. SPED Teacher is Student's special education teacher and care coordinator at Home School. SSC, Tr. Vol. II, 107:25-108:3.
23. Before an academic year begins, one of the responsibilities that special education teachers have is to cross-check their students' schedules with the least restrictive environment ("LRE") statement in their IEPs. SPED Teacher, Tr. Vol. I, 70:9-13.
24. Before the 2025-2026 school year began, SPED Teacher reviewed Student's 9/09/2024 IEP and cross-checked Student's schedule with the LRE in Student's 9/09/2024 IEP. Believing that there was an error in Student's schedule, SPED Teacher consulted with SSC on August 1, 2025. SPED Teacher provided SSC with a copy of the 9/09/2024 IEP and they discussed that the schedule did not align with the LRE statement in Student's

⁸ Student was not in SPED Teacher's class for Health ([REDACTED]) and P.E. ([REDACTED]). No one is contesting these placements.

⁹ Exhibit 23 at 205 is a copy of Student's corrected schedule after the mistake was discovered. Neither party submitted a copy of Student's initial schedule that SSC created in June of 2025.

9/09/2024 IEP because Student was enrolled in a special education setting for social studies and science, when Student's 9/09/2024 IEP indicates that Student should be in the general education setting for these two courses. SPED Teacher, Tr. Vol. I, 70:9-72:5; SSC, Tr. Vol. II, 108:14-19.

25. SSC, looking at the 9/09/2024 IEP, assumed that SSC had made a mistake with Student's initial schedule and proceeded to make a schedule change, which changed Student from the special education setting for social studies and science to the general education/inclusion setting. SSC, Tr. Vol. II, 108:24-109:5.
26. On August 1, 2025, SSC called Parent to inform Parent that there was an oversight in Student's schedule because the schedule did not match the LRE statement in Student's IEP and that SSC would be sending Parent a new schedule. Believing that an annual review of Student's IEP was due in September of 2025, SSC also told Parent that there would be an IEP meeting soon. SSC, Tr. Vol. II, 109:6-110:3.
27. Also on August 1, 2025, following the phone call, SSC sent an email to Parent with a copy of Student's new schedule, and reiterated that they would "hold an IEP meeting in the coming weeks to review [Student's] IEP." Pet. Ex. 2 at 019; DOE Ex. 4 at 089-090; DOE Ex. 20 at 191-195.
28. On August 4, 2025, SSC emailed to Parent a color-coded revised schedule to include [REDACTED] Student was placed in SPED Teacher's classroom for [REDACTED], but was still in a general education/inclusion setting for social studies and science. DOE Ex. 21 at 196-199.
29. During the first two (2) weeks of school, August 6-14, 2025, Home School implemented a schoolwide program that focused on building relationships with all their students,

building community, and setting and teaching expectations to students and teachers.
SSC, Tr. Vol. II, 114:11-116:18.

30. During the first two (2) weeks of school, SPED Teacher's classes participated in icebreakers and SPED Teacher taught his/her classes about routines. SPED Teacher did not teach his/her classes academic subjects, such as math, English, social studies and science, during the first two (2) weeks of school. SPED Teacher, Tr. Vol. I, 82:7-83:3.
31. For the first week, August 6-8, 2025, Home School had a modified bell schedule for all its students. The modified bell schedule required all the students to attend [REDACTED] every day. According to the modified bell schedule, students would attend their [REDACTED] for forty-one (41) minutes and [REDACTED] for forty-one (41) minutes on August 7 and 8. DOE Ex. 31 at 229; SSC, Tr. Vol. II, 113:25-114:6.
32. For the first week of school, Student was placed in SPED Teacher's special education classroom for [REDACTED], Life Skills, math, and ELA. Student was in a general education/inclusion classroom for social studies [REDACTED] and science [REDACTED].
SPED Teacher, Tr. Vol. I, 76:22-77:2.
33. The general education classes had approximately thirty (30) students in each class.
SPED Teacher, Tr. Vol. I, 83:7-9.
34. On August 6, 2025, Home School started school; however, Student was not feeling well and was absent. Pet. Ex. 2 at 022-024; DOE Ex. 26 at 210; SSC, Tr. Vol. II, 116:22-24.
35. After school on August 6, 2025, Parent sent an email to SSC asking SSC to clarify Student's schedule because Parent was informed by Student's sibling, who attended school that day, that the schedule at Home School was different. Parent informed SSC

that “[w]ith the change in schedule and starting new school, there’s lots of anxiety at our house.” Pet. Ex. 2 at 022-024; DOE Ex. 4 at 091-093.

