

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

CASE NO. 2026020155

DECISION

MAY 18, 2026

On February 2, 2026, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Sacramento City Unified School District. Administrative Law Judge June R. Lehrman heard this matter by videoconference on March 24, and April 7, 8, and 9, 2026. The Administrative Law Judge is called the ALJ.

Mother represented Student and attended all hearing days. Attorneys Anne Sherlock and Aisha Sleiman represented Sacramento City. Betty Jo Wessinger, Interim Director of Special Education, attended all hearing days on Sacramento City's behalf.

At the parties' request, the matter was continued to April 27, 2026, for written closing briefs. The record was closed, and the matter was submitted on April 27, 2026.

ISSUES

1. Did Sacramento City deny Student a free appropriate public education, called a FAPE, by failing to timely conduct an initial assessment of Student ahead of his potential eligibility for special education?
2. Did Sacramento City deny Student a FAPE by failing to (A) offer and (B) implement special education services and supports, beginning in the summer of 2024, through the date of filing, February 2, 2026?
3. Did Sacramento City deny Student a FAPE by failing to conduct a timely alternative and augmentative communication assessment of Student beginning in the summer of 2024 through the date of filing, February 2, 2026?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All future citations to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof on all issues.

The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).) Some details regarding Student or Student's history are not included in this Decision to protect Student's identity and the confidentiality of these proceedings. This Decision does not cite to the administrative record because it was not available before the issuance of this Decision and OAH policy is that decisions do not include citations to the record. Pursuant to the applicable web content accessibility guidelines, OAH Decisions are written in an accessible font and format.

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Student was four years old and in preschool at the time of hearing. Student resided within Sacramento City's geographic boundaries at all relevant times. Student was first made eligible for special education under the categories of autism and language or speech disorder at his initial IEP team meeting held on April 4, 2025.

PRELIMINARY MATTERS

MOTION TO DISMISS

On March 13, 2026, Sacramento City filed a Motion to Dismiss. Sacramento City argued that a settlement agreement the parties signed on June 11, 2025, waived all claims predating that date. Student filed an opposition to the motion on March 16, 2026.

The ALJ heard oral argument on the motion to dismiss on April 7, 2026. The ALJ ruled from the bench, denying in part, the Motion to Dismiss. The ruling is memorialized as follows.

The settlement agreement, referred to by the parties as the "ADR," did not waive all claims predating it. The ADR explicitly states that Student only agreed to waive "all claims related to the provision of compensatory education services." This language, on its face, relates only to the remedy of compensatory services. For this reason, no compensatory education is awarded in this Decision for denials of FAPE that occurred prior to the June 11, 2025 date of execution. Other equitable remedies, for example, training, assessments or placement, within OAH's broad remedial equitable jurisdiction, were not barred by the ADR.

This finding was bolstered by the later testimony on April 8, 2026, of Krista Arata, who at the time of the hearing was a district administrator, but was at the time of signing of the ADR, an employee of the Special Education Local Plan Area and one of its administrators. Arata, who drafted the ADR, specifically testified that the waiver was only intended to bar additional compensatory education hours, and that she did not intend by the language of the ADR to preclude other claims or remedies. She specifically testified that compensatory education was “very different” in her mind from claims relating to IEP offers or amendments.

In sum, the ADR barred the remedy of compensatory education hours for denials of FAPE that predated the June 11, 2025 ADR. Other remedies for alleged FAPE denials predating the June 11, 2025 ADR were not barred. Student’s claims or remedies arising after June 11, 2025, were unaffected by the terms of the ADR.

ISSUE 1: DID SACRAMENTO CITY DENY STUDENT A FAPE, BY FAILING TO TIMELY CONDUCT AN INITIAL ASSESSMENT OF STUDENT AHEAD OF HIS POTENTIAL ELIGIBILITY FOR SPECIAL EDUCATION?

Student contends that Sacramento City was on notice that Student had a disability prior to his third birthday, but that he was not timely assessed or made eligible for special education and related services. Sacramento City contends that it complied with all applicable timelines concerning Student’s initial assessment.

