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OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

In the Matter of STUDENT, by and through
PARENT,¹

Petitioner(s),

vs.

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

Respondents.

DOE-SY2526-034

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
May 1 & 4, 2026

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

Petitioners bring forth this case under the Individuals with Disabilities Education Act (hereinafter "IDEA") to allege that during Student's Individualized Education Program (hereinafter "IEP") was not implemented and Parent was not allowed to discuss concerns with the IEP team regarding transportation of Student, thereby denying Petitioners a free appropriate

¹ Personal identifiable information is contained in the Legend.

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

II. JURISDICTION

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

III. ISSUES PRESENTED

Petitioners assert three issues in their Complaint and Resolution Proposal (hereinafter “Complaint”) to be addressed at the Hearing.

1. Whether the DOE denied Student a FAPE by failing to implement the IEP with regard to DOE-provided transportation where Parent notified the DOE that Parent was unable to transport Student and Student has objectives in the IEP and an incomplete assessment related to those services.
2. Whether Student’s stay-put rights require the DOE to maintain curb-to-curb bus transportation with registered behavior technician (hereinafter “RBT”) support as provided in the December 2 and 9, 2025 IEP during the pendency of this proceeding.
3. Whether the DOE denied Student a FAPE by preventing the March 3, 2026 IEP team from considering Parent’s request for a discussion of how Student’s need for resumption of DOE-provided transportation services have affected Student’s access to and implementation of Student’s IEP

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

1. Order the DOE to provide curb-to-curb transportation 2x daily with an RBT as specified in Student’s current IEP, including the extended school year (hereinafter “ESY”) period, effective immediately and continuing through the pendency of the proceedings pursuant to stay-put.
2. Find that the DOE failed to implement Student’s IEP with regard to DOE-provided transportation and other aspect(s) of the IEP and assessment that were linked to that service.
3. Find that the DOE’s refusal to engage in IEP discussions on DOE-provided transportation and related aspects of Student’s program on March 3, 2026 was a denial of FAPE.
4. Find that the DOE denied Student a FAPE when DOE-provided transportation and/or RBT services were terminated at some point in time.

5. Order the DOE to convene an IEP meeting to address Student's transportation services, including consideration of any changes needed to transportation services and/or evaluations and/or objectives related to transportation.
6. Order the DOE to provide reimbursement for transportation services and/or educational and/or related services to Parent for access to Student's IEP program or services.
7. Order the DOE to fund privately provided services and supports Parent obtained in substitution of the IEP services to which Student was entitled.
8. Grant such other relief as the Hearings Officer deems just and appropriate.

IV. BACKGROUND

The Department of Education, State of Hawai'i (hereinafter "Respondents" or "DOE") received a Second Amended Complaint and Resolution Proposal dated March 18, 2026 under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the IDEA, from Student, by and through Parent (hereinafter "Petitioners").² Respondents submitted a response to Petitioners' Complaint on March 27, 2026.

On April 1, 2026, Respondents submitted a Notice of Insufficiency, which alleged that Petitioners' Complaint was insufficient. This Hearings Officer issued a Determination of Sufficiency of Petitioners' Second Amended Complaint on April 2, 2026, finding that Petitioners' Complaint met the requirements outlined in the IDEA for purposes of moving forward with the due process proceedings.

On April 8, 2026, a prehearing conference was held with this Hearings Officer, Keith H.S. Peck, Esq. (hereinafter "Mr. Peck") on behalf of Petitioners, Amber P. Boll, Esq. (hereinafter "Ms. Boll"), on behalf of Respondents. The due process hearing (hereinafter "Hearing") was scheduled for May 1 and 4, 2026.

² Petitioners submitted their original Complaint and Resolution Proposal on February 25, 2026, and their First Amended Complaint and Resolution Proposal on March 9, 2026. Leave was granted to Petitioners to file both amended complaints by this Hearings Officer after hearing no objections by Respondents.

Prior to the start of the Hearing, the parties stipulated to the Hearing being conducted via video conferencing pursuant to Hawai'i Revised Statutes Section 91-9(c). Both parties agreed to the following: a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting.

The Due Process Hearing began on May 1, 2026. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; District Educational Specialist (hereinafter "DES") and Ms. Boll, on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Private Center Director (hereinafter "PCD") and Parent to testify. After Parent's testimony was completed, Petitioners rested their case-in-chief. Respondents began their case on May 4, 2026 with Principal and DES. After DES's testimony was complete, Respondents rested their case-in-chief. Petitioners had no rebuttal witnesses and the Hearing was concluded.

