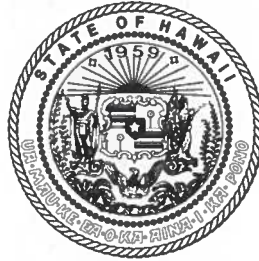


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OFFICE OF DISPUTE RESOLUTION  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE OF HAWAI'I

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

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE  
OF HAWAI'I,

Respondents.

DOE-SY2526-005

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DECISION

Due Process Hearing:  
October 27, 30, 31, 2025  
November 14, 25, 26, 2025

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

**I. INTRODUCTION**

Petitioners Student, by and through Parents, (hereinafter collectively referred to as “Petitioners”) bring forth this case under the Individuals with Disabilities Education Act (hereinafter “IDEA”) against Respondents Department of Education, State of Hawai‘i (hereinafter referred to as “DOE” or “Respondents”) to allege numerous procedural and substantive violations in Student’s Individualized Education Programs (hereinafter “IEPs”)

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

between the 2023-2024, 2024-2025, and 2025-2026 school years while Student attended Home School.<sup>2</sup>

## 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 five issues<sup>3</sup> in their Request for IDEA Impartial Due Process Hearing (hereinafter “Complaint”) to be addressed at the Hearing regarding issues from the 2023-2024, 2024-2025, and 2025-2026 school years:

1. Whether the DOE denied Student a free appropriate public education (“FAPE”) by failing to implement Student’s IEP, which resulted in physical jeopardy and injuries that Student has experienced (i.e., [REDACTED], and eloping from campus when the registered behavior technician (hereinafter “RBT”) was socializing and ignored Student, etc.), and failing to have a substantive plan to maintain one-to-one instructional support within the proximity of Student’s physical location.
2. Whether the DOE denied Student a FAPE by failing to include Student in class, receiving services and exposure to a general education setting for social adaptation, which resulted in versions of [REDACTED].
3. Whether the DOE denied Student FAPE by not developing an appropriate IEP for Student that addresses Student’s unique needs and affords Student the ability to make reasonable progress.
4. Whether the DOE denied Student a FAPE by failing to implement the IEP by providing RBT support for academic and behavioral supports in alignment with evidence-based practices.

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<sup>2</sup> The initial document that was sent to the DOE was entitled Formal Request for District Intervention, but DOE clarified on August 11, 2025, that Petitioners were requesting a due process hearing. Upon clarification, the email was forwarded to the Office of Dispute Resolution as a request for a due process hearing.

<sup>3</sup> At the prehearing conference, Petitioners were informed that Issue #6 is not an IDEA issue and cannot be resolved during this Due Process Hearing, but Petitioners requested that it remain listed as an issue for appellate purposes. This decision will not be addressing Issue #6.

5. Whether the DOE denied Student a FAPE by failing to implement the IEP by failing to provide appropriate supports (i.e., RBT presence/support) when Student was on campus.
6. Petitioners request district guidance and oversight for LBA and Home School administration that adheres to established IDEA, Chapter 19, Chapter 60 (FAPE), Chapter 703, IEP, and Hawai'i DOE standards, free from local administrative preferences and biases or inter-agency conflict.<sup>4</sup>

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

1. Order the DOE to develop an appropriate IEP for Student.
2. Order the DOE to implement the agreed upon IEP.
3. Order any equitable remedies available to Petitioners at the time of the Hearing.

#### **IV. BACKGROUND**

Petitioners submitted a Request for Intervention to Respondents on or about June 24, 2025. On August 8, 2025, Petitioners clarified to Respondents that they were seeking a due process hearing and wanted their initial request to be treated as a due process complaint. The Office of Dispute Resolution received a copy of Petitioners' Request for Intervention (hereinafter "Complaint") on August 11, 2025. Respondents submitted DOE's Response to Petitioners' Complaint and Resolution Proposal (hereinafter "Response"), on August 14, 2025.

A prehearing conference was scheduled for August 26, 2025, but due to Petitioners' failure to appear at the prehearing conference, the conference was rescheduled to September 5, 2025. On September 5, 2025, a prehearing conference was held with this Hearings Officer, Parent 1 on behalf of Petitioners, and District Educational Specialist (hereinafter "DES"), on behalf of Respondents. Due to the length of discussions at the September 5, 2025 meeting, a

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<sup>4</sup> Petitioners were informed that this issue does not fall within the jurisdiction of this Hearings Officer and will not be addressed at the Due Process Hearing or in the Decision. Petitioners requested that the issue be left in the prehearing order for purposes of the record.

further prehearing conference was held on September 11, 2025. During the discussions at the prehearing conference, the parties were informed that some of the issues were not under the authority of this Hearings Officer and could not be addressed in the Decision. Hearing procedures, deadlines, and exhibit and witness lists were also discussed at the prehearing conference with the parties. The due process hearing (hereinafter “Hearing”) was scheduled for October 27, 30, 31, 2025.

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 Videoconference Due Process Hearing was issued on September 12, 2025, which outlined the rules above.

Prior to the Hearing, the parties agreed that parties could question the witnesses during their scheduled times since some of Petitioners’ witnesses were DOE employees, so that the witnesses would not need to return to testify again during Respondents’ case-in-chief. This Hearings Officer informed Petitioners that only one Parent would be allowed to question one witness, so they would not be able to switch during the testimony of the same witness, but they were allowed to determine which Parent would question a particular witness and could change representatives between witnesses.

The Hearing began on October 27, 2025. Present at the Hearing were Parents, on behalf of Petitioners; DES, on behalf of Respondents; this Hearings Officer; and the assigned court reporter. Petitioners began by calling Student Services Coordinator (hereinafter “SSC”) to

testify. SSC's testimony was not completed on October 27, 2025, so SSC returned on October 30, 2025 and completed SSC's testimony. Petitioners also called 22/23 Teacher and 24/25 Teacher to testify on October 30, 2025. 24/25 Teacher's was not completed on October 30, 2025, so 24/25 Teacher returned on October 31, 2025 to testify. On October 31, 2025, 24/25 Teacher's testimony was completed and Petitioners began with the testimony of 23/24 Teacher, which was not completed. Additional hearing dates of November 14, 25, 26, 2025 and December 1 and 4, 2025 were scheduled to accommodate the remaining witness testimony.

On November 14, 2025, Licensed Behavior Analyst (hereinafter "LBA") was called as a witness and completed LBA's testimony. The Hearing was continued to November 25, 2025, when 23/24 Teacher's testimony was completed. Petitioners also called 25/26 Teacher, Parent 2, and Parent 1 to testify. Parent 1's testimony was continued to November 26, 2025 and completed on that date. On November 26, 2025, Respondents called Principal and Vice Principal (hereinafter "VP") and the presentation of evidence was completed on that date. The remaining hearing dates were taken off the calendar.

The five-business day disclosure deadline in this case was October 20, 2025 at 4:30 p.m. Respondents timely submitted their exhibits by the deadline; however, Petitioners did not submit their exhibits until October 20, 2025 after the 4:30 p.m. deadline. Respondents objected to the admission of Petitioners' exhibits pursuant to H.A.R. §8-60-66(a)(3). Petitioners did not contest the late disclosure and their exhibits were excluded from evidence. The parties were informed that evidence would be received into the record if it is mentioned or discussed by the witnesses or parties during the Hearing. Several exhibits were introduced by Respondents; however, they were refused based on relevance.<sup>5</sup>

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<sup>5</sup> Specifically, these were Respondents' Exhibits 427-429.

Respondents' exhibits that were received into evidence and considered as part of this Decision are as follows:<sup>6</sup> Exhibit 25, pages 0108-0124; Exhibit 29, pages 0130-0146; Exhibit 38, pages 0158-0184; Exhibit 42, pages 0190-0208; Exhibit 186, pages 0462-0472; Exhibits 196-198, pages 0554-0578; Exhibit 206, pages 0649-0665; Exhibits 216-217, pages 0780-0817; Exhibit 219, page 0828; Exhibits 221-222, pages 0840-0906; Exhibit 224, pages 0918-0935; Exhibits 416-420, pages 1004-1054; Exhibits 423-426, pages 1068-1147; Exhibits 431-432, pages 1364-1390; and Exhibit 434, pages 1392-1443.