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EVENTS PRIOR TO NOVEMBER 19, 2024

Student was born in early November 2021. Mother first noticed Student's developmental delays when Student was an infant. He did not babble or make eye contact. He had no words or emotions. He did not play. Concerned, Mother reached out to her pediatrician. Student became a client of the Alta Regional Center when he was approximately 15 or 16 months old and was diagnosed with autism at 19 months. Through his third birthday, Student received a program and services from the Regional Center through the California Early Start Program. Early Start is another name for the California Early Intervention Services Act. (Gov. Code, § 95000 et seq.). An infant or toddler under three years of age was eligible if the child demonstrated a developmental delay. (Gov. Code, § 95014, subd. (a); 20 U.S.C § 1432(1); see also Cal. Code Regs., tit. 17, § 52020.) The Department of Developmental Services delivered Early Start services through regional centers. (Gov. Code, § 95004; Welf. & Inst. Code, § 4620.)

California Code of Regulations, title 17, section 52112 prescribed a process for a transition from regional centers to school districts, as an eligible child approached the age of three. It provided for a transition from one entity to the other. The regulations provided that the Regional Center notify the school district and commence the transition process when a student turned approximately two and a half years old. The Regional Center coordinator explained to Mother that when Student reached the age of three, he would transition to a school district. Per the Regional Center coordinator, the transition process should commence at around the age of two and a half years to ensure no lapse in services.

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Here, however, the Regional Center did not contact the school district until after Student's third birthday. In or around early November 2024, Mother was concerned that the transition she was told to expect had not occurred. She escalated the situation to a Regional Center supervisor, but by then the delay had already occurred. Student had turned three years old in early November 2024. The Regional Center did ultimately refer Student to Sacramento City for an assessment for special education, but not until November 19, 2024, approximately two weeks after Student's third birthday.

Student contends, however, that Mother had already put Sacramento City on notice of Student's developmental delays through online applications for infant and toddler programs a year earlier, in the fall of 2023, when Student was approximately 20 or 21 months old, and specifically, for a program called "SETA Head Start" in January 2024, when Student was about two years old. Student contends that in these applications, Mother flagged Student's developmental delays. Student contends that these applications should have been understood by Sacramento City as a request for an assessment for special education eligibility.

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This duty is commonly referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivision (a). A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.)

The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) Either a parent's suspicion or a district's suspicion may trigger the need for a child-find initial evaluation to determine if the student is a child with a disability within the meaning of the IDEA. (*Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, 802.) The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

The Ninth Circuit has not yet articulated a test for determining when the child find obligation is triggered. (*G.M. ex. rel. G.M. v. Saddleback Valley Unified School Dist.* (9th Cir. 2014) 583 Fed.Appx. 702, 703, fn. 1 [nonpub. opn.].) The school district's duty for "child find" is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518; see 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, § 56301.)

Sacramento City argues that no one referred Student for an assessment and therefore, it was not on notice of his needs. Education Specialist Chloe Simmons, who worked with the District's assessment team, testified at hearing. Her testimony established that referrals for assessments for special education can come from a number of sources, including regional centers, district personnel, infant and toddler programs like Head Start or a county program called SETA, or doctors or parents. Anyone can

make such a request for an assessment. However, a parent's application for infant or toddler programs flagging developmental concerns did not automatically come to Sacramento City's attention or notify Sacramento City of an implied request to assess.

Education Code section 56029 defines "referral for assessment" as a written request. California Code of Regulations, title 5, section 3021 subdivision (a) provides that all referrals for special education and related services shall initiate the assessment process and shall be documented. And, when a verbal referral is made, staff of the school district, SELPA, or county office shall offer assistance to put the request into written form. Absent a referral, a school district's child find obligation is not triggered until the district has actual notice that an impairment is impacting the student's educational performance. (*Amaya v. Chaffey Union High School Dist.* (C.D. Cal., April 28, 2022, No. ED CV 20-1903-JFW(SHKx)) 2022 WL 3013181, *8; *Simmons v. Pittsburg Unified School Dist.* (N.D. Cal., June 11, 2014, No. 4:13-cv-04446-KAW) 2014 WL 2738214, *6.)