36. On August 7, 2025 (Thursday), like all the other students in the school, students in SPED Teacher’s classes, including social studies and science, learned about school routines, class routines, getting to know each other, and going on campus tours. SPED Teacher, Tr. Vol. I, 77:6-23.
37. On August 7, 2025, in general education social studies class, the students went to the cafeteria to take pictures. In general education science class, the students participated in community building activities. SSC, Tr. Vol. II, 117:16-25.
38. On August 7, 2025 at 4:37 p.m., Parent sent an email to SPED Teacher to clarify Student’s schedule since Student received two (2) schedules. At this point, Parent suspected that Student’s LRE may be wrong. Parent informed SPED Teacher that Student had a lot of nice things to say about SPED Teacher and that Student “was pretty stressed about [Student’s] schedule and finding classes” on Student’s first day of school. Parent did not mention in the email that Student was in the wrong setting for social studies and science. Later that evening, SPED Teacher replied to Parent and informed Parent that Home School had a different schedule for August 6-14, 2025. DOE Ex. 22 at 200-203; Parent, Tr. Vol. I, 50:17-54:4.
39. On August 8, 2025 (Friday), SPED Teacher’s classes continued to learn about class and schedule routines, getting to know each other, and learning to log into different platforms. SPED Teacher, Tr. Vol. I, 77:24-78:7.

40. On August 8, 2025, general education [REDACTED] participated in community building activities, just like in the special education social studies and science classes. SSC, Tr. Vol. II, 117:16-25; SPED Teacher Tr. Vol. I, 83:7-84:17.
41. On August 10, 2025, at 2:02 p.m., SSC replied to Parent's August 6, 2025 email and informed Parent that SSC had worked with school staff to help Student navigate Student's schedule. SSC also informed Parent that Home School was on a modified schedule for next week due to "Universal Screener testing." Pet. Ex. 2 at 022; DOE Ex. 4 at 091.
42. On August 10, 2025, at 6:04 p.m., Parent replied and indicated to SSC that the order of classes was different on August 7 and August 8, and wanted SSC to confirm that "[Student's] placements were all the same as what [SSC had] sent [to Parent]." Pet. Ex. 2 at 022; DOE Ex. 4 at 091. Parent did not mention that Student was in the wrong setting for social studies and science.
43. On August 10, 2025, at 10:51 p.m., SSC replied to Parent, stating that Home School was using a modified bell schedule that week because the students were taking the universal screening test. SSC sent Parent a new schedule showing updated times, but Student's class schedule was unchanged. Student was still scheduled for general education social studies and science for August 12 and 14, each class being forty-one (41) minutes long. Pet. Ex. 2 at 022; DOE Ex. 4 at 091.
44. On August 11, 2025, Parent forwarded to Mr. Peck the emails between Parent and SSC. DOE Ex. 4 at 091.
45. The second week of school (August 11-14) was "Assessment Week" for Home School, when all the students, special and general education, took universal screeners for ELA

- and math during [REDACTED]. DOE Ex. 33 at 230; SPED Teacher, Tr. Vol. I, 78:8-17, 91:22-92:8; SSC, Tr. Vol. II, 111:8-10.
46. During the second week of school, Home School had a modified bell schedule where each [REDACTED] occurred twice that week. On August 12 (Tuesday) and August 14 (Thursday), Student went to social studies [REDACTED] for forty-one (41) minutes each day and science [REDACTED] for forty-one (41) minutes each day. DOE Ex. 33 at 230; SSC, Tr. Vol. II, 114:1-10, 118:1-3.
47. During the second week of school, Student's general education social studies and science classes continued to engage in building community and relationships, which were the same exercises Student was engaged in for the week in Student's special education classes. SSC, Tr. Vol. II, 118:1-22, 119:7-12.
48. In general education social studies and science classes, Student was supported by a general education teacher and a special education teacher who provided Student with accommodations as needed from Student's IEP. SPED Teacher, Tr. Vol. I, 80:25-81:11; SSC, Tr. Vol. II, 117:1-15, 122:8-11.
49. SPED Teacher has [REDACTED] special education students and these same special education students, except for Student, are in all of SPED Teacher's classes. SPED Teacher, Tr. Vol. I, 80:10-24, 83:4-9.
50. On [REDACTED], Parent and Student attended Open House and spoke to SPED Teacher. Parent told SPED Teacher that Parent was confused about the different types of classrooms available at school. SPED Teacher explained to Parent the different classroom settings: special education (fully self-contained room, resource class), inclusion (a general education setting with a general education teacher and a special

education teacher in class), and general education with only a general education teacher. SPED Teacher told Parent that when Student leaves SPED Teacher's class, Student has an educational assistant ("EA") that supports Student to get to Student's other classes. SPED Teacher told Parent that Student was a little advanced for SPED Teacher's class and that they could discuss whether it would be appropriate to change Student's placement at Student's upcoming annual IEP meeting. Parent did not mention that Student was in the wrong setting for social studies and science. DOE Ex. 28 at 212.