Both parties wanted the opportunity to submit written closing briefs regarding the legal issues to this Hearings Officer for review. The parties requested to provide a written closing brief with the use of the transcripts due to the length of the proceeding as well as the length of time between witness testimony. Respondents submitted a request for extension of the decision deadline to allow for the preparation of transcripts, written closing briefs, and for this Hearings Officer to have sufficient time to review the exhibits and transcripts in preparation for the decision. Respondents' request was granted, and the decision deadline was extended from December 6, 2025 to January 20, 2026. Based on the extension request, the deadline by which the briefs were to be submitted was Friday, January 9, 2026. Both parties submitted their closing briefs by the deadline.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the undersigned Hearings Officer renders the following findings

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<sup>6</sup> Respondents had incorrectly paginated their exhibits and had a large number of missing exhibit/page numbers. To expedite the hearing process the Office of Dispute Resolution repaginated Respondents' exhibits and sent the repaginated exhibits to both parties. The page numbers used during the Hearing and in this Decision are the "ODR Page No." as noted on the exhibits.

of fact, conclusions of law and decision.<sup>7</sup>

## V. FINDINGS OF FACT

1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Parent 1, Transcript of Proceedings, Volume 5, page 147, line 13, through page 148, line 24 (hereinafter referenced as “Tr.V5, 147:13-148:24”).

2.

[REDACTED]

Parent 1 had offered Home School help, guidance, and suggestions for drafting Student’s IEP, but those offers were often disregarded. Parent 1, Tr.V5, 149:9-150:25, 168:18-169:11.

3.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Parent 2, Tr.V5, 108:22-109:23, 112:22-24.

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<sup>7</sup> This Hearings Officer notes that while the entire record, including exhibits and transcripts of the witness testimony was reviewed in preparing this Decision, only the testimony and exhibits that were relevant to the issues in this case are included in this Decision.

<sup>8</sup> [REDACTED] Parent 2, Tr.V5, 109:11-25, 112:25-113:4.

4. Student is currently [REDACTED] years old and is currently in the [REDACTED] grade at Home School. Student has been attending Current School since before the [REDACTED] school year. DOE's Exhibit 25, pages 0108-0124 (hereinafter referenced as "Ex.25, p.108-124").
5. Student received services from the Early Intervention Program in [REDACTED] under the category of [REDACTED]. Ex.25, p.108-124.
6. [REDACTED]  
[REDACTED] Ex.25, p.109.
7. [REDACTED]  
[REDACTED]  
[REDACTED] Ex.38, p.159.
8. Student is very creative and is a spatially aware and spatially intelligent. Student's strength is being a visual learner but Student also has abilities in kinesthetic learning, where Student can assimilate information easier when Student is able to feel and touch things. Parent 1, Tr.V5, 150:7-153:13.
9. Student has difficulty with cognitively processing emotional events, such as instances of sarcasm. Student needs assistance with understanding social dynamics with other children, as well as managing expectations for what Student is expected to do in school. Parent 1, Tr.V5, 153:14-157:16.
10. Parents' experience with the IEP team prior to the Hearing was that it seemed like there were two sides of the team, the academic side and the behavioral side, and Parents' impression were that they did not always agree or collaborate with each other as well as

they could have. Parent 1 believed that the dichotomy between the two sides worsened when LBA was assigned to Student's case. Parent 1, Tr.V5, 154:17-158:19.

11. Parent 1 often felt disrespected by the IEP team given Parent 1's extensive experience as a [REDACTED] that would offer suggestions to the team for Student's IEPs, services, and supplementary aids and supports. Parents also felt that many of the responses or information that Parents were given regarding Student's IEPs, progress, behaviors, and incidents in school were not accurate or transparent, and/or were not fully provided to Parents to give them an understanding of what was going on with Student in school. Parent 1, Tr.V5, 159:4-160:19, 166:23-173:14.174:17-175:2, 179:22-180:24,188:2-190:6, 199:23-202:10: Tr.V6, 8:9-20.
12. Student had been demonstrating inappropriate behaviors at school from a young age, and had been assigned an RBT to address those behaviors from at least the [REDACTED] grade. [REDACTED]  
[REDACTED]  
[REDACTED] Parent 2, Tr.V5, 113:5-118:11.
13. At home, Parent 2 has observed some progress in Student's reading abilities, but far less than what Parent 2 would have expected given Student's IEPs and accommodations. Parent 2 has also observed that Student's progress has seemed to go down when no RBTs were present for Student at school.<sup>9</sup> Parent 2, Tr.V5, 131:9-133:25.
14. Parent 1 has observed that Student having inconsistent RBT services has led to a regression of Student's progress in school, where Student was making noticeable progress in academics and behavior in [REDACTED] grade and then regressed substantially in

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<sup>9</sup> Parent 2 clarified that Parent 2 did not know when the RBTs were not present in class; however Parent 2 would notice that at times no one would be present to meet Student when Parent 2 would drop Student off at school. Parent 2, Tr.V5, 133:4-25.

██████████ grade. Based on Parent 1's training and experience as a ██████████ ██████████, Parent 1 believes that based on a standard rate of progression, Student is far behind where Student should be in academics, particularly reading skills. Parent 1, Tr.V5, 153:1-157:16, 162:24-166:22, 184:2-188:1; Tr.V6, 27:15-31:17.

15. Home School's methods of monitoring RBT services for Student were more informal and dependent on the school district or the RBT's company to keep records of RBT attendance. Because the DOE contracted with a company to obtain Student's RBT services, the DOE did not have much control over the attendance of the RBTs. Principal, Tr.V6, 63:18-66:2.
16. Based on Home School's record system for RBT attendance, Student's RBTs were present for fourteen days in the 2022-2023 school year; nine days for the summer ESY 2023 session; eighteen days for the 2023-2024 school year; three days for the summer ESY 2024 session; and twenty-two days for the 2024-2025 school year. The RBT records from Home School also showed that Student's RBTs were present five days for the 2025-2026 school year through August 29, 2025. Ex.434, p.1392-1443.

School Year 2022-2023<sup>10</sup>

17. Student was in 22/23 Teacher's classroom for the 2022-2023 school year. 22/23 Teacher had an inclusion classroom that had both general education students and students with individualized educational programs (hereinafter "IEPs") and accommodations in the

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<sup>10</sup> This Hearings Officer notes that the Complaint only covers the school years 2023-2024 through 2025-2026, however information was presented during the Hearing and is being included in the Decision for reference.

same general education setting. 22/23 Teacher, Tr.V2, 53:25-54:7, 67:15-24, 68:22-69:18.

18. 22/23 Teacher has a general education teaching background and training but also received training and a certification from the State of Hawai‘i for special education. 22/23 Teacher, Tr.V2, 86:20-90:2, 94:19-25.
19. 22/23 Teacher’s inclusion classroom was assigned an educational assistant (hereinafter “EA”) to help with all students in class but there were no other teachers assigned to co-teach 22/23 Teacher’s inclusion class. The EA helped students with academic work under the guidance of 22/23 Teacher. 22/23 Teacher, Tr.V2, 53:25-54:7, 60:25-61:5.
20. Student’s RBT assisted with behavioral concerns, but not with academic concerns.<sup>11</sup> The RBT was supervised by the assigned board-certified behavior analyst. 22./23 Teacher, Tr.V2, 61:6-12, 70:5-19.
21. When Student’s RBTs were not present, 22/23 Teacher would speak to or work with Student one-on-one if Student was having behavioral challenges. Student’s behaviors were not usually very long, so while 22/23 Teacher worked with Student, the EA would monitor the rest of the students in class. 22/23 Teacher, Tr.V2,70:20-71:5, 92:14-93:6.
22. 22/23 Teacher provided whole group, small group, and individual instruction in Student’s class, where students would either receive instruction as a whole class, work in small groups on certain assignments and tasks, or Student would be pulled aside by 22/23

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<sup>11</sup> An example given by 22/23 Teacher was that Student had difficulty with writing, so when Student was assigned writing work, the RBT would be closer to Student to monitor Student’s behaviors during the writing assignment better. The RBT would not provide academic guidance as far as the writing assignment. 22/23 Teacher, Tr.V2, 91:22-92:9.