Here, the evidence at hearing was insufficient to establish that, prior to receiving actual notice from the Regional Center on November 19, 2024, Sacramento City was or should have been on notice to suspect that special education services might be needed to address Student's disability. On August 24, 2023, Mother wrote an email to Sacramento City stating that she was interested in enrolling Student in a toddler playgroup program. No evidence indicated that this inquiry about that program contained any information that should have put Sacramento City on notice or knowledge of, or reason to suspect, a disability. Then, in or around January 2024, Mother applied online for a toddler program called the SETA Head Start program.

Mother credibly testified that in that application she did note Student's developmental delays. However, SETA was a county program. Mother did not establish which entity received her application.

Since the evidence did not establish whether Sacramento City had any means of accessing the information in that application, Student failed to prove that District's child find duty was triggered by it.

EVENTS AFTER NOVEMBER 19, 2024

Sacramento City did ultimately receive a transition referral from the Regional Center on November 19, 2024, after Student turned three years old. District Education Specialist Simmons claimed that Sacramento City's process was to log the referral, and send a response to the Regional Center with a "signup" for a "Transition Planning Conference." Simmons claimed it was the Regional Center's legal responsibility to schedule the Transition Planning Conference, which in this case did not occur until December 17, 2024. After the conference, Simmons sent Mother an assessment plan dated December 19, 2024, that Mother signed the same day. Sacramento City argues that it had no legal responsibility to generate an assessment plan until the date the Regional Center held the transition planning conference, December 17, 2024.

Sacramento City's argument is not persuasive. On November 19, 2024, when it received the transition referral, its child find obligation was triggered by the knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. The referral noted that Student had been diagnosed with autism at the age of two. He was receiving applied behavioral analysis where he was working on playing with toys functionally. The family was

concerned with his communication and social skills. He had sensory issues associated with his disability. He covered his ears, walked on his toes and self-stimulated with his hands. This information constituted knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S., supra*, 158 F.Supp.2d 1190, 1194.)

Education Code section 56321 states that, with certain exceptions not pertinent here, a parent shall be given, in writing, a proposed assessment plan within 15 calendar days of the referral for assessment not counting school breaks in excess of five school days. (Ed. Code, §§ 56321 and 56043.) Simmons admitted that the Regional Center sent the transition referral to Sacramento City on November 19, 2024. Therefore, Sacramento City should have presented an assessment plan to Mother within 15 calendar days thereafter, not counting breaks in excess of five school days according to the school calendar. According to the school calendar, the only relevant school break was the Thanksgiving break on November 25-29, 2024, which was not "in excess of" five school days. Therefore, the assessment plan was due no later than December 4, 2024. The assessment plan was not presented to Mother until 15 days later, on December 19, 2024. Therefore, it was not timely.

A school district has 60 calendar days from the date it receives the parent's written consent, excluding days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days, to complete the assessments and develop an initial IEP, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a).)

Had Mother received the assessment plan timely on December 4, 2024, and inferring from her other prompt actions that she would have signed it immediately, the assessment and initial IEP should have occurred by February 12, 2024, counting 60 days from December 4, 2024, and taking winter break into account. However, Student's initial assessment report was not completed until March 14, 2025. It was therefore not timely.

The March 14, 2025 assessment was also late by a different calculation, starting not from the date Mother should have received the assessment plan but also from the date she actually did receive the assessment plan, December 19, 2024. Mother signed the assessment plan the same day she received it, December 19, 2024. Sixty days from Mother's December 19, 2024 signature on the assessment plan, taking winter break into account, was February 27, 2025. Therefore, the March 14, 2025 assessment was not timely by either calculation, counting either from the date Mother should have received the assessment plan, or from the date she actually did receive it. As detailed below, the procedural violation denied Student a FAPE.

INITIAL ASSESSMENT

Sacramento City's initial special education assessment report was dated March 14, 2025. Assessment instruments showed that Student, who was three and a half years old at the time, could identify uppercase letters. He showed interest in books and listened to stories. He could identify all 26 uppercase letters. He could count by rote from 1 to 20. He could read numerals 1 through 10.

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He was delayed in his speech milestones, saying his first words at 36 months and had just started saying two-word phrases. He was not potty trained. He produced some syllable sounds and babbling. Some of his utterances were word approximations. His overall communication scores were exceptionally low. Student could make requests with hand-leading, or pointing and reaching towards a requested item. He was working on following one-step instructions, for example, "pick it up" or "put it here." He had recently begun greeting Mother in the morning with "hi," however the skill had not yet generalized to other settings.

