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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-SY2425-002

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing:
September 10-12, 2024
October 3, 2024

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 procedural and substantive violations in the development and implementation of Student's Individualized Education Program (hereinafter "IEP") dated March 15, 2024. Petitioners seek reimbursement and placement of Student at a private program due to

¹ Personal identifiable information is contained in the Legend.

the alleged denial of a free appropriate public education (hereinafter “FAPE”) by the Department of Education, State of Hawai`i (hereinafter “DOE”).

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 (3) issues in their Complaint and Resolution Proposal (hereinafter “Complaint”) to be addressed at the Hearing:

1. Whether failure to provide Student transportation has materially affected Student’s ability to receive meaningful educational benefits.
2. Whether the March 15, 2024 IEP describes sufficient behavior interventions for Student to succeed at Home School.
3. Whether the March 15, 2024 IEP identified the least restrictive placement for Student.

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

1. Find that the DOE denied Student a FAPE for the violations asserted.
2. Order the DOE to reimburse Parent and/or directly fund any privately-funded programs and/or services related to the denial of FAPE.
3. Order the DOE to directly fund any private services (including private related services, such as transportation and necessary expenses related to the provision of private services).
4. Provide compensatory education for lost educational and related skills due to the current breach of FAPE.
5. Order such other relief as appropriate and/or justified under equity and/or the law.

IV. BACKGROUND

On July 11, 2024, the Department of Education, State of Hawai`i (hereinafter “Respondents” or “DOE”) received a Complaint under the Hawai`i Administrative Rules Title 8,

Chapter 60, in accordance with the IDEA, from Student, by and through Parent (hereinafter “Petitioners”). Respondents submitted a response to Petitioners’ Complaint on July 22, 2024.

On August 2, 2024, a prehearing conference was held with Hearings Officer Chastity T. Imamura, Keith H.S. Peck, Esq. (hereinafter “Mr. Peck”) on behalf Petitioners, and Bradford K. Chun, Esq. (hereinafter “Mr. Chun”) and Hsin-Ya Tribbey, Esq. (hereinafter “Ms. Tribbey”) on behalf of Respondents. The due process hearing (hereinafter “Hearing”) was scheduled for September 10-12, 2024.

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. An Order Regarding Video Conference Due Process Hearing was filed on August 2, 2024, which set forth the parameters of the video conference due process hearing.

The Due Process Hearing began on September 10, 2024. Present at the Hearing were Parent and Mr. Peck, on behalf of Petitioners; District Educational Specialist, Mr. Chun, and Ms. Tribbey on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners called Parent and Private Registered Behavior Technician (hereinafter “Private RBT”) to testify. On September 11, 2024, Private Special Education Teacher (hereinafter “Private SPED”) and Private Board-Certified Behavior Analyst (hereinafter “Private BCBA”) testified. Private School President’s (hereinafter “PCP”) testimony also began on September 11, 2024, but was continued to September 12, 2024. Upon completion of PCP’s testimony,

Petitioners rested their case-in-chief. Respondents began their case on September 12, 2024 with DES's testimony. Due to witness testimony taking longer than expected, the Hearing was continued to October 3-4, 2024. On October 3, 2024, Vice Principal (hereinafter "VP"), DOE Board-Certified Behavior Analyst (hereinafter "DOE BCBA"), and Special Education Vice Principal (hereinafter "SPED VP") testified and Respondents rested their case-in-chief. After Respondent's case, Petitioners requested the ability to either present evidence or call a rebuttal witness to respond to testimony of DOE BCBA, to which Respondents objected. This Hearings Officer determined that since both parties agreed to submit written closing briefs, that the evidence proposed by Petitioners can be included in the closing written briefs. Petitioners accepted that proposal as an alternative to submitting evidence or recalling a witness.²

Each party submitted their exhibits for the Hearing by the disclosure deadline of September 3, 2024. The parties reviewed the exhibit and witness lists provided by the opposing party and neither party had any objections to the exhibits and/or witnesses listed in the disclosures. 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 October 4, 2024, 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.

² Specifically, Petitioners wanted to rebut a general statement made by DOE BCBA that letterboarding is not an acceptable method of teaching communication. Petitioners requested to produce a document showing the opinions regarding letterboarding or facilitated communication or call a witness to testify regarding the contents of the document. This Hearings Officer noted that the evidence was only relevant to a portion of the argument for reimbursement, so it was not necessary for Petitioners to present rebuttal evidence, but they could argue it and attach the documents to their closing brief.

Petitioners' exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 036-076; Exhibit 2, pages 081-097; Exhibit 3, pages 101-107, 111-117, 120-128; Exhibit 4, pages 129-151, 153-155, 157, 159-169, and three (3) audio files dated 04/27/2023, 03/15/2024, 05/28/2024.

Respondents' exhibits that were received and considered as part of this Decision are as follows: Exhibit 2, pages 008-042; Exhibit 15, pages 089-126; Exhibit 34-35, pages 152-183; Exhibit 39, page 188; Exhibit 41, page 195; Exhibits 52-55, pages 222-227; Exhibits 60-64, pages 234-266; Exhibit 68, pages 272-283; Exhibit 70, pages 286-288; Exhibits 73-74, pages 304-305; Exhibit 77, pages 309-310; Exhibit 80, pages 313-314; Exhibit 82, pages 316-317; Exhibits 84-91, pages 319-328; Exhibits 93-94, pages 333-345; Exhibits 100-102, pages 391-447; Exhibit 105, pages 457-476; and Exhibits 107-111, pages 486-520.