- Teacher to work on Student's IEP goals and objectives. 22/23 Teacher, Tr.V2, 75:13-77:1.
23. Student benefitted particularly from the one-on-one instruction at the beginning of the school year because Student developed a lot of self-soothing and self-management strategies through working with 22/23 Teacher. Student also benefitted greatly from having someone be there to prompt Student with what Student was supposed to be doing. 22/23 Teacher, V2, 83:16-85:1.
  24. 22/23 Teacher took additional time to work with Student, particularly in preparing Student for the reading and math diagnostic tests that were given in the beginning of the school year and at the end of the school year to help Student increase Student's scores. 22/23 Teacher, Tr.V2, 77:13-80:6, 90:22-91:21.
  25. 22/23 Teacher would use Student's assessments, classroom work, and quizzes as a whole to determine how Student was performing and whether any modifications were needed to Student's instruction. 22/23 Teacher, Tr.V2, 77:13-79:8, 95:1-96:14.
  26. Over the course of the 2022-2023 school year, Student made gains in math from adding and subtracting one-digit numbers at the start of the school year to adding and subtracting three-digit numbers at the time the new IEP was being drafted. Student had more difficulty in English/Language Arts (hereinafter "ELA") but made progress on sounding out words and comprehending, comparing, and contrasting stories that were at Student's grade level. 22/23 Teacher, Tr.V2, 81:10-82:25.
  27. Behaviorally, Student made progress by having less disruptive behaviors, participating in groups more often, and making friends in class. 22/23 Teacher, Tr.V2, 83:1-5.

28. 22/23 Teacher developed the draft goals and objectives for Student's IEP for the 2023-2024 school year, since 22/23 Teacher had the most knowledge of Student's strengths and needs at the time the IEP was being developed. 22/23 Teacher, Tr.V2, 62:25-63:15, 68:6-22, 71:13-73:4.

IEP-04/04/2023

29. Student's IEP for the 2023-2024 school year was developed at a meeting on April 4, 2023 (hereinafter "IEP-04/04/2023"). Present at the meeting were Parents, 22/23 Teacher, SSC, a behavioral health specialist, a vice principal, a BCBA, and a general education teacher. Ex.25, p.124.
30. 22/23 Teacher was mostly responsible for drafting the PLEPs, goals and objectives, and other parts of the IEP in preparation for the meeting, since 22/23 Teacher had been Student's teacher for nearly a whole school year and was familiar with Student's strengths and needs at the time. 22/23 Teacher, Tr.V2, 62:25-63:23, 68:16-21, 71:13-72:7.
31. 22/23 Teacher sent Parents the IEP draft a week in advance to afford Parents the opportunity to review the draft IEP and express their concerns. The IEP team then addressed Parents' concerns at the meeting. 22/23 Teacher, Tr.V2, 71:13-73:4.
32. Student's IEP-04/04/2023 contains a thorough statement of Student's present levels of academic achievement and functional performance (hereinafter "PLAAFPs"). Ex.25, p.109-113.
33. 22/23 Teacher drafted Student's goals based on the work and assessments that 22/23 Teacher had observed Student complete during the 2022-2023 school year when Student was in 22/23 Teacher's class. 22/23 Teacher, Tr.V2, 71:13-72:4, 81:10-83:5, 86:6-13.

34. Student's IEP-04/04/2023 contains six annual goals for ELA (2 goals), math (1 goal), and health (3 goals), which are all designed to address Student's needs listed in the PLAAFPs section. Ex.25, p.114-120.
35. For example, Student has behavioral needs such as reducing protest, tantrum, or disruptive behavior and one of Student's goals is reduce the frequency of protest, tantrum, or disruptive behaviors across all teaching staff and two different settings for twenty consecutive days. Ex.25, p.110, 120.
36. Another example is for Student's needs in reading were to identify high frequency/sight words; read "CVC" words and other one syllable words without having to sound them out; and continue to work on decoding skills. One Student's goals and objectives for ELA focus on Student's sight reading and decoding skills when Student is asked to read aloud. Ex.25, p.110-111, 115.
37. Student's IEP-04/04/2023 determined that Student was eligible for extended school year (hereinafter "ESY") services and provided that Student would receive four hours per day of school during any breaks longer than [REDACTED] days. Ex.25, p.121.
38. Student's IEP-04/04/2023 provides Student with special education for the eighteen hundred twenty-five minutes per week, which is essentially every day for the entire school day. The IEP-04/04/2023 also provides Student with counseling services for two hundred seventy minutes per quarter. Ex.25, p.121.
39. Student's IEP-04/04/2023 provides Student with supplementary aids and accommodations to address Student's needs, such as RBT services daily when Student is at school, a behavior intervention plan (hereinafter "BIP"), visual aids, positive reinforcement/token economy system; text to speech; text to read aloud; and graphic

organizers. The RBT services provided to Student was to be from the start of the school day until the end of the school day. SSC, Tr.V1, 102:3-104:14; Ex.25, p.121.

40. Student's IEP-04/04/2023 least restrictive environment (hereinafter "LRE") statement placed Student in the general education inclusion setting for the entire school day, where Student would be amongst peers for academic, non-academic, and non-instructional time. Counseling services would be in a special education setting, with the option to have services in the inclusion classroom as well. Ex.25, p.123.
41. 22/23 Teacher spoke with Parents about the IEP-04/04/2023 and addressed any concerns that they had. When 22/23 Teacher spoke with Parents after the completion of the IEP-04/04/2023, Parents did not have any concerns about the IEP-04/04/2023. 22/23 Teacher, Tr.V2, 72:8-73:5.

#### School Year 2023-2024

42. 23/24 Teacher has a bachelor's of arts degree in finance but decided to pursue a teaching career. 23/24 Teacher got hired by the DOE soon after graduating and got certified to teach general and special education from the State of Hawai'i. 23/24 Teacher received tenured status as a teacher around six years ago and has been teaching for around nine years. 23/24 Teacher, Tr.3, 121:5-122:17.
43. Student was in 23/24 Teacher's classroom for the 2023-2024 school year. 23/24 Teacher had an inclusion classroom that had around twenty-two students total, including general education students and around [REDACTED] students with individualized educational programs (hereinafter "IEPs"), including Student. 23/24 Teacher, Tr,V3, 128:16-129:11.
44. 23/24 Teacher's classroom was assigned one EA for the 2023-2024 school year. 23/24 Teacher would work with the EA on preparing the class assignments and materials so the

EA could assist 23/24 Teacher during class. 23/24 Teacher, Tr.V3, 131:14-22; Tr.V5, 52:3-10.

45. For the 2023-2024 school year, Student had an assigned RBT at the beginning of the school year, but that RBT left the school in around December 2023. A replacement RBT was found around two weeks after the first RBT left, but the second RBT stayed with Student only for about one month. Another RBT was assigned to Student thereafter for the remainder of the school year. During the 2023-2024 school year, there were times when Student did not have an RBT due to the RBTs leaving or calling in sick. 23/24 Teacher, Tr.V3, 125:2-128:5; Tr.V5, 7:6-19.
46. When the RBTs were unavailable for Student, the EA and 23/24 Teacher would take turns monitoring Student. 23/24 Teacher ensured that either 23/24 Teacher or the EA would keep an eye on Student when Student was demonstrating behaviors during class. 23/24 Teacher, Tr.V3, 128:1-15; Tr.V5, 7:20-8:12.
47. During the 2023-2024 school year, Student would sometimes engage in behaviors such as evading work, saying mean things to classmates, and being loud in the process. 23/24 Teacher or the EA would usually be able to redirect Student from these behaviors relatively quickly. 23/24 Teacher, Tr.V3, 129:16-131:13; Tr.V5, 10:5-15, 42:6-44:22.
48. For example, Student had occasionally yelled out loud when given an assignment, saying [REDACTED] possibly throwing the work onto the ground, and walking outside the classroom to sit on a bench. At times like this, the EA would usually accompany Student and 23/24 Teacher would watch the rest of the class. 23/24 Teacher, Tr.V3, 129:16-131:13; Tr.V5, 10:5-15.