51. Between August 7-14, Student missed four (4) [REDACTED] of social studies in a special education setting and four (4) [REDACTED] of science in a special education setting. SPED Teacher, Tr. Vol. I, 92:9-15.
52. August 14, 2025 was the last day that Student attended school at Home School. SPED Teacher, Tr. Vol. I, 81:16-20.
53. SSC saw Student every day that Student was on campus. According to SSC, Student was social, laughing, and able to communicate with peers. SSC, Tr. Vol. II, 119:13-122:7.
54. Student did not suffer any educational harm by not being in SPED Teacher's class for social studies and science during the first two (2) weeks of school. SPED Teacher, Tr. Vol. I, 81:21-24.
55. Student did not suffer any educational detriment by being placed in general education/inclusion social studies and science for four (4) [REDACTED] each because Student was able to get the community programming that was being taught schoolwide. SSC, Tr. Vol. II, 118:23-119:19.

56. On or about August 14, 2025, as SPED Teacher was conducting a file review and looking at Student's historical data on the eCSSS system to prepare for an IEP meeting in September, SPED Teacher saw the 5/20/2025 IEP¹⁰. SPED Teacher, Tr. Vol. I, 86:22-87:11, 92:16-21.
57. Private Academy is owned by Academy Owner. Parent, Tr. Vol. I, 11:7-10.
58. On August 15, 2025¹¹, Parent had a meeting with Academy Owner, and they orally agreed that if Student attended Private Academy, Parent would pay \$ [REDACTED] however, if DOE were to pay, DOE would pay \$42,000.00. Parent, Tr. Vol. I, 46:6-19. Parent, Tr. Vol. I, 44:3-18; Pet. Ex. 3 at 058-059.
59. On August 18, 2025, Student started attending Private Academy. Parent, Tr. Vol. I, 41:15-17.
60. Also on August 18, 2025, at 8:23 a.m., the instant due process complaint was filed.
61. Parent did not personally provide DOE with written notification that Parent would be removing Student from Home School and enrolling Student at Private Academy before filing the due process complaint. Parent, Tr. Vol. I, 41:9-14; SSC, Tr. Vol. II, 120:1-4.
62. On August 18, 2025, SPED Teacher heard from other school employees that Student may be attending a different school. DOE Ex. 29 at 213; SPED Teacher, Tr. Vol. I, 86:9-21.

¹⁰ The undersigned notes that SPED Teacher should have been more proactive in correcting Student's schedule when SPED Teacher saw the 5/20/2025 IEP; however, there was not much opportunity between August 14 and August 19 because August 15 was a state holiday in Hawaii, and August 16 and 17 were weekends. Had SPED Teacher been more proactive, the error could have been addressed on August 18, instead of August 19. However, by August 18, 2025, Student had already been removed from Home School and Parent had already committed to Private Academy. (FOF 52, 58, 59).

¹¹ The undersigned takes judicial notice of the fact that August 15, 2025 was Statehood Day in Hawaii—an observed holiday--and the Hawaii DOE did not have school.

63. The week after universal screening was completed, SSC reviewed the universal screener results and noticed that there was a discrepancy between Student's current schedule and the 5/20/2025 IEP. SSC then realized that Student was placed in the wrong setting for social studies and science. SSC, Tr. Vol. II, 111:6-14.
64. On August 19, 2025, SSC and SPED Teacher talked about the discrepancy between Student's schedule and the 5/20/2025 IEP. During the discussion SPED Teacher told SSC that while SPED Teacher was preparing for an IEP meeting in September, SPED Teacher noticed that SSC had given SPED Teacher the 9/09/2024 IEP and not the 5/20/2025 IEP. SSC then went to the school registrar to change Student's schedule for social studies and science so that they would align with Student's 5/20/2025 IEP. SSC, Tr. Vol. II, 111:6-112:12.
65. Also on August 19, 2025, SSC informed Parent that an error was found in Student's schedule and that Home School was correcting it immediately. SSC provided Parent with a revised schedule that placed Student in SPED Teacher's social studies and science classes. This new schedule was set to begin the next day on August 20, 2025. Pet. Ex. 2 at 025-026; DOE Ex. 23 at 204-207.
66. Parent testified that the day after the instant due process complaint was filed, Home School offered to fix Student's schedule and said it was a "clerical error." Parent, Tr. Vol. I, 56:21-57:3. However, Parent decided to keep Student at Private Academy until they could figure out a "transition plan" to get Student back to Home School. Parent, Tr. Vol. I, 57:4-11. Parent testified that while it might be more difficult for Student to transition back to Home School the longer Student stayed at Private Academy, Parent

felt that the “academic gains” Parent saw and the need for stability of a transition plan justified doing it. Parent, Tr. Vol. I, 57:12-17.