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

Student's background

1. Student is currently [REDACTED] years old. [REDACTED]
[REDACTED]. Testimony of Parent, Transcript of Proceedings, Volume 1, page 15, line 5, through page 16, line 7 (hereinafter referenced as "Tr.V1, 15:5-16:7");
Petitioners Exhibit 3, page 103 (hereinafter referenced as "P-Ex.3, p.103.")
2. [REDACTED]

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

[REDACTED]

Testimony of Parent, Tr.V1, 16:8-17:13; Testimony of PCP, Tr.V4, 449:5-11.

3. Parent has very little recollection of anything related to the IEP meetings and is not familiar with Student's IEP having only "looked through"⁴ the IEP but not really reading it. *See generally* Testimony of Parent, Tr.V1, 17:6-136:15.
4. Parent relies heavily on the personnel at Private Center to advocate for Student's education because Parent claims that Parent does not have the knowledge to understand what Student needs.⁵ PCP often acts as an advocate for Student and Parent in meetings with the DOE. Testimony of PCP, Tr.V3, 439:5-441:9; *see* Testimony of Parent, Tr.V1, 34:7-25.
5. Student is eligible for IDEA special education and related services under the category of [REDACTED] due to Student's diagnosis of [REDACTED], [REDACTED], [REDACTED].
R-Ex.2, p.009.
6. Student had attended Private Center for many years prior to December [REDACTED] with at least some of the tuition and expenses being paid by the DOE. Testimony of Parent, Tr.V1, 53:16-59:21, 131:7-21.
7. Student attended Prior Public School from December [REDACTED] through April [REDACTED] and

⁴ Testimony of Parent, Tr.V1 18:19-19:17.

⁵ Based on Parent's testimony, it appears that Parent knows very little about Student's educational program and spends very little time with Student, [REDACTED]. However, Parent is still Student's educational representative and attends and participates in Student's IEP meetings. *See* Testimony of Parent, Tr.V1, 134:15-135:20; *see generally* P-Ex.4, 3/15/24 video recording.

enrolled at Home School in March 2024. R-Ex.2, p.009.

8. Petitioners filed a previous due process complaint for Student's time at Prior Public School and subsequent enrollment at Private Center, requesting tuition reimbursement for Private Center, which was later denied by the administrative hearings officer. *See* Respondent's Closing Brief, Exhibit 1.
9. According to Private Center personnel, such as PCP and Private BCBA, Student does not have 'typical' triggers that start Student's maladaptive behaviors. Because Student is intelligent, Student's maladaptive behaviors are usually a result of Student learning more about the person that is working with Student and testing boundaries and getting in a 'power struggle' with the other person. Testimony of Private BCBA, Tr.V2, 267:17-273:22; Testimony of PCP, Tr.V3, 348:10-349:15; P-Ex.4, 3/15/24 video recording [32:43-37:46].
10. Student is able to control Student's actions, including maladaptive behaviors, if Student has someone that has "instructional control" over Student, meaning that Student will listen when the person tell Student not to engage in the maladaptive behaviors and/or the person with the control over Student may identify when Student is about to engage in behaviors. Testimony of Private BCBA, Tr.V2, 257:10-264:21; Testimony of PCP, Tr.V3, 386:4-387:22; P-Ex.4, 3/15/24 video recording [32:43-37:46].
11. Student does not respond well to standard behavioral interventions, such as a sensory room or breaks, and they may feed into Student's maladaptive behaviors. P-Ex.4, 3/15/24 audio recording [35:40-37:15].
12. The primary method of managing Student's behaviors at Private Center has been to have Private RBT work with transitioning other employees and service providers to transfer

the “instructional control” from Private RBT to the other person, allowing that person to be able to identify the cues for and manage Student’s behaviors. Testimony of Private BCBA, Tr.V2, 235:13-237:20.

Student’s IEP

13. Student’s IEP team developed a written IEP for Student over the course of three meetings in March 2024 (hereinafter referred to as “IEP-03/15/2024”). Testimony of VP, Tr.V4, 501:23-502:15; R-Ex.2, p.008-042.
14. At the IEP and other meetings with Home School, PCP and Private RBT act as representatives for Student, often voicing objections and concerns about Student’s IEP instead of Parent. Testimony of VP, Tr.V4, 502:14-19; *see generally* P-Ex.4, 4/27/23 video recording; P-Ex.4, 3/15/24 video recording; P-Ex.4, 5/28/24 video recording.
15. Student’s IEP-03/15/2024 indicates that Student is on a [REDACTED] for school and is enrolled in a community-based instruction program to focus on skills that Student needs to become more independent and learn safe community behaviors. R-Ex.2, p.015.
16. Student’s IEP-03/15/2024 behavior goals and objectives are based on Student’s behavior intervention plan (hereinafter “BIP”), which was developed and revised in 2023 by Doctorate-level Board-Certified Behavior Analyst (hereinafter “Dr.BCBA”). Testimony of DOE BCBA, Tr.V4, 580:2-581:17, 602:3-24; *compare* R-Ex.2, p.022-030; P-Ex.2, p.083-086.
17. Student’s DOE BIP was based on a functional behavior assessment conducted by Dr.BCBA, which was conducted with Student in [REDACTED]. Testimony of DOE BCBA, Tr.V4, 579:7-580:1, 604:7-12; R-Ex.2, p.011.
18. Student’s IEP-03/15/2024 provides Student with direct services for special education for

one thousand eight hundred seventy minutes per week; speech/language therapy for five hundred forty minutes per quarter; occupational therapy for one hundred eighty minutes per quarter; and transportation two times per day.⁶ R-Ex.2, p.037.