49. 23/24 Teacher observed that Student usually behaved better on days when the RBTs were not present. The behaviors, such as crying or needing to exit the classroom, usually only occurred when the RBT was at school with Student. So when the RBTs were not present, 23/24 Teacher and the EA were able to manage Student's behaviors by themselves. 23/24 Teacher, Tr.V5, 44:4-45:7.
50. 23/24 Teacher's impression based on Student's comments and behaviors was that Student did not like the RBTs following Student around in school, so Student would demonstrate more behaviors when the RBTs were present. 23/24 Teacher, Tr.V5, 52:11-54:3, 55:6-19.
51. LBA was assigned as the BCBA for Student in around March 2024. LBA took over Student's case from another BCBA who had been assigned to Student prior to LBA. LBA, Tr.V4, 10:5-11:6.
52. LBA did not receive data on Student's behaviors from Student's teachers and would rely solely on Student's RBTs to provide LBA with data to keep track of Student's progress. LBA, Tr.V4, 11:7-12:14.
53. LBA and the RBTs assigned to Student's case did not work for the same companies, so LBA would find out from the school district if an RBT was not in attendance for Student on a given school day. Occasionally, if LBA found out that the RBT was not going to attend, LBA would stay and take data on Student's behaviors for that day. LBA, Tr.V4, 27:11-18:25, 46:17-47:2, 133:4-15.
54. In LBA's practice, the standard operating procedure for modifying a BIP does not require the BCBA to notify parents or get parents' consent unless the change is large. LBA did attempt to ensure that each version of the BIP that LBA drafted for Student was signed and approved by Parents, but this did not always occur. LBA, Tr.V4, 49:3-54:17.

55. LBA would go to Home School once per week to observe Student and the RBT interacting to ensure that the BIP was being implemented by the RBTs. LBA, Tr.V4, 76”13-77:3.
56. During the 2023-2024 school year, Student was struggling with reading and writing. This occasionally affected Student’s performance in math and other subjects as well. 23/24 Teacher, Tr.V5, 27:10-35:25.
57. 23/24 Teacher would make sure to check that Student understood the assignments after the initial instructions were given. 23/24 Teacher also used the chunking method of teaching Student, which meant that if the general education students were given an assignment of ten problems, then Student would be assigned maybe four or five problems at first, and then given a preferred task to work on once those four to five problems were completed. Then Student would work on the rest of the problems. This primarily occurred during ELA work sessions. 23/24 Teacher, Tr.V5, 45:8-46:25.
58. 23/24 Teacher provided extra help and support for Student in reading as part of Student’s special education, along with the accommodations that were included in Student’s IEP-04/04/2023. For example, 23/24 Teacher, or the EA under 23/24 Teacher’s guidance, would take time during the week to work individually with Student on the reading IEP goals, like reading “CVC” words with Student to have Student practice reading fluency. 23/24 Teacher, Tr.V5, 34:20-35:25.
59. 23/24 Teacher initially had Student’s assigned RBT also assist with some academic work, such as the “CVC” word practice above, but was later informed that the RBTs were only there to support Student in behaviors and not academics. 23/24 Teacher, Tr.V5, 36:1-24.

60. Student made progress on academics during the 2023-2024 school year. 23/24 Teacher, Tr.V5, 48:25-49:11; Ex.186, p.462-472.
61. During the 2023-2024 school year, Student had several significant behavioral incidents at school [REDACTED]. Ex.420, p.1039-1041.
62. Student's behaviors improved over the course of the 2023-2024 school year and Student only had one incident in the spring of 2024 that did not involve physical contact with anyone. Ex.420, p.1039-1041.
63. Student had mastered nearly all of Student's skill acquisition goals in Student's behavior improvement plan (hereinafter "BIP"), in the 2023-2024 school year. Student also made progress on Student's behavior reduction goals during the 2023-2024 reporting period that LBA received and analyzed data. LBA, Tr.V4, 87:1-10; Ex.197, p.554-561; Ex.198, p.562-569; Ex.423, p.1070-1071.
64. It is unclear during what school year this occurred, but LBA observed that there were incidents at Home School where other students would make negative comments, such as [REDACTED] LBA started having the RBTs take data on these behaviors, but none of the information is included in any of the documents produced for this case. LBA, Tr.V6, 122:12-124:12.

#### IEP-03/25/2024

65. On March 25, 2024, the IEP team met to develop Student's IEP for the remainder of the 2023-2024 school year and the upcoming 2024-2025 school year (hereinafter "IEP-03/25/2024"). 23/24 Teacher was in charge of drafting the IEP since 23/24 Teacher was Student's primary teacher for the 2023-2024 school year. 23/24 Teacher, Tr.V5, 15:6-18:4, 20:11-21:4; Ex.29, p.130-146.

66. The IEP-03/25/2024 is duplicative of the IEP-04/04/2023. The PLAAFPs, goals and objectives, ESY determination and offer, the special education and counseling services, almost all the supplementary aids and supports, and the LRE statement are exactly the same as the IEP-04/04/2023. The only difference in the supplementary supports and services was that the “text to read aloud” provision was not included in the IEP-03/25/2024.
67. The goals and objectives in the IEP-03/25/2024 were the same, despite the grade level standards being different from the IEP-04/04/2023. This was because the form that was used by 23/24 Teacher did not allow the team to use the same standards since Student was moving up in grade levels. The goals and objectives, however, remained exactly the same, despite the grade level standards being different. 23/24 Teacher, Tr.V5, 33:19-35:6.
68. The IEP-03/25/2024 did not include any progress reports or updates from Student’s performance from the 2023-2024 school year to indicate whether Student had made any progress on the IEP goals and objectives that would allow the team to modify the goals and objectives to better suit Student’s needs. Ex.29, p.131-142.
69. The IEP-03/25/2024 does not indicate whether any discussions were had during the March 25, 2024 IEP meeting on Student’s current strengths and needs at the time of the meeting. The only strengths and needs that were listed in the IEP-03/25/2024 were the same ones as were listed in the IEP-04/04/2023, which was nearly a year prior. Ex.29, p.131-135.

IEP-05/20/2024

70. On May 13, 2024 and May 20, 2024, Student's IEP team met again and revised Student's IEP for the 2024-2025 school year (hereinafter referred to as "IEP-05/20/2024"). Ex.38, p.158-184.
71. The IEP-05/20/2024 contained updated information regarding social and emotional strengths and needs; academic strengths and needs regarding reading, written expression and spelling; math; and Student's fine motor skills. The IEP-05/20/2024 contained results from assessments conducted in April and May 2024 in the PLAAFPs section. Ex.38, p.159-164.
72. New annual goals and objectives based on Student's needs listed in the PLAAFPs section were created for the IEP-05/20/2024. These goals included two health goals, three physical education goals, five reading fluency goals, two writing goals, and two math goals. The goals and objectives were appropriate based on the needs of Student as stated in the PLAAFPs. *See* Ex.38, p.159-179.
73. For example, the school counselor listed goals addressing Student's [REDACTED] and teaching Student more positive social skills. The goals that were developed appropriately addressed ways that Student could identify and verbalize Student's triggers and/or [REDACTED] or symptoms, and then use coping strategies to address them. Ex.38, p.159-160, 165-166.
74. Student had reading goals and objectives that raised the level of reading words and passages that Student was attempting to try to get Student closer to grade-level. Ex.38, p.160-161, 170-174.