Each party submitted their exhibits for the Hearing by the disclosure deadline of April 24, 2026. The parties reviewed the exhibit and witness lists provided by the opposing party and neither party had any objections to each other's exhibits. Both parties were informed that any exhibits that were discussed or mentioned during the proceeding would be received for consideration in the Decision in this case and that prior to the conclusion of the Hearing, this Hearings Officer would review the exhibits that had been received into evidence. On May 5, 2026, a List of Exhibits Received at Due Process Hearing was filed with the final list of exhibits submitted and received by the parties for consideration in this Decision.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-112; Exhibit 2, pages 113-117, 119-125, 132-134, 175-190, 204-210; and Exhibit 3, pages 211-251, 319-394, and one audio recording dated March 3, 2026.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 0001-0012; Exhibit 15, pages 0142-0188; Exhibit 47, pages 0318-0320; Exhibit 52, pages 0340-0342; Exhibit 64, pages 0388-0389; Exhibit 67, pages 0406-0408; Exhibit 74, pages 0500-0504; Exhibit 80-81, pages 0512-0513; Exhibits 85-93, pages 0517-0531; Exhibits 113-114, pages 1546-1547; Exhibit 121, pages 1554-1560; Exhibits 126, pages 1572-1573; Exhibit 130, a video recording dated March 3, 2026.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding,³ the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision.

V. FINDINGS OF FACT

Relevant due process hearing background

1. On September 25, 2026, Petitioners, by and through Mr. Peck, submitted a Complaint and Resolution Proposal that was filed under [REDACTED] with the Office of Dispute Resolution. Respondents' Exhibit 1, page 0001-0012 (hereinafter referenced as "R-Ex.1, p.1-12").
2. The Complaint under [REDACTED] contained six issues pursuant to the IDEA and five issues that were alleged as violations of Section 504 of the Rehabilitation Act of 1973 (hereinafter "Section 504"). See R-Ex.1, p.1-12.

³ Although all evidence presented in this case were reviewed, only relevant information is included in this Decision.

3. Several of the issues addressed Parent's concerns/allegations regarding Student's transportation needs. This included a concern that Student's medical needs required an adjustment to Student's transportation services. *See* R-Ex.1, p.5-7, 9.
4. Parent sent a letter dated August 8, 2025 from Student's physician that stated that Student should not be on a bus for longer than [REDACTED] minutes. R-Ex. , p.1547.
5. In September to November 2025, the IEP team conducted a reevaluation of Student for continued eligibility under the IDEA and to develop a new IEP for Student. *See* P-Ex.1, p.058, p.111-112; R-Ex.15, p.143.
6. In October 2025, Principal requested that Parent sign a consent form for the IEP team to discuss Student's medical needs related to transportation with the doctor that wrote the note to the school. The consent form specifically stated that the school was asking for documentation/information regarding "[m]edical documentation, reports, or records supporting the physician's recommendation that the student requires a shortened bus ride, including information relevant to the student's medical or physical condition impacting transportation needs." R-Ex.64, p.388-389.
7. Parent refused to provide consent, claiming that Parent understood that the DOE was asking for all medical information for Student. Testimony of Parent, Transcript of Proceedings, Volume 1, page 107, line 14, through page 109, line 7 (hereinafter referenced as "Tr.V1, 107:14-109:7").
8. In December 2025, the IEP team held a meeting that included Parent. A new IEP was developed for Student from the two meetings held on December 2 and 9, 2025 (hereinafter referenced as "IEP-12/09/2025"). Petitioners' Exhibit 1, pages 057-103 (hereinafter referenced as "P-Ex.1, p.57-103"); R-Ex.15, p.142-188.

9. In the IEP-12/09/2025, Student had one annual goal and related objectives that addressed Student's behavior on the bus. The annual goal was "[b]y the end of the IEP year, when on the bus, [Student] will independently make requests for items and attention using spoken words/approximations, [REDACTED], with an average of at least 80% correct responding for at least two consecutive weeks." P-Ex.1, p.87; R-Ex.15, p.172.
10. The IEP-12/09/2025 provided Student with daily transportation two times per day for both the ESY period and the regular school year. P-Ex.1, p.97-98; R-Ex.15, p.182-183.
11. The transportation provision in the IEP-12/09/2025 provided that

"The DOE will provide curb-to-curb transportation two times per day during the school year and two times per day during ESY. An RBT will be provided during curb-to-curb transportation. At the parent's request, the parent may transport the student to school in the mornings and after school up to five days per week and submit mileage for reimbursement in accordance with DOE procedures. This option is offered as an alternative to DOE-provided transportation. The DOE understands that parent's place of employment is located at or near the student's program that is [student's] current placement. This alternative is offered in response to parents expressed concerns related to the student's medical needs. While the parent has provided a medical note, the IEP team was denied parental consent to discuss these concerns directly with the student's physician and has not made a team determination that medical needs require a change to the DOE's transportation offer." P-Ex.1, p.99; R-Ex.15, p.184.
12. A prior written notice (hereinafter "PWN") was prepared after the December 2025 IEP meetings (hereinafter referenced as "PWN-12/22/2025") to reiterate the DOE's FAPE offer to Parent and Student contained in the IEP-12/09/2025. P-Ex.1, p.104-110.
13. Both the IEP-12/09/2025 and the PWN-12/22/2025 clearly laid out the terms of the transportation arrangement for Student, which included curb-to-curb transportation to be provided by the DOE unless Parent chose to transport Student, in which case Parent could get reimbursement from the DOE if that happened. P-Ex.1, p.99; P-Ex.1, p.106; R-

Ex.15, p.184.