67. On October 16, 2025, Parent signed a contract with Private Academy for the 2025-2026 school year. According to the contract, the base tuition for enrollment in the program was \$42,000.00 per academic year; however, the tuition would be reduced to \$[REDACTED] per academic year, plus applicable fees, if paid for by the family. If the tuition is paid in full or in part by a public agency, such as the DOE, the tuition would be the full \$42,000.00. The contract also indicates that there were “Standard Fees” of \$[REDACTED]. Pet. Ex. 3 at 057. According to the contract, “The parties entered into a verbal agreement on August 15, 2025. This document memorializes the terms of that agreement.” Pet. Ex. 3 058-059.
68. Parent testified that the signed contract is the same as the oral agreement made on August 15, 2025. Parent, Tr. Vol. I, 24:25-25:9. Parent also testified that Parent waited until October 16, 2025 to sign the written contract because Parent wanted to see what was going to happen with the due process complaint. Parent, Tr. Vol. I, 44:19-45:20.
69. Although the contract signed by Parent and Academy Owner is for the 2025-2026 school year, Parent and Academy Owner have an “agreement” whereby Student may stay at Private Academy for a “few months” until the parties could work out a transition back to Home School. Pet. Ex. 3 at 057-059; Parent, Tr. Vol. I, 45:14-46:5.

Private Academy

70. Private Academy is located at a [REDACTED] and has two (2) classrooms. There is a kitchen where lunch is prepared; a bathroom; an outdoor area for the children to play or have physical education; and a garden. Parent, Tr. Vol. I, 33:14-34:3.

71. Private Academy offers services for “day school,” after school, tutoring in all subjects, test preparation, field trips, and intersession programs. Private Academy offers rolling admissions for their “day school.” Pet. Ex. 3 at 043-044.
72. Private Academy has [REDACTED] full-time students, ranging from [REDACTED] [REDACTED] years old. Student is one (1) of the [REDACTED] full-time students. Student is the only [REDACTED] grader. Parent, Tr. Vol. I, 37:4-10, 62:8-16.
73. Parent does not know if there are other students at Private Academy who have IEPs because Parent does not have any personal information about the other students’ educational needs or disability needs. Parent, Tr. Vol. I, 62:17-21.
74. The full-time program at Private Academy runs from [REDACTED] a.m. to [REDACTED] p.m. Student attends Private Academy five (5) days a week from [REDACTED] a.m. to [REDACTED] p.m. Parent, Tr. Vol. I, 39:8-15, 62:22-24.
75. None of the teachers at Private Academy are trained in special education or have special education certification. Pet. Ex. 3 at 042; Parent, Tr. Vol. I, 39:1-7.
76. According to Private Academy’s “October 2025 Report” for Student, Student received the following academic instructions: “Citizenship,” “OG,” Language Comprehension, “Math 2 (Beta),” and Physical Fitness. Although science is listed, the report indicates that “Science report is not completed.” Pet. Ex. 3 at 040-041. Social studies was not a part of Student’s curriculum in October of 2025.
77. According to Private Academy’s website, Private Academy offered the following classes in Fall of 2025: [REDACTED]
[REDACTED]. Pet. Ex. 3 at 047-048. Private Academy did not offer social studies or science in Fall of 2025.

78. Parent testified that Student's curriculum at Private Academy included math, English, social studies, science, P.E., art, and [REDACTED]; and accommodations from Student's IEP were also provided, such as receiving instructions, non-reading tests, someone reads to Student, manipulative for math, ability to use timetables, charts, and word banks. Parent, Tr. Vol. I, 34:4-10, 61:14-62:7.
79. Hawaii Association of Independent Schools ("HAIS") is an accrediting body for private schools in Hawaii. Parent, Tr. Vol. I, 37:19-25. Private Academy is not listed with HAIS and therefore is not accredited by HAIS. Private Academy is not licensed by the Hawaii Council of Private Schools ("HCPS"). "An unlicensed school is a private school that (1) has never been licensed by HCPS or has an expired license and (2) has not submitted all basic safety documents to HCPS and is not awaiting a visit. These institutions are not considered schools, and students attending these institutions are considered truant under Hawaii state law." Pet. Ex. 2 at 053-056.
80. According to Parent, the program offered by Private Academy "is not a private school placement but a specialized instructional services program." Petitioners' Motion for Partial Summary Judgment, Declaration of Parent, ¶12¹².

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

¹² Although Petitioners' MPSJ is not evidence admitted during the due process hearing, the undersigned takes judicial notice of Petitioners' MPSJ, filed on October 8, 2025.

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 DOE denied Student a FAPE by failing to implement the 5/20/2025 IEP’s explicit placement requirement that Student receive social studies and science instruction in a separate special education setting.**
-

In this allegation, Petitioners are alleging that Home School failed to implement the 5/20/2025 IEP’s placement requirement that Student receive social studies and science instruction in a separate special education setting because Student was placed in a general education/inclusion classroom for these two (2) courses. Although Petitioners showed that Home School failed to implement the placement requirement in Student’s 5/20/2025 IEP,

Petitioners fail to meet their burden of proof in showing that the implementation failure was material.