19. During the transportation discussion at the March 15, 2024 IEP meeting, Parent and Private RBT indicated that Student required transportation and needed the services of a registered behavior technician on the bus because Student had behaviors on the bus. P-Ex.4, 3/15/24 video recording [1:24:08-1:25:42].
20. Student's IEP-03/15/2024 provides Student with the following supplementary aids and services and program modifications and supports for school personnel:
 - applied behavior analysis (hereinafter "ABA") services for four hundred thirty-four minutes per month;
 - individual instructional support by a registered behavior technician (hereinafter "IIS") for two thousand one hundred seventy minutes per week;
 - the BIP;
 - occupational therapy consultation for ninety minutes per quarter;
 - speech/language consultation for thirty minutes per week;
 - frequent rest, movement, and/or sensory breaks throughout the day;
 - access to an adaptive pencil grip;
 - access to low and/or no-tech communication system; a
 - safety identification card;
 - visual supports;
 - a communication log between the school and Parent; and
 - a transition plan.⁷ R-Ex.2, p.037.
21. Student's IEP-03/15/2024 does not contain strategies, interventions, or reinforcers, for modifying Student's behaviors because the board-certified behavior analyst needs to be able to modify the strategies, interventions, or reinforcers as Student responds to them to

⁶ Transportation for Student in the IEP-03/15/2024 would have been using a smaller bus that would pick Student up from Student's home and drop Student off at Home School and then take Student back home after school. Testimony of DES, Tr.V3, 460:23-461:14.

⁷ The discussion at the IEP meeting on March 15, 2024 included talk of clarifying several of the supplementary aids and supports for Student which did not appear in the resulting IEP-03/15/2024.

be an effective behavioral tool. Having the specific strategies, interventions, or reinforcers in the IEP would require a team meeting every time they need to be modified instead of having the ABA professional make the assessments and determinations based on their qualifications. Testimony of DOE BCBA, Tr.V4, 581:2-586:1.

22. Student was determined to be eligible for extended school year (hereinafter “ESY”) in Student’s prior IEP, dated April 27, 2023 hereinafter “IEP-04/27/2023”), so the IEP team on March 15, 2024 decided to continue Student’s eligibility for ESY and thereafter collect data to see if continued ESY was necessary. P-Ex.4, 3/15/24 video recording [1:20:02-1:22:21].
23. Student was provided the following services and supplementary aids and supports in the IEP-03/15/2024:⁸
 - Extended school days from 8:30 a.m. – 12:30 p.m.
 - Occupational therapy for twenty minutes per week during summer ESY
 - One occupational therapy consultation prior to summer break
 - Speech/language therapy for thirty minutes per week during summer ESY
 - Transportation
24. For the summer of 2024, Student was to attend ESY on June 14, 17-21, 24-28, 2024; July 1-3, 5, 8-12, 15-19, 22, 2024. P-Ex.1, p.072; R-Ex.2, p.037.
25. The IEP team determined that Student’s least restrictive environment (hereinafter “LRE”) or educational placement for the IEP services would be to place Student in a special education setting but allow Student to have access to nondisabled students and

⁸ Neither the IEP-03/15/2024 nor the PWN-03/21/2024 specifically state whether Student was to receive ABA and IIS services by an RBT, or the BIP for Student’s ESY program, however during the IEP meeting, the IEP team implied that they would continue the ESY services that Student had in the prior IEP, however, the ESY services section did not list the same services as was in the IEP-04/27/2023. P-Ex.4, 3/15/24 video recording [1:20:02-1:22:21]; *see also* P-Ex.1, p.066-067.

extracurricular activities that would be tailored to Student's interests. The proposal by VP during the meeting was to collect data and revisit Student's LRE based on how Student does at Home School. Parent and PCP strongly objected to the LRE and requested that Student be placed in the general education setting with the proper supports. Testimony of VP, Tr.V4, 503:12-505:7, 526:3-528:13; P-Ex.4, 3/15/2024 audio recording [1:51:30-2:15:10].

26. Student's IEP-03/15/2024, however, stated that Student would not be participating with nondisabled students in the general education class, extracurricular activities, and other non-academic activities during the school day, including transportation. Testimony of VP, Tr.V4, 506:2-507:9, 528:14-18; R-Ex.2, p.039.
27. A prior written notice (hereinafter "PWN") dated March 21, 2024 (hereinafter "PWN-03/21/2024") reiterated the same LRE for Student and noted that Student would be attending school at Home School. P-Ex.1, p.073.
28. Immediately after the IEP meeting on March 15, 2024, the team held a transition planning meeting to develop the transition plan for Student that was included in the IEP-03/15/2024. Testimony of VP, Tr.V4, 508:25-509:16; *see* P-Ex.4, 3/15/2024 video recording [2:22:10-3:27:38].
29. At the start of the transition meeting, PCP provided the IEP team a proposed transition plan for Student's start at Home School, which included a schedule of Student starting at Home School for one to two hours for the first few days, then three to four hours after Student adjusts to the new setting. P-Ex.4, 3/15/24 video recording [2:22:23-2:57:29].
30. The transition plan, dated March 15, 2024 and developed by the IEP team, indicated that the transition for Student from Private Center to Home School was anticipated to take

two weeks and Student was to attend Home School for two hours per day for the first and second days of school and then attend the second week for three hours per day, similar to what was proposed by PCP. The transition was scheduled for March 27, 2024 through April 5, 2024, and five transition status meetings were scheduled for April 4 and 19, 2024, and May 3, 17, and 31, 2024. R-Ex.15, p.090.