14. Prior to the IEP-12/09/2025, Parent had already been opting to transport Student to and from school on occasion and asking for mileage reimbursement from the DOE. R-Ex.47, p.318-320; R-Ex.52, p.340-342; R-Ex.74, p.500-504.
15. On January [REDACTED], 2026, Parent and Mr. Peck signed off on a settlement agreement with the DOE to dispose of the issues in the Complaint under [REDACTED]. R-Ex.121, p.1554-1560.
16. The settlement agreement reads, in pertinent part:

“1. The DOE agrees to amend Student’s current Individualized Education Program (IEP) to clarify that:

 - a. Student’s Intensive Instructional Services (IIS) provider is a Registered Behavior Technician (RBT); and
 - b. Transportation is being provided to and from school.

2. The parties will amend the IEP by agreement, without the need for an IEP revision meeting, to reflect that the clarifications stated in paragraphs 1a and 1b.

3. Parent agrees to sign a consent form to allow the IEP to be amended without the need for an IEP meeting.

4. In lieu of school bus transportation, the DOE agrees to pay Parents for transportations at \$0.67 per mile, to and from school upon timely submission of the required Parent Automobile Mileage Voucher, a copy of which is attached hereto, subject to applicable DOE policies and procedures.”
17. On January 27, 2026, Principal sent Parent an email confirming that the settlement agreement was in effect, which meant that the DOE would reimburse both parents for transporting Student to and from school. Principal sent the required reimbursement request form to Parent with instructions on where to send the form. R-Ex.80, p.512.
18. On February 23, 2026, Principal sent another email to Parent informing Parent that per the settlement agreement, the DOE would no longer be providing transportation for Student other than through the mileage reimbursement to parents for transporting Student on their own. P-Ex.2, p.119; R-Ex.85, p.517.

19. On that same date, Parent informed Principal that Parent wanted an IEP meeting because “[they] are finding the new transportation arrangements unworkable.” P-Ex.2, p.120-122; R-Ex.86, p.519.
20. At no time between January ■, 2026 and the due process hearing in the current case was Parent sent a consent form to allow the IEP team to amend the IEP-12/09/2025 to reflect the terms listed in the settlement agreement.
21. No amended IEP after the IEP-12/09/2025 was submitted as part of the exhibits in this case, and no amended IEP that reflected the changes listed in the settlement agreement was provided to Parents between January ■, 2026 and the due process hearing for this case.

March 3, 2026 IEP meeting

22. An IEP meeting was held on March 3, 2026 in response to Parent’s request to have an IEP meeting. Parent attended the meeting, along with Principal, Public Separate Facility (hereinafter “PSF”) Special Education Teacher (hereinafter “PSF SPED”), Board Certified Assistant Behavior Analyst (hereinafter “BCABA”), a speech language pathologist, a general education teacher, a district resource teacher, a special education teacher from Home School, and the PSF director. R-Ex.130, video file of March 3, 2026 IEP meeting, approximate time stamp 00:0 -01:43 (hereinafter referenced as “R-Ex.130, video [00:00-01:43]”).⁴
23. During the meeting Parent claimed several times that Parent did not agree that Parents would provide transportation for Student as a substitute for DOE transportation. Parent

⁴ Petitioners and Respondents both submitted the same video file as part of their exhibits. For ease of reference, Respondents’ video is being used for citation purposes since both videos are the same and Respondents’ video was easier for this Hearings Officer to readily access.

accused the DOE at the outset of the meeting of not providing the services that Student was to be provided as part of the IEP-12/09/2025. When Principal noted that there was a settlement agreement that superceded the IEP-12/09/2025 regarding transportation, Parent insisted that the IEP-12/09/2025 supercedes any other document. Parent also repeated phrases to the effect that “if the school doesn’t want to agree to it, then we can let the lawyers decide.” R-Ex.130, video [02:05-05:16], [06:45-06:58].