75. Student's writing goals focused on Student's sentence and paragraph structures and using the correct word choice, conventions, grammar, capitalization, and punctuation. Ex.38, p.161, 175-177.
76. Student's IEP-05/20/2024 provided Student with occupational therapy services to address Student's fine motor needs; counseling, to address Student's needs relating to [REDACTED] and social interactions; and special education to address Student's academic needs. Ex.38, p.181.
77. Student's IEP-05/20/2024 also provided Student with additional supplementary aids and supports, such as an occupational therapy consultation, access to noise dampening headphones, access to sensory supports, visual organizers, help with identifying triggers, limited auditory and visual distractions during instructional time, and the pre-teaching and re-teaching of certain skills. Ex.38, p.180-181.
78. Student's IEP-05/20/2024 provided Student with RBT services daily, similar to the IEP-04/04/2023. A discussion was held with the IEP team in the May 2024 meeting to consider an independence plan to work Student away from needing the BIP and the RBT services. Ex.38, p. 181.
79. The IEP-05/20/2024 statement regarding LRE placed Student in the general education inclusion classroom for the entire school day, with occupational therapy and counseling services in the special education setting, with the option to also have counseling in the general education setting. Ex.38, p.182.

#### School year 2024-2025

80. 24/25 Teacher has a general education teaching background, during which 24/25 Teacher took a few core classes that were included to help teachers learn to work with all types of

learners. 24/25 Teacher was certified to teach special education approximately two years before having Student in 24/25 Teacher's inclusion class. 24/25 Teacher, Tr.V2, 104:6-106:23.

81. Prior to getting certified as a special education teacher, 24/25 Teacher routinely taught inclusion classes as a general education teacher and had experience with teaching students with IEPs. 24/25 Teacher, Tr.V3, 45:15-46:1.
82. Student was in 24/25 Teacher's inclusion classroom for the 2024-2025 school year. 24/25 Teacher's class had around [REDACTED] general education students and [REDACTED] students, including Student, who had IEPs. 24/25 Teacher, Tr.V2, 117:11-21.
83. 24/25 Teacher's classroom was assigned an EA to assist Student and other students in the class, as well as 24/25 Teacher. 24/25 Teacher, Tr.V2, 114:9-19.
84. Student was also assigned an RBT for the 2024-2025 school year based on the IEP-03/25/2024.
85. Student had different RBTs to assist during the 2024-2025 school year. One of them helped to provide Student with academic as well as behavioral support during the 2024-2025 school year. 24/25 Teacher, Tr.V2, 114:20-116:14.
86. LBA observed that one RBT that was assigned to Student during the 2024-2025 school year was "triggering" Student and LBA had to work with the RBT to ensure that Student's BIP was being followed appropriately by the RBT.<sup>12</sup> LBA, Tr.V4, 47:3-19,
87. During the 2024-2025 school year, 24/25 Teacher provided Student with one-to-one academic support. This would usually occur after 24/25 Teacher completed the

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<sup>12</sup> Based on LBA's testimony, the RBT in questions provided services to Student in November 2024 and January 2025, however LBA initially could not remember the RBT's name and only agreed upon the name of the RBT when it was posed in questioning. LBA, Tr.V4, 47:3-19.

instruction to the entire class, where 24/25 Teacher would pull Student aside and check that Student understood the lesson or instructions, and then assist Student with the work that Student would need to do, modify assignments as needed, or provide supports for Student to complete the assignments. Sometimes Student would also receive additional assistance in a small group with other students. 24/25 Teacher, Tr.V2, 118:1-126:20.

88. 24/25 Teacher would observe Student's progress in whole group readings, where Student would volunteer to read grade-level texts in front of the whole group while 24/25 Teacher provided support for Student. 24/25 Teacher, Tr.V3, 46:9-47:16.
89. Student made academic progress on writing during the 2024-2025 school year. Student was able to produce written work such as a poem, a summary of a passage, and complete a form to take notes about a subject Student was interested in. 24/25 Teacher, Tr.V3, 52:16-54:16; Ex. , p.842-848; *see also* Ex.217, p.810-814.
90. Student made progress on reading during the 2024-2025 school year, where Student was showing mastery on a reading fluency test at a lower grade level and was able to progress to reading some high grade level words with fluency. 24/25 Teacher, Tr.V3, 15:11-22:6, 54:18-56:10; Ex. , p.850-857; *see also* Ex.217, p.800-809.
91. Student made progress on math during the 2024-2025 school year, where Student was able to complete math quizzes that also included word problems. 24/25 Teacher, Tr.V3, 56:15-59:21; Ex. , p.859-894; *see also* Ex.217, p.815-817.
92. Student made progress on Student's fine motor goals and objectives over the 2024-2025 school year. Ex.217, p.795-799.

93. Student made progress on social interactions during the 2024-2025 school year, such as working on managing Student's emotions and asking for breaks when needed. 24/25 Teacher, Tr.V3, 47:25-48:20; *see also* Ex.217, p.791-794.
94. During the 2024-2025 school year, Student was involved with several significant behavioral incidents that involved other students. 24/25 Teacher, Tr.V3, 152:20-159:25,
95. [REDACTED]  
[REDACTED]  
[REDACTED] Ex.425, p.1118.
96. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Ex.425,  
p.1120-1125.
97. In March 2025, [REDACTED]  
[REDACTED]  
[REDACTED] Student was counseled by a school counselor on that date because Student's normal calming strategies were not effective. Ex.425, p.1126-1127.
98. In the second two February incidents and the March incident, Student's RBT was present on campus when these behaviors occurred. *See* Ex.425, p.1123-1128.

99. [REDACTED]  
[REDACTED]  
[REDACTED] After the RBT's intervention, Student was able to deescalate and eventually calmed down and completed Student's work. Ex.425, p.1129-1130.

100. LBA had not received "ABC" data that is necessary to determine the function of Student's behaviors for the incidents that occurred above. It is unclear whether the RBTs were not present, did not collect data, or the data was not provided to LBA for the incidents listed above. LBA, Tr.V4, 63:25-67:11.

101. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] 24/25 Teacher, Tr.V2, 110:1-114:8.

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13 [REDACTED]

102. Despite the significant behavioral incidents that Student was involved in during the 2024-2025 school year, Student did make progress on Student's behavioral and health goals in both the IEP-05/04/2024 and the included BIP. LBA, Tr.V4, 87:14-89:3; Ex.216, p.780-790; Ex.217, p.791-794.
103. Student has been able to behave more independently at school by self-advocating and doing what was expected of Student regarding the BIP. LBA was considering suggesting to the IEP team to fade Student's ABA/RBT services due to Student's success. LBA, Tr.V4, 102:15-103:21.

IEP-05/22/2025

104. On May 22, 2025, Student's IEP team met to develop Student's IEP for the 2025-2026 school year (hereinafter referred to as "IEP-05/22/2025"). Prior to the IEP meeting, Parents were informed that the team needed to complete the IEP on that date or Student would not be able to receive RBT services due to the expiration of the contract. SSC, Tr.V2, 11:16-15:8.
105. The IEP team met and did not extensively discuss any of the PLAAFPs, goals and objectives, special education and related services, and supplementary aids and supports. The understanding of the team was that they would complete a cursory IEP and then meet again to discuss and finalize the IEP. Parents were split on when to meet again, with Parent 1 wanting to meet immediately after and Parent 2 wanting to wait until the school year had started to see how Student was doing. SSC, Tr.V2, 10:5-23; Tr.V3, 30:1-20.