He could register protest with a grunt, although his protests might move into a tantrum. He had improved significantly in transitions, responding appropriately to cues like "let's go" or "all done." Mother could alert him with a prompt "five more minutes," to alert him that a transition was coming. He would respond if Mother called him from another room. He guided Mother to place puzzle pieces. He enjoyed having Mother write letters and numbers for him to label. He enjoyed music and singing. He could sing the melody of familiar songs.

Student's cognitive development score fell within the very poor range as compared to peers in the same age group. In the social-emotional realm, based on Mother's rating scales, Student had poor social skills and difficulty communicating with others. He was generally alone, had difficulty making friends, and was unwilling to join group activities. Socially, he engaged with familiar cousins in parallel play. With less familiar peers, he watched from a short distance, was careful or reserved. He had difficulty performing simple daily tasks in a safe and efficient manner.

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The assessors recommended that Student be made eligible for special education under the eligibility categories of autism and speech language impairment, and recommended services to address communication and social language. Specifically, the assessors recommended:

- limiting television, computer, and other screentime to no more than an hour per day to provide an ample opportunity to engage in language and social-based activities.
- exposing Student to a wide variety of experiences, explaining what was happening, naming objects and actions, and answering questions.
- teaching and reinforcing academic concepts at home.
- exposing Student to high quality learning opportunities including:
 - exposure to rich and varied vocabulary,
 - access to printed material,
 - involvement in structured and unstructured individual/group play interactions and conversations, and
 - engagement in gross and fine motor activities.
- providing activities that develop perceptual, coordination, and fine and gross motor skills, such as use of
 - scissors,
 - crayons,
 - finger paints,

- beads,
- balls, and
- puzzles.
- maintaining consistent behavioral expectations by providing a structured home setting infused with positive reinforcement for success.
- utilizing pictures in the classroom and at home to illustrate behavior expectations (i.e., using walking feet, using gentle hands).
- explicitly teaching social skills and problem-solving skills through visual pictures, role playing, and frequent conversations to increase pro-social behavior.

THE UNTIMELY ASSESSMENT RESULTED IN AN UNTIMELY IEP AND A DENIAL OF FAPE

In matters alleging a procedural violation, such as a child find violation resulting in an untimely assessment, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following: (I) impeded the right of the child to a FAPE; (II) significantly impeded the opportunity of the parents to participate in the decisionmaking process regarding the provision of a FAPE to the child of the parents; or (III) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(i); Ed. Code, § 56505, subd. (f); *W.G., et al. v. Board of Trustees of Target Range School Dist.*, etc. (9th Cir. 1992) 960 F.2d 1479, 1484, superseded in part by statute on

other grounds [“... procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents’ opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE.”].)

According to the timelines and date calculations discussed above, the IEP team’s review of the assessment should have occurred by February 12, 2025, had Mother received the assessment plan on time, or at the latest by February 27, 2025, counting from the day she actually signed it. However, after the March 14, 2025 assessment was completed, Sacramento City did not convene an IEP team meeting until five and a half weeks later on April 4, 2025.

A five- or six-week delay in some circumstances might appear inconsequential, but in this case, it was material. Sacramento City was aware that Student had turned three in early November 2024. Sacramento City knew that the Regional Center referral was untimely, and therefore Student first came to its attention after he had already turned three. Sacramento City was also aware that Student had aged out of Early Start services when he turned three, and had therefore been without any program or services since his third birthday in early November 2024, five months prior to the IEP. According to the referral from the Regional Center, Sacramento City knew that Student was autistic, and had communication and social skills deficits, and sensory issues associated with his disability. Sacramento City’s assessment specifically noted that he was non-verbal, was not potty trained and had not yet attended a preschool or daycare. It also noted he had been diagnosed with autism at 19 months old, and his low cognitive learning skills were still developing. The assessor noted that it was likely that his cognitive skills would

improve once he became “continuously exposed to more learning and academic experiences.” Thus, delay was consequential given the importance of early intervention in this age-range of autistic youngsters.