31. The IEP-03/15/2024 and the March 15, 2024 transition plan was emailed to Parent on March 27, 2024. Testimony of Private BCBA, Tr.V2, 229:16-230:1.
32. A more detailed draft transition plan (hereinafter “DTP”) was developed on May 3, 2024 (hereinafter “DTP-05/03/2024”). The delay was based, in part, on the pending due process complaint and settlement negotiations by the parties. Testimony of Private BCBA, Tr.V2, 230:2-12; *see* R-Ex.34, p.152-177; R-Ex.109, p.507-513.
33. The DTP-05/03/2024 noted that during all phases on the transition plan, Private RBT would transport Student to Home School. R-Ex.108, p.501.
34. The DTP-05/03/2024 anticipated a ten-week transition from Student having primarily services provided by Private Center personnel to Student attending Home School full-time with DOE personnel. R-Ex.108, p.502-503.
35. During the different phases of the DTP-05/03/2024, Private RBT was to initially provide services to Student at Home School and allow DOE staff to build rapport and eventually provide services to Student. Testimony of DOE BCBA, Tr.V4, 544:1-25; R-Ex.108, p.501.
36. The DTP-05/03/2024 indicated that the board-certified behavior analyst and IIS hours would remain the same as listed in the IEP-03/15/2024, but could be revised at an upcoming meeting. R-Ex.108, p.506.

37. Initially, Private RBT was to accompany Student to school and provide registered behavior services to Student during the period Student would attend Home School. Slowly, the DOE registered behavior technician was supposed to shadow Private RBT, and as Student adjusted to the DOE registered behavior technician, Private RBT would fade from providing service, and then eventually not attend school with Student at all. Testimony of PCP, Tr.V3, 351:25-352:7; R-Ex.108, p.501-502; P-Ex.4, 3/15/24 video recording [3:18:20-3:18:46].
38. The goal of the transition plan was to fully transition Student from Private Center to Home School with minimal incidents. The goal listed in the DTP-05/03/2024 was for Student to attend Home School for one hundred twenty minutes without any intervention from Private RBT. R-Ex.108, p.501.
39. The team noted at the March 15, 2024 meeting that the transition plan needed to be flexible to accommodate Student's needs and regularly scheduled transition update meetings were to be scheduled. R-Ex.108, p.501-503.
40. Student began attending Home School on May 20, 2024 with Private RBT. Testimony of Private BCBA, Tr.V2, 230:13-18; Testimony of VP, Tr.V4, 7:10-18.
41. Private BCBA worked with the DOE personnel when Student was attending Home School from May 2024 through July 2024. Testimony of Private BCBA, Tr.V2, 227:25-228:24.
42. Notwithstanding the LRE described in the IEP-03/15/2024 and PWN-03/21/2024, Student did have opportunities to interact with nondisabled students while attending Home School. Student participated in a physical education class where Student played basketball with nondisabled peers. Testimony of VP, Tr.V4, 507:16-508:3; Testimony of

DOE BCBA, Tr.V4, 575:6-578:16, 610:14-612:12.

43. A meeting was scheduled for May 28, 2024 to discuss Student's transition to Home School and the ESY summer session for 2024. R-Ex.108, p.506.
44. At the meeting on May 28, 2024, the team determined that additional time is needed for Student's transition to Home School, so the team agreed to extend the services of Private BCBA and Private RBT to continue working on Student's transition. *See* P-Ex.4, 5/28/24 meeting recording.⁹
45. Parent did not attend the meeting on May 28, 2024, noting that since it was not an IEP meeting, Parent would not attend either in-person or virtually. Testimony of Parent, Tr.V1, 33:17-34:25, 46:13-49:3; R-Ex.52, p.222.
46. On June 17, 2024, Private Center sent an email to Prior District Educational Specialist (hereinafter "Prior DES") asking Private DES to update the contract to amend the dates to June 30, 2024 and increase the dollar amount cap, based on the discussion at the May 28, 2024. P-Ex.3, p.111-112; R-Ex.60, p.234.
47. A contract, dated May 31, 2024, was provided to Private Center on June 18, 2024 in response to Private Center's request. P-Ex.3, p.115-117; R-Ex.60, p.234-237.
48. On June 24, 2024, Home School put in a request for bus transportation services for Student to begin on July 1, 2024. R-Ex.64, p.265.
49. On June 24, 2024, Student had a behavioral incident while attending Home School. Although Student engaged in maladaptive behavior, Student was able to regulate after the behavioral interventions were used with Student. Testimony of DOE BCBA, Tr.V4,

⁹ The meeting recording that was submitted by Petitioners seems to start at some point after the meeting started, but the contents of the recording reflect discussions by the team about Student's transition. *See* P-Ex.4, 5/28/24 meeting recording.

563:21-565:8; R-Ex.63, p.263-264.

50. After the behavioral incident, DOE BCBA noted that Home School should put a hold on requesting school bus transportation service for Student. R-Ex.64, p.266.
51. On June 25, 2024, Student had a behavioral incident while attending Home School. A Home School educational assistant was observed engaging in behaviors [REDACTED] [REDACTED] that was not appropriate according to Student's BIP. R-Ex.55, p.225-226.
52. On June 26, 2024, PCP provided an update to Prior DES and DOE BCBA regarding Student's status in the transition from Private Center to Home School. Testimony of PCP, Tr.V2, 320:18-321:8; Testimony of DOE BCBA, Tr.V4, 558:15-562:18,; P-Ex.3, p.120; R-Ex.68, p.272.
53. On June 27, 2024, DOE BCBA responded to PCP's email, indicating that DOE BCBA would like to recommend additional time for Student's transition due to a change in the Home School setting had happened during that time.¹⁰ Testimony of PCP, Tr.V2, 321:9-18; Testimony of DOE BCBA, Tr.V4, 562:19-563:9; P-Ex.3, p.121; R-Ex.68, p.275.
54. On the same day, PCP responded to DOE BCBA agreeing that additional time was needed, although for different reasons. Testimony of PCP, Tr.V2, 321:20-322:7; P-Ex.3, p.121; R-Ex.68, p.276.
55. No documented attempts were made to schedule a meeting regarding Student's transition plan during the week of June 26, 2024. Testimony of VP, Tr.V4, 529:15-530:8.
56. On July 4, 2024, Private Center CEO sent the DOE an email, similar to the one sent on

¹⁰ DOE BCBA testified that Student had been moved from a different classroom than Student had been introduced to when Student began attending Home School. DOE BCBA noted that since Student does not do well with transitions, they wanted to see if Student's behaviors would stabilize after some time being in the new classroom. Testimony of DOE BCBA, Tr.V4, 563:10-20.