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

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

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

Dept. of Educ., Hawaii v. C.J., 2011 WL 6002621, CV. No. 10-00257 AWT-BMK, at *4 (D.Haw. Nov. 29, 2011).

Student attended Public Charter School during Student's [REDACTED] years for grades [REDACTED]. (FOF 5). During the 2025-2026 academic year, Student transitioned to [REDACTED] school at Home School for the [REDACTED] grade. (FOF 6). The first day of school for the 2025-2026 school year at Home School was August 6, 2025. (FOF 34). Student was ill on August 6, 2025 and did not attend school. (FOF 34). Student's first day at Home School was August 7, 2025. Although Student was supposed to be placed in SPED Teacher's special education classroom for all core classes, due to an error by SPED Teacher and SSC, Student was placed in a general education/inclusion classroom for social studies and science. (FOF 17, 25). During the two (2) weeks that Student was attending school, Student was in a general education/inclusion setting for social studies for four (4) [REDACTED]; and in the general education/inclusion setting for science for four (4) [REDACTED]. (FOF 31, 43, 46, 51). This was a failure to implement the placement requirement in Student's 5/20/2025 IEP; however, the implementation failure did not rise to the level of material.

During the first week of school (August 7-8), SPED Teacher's classes, including social studies and science, were learning about school and class routines, getting to know each other, and going on campus tours. (FOF 29, 30, 36, 39). On August 7, in the general education classroom for social studies [REDACTED] the students went to the cafeteria to take pictures; and in the general education classroom for science [REDACTED] the students participated in community building activities. (FOF 37). On August 8, the general education classroom for social studies and science participated in community building activities—similar to what the special education social studies and science classes were doing. (FOF 40). During the first week, Student missed eighty-two (82) minutes of social studies in a special education setting and eighty-two (82) minutes of science in a special education setting. (FOF 31).

During the second week of school (August 11-14), the entire school, special and general education students, participated in universal screening for ELA and math during [REDACTED]. (FOF 45). In Student's general education classes on Tuesday and Thursday, the classes continued to engage in building community and relationships, which were the same exercises Student was engaged in for that week in Student's special education classes. (FOF 47). During the second week of school, Student spent eighty-two (82) minutes in the wrong setting for social studies and eighty-two (82) minutes in the wrong setting for science. (FOF 46).

While Student missed being in SPED Teacher's social studies and science classes during the first two weeks of school, Student was in SPED Teacher's [REDACTED], Life Skills, math and ELA classes, including [REDACTED] (FOF 19, 28, 32). SPED Teacher's special education classes have the same special education students in them, with the exception of Student who didn't have social studies and science with SPED Teacher. (FOF 49). Therefore, even though Student was in the general education/inclusion class for social studies and science, Student was able to participate in the school activities with the same special education peers in the other special education classes. (FOF 49). Student did not miss out on any academic instructions for social studies and science because SPED Teacher did not teach academic lessons to his/her students during the first two weeks of school. (FOF 30). Student was happy at school and did not suffer any educational harm by being in the wrong setting for social studies and science. (FOF 53, 54, 55). Although Parent testified that after having attended inclusion classes at Home School, Student came home and complained about not knowing what was going on, expressed refusal to go to school, complained of stomach aches, refused to get in the car, and appeared really stressed (Parent, Tr. Vol. I, 22:17-23:2), there is insufficient evidence to show that Student's reaction was due to being in an inclusion setting and not simply due to

transitioning from [REDACTED] to [REDACTED] school or due to the modified schedule imposed on all the students. (See FOF 13, 35).

For the reasons stated above, the undersigned Hearings Officer finds that Petitioners have not met their burden in showing that DOE materially failed to implement Student's 5/20/2025 IEP because Student was not in a special education setting for social studies and science for four (4) [REDACTED] each—totaling approximately five (5) and a half hour. The implementation failure was a minor discrepancy between what was called for in the 5/20/2025 IEP and what was provided to Student and did not result in a denial of FAPE.

2. Whether DOE violated the IDEA by unilaterally changing Student's educational placement that was in Student's 5/20/2025 IEP without convening an IEP meeting.

In this issue, Petitioners are alleging that DOE unilaterally changed Student's educational placement from a special education setting to a general education/inclusion setting for social studies and science without convening an IEP meeting. Petitioners do not directly address this issue in their closing brief. Petitioners, however, allege in their closing brief that Parent relied on DOE's "misrepresentation" where "Parent was misled into believing an imminent IEP meeting would resolve the discrepancy; by the time [Parent] learned the truth, the damage had already occurred." Pet. Closing Brief, p. 18. Petitioners further allege in their closing brief that Parent was unable to participate in the "IEP formation" because of DOE's misconduct and "Parent was prevented from challenging the incorrect LRE decision precisely because of DOE's misrepresentation." Pet. Closing Brief, p. 21. Based on the evidence, Petitioners fail to establish that DOE unilaterally changed the educational placement that is in Student's 5/20/2025 IEP without convening an IEP meeting and failed to establish that Parent was prevented from participating in the "IEP formulation process." Pet. Closing Brief, p. 21.