At the April 4, 2025 IEP team meeting, Sacramento City found Student eligible for special education and offered him a program. However, by the time of that offer Sacramento City had no remaining slots available in any of its existing preschool programs and it did not locate any alternatives. Sacramento City Program Specialist Mary Allyson Carney informed Mother of that fact during the April 4, 2025 IEP team meeting. Thus, Student was left without any educational services for the remainder of the 2024-25 school year.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

Student was offered an untimely assessment plan, assessment, and IEP. By the time the offer was made on April 4, 2025, it could not be implemented. Student was left without any educational program for the rest of the 2024-25 school year. In sum, Sacramento City denied Student a FAPE, by failing to timely conduct an initial assessment of Student ahead of his potential eligibility for special education.

Student prevailed on Issue 1.

ISSUE 2(A): DID SACRAMENTO CITY DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT SPECIAL EDUCATION SERVICES AND SUPPORTS, BEGINNING IN THE SUMMER OF 2024, THROUGH THE DATE OF FILING, FEBRUARY 2, 2026?

MOTION TO CLARIFY ISSUE 2

On March 23, 2026, Sacramento City filed with OAH a Motion to Clarify Issue 2. Sacramento City's Motion to Clarify contended that Issue 2 related solely to implementation failures and did not relate to its offers of FAPE. The Motion to Clarify was argued on the second day of the due process hearing, on April 7, 2026, and was denied, for the following reasons.

Student's complaint alleged that Student was denied FAPE because Sacramento City failed to "enroll and place him in [a] Special Education program with the necessary services and [extended school year] on time since Summer of 2024." The words used by Student encompassed both failure to offer placement or services, and failure to implement them.

Under the IDEA, pleadings are sufficient when they provide “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Board of Education v. Benton* (S.D.Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Board* (M.D.Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; Cf. *M.S.-G v. Lenape Regional High School Dist. Board of Education* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Here, the complaint put Sacramento City on notice of Student’s issues as to both offers of FAPE and the implementation thereof.

Moreover, if Sacramento City was confused by the “enroll and place” wording of the complaint, it could have, but did not, file a Notice of Insufficiency. The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Issue 2 therefore includes claims based both on a failure to offer and a failure to implement.

In Issue 2A, Student contends that Sacramento City denied Student a FAPE by failing to offer Student special education services and supports beginning in the summer of 2024, through the date of filing, February 2, 2026. In its motions,

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Sacramento City contends Issue 2 related only to implementation of its offers of FAPE, not the offers itself, and that the June 11, 2025 ADR barred this claim prior to June 11, 2025. Sacramento City further argues its IEP offer did not deny Student a FAPE.

For the period between three and six years of age, California does not mandate compulsory education for typically developing children. (Ed. Code, § 48200.) However, if a preschool-aged child requires special education and related services in order to receive a FAPE, school districts must offer the child an appropriate program. (Ed. Code, §§ 56345, subd. (a)(1)(B), 56426.9, 56440-56447.1.) Under the IDEA and California special education law, school districts must offer an IEP to children with disabilities who turn three years of age. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. §§ 300.101(a), 300.323(b); Ed. Code, §§ 56001, subd. (b), 56026, subd. (c)(2).)

In the April 4, 2025 IEP, District offered goals in

- communication and social language,
- attention and sensory modulation,
- social emotional development, and
- pre-math and pre-literacy skills.

One of the speech goals aimed for Student to

- use sign language, gestures, speech and word approximations,
- exchange picture icons, or
- “activate a device” to request, protest, share, comment, and/or participate at least eight times during speech sessions.

The IEP offered placement in a preschool special day class with 150 minutes a day of specialized academic instruction, to commence immediately and continue through April 3, 2026. It offered 30 minutes of speech services, approximately weekly for 1500 total yearly minutes. It offered occupational therapy as a consultation service. The April 3, 2026 end date reflected that the offer was intended to comprise two school years of preschool, for the 2024-25 and 2025-26 school years. Student was a November baby born after the cut-off date for transitional kindergarten which bridged preschool and kindergarten. At some point when age-appropriate, Student would be expected to transition to transitional or regular kindergarten.