24. While Parent claimed several times at the Hearing that Parent is not a lawyer and is not familiar with legal terms, Parent made several references throughout the March 3, 2026 IEP meeting about the law and what Student was legally entitled to. *See e.g.*, R-Ex.130, video [03:03-03:08], [06:22-06:58], [42:10-48:10].
25. Principal asked Parent if there were other concerns besides transportation that Parent wanted to discuss during the IEP meeting, and Parent was allowed to present Parent’s other concerns. Parent made several allegations that Student’s ‘other professionals’ were reporting incidents that were inconsistent with what Student’s support staff and BCABA had observed. Parent did not provide any names of the people that had informed Parent of these allegations. R-Ex.130, video [07:01-8:50].
26. The BCABA was asked to discuss Parent’s concerns of Student’s self-stimulation on the bus and Parent claimed that the reports that Parent was getting from Student’s ‘other providers’ are in conflict with what BCABA and the support staff were observing. R-Ex.130, video [10:18-11:23].
27. When PSF SPED attempted to interject to provide the school’s point of view, Parent accused PSF SPED of using a raised voice, yelling, and talking over Parent, when in fact Parent was the person in the meeting that was using a raised voice and talking over others

in the meeting. Parent went on to complain to Principal that Parent was ‘accosted’ by PSF SPED, when it was clear that Parent was the only person that was not speaking calmly and being disrespectful during the meeting. Parent then made ungrounded accusations that since PSF SPED was being so biased against Parent, it made Parent believe that some of the bias may work against Student at PSF. R-Ex.130, video [11:31-18:32].

28. Parent focused on the interactions with PSF SPED consistently even during the remainder of the meeting when the IEP team asked Parent to discuss other concerns that Parent had regarding Student’s placement and programming, such as the lack of communication between the school and Parent. *See e.g.*, R-Ex.130, video [20:00-22:17], [27:52-28:30].

29. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] R-Ex.130, video [27:12-29:23].

30. Parent also accused the team of not providing ESY for Student, which “violated the rules of service for ESY,” for a teacher institute day and a holiday after a weekend. Parent reminded the school that they are “still legally obligated to provide ESY,” and that it was a “violation and it needs to be in writing that it won’t happen again moving forward.” R-Ex.130, video [29:50-31:25].

31. Parent was being flippant, difficult, and confrontational throughout the March 3, 2026 IEP meeting, accusing team members of various things, taking what was being said by several members and twisting them to accuse the school of having ill intentions toward Student, and making multiple claims of Student’s legal rights being violated or taken

away. Principal and the rest of the team members who were participating in the meeting handled Parent's constant accusations, interruptions, and obstinate attitude with calm responses that attempted to address Parent's concerns. *See* R-Ex.130, video.

32. Parent had a list of demands that Parent presented at the IEP meeting on March 3, 2026, which clearly indicated that Parent understands language such as the language that was used in the settlement agreement that Parent signed. Parent thereafter declined to provide the list to Principal until after Parent spoke with Parent's lawyer. R-Ex.130, video [39:45-41:13].
33. Parent also made an attempt to force Principal to answer a question in a cross-examination style of question regarding making changes to the IEP-12/09/2025 regarding transportation. When Principal answered the question with explanations as to what was occurring during the meeting and why, Parent persisted in the line of questioning for several minutes using a raised voice and accusatory tone. Principal ended the meeting without seeming to answer Parent's line of questioning without satisfaction. R-Ex.130, video [42:10-48:10].
34. At the conclusion of the IEP meeting on March 3, 2026, no changes were made or agreements were made to provide transportation for Student based on the IEP-12/09/2025. *See* R-Ex.130, video.
35. Based on the evidence presented at the Hearing, it does not appear that a revised IEP was produced after the IEP meeting on March 3, 2026 that reflected the January ■■■, 2026 settlement agreement. *See* P-Ex.2, p.1-56 (Parent was emailed a copy of the PWN from the March 3, 2026 meeting and an exact copy of the IEP-12/09/2025 with no changes having been made).

36. Parent claimed throughout the due process hearing in this case that Parent is not a lawyer and does not understand legal language and claimed multiple times that Parent did not understand what Parent agreed to in the settlement agreement. This is contradictory to Parent's behavior in the IEP meeting, when Parent consistently accused the DOE of violating the law and not providing services that Student was legally entitled to.
37. Parent's claim under oath during the Hearing that Parent did not understand the plain language of the settlement agreement, which clearly stated "[i]n lieu of school bus transportation, the DOE agrees to pay Parents for transportations at [REDACTED] per mile, to and from school upon timely submission of the required Parent Automobile Mileage Voucher, a copy of which is attached hereto, subject to applicable DOE policies and procedures," is not at all credible. Testimony of Parent, Tr.V1, 91:18-96:9.
38. While Parent claims that Parent's understanding of the settlement agreement terms mean that Parent would be provided the option of picking Student up from school on [REDACTED] [REDACTED] if Parent chose to do so, nowhere in the plain language of the settlement agreement indicates that is what was agreed to by the parties. Furthermore, language of the IEP-12/09/2025 already provided that option for Parent, so coupled with the plain language of the agreement that Parent signed, it is implausible that Parent reasonably believed that the terms of the settlement agreement only provided the option for Parent to pick Student up from school if Parent chose to do so. *See* Testimony of Parent, Tr.V1, 93:13-94:21; P-Ex.1, p.052.
39. [REDACTED]
[REDACTED] Parent would be provided accommodations to be able to transport Student to and from PSF and still comply with the terms of Parent's contract. Testimony

of Parent, Tr.V1, 104:14-105:13; Testimony of DES, Tr.V2, 159:11-163:7.