As discussed *supra* in Issue 1, DOE failed to implement Student's 5/20/2025 IEP from

August 7-14, 2025 when Student was placed in a general education/inclusion setting for social studies and science; however, the implementation failure was not material. Petitioners fail to meet their burden of proof for this issue for two (2) reasons. First, there is no “IEP formulation” issue because there is no evidence that DOE tried to change Student’s 5/20/2025 IEP. The only evidence that Petitioners can point to show that DOE tried to change Student’s placement for social studies and science is Home School’s failure to implement the LRE provision in Student’s 5/20/2025 IEP. The Ninth Circuit Court of Appeal addressed this precise scenario in Van Duyn, stating:

Van Duyn’s procedural argument thus boils down to the novel proposition that failures to *implement* an IEP are equivalent to *changes* to an IEP. If accepted, this proposition would convert all IEP implementation failures into procedural violations of the IDEA, but there is no indication that a conflation of this sort is intended or permitted by the statute.

Van Duyn, 502 F.3d at 819 (italic in original). There is no evidence to support an argument that putting Student in a general education/inclusion classroom for social studies and science was an attempt to change Student’s 5/20/2025 IEP. The mistakes made by SSC and SPED Teacher were not attempts to change the educational placement in Student’s 5/20/2025 IEP without convening an IEP meeting. There were in fact no changes made to the 5/20/2025 IEP. Petitioners, therefore, fail to meet their burden of proof in showing that the DOE unilaterally changed the educational placement that was in Student’s 5/20/2025 IEP without convening an IEP meeting.

Second, there was no “misrepresentation.” Petitioners did not establish that Home School, through SSC and SPED Teacher, “misled [Parent] into believing an imminent IEP meeting would resolve the discrepancy” and interfered with Parent’s participation in the IEP formation process. Pet. Closing Brief, pp. 18, 21. Believing that Student’s annual IEP review date was approaching, SSC and SPED Teacher, on August 1 and 13, respectively, stated that an

IEP meeting would be forthcoming. (FOF 27, 50). Neither indicated when this IEP meeting would take place. SSC indicated “in the coming weeks,” while SPED Teacher referred to Student’s “annual IEP.” (FOF 27, 50). Although Parent testified that Parent believed “coming weeks” meant “a couple of weeks,” Parent did not seek clarification as to what the phrase “coming weeks” meant nor did Parent express any concerns to the DOE when an IEP meeting was not scheduled within a couple of weeks (Parent, Tr. Vol. I, 47:22-49:23). Although Parent is not required to ask questions, “parents 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). DOE is not responsible for recognizing unspoken parental concerns when a parent has given no indication of concern. 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.”)¹³. Here, Home School did not know that Parent interpreted “coming weeks” to mean two (2) weeks or that Parent was concerned about Student’s placement. There is no evidence that Home School prevented Parent from asking questions or seeking clarification. Although the impetus for SSC and SPED Teacher to tell Parent that an IEP

¹³ Parent’s credibility is questionable. Parent testified that Parent did not express to the DOE concerns that an IEP meeting was not being scheduled because Parent “trusted that it would happen.” However, Parent’s actions contradict this statement. First, Parent had already enlisted the help of an attorney on or before August 11, 2025, which is before speaking with SPED Teacher on August 13, 2025. (FOF 44). Second, after the first two (2) weeks of a modified school schedule, Parent took the unreasonable steps of removing Student from Home School on August 14 and ostensibly committing to either a \$[REDACTED] or \$42,000.00 tuition on August 15 (FOF 52, 58). Parent also gives contradicting testimony regarding how much Parent is paying for Private Academy. Initially, Parent stated that Parent would pay \$42,000.00, but later Parent stated that Parent would pay \$[REDACTED], and if DOE were to pay, DOE would pay \$42,000.00. Parent, Tr. Vol. I, 27:3-20, 46:10-19.

meeting was forthcoming was the erroneous belief that an annual review of Student's IEP was due mid-September 2025, an IEP meeting can be scheduled to review and revise Student's IEP at any time, subject to H.A.R. § 8-60-48(b). Had the scheduling error not been discovered on August 19, 2025, an IEP meeting may have been scheduled in September of 2025, which falls within the definition of "coming weeks." Therefore, there was no misrepresentation, and Home School did not infringe on Parent's right to participate in the IEP formulation process.

Based on the foregoing, Petitioners fail to meet their burden of proof in establishing that DOE unilaterally changed the educational placement in Student's 5/20/2025 IEP without convening an IEP meeting.