June 17, 2024, inquiring about extending the contract for Private BCBA and Private RBT's services in July, as the contract that had been signed had expired. Testimony of PCP, Tr.V2, 317:8-318:25; P-Ex.3, p.112; R-Ex.60, p.237.

57. Prior DES sent Private Center CEO a response that said “[Home School] is scheduling a transition meeting with the [Private Center] team for sometime this week. We can adjust the contract based on what is decided at the meeting.” P-Ex.3, p.112-113; R-Ex.60, p.243.
58. On Monday, July 8, 2024, at 6:54 p.m., Private Center CEO inquired with Prior DES about the week from July 1, 2024 through July 8, 2024, as well as the time until the transition meeting would be held, since there was no existing contract between Private Center and the DOE. P-Ex. , p. ; R-Ex.60, p.246.
59. On Tuesday, July 9, 2024, at 2:15 p.m., after not receiving a response from Prior DES or anyone from the DOE, Private Center CEO informed Prior DES that Private Center will be suspending their services until they receive assurance from the DOE that they will be getting paid for the services that Private BCBA and Private RBT are providing to Student from July 1, 2024. Testimony of PCP, Tr.V3, 317:24-318:25; P-Ex.3, p.113-114; R-Ex.60, p.248.
60. Private Center was ultimately paid by the DOE for the services they provided to Student for the transition to Home School for July 1-9, 2024. Testimony of PCP, Tr.V3, 360:9-361:1; Testimony of DES, Tr.V3, 470:9-472:2; P-Ex.4, p.165.
61. As of July 10, 2024, Student had met seven out of nine of Student's behavioral goals and objectives from the IEP-03/15/2024 during Student's transition period to Home School. Testimony of DOE BCBA, Tr.V4, 545:25-551:13, 548:6-558:14; R-Ex.100, p.391-397;

R-Ex.105, p.457-476.

62. On July 11, 2024, the instant Complaint was filed. Testimony of DES, Tr.V3, 473:24-474:13.
63. A team meeting with the IEP team, Parent, and Private Center participants was scheduled for July 12, 2024. Parent cancelled the meeting on July 12, 2024 because Parent wanted Student's attorney to attend the meeting. Testimony of SPED VP, Tr.V4, 625:1-628:1; R-Ex.70, p.286-288; R-Ex.77, p.309-310.
64. Between July 10, 2024 and the resolution session for the instant case, Home School did not reach out to negotiate continued transition services for Private RBT either transporting Student or riding on the bus with Student. Testimony of PCP, Tr.V2, 322:16-323:6, 447:14-23.
65. Neither Petitioners' attorney nor Respondents' attorney attended the resolution session for this case. Parent participated in the resolution session while Parent was on a vacation with Parent's parent. PCP did not attend the resolution session with Parent. No video was made of the resolution summary and the resolution summary was not distributed due to Parent not signing off on the document. Testimony of PCP, Tr.V3, 448:3-9; Testimony of DES. Tr.V3, 477:7-478:23.
66. At the resolution session, the DOE offered to continue payment for the services that were in place for Student's transition to Home School and to schedule a transition meeting. Petitioners did not accept the offer by the DOE at the resolution session. Testimony of DES, Tr.V3, 474:14-475:23.
67. On August 2, 2024, Home School attempted to schedule a meeting with Parent regarding Student. R-Ex.84, p.319.

68. On August 6, 2024, Home School sent a letter to Parent that provided three dates for the meeting regarding Student, and a notice that if Parent did not contact Home School or attend the meetings, the IEP team would hold a meeting on August 12, 2024 without Parent. A follow-up telephone call was made by SPED VP on August 7, 2024. R-Ex.85, p.320; R-Ex.86, p.321; R-Ex.87, p.322.
69. On August 7, 2024, SPED VP called Parent and left a voicemail to try to schedule an IEP team meeting as soon as possible. Testimony of SPED VP, Tr.V4, 628:2-20; R-Ex.77, p.309-310.
70. On August 9, 2024, Home School reached out to Private Center to get in touch with Parent to hold a meeting. The email from VP also suggested that Home School would be willing to pay for Private RBT to transport Student on the curb-to-curb transportation for Student to attend school at Home School. Testimony of PCP, Tr.V3, 397:25-398:18; R-Ex.88, p.323.
71. On August 12, 2024, PCP responded to VP, saying that Private Center would not provide services until the IEP team meets and resolve the concerns related to Student's transition. Testimony of PCP, Tr.V3, 398:19-400:8; R-Ex.89, p.325-326.
72. On August 14, 2024, SPED VP again attempted to schedule an IEP team meeting with Parent. Testimony of SPED VP, Tr.V4, 628:21-629:5; R-Ex.90, p.327.
73. An IEP meeting was held on August 22, 2024. Testimony of SPED VP, Tr.V4, 629:6-13.
74. At no point between July 10, 2024 and August 22, 2024 did the DOE send a curb-to-curb bus with a DOE registered behavior technician to pick Student up for school. Testimony of Private RBT, Tr.V2, 145:10-147:20; Testimony of DES, Tr.V3, 483:18-21; Testimony of VP, Tr.V4, 528:19-21.