40. Parent has not provided any actual information either during the Hearing or during the IEP meeting on March 3, 2026, or in emails presented at the Hearing, as to what about the transportation of Student to PSF was unworkable for Parent.
41. The explanation that Parent provided as to why Parent was unable to transport Student to and from school because of Parent's work schedule and because Parent [REDACTED] Parent further stated that the transportation was unworkable because Parent never agreed to provide transportation for Student as part of the settlement agreement. Testimony of Parent, Tr.V1, 82:23-83:3; 10:7-16.
42. Parent alleges that Parent had to enlist the assistance of a relative and a friend to transport Student to school after the DOE stopped the bus services on March 3, 2026. Neither Parent nor any other witnesses at the Hearing testified about the number of times that Parent needed assistance in transporting Student to school between March 3, 2026 and April 4, 2026.

Private Center

43. Student began attending Private Center for the educational day program after April 4, 2026.⁵ While Private Center is further away from PSF and Other School, Parent was given accommodations to drop Student off at Private Center at [REDACTED] which supposedly allowed Parent to get to work on time. Testimony of PCD, Tr.V1, 20:19-21; Testimony of Parent, Tr.V1, 83:15-22, 84:19-21;
44. Student also attends Private Center for medical insurance services after school, so Student does not need transportation until Private Center's services are completed at [REDACTED]

⁵ This Hearings Officer notes that April 4, 2026 was a Saturday.

██████, and Student is transported home. On ██████, Parent transports Student home after school. Testimony of Parent, Tr.V1, 83:23-84:12.

45. Private Center has separately provided medical insurance services for Student during the afterschool portion of the programming at Private Center for approximately ██████ ██████ months prior to Student attending the day program there. Private Center bills Parent/Student's medical insurance for those services. Testimony of PCD, Tr.V1, 19:3-23:10.
46. Private Center has provided Student with academic and related services similar to what is listed for Student in the IEP-12/09/2025. Private Center developed its own programming for Student after conducting their own assessment and observations of Student's behaviors and academic abilities. Testimony of PCD, Tr.V1, 24:25-39:12, 44:11-48:10, 61:8-13
47. Private Center does not transport Student to school in the morning, and Student is transported home through the medical insurance afterschool program. Student is also picked up by Parent(s) on occasions. Testimony of PCD, Tr.V1, 58:9-60:25.

VI. CONCLUSIONS OF LAW

Burden of Proof

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

proceedings for the school districts to prove that the IEPs designed for students are appropriate. *Schaffer*, 546 U.S. at 60-61, 126 S.Ct. at 536-537, 163 L.Ed.2d 387.

IDEA framework

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

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

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

The DOE is not required to “maximize the potential” of each student; rather, the DOE is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.” *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048. However, the United States Supreme Court, in *Endrew F. v. Douglas County School Dist.*, held that the educational benefit must be more than *de minimus*. 137 S.Ct. 988, 197 L.Ed.2d 335 (2017). The Court held that the IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S.Ct. at 1001, 197 L.Ed.2d 335; *see also*, *Blake C. ex rel. Tina F. v. Hawai‘i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai‘i 2009).

In deciding if a student was provided a FAPE, the two-prong inquiry is limited to (a) whether the DOE complied with the procedures set forth in IDEA; and (b) whether the student’s IEP is reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 206-7; 102 S.Ct. at 3050-3051. “A state must meet both requirements to comply with the obligations of the IDEA.” *Doug C. v. Hawai‘i Dept. of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013); *see also*, *Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

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

1. Petitioners have not proven that the DOE denied Student a FAPE by failing to implement the IEP-12/09/2025 with regard to DOE-provided transportation where Parent notified the DOE that Parent was unable to transport Student and Student has objectives in the IEP-12/09/2025 and an incomplete assessment related to those services

Petitioners' first argument is that the DOE denied Student a FAPE by not providing curb-to-curb transportation for Student as outlined in the IEP-12/09/2025. This allegation arose after the DOE informed Parent that the bus service for Student would be canceled on March 2, 2026 pursuant to the settlement agreement that was signed on January [REDACTED], 2026 by Parent and Mr. Peck. Based on the clear and unambiguous language of the settlement agreement, Petitioners have not proven that the DOE denied Student a FAPE by not providing curb-to-curb transportation for Student after March 2, 2026.