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*See Ex.426, p.1131-1147.*

106. 24/25 Teacher was responsible for preparing the draft of the IEP-05/22/2025 due to 24/25 Teacher being most familiar with Student's strengths and needs after observing Student's performance over the 2024-2025 school year. 24/25 Teacher, Tr.V2, 134:24-149:7; Tr.V3, 115:10-19.
107. Student's IEP-05/22/2025 contained information updated in May 2025 regarding Student's social and emotional strengths and needs. Ex.42, p.191-192.
108. Student's IEP-05/22/2025 contained updated academic achievement information regarding Student's strengths and needs in reading, writing, and math. While Student's strengths and needs were not prepared in a list format, the detailed narrative provided in the PLAAFPs section clearly provided information on what Student was able to do independently, what Student was able to do with supports or reminders, and what Student continued to need work and support on. Ex.42, p.192-193.
109. Student's IEP-05/22/2025 contained updated information on Student's strengths and needs in communication and fine motor skills. Ex.42, p.193-194.
110. The PLAAFPs section was written in narrative form, which conveyed the observations that 24/25 Teacher had made of Student's performance, struggles, and progress during the 2024-2025 school year. The PLAAFPs support that many aspects of Student's daily school interactions were considered during the development of the IEP-05/22/2025, and not just a single assessment score. Ex.42, p.191-194.
111. Student's goals and objectives for occupational therapy were adjusted based on Student's mastery and progress on the IEP-05/20/2024 goals to increase the skills Student was required to meet while decreasing the number of prompts used to get Student to meet the goals. *See* Ex.29, p.167; Ex.42, p.196.

112. Student's health goals related to Student's [REDACTED] and social skills remained the same in the IEP-05/22/2025. *See* Ex.29, p.165-166; Ex.42, p.197-198.
113. Student's reading and writing goals were also adjusted to reflect Student's progress in reading and writing at higher grade levels since the IEP-05/20/2024. *See* Ex.29, p.170-177; Ex.42, p.200-204.
114. Student's math goal was also adjusted to increased difficulty to reflect Student's progress over the 2024-2025 school year. Ex.29, p.178; Ex.42, p.199.
115. Student continued to receive occupational therapy, counseling, and special education services in the IEP-05/22/2025. Student also received additional supplementary aids and supports in the IEP-05/22/2025, compared to the IEP-05/20/2024. *See* Ex.29, p.180-181; Ex.42, p.205-206.
116. Student's statement on LRE placement in the IEP-05/22/2025 indicated that Student would receive core instruction in the general education classroom with pull-out support in math and reading, which could be done in either small group or individualized instruction. Student's counseling services and occupational therapy services remained the same as in the IEP-05/20/2024.
117. Student's placement in the IEP-05/22/2025 was different from previous IEPs, in part, because Student's 2025-2026 grade level had a separate special education teacher and general education teacher, whereas the 2023-2024 and 2024-2025 grade levels did not have a separate special education teacher and general education teacher due to the small size of Home School. Student's 2022-2023 grade level had a separate special education and general education teacher. Principal, Tr.V6, 59:5-21, 67:17-68:23.

#### School Year 2025-2026

118. 25/26 Teacher is currently Student's special education teacher for the 2025-2026 school year. 25/26 Teacher has been a special education teacher for approximately twenty-five years. 25/26 Teacher was also Student's ESY teacher in the summer of 2023 and 2025. 25/26 Teacher, Tr.V5, 60:25-63:13.
119. In the ESY session in the summer of 2025, 25/26 Teacher began working with Student on Student's reading fluency and proficiency by working with Student on a daily reading test. During this time, Student's assigned RBT did not continue with services, but 25/26 Teacher was able to support Student until a new RBT was going to be assigned to Student. 25/26 Teacher, Tr.V5, 79:10-85:2.
120. 25/26 Teacher works with Student one-on-one for reading and writing during class sessions in the morning of the school days. Student's RBTs accompany Student to 25/26 Teacher's class where Student receives special education from 25/26 Teacher. 25/26 Teacher, Tr.V5, 68:22-69:5, 94:1-95:18.
121. 25/26 Teacher gives Student reading tests every day in school to work on Student's reading fluency and proficiency. Student has gotten better in both abilities and Student's [REDACTED] for these tests because Student is able to see whether Student makes progress, which provides incentive for Student to try harder on the tests. 25/26 Teacher, Tr.V5, 77:1-23.
122. Student has more difficulty with tests and assessments that are given more infrequently since Student is not able to see Student's progress as quickly or easily. 25/26 Teacher, Tr.V5, 77:24-78:8.
123. Student attends math and the remainder of the classes in the day in the general education setting. During those class periods, an EA is available to assist Student with any

questions that Student may have. Student typically only asks the EA to clarify that Student understands what was being taught in the other classes. 25/26 Teacher, Tr.V5, 69:6-22.

124. The RBT that works with Student for the 2025-2026 school year assists Student by doing check ins to see how Student is feeling and escorts Student if Student needs breaks to walk around campus. The RBT also provides some of the other supports in the IEP-05/22/2025. 25/26 Teacher, Tr.V5, 70:21-72:1.
125. Student gets along well with the RBT assigned to Student for the 2025-2026 school year and does not request that the RBT not be present or near Student during the school day. 25/26 Teacher, Tr.V5, 72:2-16.
126. During the 2025-2026 school year, Student has been able to participate in all Student's classes in the general education classroom, except for ELA. Sometimes, Student is able to join the ELA general education classroom and work on the same materials that the class is working on. 25/26 Teacher, Tr.V5, 74:7-75:11.
127. Student has not had any issues with behavior during the 2025-2026 school year. The only concerns that have been noticed are that Student sometimes is more tired on some days and requires longer or more frequent breaks. 25/26 Teacher, Tr.V5, 75:12-76:14.
128. According to 25/26 Teacher, screening assessments such as the iReady test provides an assessment that starts off at grade level and progressively gets easier if the student makes mistakes. At the grade [REDACTED] level, the iReady provides the ability to listen to a story instead of reading the story. Student's ability to understand the story is higher than what is demonstrated in the iReady assessments but Student has difficulty with reading the text

that accompanies the stories in the higher grade levels. 25/26 Teacher, Tr.V5, 101:3-102:17.

## **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 (9<sup>th</sup> 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 *Andrew 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.” *Andrew 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 denied Student a FAPE by failing to implement Student’s IEPs<sup>14</sup>

Petitioners’ issues #1, 4, and 5 allege that the DOE failed to implement Student’s IEPs, particularly with the lack of providing consistent RBT services to Student from the 2023-2024 school year through the 2025-2026 school year. Petitioners allege that implementation issue has been demonstrated by Student being placed in physical danger (i.e. through injury or elopement); failing to have RBT support for academics and behaviors; and failing to provide appropriate supports or a plan to ensure one-to-one instructional support for Student. This Hearings Officer concludes that Petitioners have proven that the DOE failed to implement Student’s IEPs for the 2023-2024 and 2024-2025 school years,<sup>15</sup> and that this failure was a material failure in light of the purpose of the RBT services for Student in Student’s IEPs.

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<sup>14</sup> As the general allegation of failing to implement Student’s IEPs are the crux of Issues #1, 4, and 5, this Hearings Officer will address them all in this section.

<sup>15</sup> This Hearings Officer does not conclude that these issues have been proven for the 2022-2023 and 2025-2026 school years.

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 (9<sup>th</sup> Cir. 2007); *see also L.J. by N.N.J. v. School Board of Broward County*, 927 F.3d 1203 (11<sup>th</sup> 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.

1. School Year 2023-2024

Petitioners' argue that the failure of Home School to secure the attendance of an RBT for every day that Student was in school for the 2023-2024 school year was a material failure to implement the IEP. Student's IEP-04/04/2023 did provide Student with an RBT daily, which meant from the first bell of the school day to the last bell of the school day. *FOF 39*. It is undisputed in the facts of this case that there were issues that Home School had in obtaining and retaining consistent services of the RBT during the 2023-2024 and 2024-2025 school years. *See FOF 15, 16, 45*.