75. Student did not attend Home School between July █, 2024 and August █, 2024 and did not receive special education or related services. It does not appear that Student attended Private Center for educational services from July █, 2024 through August █, 2024, as no contract for services was signed between Parent and Private Center for that time period. *See* Testimony of Parent, Tr.V1, 131:22-134:4; *see also* Testimony of Private SPED, Tr.V2, 193:23-194:13.¹¹
76. The DOE school year at Home School started on or about August 6, 2024 for freshman students and August 7, 2024 for all students.¹² See
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██████████.
77. On August 22, 2024, the IEP developed a new IEP for Student for the 2024-2025 school year. Petitioners rejected the IEP, dated August 22, 2024, and filed a separate due process complaint based on the August 22, 2024 IEP. Testimony of PCP, Tr.V2, 336:5-13; Testimony of SPED VP, Tr.V4, 636:22-637:23.
78. On August 23, 2024, Parent signed a contract with Private Center for Student to attend Private Center for the 2024-2025 school year and Student began attending Private Center

¹¹ Although Parent testified that Student began attending Private Center days after Private Center suspended their services with the DOE, it is clear through Parent's testimony that Parent has no actual recollection of dates and sometimes just provides answers that Parent believes that should be said, which could be a factor of Parent's ██████████ capabilities, rather than testifying to specifics. For example, Parent testified that Parent and Student ride the public bus "all the time," but no other staff member at Private Center could corroborate that fact and based on Parent's limited contact with Student, it is difficult to believe that was a truthful statement. *See* Testimony of Parent, Tr.V1, 68:16-19, Testimony of Private BCBA, Tr.V2, 303:12-14. Parent also initially testified that Student stays with Parent on weekends, but then later clarified that Student just visits with Parent for an hour or so on weekends. Testimony of Parent, Tr.V1, 134:20-135:17.

¹² This Hearings Officer notes that despite Student's age, Student had just begun school at Home School, so August █, 2024 is being counted as a school day for Student.

on or about that date. Testimony of Parent, Tr.V1, 125:24-126:22; Testimony of PCP, Tr.V2, 336:14-22; P-Ex.4, p.129-131; *see also* Testimony of Private SPED, Tr.V2, 184:10-12.

Private Center

79. At Private Center, Student receives special education from a certified special education teacher and speech-language therapy. Student currently does not receive occupational therapy at Private Center. Testimony of Private SPED, Tr.V2, 184:10-191:23; Testimony of Private BCBA, Tr.V2, 250:25-252:19; P-Ex.4, p.132-147.
80. Private SPED uses visual supports, such as a timer, to facilitate transitions with Student, and often takes breaks during Student's educational day. Testimony of Private SPED, Tr.V2, 184:25-188:12; 196:5-208:11; Testimony of Private BCBA, Tr.V2, 297:1-9.
81. Private Center uses low and no-tech assistive technology with Student, such as an alphabet board to practice communication. Testimony of Private SPED, Tr.V2, 203:15-24; Testimony of Private BCBA, Tr.V2, 245:16-246:4.

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.*

A. Petitioners have proven that Respondents' failure to provide transportation and/or transition services has materially affected Student's ability to receive meaningful educational benefits

Petitioners' primary argument is that Respondents failed to provide Student with transportation for Student to attend school from July 10, 2024 through August 22, 2024.¹³ Intertwined with Petitioners' argument is the allegation that Respondents' failure to negotiate Private Center's fees for continued transition services for Student resulted in a denial of FAPE. This Hearings Officer finds that Petitioners have met their burden and that the failure of the DOE to either provide transportation services and/or a contract for continued transition services with Private Center resulted in Student's inability to attend school from July 10, 2024 through August 22, 2024, which resulted in a denial of FAPE.

When an IEP team determines what services are necessary for a student to receive a FAPE based on the student's unique needs, the educational agency offering the IEP services must provide the special education and related services in conformity with what is described in the student's IEP. *Van Duyn*, 502 F.3d at 820-822. Here, Student's IEP-03/15/2024 and PWN-03/21/2023 noted that Student's placement was to be at Home School and that Student requires both transportation and IIS services during Student's transportation to school and home daily. *FOF 18-20*. While the DTP-05/03/2024 stated that Private RBT would provide transportation to and from school daily, the failure of the DOE to renegotiate and/or discuss the extension of the contract for Private RBT's services before the expiration of the contract resulted in Private RBT

¹³ This Hearings Officer notes that on August 22, 2024, a new IEP was developed for Student that Petitioners rejected. Petitioners have filed a separate complaint under DOE-SY2425-009, alleging a denial of FAPE based on the new IEP and objected to the cases being consolidated at the prehearing conference for this case. Based on the issues in this case, this Hearings Officer finds that the only relevant time period for this Decision is between July 10, 2024 and August 22, 2024, when the new IEP was developed, as there are new issues based on the new IEP.

discontinuing transportation services for Student. *FOF 32-33, 44, 55-59.* Private Center notified Home School that they would discontinue services for Student unless their contract was renewed. *FOF 59.* At that time, Respondents had two choices-1) to negotiate an extension of the contract for Private RBT's services or 2) send a curb-to-curb bus with a DOE registered behavior technician to pick up Student to take Student to school daily. Neither of those things happened and Student did not attend Home School from July 10, 2024 through August 22, 2024.