3. Whether DOE violated the IDEA by predetermining Student's placement in inclusion classes without meaningful IEP team input during the 2025-2026 school year.

Petitioners do not present any arguments in their closing brief with respect to this issue. According to the due process complaint, "DOE predetermined [Student's] placement in inclusion classes for social studies and science before any IEP team review. Emails reflect DOE implemented the inclusion schedule and presented it as a fait accompli. This predetermination violated the individualized decision-making process mandated by IDEA and deprived the parent of meaningful participation." Complaint, p. 6. Petitioners fail to meet their burden of proof in showing that DOE predetermined Student's placement in a general education/inclusion setting for social studies and science without meaningful IEP team input during the 2025-2026 school year.

A school violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement. K.D. v. Dept. of Educ., Hawaii, 665 F.3d 1110, 1123 (9th Cir.2011). "Predetermination is a species of procedural violation because

the IDEA ‘requires that the placement be based on the IEP, and not vice versa.’” Cupertino Union Sch. Dist. v. K.A., 75 F.Supp.3d 1088, 1099 (N.D.Cal. Dec. 2, 2014). A “court must still consider whether the procedural error led to a substantive violation of the IDEA, or whether the procedural error caused the loss of educational opportunity, seriously infringed the parents’ opportunity to participate in the IEP formulation process, or caused a deprivation of educational benefits.” K.A., 75 F.Supp.3d at 1099.

There is no evidence that DOE tried to change any aspect of Student’s 5/20/2025 IEP, much less predetermined Student’s placement. Student’s 5/20/2025 IEP places Student in a special education setting for social studies and science, and this placement remains unchanged. SSC revising Student’s schedule to reflect a mistaken fact does not mean that Student’s IEP was changed; it does however mean that Student’s 5/20/2025 IEP was not being implemented. As Petitioners fail to show that the DOE tried to predetermine Student’s placement or change Student’s placement, Petitioners consequently did not show that there was a loss of educational opportunity, that Parent’s opportunity to participate in the IEP formulation process was seriously infringed upon, or that there was a deprivation of educational benefits.

D. TUITION REIMBURSEMENT FOR PRIVATE ACADEMY

Petitioners seek tuition reimbursement for Private Academy from August 18, 2025 until Student is provided the supports needed to transition back to Home School. Pet. Closing Brief, p. 24. The U.S. Supreme Court has recognized the rights of parents who disagree with a proposed IEP to unilaterally withdraw their child from public school and place the child in private school and request reimbursement for tuition at said private school from the local educational agency. Florence County School Dist. Four v. Carter, 510 U.S. 7, 12, 114 S. Ct. 361, 364-365, 126 L.Ed.2d 284 (1993) (citing School Comm. of Burlington v. Department of Ed. of

Mass., 471 U.S. 359, 369-370, 105 S. Ct. 1996, 2002-2003, 85 L.Ed.2d 385 (1985)), see also 20 U.S.C. §1415(b)(6), (f)(1)(A). A parent who unilaterally places a child in private school pending review proceedings under the IDEA is entitled to reimbursement if the parent can establish that (1) the public placement violated the IDEA, and (2) the private school placement was proper under the IDEA. Doug C., 720 F.3d 1038, 1041, 1047-1048 (9th Cir.2013) (citing Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 15, 114 S. Ct. 361, 126 L.Ed.2d 284 (1993)). If both are met, “the district court must then exercise its ‘broad discretion’ and weigh ‘equitable considerations’ to determine whether, and how much, reimbursement is necessary.” C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist., 635 F.3d 1155, 1159 (9th Cir. 2011) (citing Carter, 510 U.S. at 15-16, 114 S. Ct. 361).

The Ninth Circuit Court of Appeals has adopted the standard put forth by the Second Circuit in Frank G. v. Bd. Of Educ., 459 F.3d 356, 365 (2nd Cir.2006), where “to qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child’s potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.” C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist., 635 F.3d 1155, 1159 (9th Cir.2011) (citing Frank G. v. Bd. Of Educ., 459 F.3d at 365). Parental placement can be appropriate, even if it does not meet state standards. 34 C.F.R. 300.148(c). See e.g., Florence County Sch. Dist. Four v. Carter, 20 IDELR 532 (U.S. 1993).

In this case, Petitioners fail to show that Student was denied a FAPE; however, if a reviewing body decides that Student was denied a FAPE, this Hearings Officer offers the

following analysis of whether the unilateral placement of Student at Private Academy was proper under the IDEA and determines that it was not.

It is unclear how long Student is enrolled at Private Academy because Parent gives conflicting testimony regarding Student's enrollment status. Parent initially testified that Student was enrolled from August through May at Private Academy (Parent, Tr. Vol. I, 34:11-17). Parent later testified that the "current" agreement was for a few months but acknowledged that the signed contract was for a whole year (Parent, Tr. Vol. I, 45:21-25).