Allegations of a failure to implement an IEP are determined using an analysis of whether the failure to implement the IEP was a material failure, meaning when there is more than a minor discrepancy between the services that the school provides to a disabled child and the services required by the child's IEP. *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007); *see also L.J. by N.N.J. v. School Board of Broward County*, 927 F.3d 1203 (11th Cir. 2019). The Eleventh Circuit Court in *L.J. by N.N.J. v. School Board of Broward County*, 927 F.3d at 1212, reinforced the idea set forth by the Ninth Circuit Court in *Van Duyn*, 502 F.3d at 822, that rather than determining whether an IEP was implemented perfectly without error, it was more appropriate to determine whether a school has satisfied its obligations under the IDEA, which is to provide special education and related services in conformity with an IEP.

In this case, the Petitioners and Respondents executed a settlement agreement with the assistance of counsel. *FOF 15*. The settlement agreement clearly and unequivocally called for Parent(s) of Student to provide transportation in place of the DOE bus transportation and for the

DOE to reimburse Parent(s) for providing such transportation. *FOF 16*. Nothing in the settlement agreement provided that the DOE would continue providing transportation with an option for Parent to pick Student up from school only on [REDACTED], contrary to what Parent claimed throughout the March 3, 2026 IEP meeting and the Hearing.

Based on the settlement agreement, the DOE reasonably canceled their bus transportation that was previously scheduled for Student and provided Parent with notice prior to canceling the bus service. *FOF 17-18*. Parent was provided the forms to complete to receive reimbursement and completed those forms to claim reimbursement costs for transporting Student to and from School. *FOF 14*.

The implementation of the IEP-12/09/2025 was accomplished by the DOE in a fashion that was agreed upon by the parties in the January [REDACTED], 2026 settlement agreement. While Petitioners further argue that upon being provided notice that Parent was no longer able to transport Student resulted in a failure to implement the IEP-12/09/2025, this Hearings Officer disagrees.⁶ Until the IEP team, an administrative review, or an alternative agreement revised the terms of the settlement agreement or the IEP-12/09/2025, reimbursement to Parent in lieu of the transportation service was provided ‘in conformity’ with the IEP-12/09/2025. Petitioners have failed to meet their burden of proof on this issue.

2. Student’s stay-put rights did not require the DOE to maintain curb-to-curb bus transportation with RBT support as provided in the IEP-12/09/2025 during the pendency of this proceeding.

Petitioners next argue that Student’s stay-put rights should have entitled Student to curb-to-curb bus transportation during the pendency of the proceeding. Petitioners conveniently

⁶ This issue of whether the IEP team should have discussed Parent’s concerns about not being able to provide transportation will be addressed in Issue #3, *infra*.

overlook that a written settlement agreement was executed between the IEP-12/09/2025 development and the filing of the due process complaint in this case. For the reasons set forth below, this Hearings Officer concludes that Student's stay-put rights did not entitle Student to curb-to-curb bus transportation as provided in the IEP-12/09/2025.

The IDEA provides, in pertinent part, that “during the pendency of any proceedings conducted pursuant to this section, ***unless the State or local educational agency and the parents otherwise agree***, the student shall remain in the then-current educational placement of the child...” 20 U.S.C. §1415(j), Hawaii Administrative Rules (H.A.R.) §8-60-72(a). The purpose of stay-put is to “strip schools of the unilateral authority they had traditionally employed to exclude disabled students...from school and to protect children from any retaliatory action by the agency.” *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.*, 600 F.3d 1104, 1114 (9th Cir. 2010) (citing *Johnson ex rel. Johnson v. Special Educ. Hearing Office, State of California*, 287 F.3d 1176, 1181 (9th Cir. 2002)). While the IDEA does not define “then-current educational placement,” some courts have reviewed various issues related to stay-put and have defined “then-current educational placement” as the placement set forth in the child’s most recently implemented IEP; the operative placement actually functioning at the time when the stay put provision of the IDEA was invoked; or the placement at the time of the previously implemented IEP. *K.D. ex rel. C.L. v. Department of Educ., Hawaii*, 665 F.3d 1110, 1118 (9th Cir. 2011), see also *E.E. by and through Hutchinson-Escobedo v. Norris School District*, 4 F.4th 866, 871-872 (9th Cir. 2021). Stay-put is applicable to related services as well as the student’s “then-current educational placement.” *Doe v. East Lyme Bd. of Educ.*, 790 F.3d 440, 452 (2nd Cir. 2015).