Respondents argue that Private Center and Petitioners are colluding to try to make it difficult for the DOE to complete a transition of Student to Home School in an effort to try to get the DOE to pay for Student's tuition at Private Center. *See Respondents' Closing Brief, pages 2-3.* This Hearings Officer does not deny that this is a possibility given the testimony in this case and history of Student's attendance at Private Center. However, the basic facts of this case are that the DOE was aware that the contract with Private Center for Private Center's staff's services was ending on June 30, 2024 and no effort was made to negotiate the extension of the contract before it expired. *FOF 46-47, 55-59, 64.* No documented attempts to schedule a transition meeting were made before June 30, 2024. *FOF 55.* The team had difficulty with scheduling a follow-up meeting with Parent to discuss Student's transition, but Parent had also declined to participate in a transition meeting previously, so nothing was stopping the DOE from arranging a meeting with Private Center to determine whether the contract would be extended even if Parent was not responding. *FOF 45.* Private Center CEO provided the DOE with the opportunity to discuss the contract extension by asking about whether they would be paid for services until the transition meeting happened, and Prior DES did not respond in a clear way that would ensure that Private Center would receive payment for services until the team met and determined further steps. *FOF 56-59.* Private Center had provided services in early June with assurances from the

meeting in May 2024 and continued to provide services without a contract, and the email communication appeared to be asking for the same assurances. *See FOF 44, 46-47.* None were given before Private Center CEO informed the DOE that they would discontinue services, or anytime thereafter.

After Private Center stopped providing services to Student on July 10, 2024, Home School did not make any documented attempts to get Student back to attend school until August 1, 2024 when it simply asked if Private RBT could continue to take Student to school. *FOF 65-66, 70.* While it appears that Student was not yet ready to catch the bus to school, Respondents simply failed to provide the services in conformity with the IEP. As a result of Student not having any transportation to school from July 10, 2024 through August 22, 2024, Student did not receive special education and related services, which was a loss of educational opportunity for Student and a denial of FAPE.

B. Petitioners have not proven that the IEP-03/15/2024 failed to describe sufficient behavioral interventions for Student to succeed at Home School

Petitioners argue that the IEP-03/15/2024 fails to describe sufficient behavioral interventions for Student to succeed at Home School. Petitioners have failed to meet their burden of proof on this issue.

The evidence presented by Petitioners in this case is that the primary way to manage Student's behaviors is to have a person that works with Student have "instructional control" over Student to indicate to Student to refrain from engaging in the maladaptive behaviors. *FOF 9-11.* The behavioral interventions that are in Student's IEP-03/15/2024, such as the frequent rest, movement, and/or sensory breaks, access to low and/or no-tech communication, and visual supports, are all things that Private Center say that are helpful to use with Student. *FOF 80.*

Petitioners have not suggested any specific behavioral interventions that are necessary for Student to succeed at Home School that are not currently included in Student's IEP-03/15/2024.

The evidence presented by Respondents suggests that the behavioral interventions in the BIP cannot specifically be included in the IEP due to the need for the board-certified behavioral analyst to be able to analyze the behavioral data for Student to determine what would be an appropriate strategy to use at the time it is necessary. *FOF 21*. An IEP meeting that would be required to change the contents of the IEP, as evidenced in this case, often takes time to schedule due to Parent's schedule and the large number of team participants, which would delay possible behavioral interventions from being implemented as necessary. *See e.g. FOF 63, 67-72*.

This Hearings Officer finds that the supplemental aids and supports included in the IEP-03/15/2024 sufficiently describe behavioral supports, including the BIP, that would allow the personnel working with Student to effectively address Student's behaviors as necessary. Based on the evidence presented at the Hearing, Petitioners have failed to meet their burden on this issue.

C. Petitioners have proven that the IEP-03/15/2024 does not accurately identify the least restrictive environment for Student

Petitioners next argument is that Student's IEP-03/15/2024 does not accurately identify Student's least restrictive environment. Petitioners have met their burden of proof on this issue, as the IEP-03/15/2024 has Student's educational placement listed as special education for the full school day, including transportation and non-academic activities.

The evidence presented in this case is that while the IEP team discussed having Student in the special education class for the majority of academic programming, with Student having access to nondisabled students in certain settings, the IEP-03/15/2024 and the PWN-03/21/2024

both misidentified the LRE as completely special education with no access to nondisabled children. *FOF 25-27.*

Notwithstanding the errors in the LRE sections of the IEP-03/15/2024 and the PWN-03/21/2024, the evidence presented in this case is that Student did have access to nondisabled peers during Student's attendance at Home School. *FOF 42.* This Hearings Officer notes that the IEP-03/15/2024 should have been amended to reflect the appropriate LRE, as discussed by the IEP team at the meeting; however, a new IEP was developed for Student in August 2024, which is the subject of a separate due process hearing and was not included in the evidence presented in this case. *FOF 77.* This Hearings Officer finds that while Petitioners have met their burden of proof on this issue as to the content of Student's IEP-03/15/2024 regarding Student's LRE, the implementation of the IEP-03/15/2024 provided Student with appropriate access to nondisabled students and since a new IEP has been developed for Student, the violation did not result in a denial of FAPE.

D. Petitioners are entitled to compensatory education for the lost services that Student failed to receive as a denial of FAPE

Petitioners are seeking tuition reimbursement for Student's tuition at Private Center for the 2024-2025 school year as a remedy for any denials of FAPE by Respondents. Student did not attend Private Center during the period between July 10, 2024 and August 22, 2024, so Petitioners are requesting reimbursement for the contract signed by Parent on August 23, 2024. *See Petitioners' Closing Brief, p.18-23.* The evidence presented in this case is that Petitioners did not sign the contract for Student's attendance at Private Center until after the new IEP was developed on August 22, 2024 and Petitioners rejected the new IEP offer by the DOE. *FOF 78.*

The IDEA provides that a finding of a denial of FAPE to a student entitles the student to relief as is appropriate under the circumstances of the student's situation. Compensatory

education is a judicially created remedy that essentially replaces the educational services that the child should have received in the first place with an aim to place the child in the same position that they would have been in had the school district not violated the IDEA. *Ferren C. v. School Dist. Of Philadelphia*, 612 F.3d 712, 717-718 (3rd Cir. 2010). Requests for reimbursement or payment of private school tuition is a common request for compensatory education, as parents of children who are unhappy with the education being provided by school districts may choose to send their children to a private school or placement. *See 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).