Student's supplementary aid of an RBT was provided to Student to address Student's behaviors due, at least in part, to Student's [REDACTED]. *FOF 20*. The RBTs assigned to Student would take data in accordance with Student's goals in Student's BIP and provide them to LBA for data analysis. *FOF 52*. Based on the data that was collected when the RBTs were

present,<sup>16</sup> Student made progress in the reduction of maladaptive behaviors, such as tantrums, protesting, disruptive behaviors, inappropriate vocalizations/gestures/aggression, [REDACTED]. FOF 63. Student also made progress in acquiring positive behaviors/skills, such as following instructions within twenty seconds, gaining attention appropriately, and using coping strategies.

However, in the 2023-2024 school year, Student had engaged in behaviors that interfered with Student's access to education; particularly with Student's protest and avoidance behaviors. 23/24 Teacher noted that Student would often protest doing non-preferred work and would vocalize it loud enough for the class to hear. FOF 47-48. 23/24 Teacher approached Student's behaviors by having the EA in the classroom work directly with Student when Student was engaged in the behaviors; however it is difficult to believe that 23/24 Teacher or the assigned EA could reasonably address Student's behaviors and appropriately manage the other students in 23/24 Teacher's class. FOF 46. 23/24 Teacher acknowledged that sometimes Student would need to go outside and EA would accompany Student while 23/24 Teacher would have to stand by the door to monitor what was going on. See 23/24 Teacher, Tr.V3, 130:22-131:13. 23/24 Teacher stated that when Student did not have an RBT present, Student did not engage in maladaptive behaviors as much as when the RBT was present; however, it is unclear whether Student engaged in such behaviors due to the inconsistency of the RBTs, because Student was not comfortable or had built rapport with the RBTs, or another reason entirely. FOF 49. Student also engaged in several incidents of [REDACTED] in the beginning of the 2023-2024 school year, none of which appear to have been addressed or included in any of the

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<sup>16</sup> In looking at the data sheets, there are many days where no data point is indicated, which is presumably when the RBTs and/or Student were not present at school for data to be collected. Ex.197, p.562-569.

data reporting sheets submitted by LBA. *FOF 52, 61.*

Home School's records of RBT attendance for the 2023-2024 school year only accounts for RBTs being present to support Student in school for eighteen days out of approximately one hundred eighty days of the DOE school year. *FOF 16.* This was the only records presented at the Hearing for the attendance of RBTs for Student during the school year. Given the limited resources of 23/24 Teacher being the only teacher assigned to the class and having only one EA assigned to the class, the ability for Student to receive the consistent behavioral ABA interventions provided in Student's IEP-04/04/2023 is unlikely. While it is to their credit that 23/24 Teacher and the assigned EA were able to assist Student in making the progress throughout the 2023-2024 school year that is reflected in the progress reports presented; having such inconsistency with the individualized, one-to-one support that Student was entitled to under the IEP-04/04/2023 makes it unlikely that Student made the same progress that would have been appropriate had Student been given the IEP-04/04/2023 services as written.

## 2. School Year 2024-2025

Similar to the IEP-04/04/2023, Student's IEP-05/20/2024 provided Student with ABA and RBT services. These services were included as one-to-one individualized instructional support for Student on a daily basis. *FOF 78.* For the 2024-2025 school year, Home School's records of RBT attendance only accounts for RBTs being present twenty-two of approximately one hundred eighty school days in the 2024-2025 school year. *FOF 16.*

Similar to the previous school year, 24/25 Teacher was the only teacher for Student's class, acting as the general education and special education teacher. *FOF 82-83.* However, the inconsistencies with the RBT support resulted in 24/25 Teacher and the EA being responsible for Student's individualized support and the instruction and support of around [REDACTED] other students

in the class.

During the 2024-2025 school year, Student also had notably significant behavioral incidents involving [REDACTED], none of which appeared to be addressed by either Student's BIP or IEP-05/20/2024. *FOF 94-100.* [REDACTED]

It appears based on the IEP and ABA progress reports, that Student made progress in most areas of Student's IEP and ABA goals and objectives, but it is difficult to say whether more appropriate progress would have been made had Student been given Student's required RBT services on a more consistent basis. *FOF 93, 102-103.*

Based on the evidence presented at the Hearing, this Hearings Officer concludes that the DOE materially failed to implement Student's IEPs for the 2023-2024 and 2024-2025 school year. While it is impossible to predict how much progress Student would have been able to make had Student received consistent services, the IDEA does not require a showing that a child suffered demonstrable educational harm to prevail on an implementation issue. *Van Duyn, 502 F.3d at 822.* Rather, the standard is whether the discrepancy between the services the school provided to the student was more than minor compared to what was provided for in the student's IEP. Here, it is unclear how many additional days, if any, that Student received RBT services due mostly to Home School's inconsistent record-keeping for RBT attendance.<sup>17</sup> At a minimum, based on the evidence that was presented, it appears that Student received one-to-one RBT

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<sup>17</sup> During the periods where the ABA progress reports were submitted by LBA, it is possible to discern the approximate number of days the RBTs may have been present, however, this Hearings Officer did not conduct that analysis based on LBA's testimony that LBA also took data on days when the RBTs were not present.

services for less than half the school days for both the 2023-2024 and 2024-2025 school years. While this Hearings Officer acknowledges that the evidence presented during the Hearing is that an RBT shortage is plaguing school districts as well as other ABA providers, the IDEA places the responsibility of providing IEP service on school districts. In this case, it does not appear that the DOE attempted to find alternative practices, such as an additional resource teacher or EA to be present or available at Home School for days when the RBTs were unavailable. Such alternatives may have been suitable to approximate the RBT services that were required under the IEP if they provided sufficient one-to-one services. Unfortunately, no such plans were made even after Home School had notice that there were problems with Student's RBTs not attending school on a consistent basis.

The RBT services were an essential part of Student's IEPs due to behaviors that Student was engaging in at school that disrupted Student's, as well as other students' access to their education. Behaviors such as making loud noises, protesting, and leaving the classroom during instruction or work time were all significantly related to the ability for Student and other students to access their education. Moreover, the evidence presented showed that Student engaged in

[REDACTED]

In light of Student's IEP-04/04/2023 and IEP-05/20/2024 both providing one-on-one RBT services daily for both the 2023-2024 and 2024-2025 school years, and the severe inconsistency in the provision of the RBT services for those years, this Hearings Officer concludes that the DOE denied Student a FAPE by materially failing to implement Student's

IEPs.

3. School Year 2025-2026

Petitioners finally allege that the RBT services for the 2025-2026 school year has been inconsistent and lacking as well. The evidence presented at the Hearing is that while there was a short period during the start of the 2025-2026 school year when no RBT was present, once an RBT had been obtained for Student in August of 2025, the services have been consistent. *FOF 124-125*. Additionally, since Student was assigned pull-out special education services from 25/26 Teacher, Student's behaviors and academic support has been more rigorously and consistently applied for the 2025-2026 school year. *FOF 119-122*. This Hearings Officer finds that based on the evidence presented, Petitioners have not proven this allegation for the 2025-2026 school year.

B. Petitioners have not proven that the DOE denied Student a FAPE by failing to include Student in class

Petitioners' next argument is that the DOE denied Student a FAPE by failing to include Student in class, receiving services and exposure to a general education setting for social adaptation, which resulted in [REDACTED].

It appears based on the evidence presented at the Hearing, that Petitioners' argument relates to the several instances of detention and counseling that Student received as a result of [REDACTED] behaviors displayed by Student. To the extent that this issue relates to the lack of appropriate RBT services to prevent [REDACTED], this Hearings Officer concludes that it is included with the DOE's failure to implement Student's IEPs, as discussed *supra*.