Multiple circuits, however, have determined that stay-put focuses on the general overall program of the students and does not require school districts to conform exactly with the terms of the IEP during the pendency of the proceedings. Courts have determined that changes in vendors, changes in a specific school or setting, a change in the length of the school year, or a change in feeding treatment did not violate a stay-put order. *Johnson ex rel. Johnson*, 287 F.3d at 1181-1182 (holding that a change in vendor did not violate stay-put); *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373, 380 (5th Cir. 2003) (holding that educational placement does not mean a particular school but means a setting in which a student will receive their education); *Tilton by Richards v. Jefferson County Bd. of Educ.*, 705 F.2d 800, 804 (6th Cir. 1983) (holding that a change in a setting with a shortened school year was not a change of placement when the school district was closing the year round school); *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 1582 (D.C. Cir. 1984) (holding that a change in staff at a facility for feeding treatments is not a change in educational placement for stay-put purposes). The Third Circuit Court of Appeal also reviewed this issue of stay-put regarding a change in transportation and determined that while each set of facts should be reviewed in making a stay-put determination, “[m]inor changes in the daily transportation routine, however, will not generally have such an impact on the child’s learning experience, even when the child is severely handicapped.” *DeLeon v. Susquehanna Community School Dist.*, 747 F.2d 149, 154 (3rd Cir. 1984).

The facts of this case differ from a typical stay-put review, since in this case there was an agreement by the parties to change the method of transportation subsequent to the completion of the IEP-12/09/2025. *FOF 15*. The plain language of the settlement agreement signed by Parent on January ■, 2026 stated that Parent(s) would transport Student to and from school and be

reimbursed by the DOE for such transportation. *FOF 16*. The DOE's determination to cancel bus service for Student as a result of their reliance upon the written settlement agreement was reasonable and there was no need for the DOE to continue bus transportation service for Student. Unlike a typical stay-put situation where a school is trying to unilaterally change an educational placement of a child and the stay-put must keep the status quo while the parents file due process, the parties in this case came to an agreement *after* the IEP-12/09/2025 was developed, thereby modifying the IEP-12/09/2025 accordingly. No action needed to be taken to prevent the school district from stripping away rights that were retained by Parent and/or Student since the claim for transportation was modified in the written settlement agreement.

Even assuming, *arguendo*, that Parent's claim that the settlement agreement did not set forth what Parent had agreed to, the change in the transportation method in this case would not constitute a change in educational placement for Student. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *FOF 39*. Parent provided no reasons as to why Parent could no longer transport Student to and from school. *FOF 40*. More importantly, Student's educational program was unaffected the DOE stopping Student's bus transportation. Student only had a single IEP goal and objective that related to bus transportation and it was to make requests for items or attention using a method of communication, which was also covered by other goals and objectives in the IEP. *See* P-Ex.1, p.39-4; R-Ex.15, p.17-173. Petitioners have not provided any evidence that this goal or objective could not have been achieved in other situations or scenarios such that Student's educational program would be so significantly affected that it would constitute a change in educational placement.

Petitioners have failed to meet their burden of proving that Student's stay-put rights required the DOE to maintain curb-to-curb bus transportation with RBT support as provided in the IEP-12/09/2025 during the pendency of this proceeding. As stated above, the settlement agreement signed by both parties modified the transportation services of the IEP-12/09/2025 by agreement, so the change by the DOE to follow the settlement agreement did not constitute a change in educational placement that would have triggered Student's stay-put rights. Even assuming, *arguendo*, that the settlement agreement would not have modified the IEP-12/09/2025 as noted, the change in bus service for Student was not a significant change that would have resulted in a change in educational placement that would have required a stay-put placement by the DOE.

3. Petitioners have proven that the DOE denied Student a FAPE by preventing the March 3, 2026 IEP team from considering Parent's request for discussion of how Student's need for resumption of DOE-provided transportation services have affected Student's access to and implementation of Student's IEP-12/09/2025

Petitioners' final argument is that the DOE denied Student a FAPE by preventing the March 3, 2026 IEP team from considering Parent's request for discussion of how Student's need for resumption of DOE-provided transportation services have affected Student's access to and implementation of Student's IEP-12/09/2025. On this issue, this Hearings Officer concludes that Petitioners have met their burden and finds that the DOE denied Student a FAPE.

An IEP must be reviewed periodically, but not less than annually, and may be revised as appropriate to address information about the child, the child's anticipated needs, and/or other matters as raised by either the school district or by the parents of the child. 20 U.S.C.

§1414(d)(4)(A); 34 C.F.R. §300.324(b); H.A.R. §8-60-48(b). In this case, Parent requested an IEP meeting to discuss a concern that Parent had regarding transportation. *FOF 19*. While it is abundantly clear that a settlement agreement had been signed just over one month before

Parent's request to discuss transportation, the IEP team should have met to allow Parent to discuss concerns regarding the difficulty that Parent was having with the new transportation agreement. A parent's ability to discuss concerns regarding a Student's IEP is of utmost importance under the IDEA and any significant impairment of a parent's ability to participate effectively in the IEP meeting is a denial of FAPE. *Doug C.*, 720 F.3d at 1043-1044.