As an initial matter, this Hearings Officer finds that the time period for the issues in this Complaint occurred between July 10, 2024 and August 22, 2024. On July 10, 2024, Private Center stopped providing services for Student to attend Home School as a result of Home School's failure to renegotiate the contract with Private Center for their services until the transition meeting was held. *FOF 59*. On August 22, 2024, an IEP meeting was held, from which a new IEP was developed for Student. *FOF 77*. The transition and matters from the IEP-03/15/2024 basically concluded when the new IEP superseded the IEP-03/15/2024 on August 22, 2024. Petitioners argue that due to Student's non-attendance at school from July 10, 2024 through the new IEP meeting date of August 22, 2024, Student regressed and needed additional services to compensate for that regression, in the form of tuition for the 2024-2025 school year at Private Center. This Hearings Officer disagrees with Petitioners' reasoning and declines to award tuition for an entire school year due to a denial of FAPE for approximately two weeks of ESY and three weeks of school.

In this case, Student missed [REDACTED] days of ESY school and approximately [REDACTED] days of regular school. *FOF 24, 76*. Student would have received two thousand one hundred sixty minutes of special education during ESY and four thousand four hundred eighty-eight minutes of special education during the regular school year, assuming that Student had successfully transitioned and attended Home School full time.¹⁴ *FOF 18, 23*. Student would have received two hundred seventy minutes¹⁵ of IIS services per day and one hour per week of ABA services for the ESY session. *FOF 23*. Student would have received four hundred thirty-four minutes of IIS services per day¹⁶ and approximately two hours per week of ABA services for the school year. *FOF 20*. Student also would have received twenty minutes per week of occupational therapy and thirty minutes per week of speech-language therapy for the ESY session, and twenty minutes per week of occupational therapy and sixty minutes per week of speech-language therapy during the regular school year. *FOF 18, 20*. The appropriate remedy for the denial of FAPE in this case is an award of compensatory minutes of education for the missed services listed above. Had Petitioners paid Private Center for services during the time between July 10, 2024 and August 22, 2024, then that could also have been an appropriate award for reimbursement due to the denial of FAPE, but that was not the situation presented during the Hearing in this case.

¹⁴ Student was provided with one thousand eight hundred seventy minutes per week of special education, which is three hundred seventy-four minutes per day.

¹⁵ Two hundred seventy minutes per day for ESY accounts for the four hours of the ESY session plus transportation time of thirty minutes. The thirty minutes of transportation time is based on PCP's testimony that Private RBT lives approximately five to ten minutes from Home School. Testimony of PCP, Tr.V4, 449:5-11.

¹⁶ The IEP-03/15/2024 provides Student with two thousand one hundred seventy minutes per week of IIS services, which is four hundred thirty-four minutes per day.

This Hearings Officer notes that a significant part of the problem with the scheduling in this case was Parent's failure or refusal to respond and attend meetings as requested by Home School; however, the primary failure in this case by the DOE was the failure of the DOE to provide Private Center with at least the assurance that Private Center would continue to get paid for Student's services until the transition team had met and decided on the status of the transition. Private Center had demonstrated in June 2024 that it would continue to provide services pending an updated contract with assurance from the DOE that payments would continue for their services. *See FOF 44, 46-47.*

While Respondents have argued that what happened in this case was a ploy by Private Center to force the DOE to pay for Student's tuition at Private Center for another school year, the evidence in this case is that Student did not receive any educational services for which Private Center or Parent are asking for reimbursement for during the period between July 10, 2024 and August 22, 2024. The remedy found by the Hearings Officer in this case is compensatory education to allow Student to eventually gain the independence necessary for Student to function daily in the community. This is the appropriate remedy to make Student whole for the denial of FAPE in this case.

VII. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have proven that Respondents denied Student a FAPE by failing to provide transportation and/or transition services necessary for Student to access Student's education. This Hearings Officer awards Petitioners compensatory education for the services Student did not receive as a result of the denial of FAPE from July 10, 2024 to August 22, 2024.

For the reasons stated above, IT IS HEREBY ORDERED –

1. Petitioners are awarded compensatory educational services of seven thousand six hundred thirty-eight (7638) minutes of IIS services.¹⁷
2. Petitioners are awarded compensatory educational services of eight (8) hours of ABA or board-certified behavior analyst services.
3. Petitioners are awarded compensatory educational services of one hundred (100) minutes of occupational therapy services.¹⁸
4. Petitioners are awarded compensatory educational services of five hundred forty (540) minutes of speech-language therapy services.
5. This Decision does not prevent the DOE from providing these compensatory minutes and hours at any time based on the IEP team’s decisions as to Student’s IIS, ABA or board-certified behavior analyst, occupational therapy, and speech-language therapy minutes/hours; [REDACTED]

[REDACTED]

[REDACTED]¹⁹

¹⁷ These minutes are based on the nine ESY days and twelve regular school-year days that Student would have attended Home School had Student received transportation and transition services through August 22, 2024.


¹⁸ The calculation of minutes for occupational therapy and speech-language are based roughly on [REDACTED] weeks of ESY and [REDACTED] weeks of regular school-year days that Student missed from July 10, 2024 through August 22, 2024.

¹⁹ [REDACTED]

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, November 7, 2024.



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