To the extent that Petitioners argue that Student was not being included in the general education setting for the 2023-2024 and 2024-2025 school years, this argument fails. As noted

by the evidence, Student was in the general education setting for the entire school day for both the 2023-2024 and 2024-2025 school years, especially since 23/24 Teacher and 24/25 Teacher were the only available teachers to Student for those school years. *FOF 40, 43, 79, 82.*

Regarding the 2025-2026 school years, the limited evidence that was presented at the Hearing shows that Student is being included with general education students to the extent practicable based on Student's needs. The IEP team determined for the IEP-05/22/2025 that Student needed additional special education instruction for ELA, reading and writing. *FOF 117.* The placement for Student's IEP-05/22/2025 is appropriate given Student's continued struggles with ELA. 25/26 Teacher testified that Student is usually pulled out for individualized instruction for ELA blocks, but that occasionally Student will join the general education class and work on materials that the general education students are working on. *FOF 12.* 25/26 Teacher testified that for all other subjects, Student is in the general education class and is not taken out of the classroom for instruction in those other subjects. *FOF 123.*

Petitioners have failed to prove that the DOE denied Student a FAPE by failing to include Student in class, receiving services and exposure to general education setting for social adaptation for other aspects of the issue besides the failure to provide appropriate RBT services as discussed *supra*.

- C. Petitioners have not proven that the DOE denied Student a FAPE by failing to develop appropriate IEPs for Student that address Student's unique needs and affords Student the ability to make reasonable progress

Petitioners raise the issue of whether the DOE failed to appropriately develop Student's IEPs in a manner that addresses Student's unique needs and affords Student the ability to make reasonable progress. This Hearings Officer disagrees with Petitioners and concludes that the IEP-

04/04/2023, IEP-05/20/2024, and IEP-05/22/2025 were developed appropriately for Student's unique needs and was reasonably calculated to help Student make progress.

The IDEA does not require school districts to draft or develop IEPs in strict compliance with what is requested or offered by parents. *Doe by Gonzales v. Maher*, 793 F.2d 1470, 1490 (9<sup>th</sup> Cir. 1986). The school district's responsibility is to formulate the plan to the best of its ability in accordance with the information developed at the IEP meetings, but must afford parents a due process hearing in regard to that plan. *Id.*

An IEP is determined to be appropriate if it is designed to address the needs of the student to afford the student the opportunity to make progress in light of the student's unique needs and convey a meaningful benefit to the student. *Los Angeles Unified School District v. A.O. by and through Owens*, 92 F.4<sup>th</sup> 1159, 1172 (9<sup>th</sup> Cir. 2024) (citing *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999)). The Court in *Adams* noted that “[w]e do not judge an [IEP] in hindsight; rather we look to the [IEP's] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer [the student] with a meaningful benefit.” 195 F.3d at 1149.

The IEPs in this case were all drafted by the teachers who had been working with Student for the entire school year and were familiar with Student's progress, strengths, and needs relating to both behavioral and academic concerns for Student. *FOF 28, 30, 106*. The PLAAFPs included current information about the needs that Student had in each core area of concern and each goal and objective in the IEPs were drafted to address Student's needs. *See FOF 29-41, 70-79, 104-117*. Student was also provided with special education and counseling services to address Student's academic and [REDACTED] concerns, and Student was provided with a number of supplementary aids and supports to assist Student in class. The goals and objectives for Student

in each area of concern addressed Student's current abilities and were appropriately designed to provide challenges for Student to make progress in the different areas. Student's LRE statements in the IEPs provided access to the general education setting.

While this Hearings Officer has some concerns about the BIP not addressing Student's [REDACTED], it appears that the incidents were addressed immediately after they occurred and the number of incidents had also reduced over the course of the school year.

This Hearings Officer notes that no evaluation or assessment information was provided as part of the evidence in this case, but the information contained in the PLAAMPs of each IEP indicate Student's results on those evaluations and assessments, with one reevaluation having taken place in 2024.

Overall, the IEP-04/04/2023, IEP-05/20/2024, and IEP-05/22/2025 contain sufficient information about Student's strengths and needs in each area addressed in school, appropriate goals and objective to address each of Student's needs, special education and related services to assist Student in reaching the goals and objectives, supplementary aids and supports to assist Student in accessing Student's education, and provide Student with access to the general education classroom setting. This Hearings Officer concludes that Petitioners have not proven this issue.

## **VII. DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have met their burden of proving some of the allegations in the Complaint by a preponderance of the evidence. Specifically, this Hearings Officer finds

that the failure of the DOE to implement Student's IEP-04/04/2023 and IEP-05/20/2024 were material failures that resulted in a denial of FAPE to Student.

Due to the disruption in RBT services for Student during the 2023-2024 and 2024-2025 school years likely having a negative effect on Student's progress in ELA, particularly reading proficiency and fluency, this Hearings Officer finds that the appropriate remedy in this case is for the IEP team to reconvene to review and/or revise Student's IEP as deemed appropriate by the team and to provide ELA tutoring services to Student.

For the reasons stated above, IT IS ORDERED –

1. Within thirty (30) calendar days of this Decision, Home School and Parents shall meet at a time reasonably convenient for at least one Parent to determine if a new functional behavior assessment (hereinafter "FBA") is appropriate for Student given the inconsistent RBT services provided and the change in BCBA's in the 2025-2026 school year
2. Within thirty (30) calendar days of the team determining that a new FBA is not necessary or after completion of the FBA, the team shall meet and develop a new IEP for Student for the remainder of the 2025-2026 school year.
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
4. Tutoring services in the amount of four hundred (400) minutes will be ordered for Student as a remedy for the DOE's failure to provide consistent RBT services for the

2023-2024 and 2024-2025 school years. Tutoring services will be provided in the amount of forty (40) minutes per week, after school or on weekends, which roughly equates to twenty (20) minutes, two (2) times per week after school or forty (40) total minutes on weekends.

5. This Hearings Officer intends for tutoring services to be held between **March 23, 2026 and May 28, 2026 (10 weeks)**. However, the parties may agree to change the dates of the tutoring services to start sooner or later or be provided during the summer of 2026. This agreement must be in writing and signed by at least one representative of each party.
6. Failure of Petitioners to bring Student to tutoring services or provide written notice of absence and/or rescheduling for a service date within 24 hours of the tutoring shall result in a forfeiture of the tutoring minutes for that service date.<sup>18</sup>
7. The DOE will provide the above-ordered tutoring services by a tutor, special education teacher, or paraprofessional who has training and experience in providing tutoring for reading fluency and proficiency.
8. The parties may, but are not required to, alter the scope and practice of the tutor (i.e. general ELA instead of just reading, including math and science, etc.) by written agreement signed by at least one representative of each party.
9. The DOE will be responsible for finding an appropriate tutor and has the discretion to hire the tutor, special education teacher, and/or paraprofessional as it deems appropriate. The DOE may, but is not required to, consult with Parents to obtain services of a tutor that Parents find or approve. The DOE may, but is not required to,

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<sup>18</sup> This includes absences from school for Student if the tutoring is scheduled for afterschool.

- choose to pay a tutor, special education teacher, and/or paraprofessional that Parents recommend that complies with this Decision.
10. The DOE may, at its discretion, hire multiple providers to ensure that Student receives the full amount of tutoring services provided in this Decision.
  11. The DOE is responsible for maintaining accurate records of the tutoring services to be provided to Student, as well as the qualifications of the assigned tutor, special education teacher, and/or paraprofessional.
  12. Any tutoring services that are not provide due to the DOE's failure to secure a tutor, special education teacher, and/or paraprofessional, and/or the failure of the tutor, special education teacher, and/or paraprofessional to provide the services on a scheduled service date will be 'banked' for either the summer of 2026 or the 2026-2027 school year, at Petitioners' discretion.<sup>19</sup>
  13. Petitioners may, in writing, decline tutoring services as ordered by this Decision. Any tutoring services declined in this fashion will be forfeited and not be banked for later use by Petitioners.

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<sup>19</sup> Specifically, Petitioners may choose to have the missed tutoring services provided during summer of 2026 or during the 2026-2027 school year. The DOE will be responsible for maintaining a record/log of the services provided, any scheduled services missed, and whether they are forfeited by Petitioners or are to be banked for later use by Petitioners. This Decision is not requiring Petitioners to use the tutoring services during the summer if they choose not to.

## 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, January 20, 2026.



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