While it is understandable that the DOE personnel were unfamiliar with the process of discussing and issue that had been settled by other parties through legal documents, the IEP team should have allowed Parent to voice Parent's concerns about the transportation issues and had the IEP team discuss what, if anything, would be done in response. *See FOF 22-25, 34-35.* Failure to allow the IEP team to discuss Parent's concern significantly impaired Parent's ability to participate in the IEP team discussions regarding a service that impacted Student's education.

This Hearings Officer notes that the IEP team may not have been able to change the terms of the settlement agreement or even provide a solution to Parent's concern regarding the transportation for Student, but denying Parent the opportunity to discuss Parent's concerns at the IEP meeting on March 3, 2026 is what resulted in a denial of FAPE. The numerous cases cited to by Respondents that found that schools do not have to concede to a parents request to change transportation all involved a discussion with the IEP team that ultimately resulted in the IEP team's decision.

4. Equitable Considerations

Having found a denial of FAPE by the DOE for significantly impairing parent participation in the IEP team meeting on March 3, 2026, this Hearings Officer is now tasked with determining an appropriate remedy. Petitioners have provided evidence that after Parent was

denied the opportunity to discuss the problems with transportation for Student at the March 3, 2026, Parent enrolled Student in Private Center on or about April 4, 2026. *FOF 43*.

Petitioners have included in their Complaint a request for tuition reimbursement for April and May 2026 for Student's attendance at Private Center. This Hearings Officer does not believe that this is an appropriate remedy for the denial of FAPE that took place in this case. The denial of FAPE was simply a failure to discuss a single related service of Student's IEP and not a failure to provide Student with an educational program that addressed Student's needs. In fact, Petitioners concede that Student's IEP-12/09/2025 is an appropriate program for Student, including the transportation that is provided. As such, tuition reimbursement for a private school for a failure to provide transportation as requested by Parent is not an appropriate remedy.

The appropriate remedy in this case for the denial of FAPE for failing to discuss transportation at the IEP meeting on March 3, 2026 is compensatory education. This would take into account that Parent might have had to make alternative arrangements for transporting Student to school for the days and times when Parent was unable to transport Student based on the settlement agreement. This Hearings Officer concludes that a fair compensation amount for transportation costs that Parent might have had to expend during the two months that Parent was unable to transport Student to school is Ten Thousand Dollars (\$10,000.00). This Hearings Officer reaches this dollar amount by taking the transportation, RBT, BCBA, administrative fee, and tax from Private Center's cost sheet and including mileage pursuant to the settlement agreement on [REDACTED], which is when Parent stated that parents were planning to transport Student to and from school.⁷

⁷ Specifically, Private Center charges [REDACTED] per month for transportation. For the months of April and May, there were [REDACTED] school days from [REDACTED]. Assuming an RBT would need to be paid for one hour each way to and from school at [REDACTED] per hour, the RBT costs

VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have failed to prove that Respondents denied Student a FAPE by failing to implement the IEP-12/09/2025 regarding Student's transportation. Petitioners have also failed to prove that Student was entitled to transportation as listed in the IEP-12/09/2025 as stay-put during the pendency of these proceedings. Petitioners have proven that the DOE significantly impairing parental participation in the March 3, 2026 IEP meeting by not allowing Parent to discuss concerns regarding Student's transportation, which resulted in a denial of FAPE. This Hearings Officer finds that compensatory education is an appropriate remedy for the denial of FAPE in this case and respectfully denies Petitioners' request for tuition reimbursement for Private Center for the months of April and May.

For the reasons stated above, IT IS ORDERED –

1. Within thirty (30) calendar days of this Decision, the DOE shall pay Parent Ten Thousand Dollars exactly (\$10,000.00) for the compensatory education award as noted in this Decision.
2. Within thirty (30) calendar days of this Decision, Home School shall schedule an IEP meeting with Parent to review the transportation for Student as part of Student's IEP and determine whether the IEP shall be revised.

would amount to [REDACTED] for 70 hours of transportation. The BCBA cost for supervising the RBT at [REDACTED] would be 3.5 hours at [REDACTED], totaling [REDACTED]. The amount to Private Center for transportation for Student with RBT and BCBA services for Monday to Thursday in April and May would be [REDACTED]. The [REDACTED] administrative fee and 4.166% tax would result in a total of \$9643.17. Mileage to Parent on [REDACTED] twice a day for [REDACTED] miles each way at [REDACTED] per mile (as per the settlement agreement) would amount to \$107.20 for the [REDACTED] in April and May. P-Ex.3, p.342.

3. Any delays in the scheduling of meetings, provision of consent, scheduling of assessments or observations of Student, or for any other reason caused by Petitioners and/or Petitioners' advocates or representatives shall be carefully documented by Respondents and shall extend the timelines set herein by the number of days attributable to Petitioners and/or Petitioners' advocates or representatives.

RIGHT TO APPEAL

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

DATED: Honolulu, Hawai'i, May 29, 2026.



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