There are currently [REDACTED] children, ages ranging from [REDACTED] years old, who attend Private Academy on a full-time basis. (FOF 72). There are no other children who are in the same grade as Student and it is unknown if these children have special needs or are nondisabled children. (FOF 72, 73).

It is unclear what academic instruction Student is receiving at Private Academy. Parent testified that Student's curriculum includes math, English, social studies, science, P.E., art, and [REDACTED]. (FOF 78). However, according to Private Academy's October 2025 Report, Student does not receive instruction in social studies, and it is unclear if Student is receiving instruction in science because a "Science report is not completed." (FOF 76). And according to Private Academy's website, Private Academy did not offer social studies and science in the fall of 2025. (FOF 77). Lastly, the evidence does not show, and Parent does not know, how long each course is (Parent, Tr. Vol. I, 39:8-15).

Teachers at Private Academy do not have training or certification in special education and there is insufficient evidence to establish that Private Academy is an academic institution that has been accredited by HAIS or licensed by the HCPS. (FOF 75, 79). Children who attend institutions that are not licensed by HCPS are considered truant in the State of Hawaii. (FOF

79). And according to Parent, the program offered by Private Academy “is not a private school placement but a specialized instructional services program.” (FOF 80).

Parent testified that “it appears” that Private Academy is following Student’s IEP and provides Student with accommodations, such as someone reading to Student in areas that Student is not being assessed on reading; manipulatives for math; and use of timetables, charts, and word bank. (FOF 78, Parent. Tr. Vol. I, 32:7-33:5). Parent also testified that so far Parent has observed Student twice at Private Academy, spoke to Academy Owner on multiple occasions, and recently had a parent/teacher conference to go over Student’s progress in the first quarter of school. Based on the information available to Parent, Parent feels that Student’s confidence in trying new things in academics, and generally, has blossomed. When Parent observed Student in class, Parent saw Student participating by raising Student’s hand, being very excited to answer questions, and able to work independently on assignments with interventions. Student also gives Parent very little pushback about going to school (Parent, Tr. Vol. I, 27:21-28:25). Although Parent’s testimony appears to suggest that Private Academy may be able to meet some of Student’s academic needs, the inconsistencies in Parent’s testimony brings into question Parent’s credibility and the undersigned is unable to give much weight to Parent’s perception of how Student is performing at Private Academy without more corroborating evidence.

While Petitioners are able to show that Private Academy offers some academic services and accommodations, without more, it is difficult to determine whether Private Academy is able to meet Student’s unique educational needs and whether Private Academy is providing an educational program that enables Student to make educational progress in light of Student’s circumstances. Based on the foregoing reasons, Petitioners have not proven that Private Academy placement was proper under the IDEA.

Finally, Petitioners failure to comply with 20 U.S.C. § 1412(a)(10)(C)(iii) also warrants denial of reimbursement. Although the IDEA allows for a reduction in the cost of reimbursement for non-compliance with the notice requirement, a denial of reimbursement in its entirety is appropriate in this matter. Parent entered into an oral agreement with Private Academy on August 15, 2025. Signing the contract on October 16, 2025 was a formality because the signed contract was intended to memorialize the terms of the oral agreement. (FOF 58, 67). Student began at Private Academy on August 18, 2025. (FOF 59). Home School provided Parent with a corrected schedule that placed Student in a special education setting for social studies and science on August 19, 2025, and was ready to implement the corrected schedule on August 20, 2025. (FOF 64, 65, 66). Yet, Parent refused to send Student back to Home School until a “transition plan” was developed to address the two days—August 18 and 19—that Student attended Private Academy. (FOF 66).

Petitioners did not inform the IEP team that they were rejecting the placement in Student’s 5/20/2025 IEP and of their intent to enroll Student at Private Academy at public expense at the most recent IEP meeting prior to the removal of Student, nor did Petitioners give written notice to the DOE ten (10) business days prior to removal of Student from public school. 20 U.S.C. § 1412(a)(10)(C)(iii). Based on the evidence, Student was removed from public school on August 14, 2025—Student’s last day at Home School—and DOE was notified on August 18, 2025 when the instant due process complaint was filed. (FOF 52, 60, 61, Pet. Closing Brief, p. 10). As such, tuition reimbursement is denied because Petitioners have not met their burden of proof in showing that placement at Private Academy was proper under the IDEA

and that they provided DOE with appropriate notice prior to removal, and because the actions taken by Parent were unreasonable¹⁴.


VI. DECISION

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

RIGHT TO APPEAL

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

DATED: Honolulu, Hawaii, December 16, 2025.



CHARLENE S.P.T. MURATA
Hearings Officer
707 Richards Street, Suite 520
Honolulu, Hawaii 96813
Phone: (808) 587-7680
Fax: (808) 587-7682
atg.odr@hawaii.gov

¹⁴ See also FN13.