EXTENDED SCHOOL YEAR NOT OFFERED IN THE APRIL 4, 2025 IEP OFFER

Sacramento City did not offer extended school year for the summer of 2025. Extended school year services are special education and related services provided to a child with a disability beyond the normal school year. (34 C.F.R. § 300.106(b); Cal. Code Regs., tit. 5., § 3043.) An IEP team decides if a child requires extended school year services to receive a FAPE. (34 C.F.R. § 300.106(a)(2).) For a student to qualify for extended school year services, the student must have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (Cal. Code Regs., tit. 5, § 3043.)

By the time of the IEP, no slots were available for the remainder of the 2024-25 school year. Sacramento City knew at the time of the April 4, 2025 IEP that it had no slots available for the remainder of the 2024-25 school year, and that Student would not be getting the program he had been offered. In light of this information, the failure to offer him extended school year for the summer of 2025 denied him a FAPE. As mentioned above, Sacramento City knew that student had been without any educational program since his third birthday. Sacramento City knew

- of Student's communication and social skills deficits, and sensory issues associated with his disability,
- of his nonverbal status,
- of the fact that he was not yet potty-trained,
- Student had not yet attended a preschool or daycare, and
- Student had very low but still developing cognitive learning skills.

Its assessment recommended that he should be continuously exposed to more learning and academic experiences.

In sum, Student had disabilities which were likely to continue indefinitely or for a prolonged period, and interruption of his educational programming was likely to render it impossible or unlikely that he would attain the level of self-sufficiency and independence that would otherwise be expected in view of his disabling condition. (Cal. Code Regs., tit. 5, § 3043.) Failure to offer him extended school year denied him a FAPE.

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THE JUNE 11, 2025 SETTLEMENT AGREEMENT

Sacramento City Program Specialist Mary Allyson Carney told Mother at or around the April 4, 2025 IEP team meeting that no slots were available and that Mother's sole remedy for the failure to implement the IEP was to engage in an alternative dispute resolution process, called an ADR. Carney told Mother that in order to proceed with the ADR, she had to sign the April 4, 2025 IEP, which Mother did on or around April 7, 2025. Mother did not understand, and Sacramento City did not explain, the option to sign the IEP with exceptions. Mother therefore consented to the IEP.

The ADR process was managed by the SELPA rather than by Sacramento City personnel. Sacramento City did not refer the matter promptly to the SELPA. As a result, delays ensued throughout April and May. Sacramento City did not make the referral to the SELPA to convene the ADR until May 12, 2025, and the meeting did not occur until June 2, 2025. The attendees were SELPA administrator Arata, Sacramento administrator Dorinda Chu-Ewing, and Mother. Arata drafted the settlement document, called by the parties the "ADR." Mother signed it on June 11, 2025.

The ADR offered compensatory education to be provided by a nonpublic agency, in settlement of the failure to implement Student's program during the 2024-25 school year. The ADR provided for 130 hours of specialized academic instruction, 15 hours of speech language therapy, and three hours of occupational therapy. Sacramento City was to select the nonpublic agency or agencies who would provide the compensatory services, and the hours were to be used by December 31, 2025, or forfeited. Mother agreed "to waive all claims related to the provision of compensatory education services."

BREACH OF THE ADR IS OUTSIDE OAH JURISDICTION

Sacramento City contends that any failure to provide the hours required by the ADR in a timely fashion did not give rise to a claim within OAH jurisdiction because it involved breach of a settlement agreement that must be enforced not through OAH, but in a compliance complaint or a court of law. Sacramento City is correct.

This contention is governed by *Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026. (*Wyner*), which holds that OAH lacks jurisdiction to enforce settlement agreements. As *Wyner* makes clear, enforcement must proceed, if at all, in state or federal court as a contract action or through a compliance complaint filed with the California Department of Education. (*Id.* at pp. 1028–30.) The law provides for a limited exception to this rule when the agreement states that it contains, or is intended to contain, an offer of FAPE, the deprivation of which would then be within OAH’s limited jurisdiction. (See *Pedraza v. Alameda Unified School Dist.* (N.D. Cal. Mar. 27, 2007, No. C-05-04977-VRW) 2007 WL 949603.)

Here, however, the ADR the parties signed contains no such language that it constituted, or was intended to constitute, an enforceable offer of FAPE. (See *Lendsey v. Santa Rose Academy Charter School* (C.D. Cal., February 4, 2026, No. 2:25-cv-03271-HDV-PDx) 2026 WL 331358.) Therefore, District is correct that it need not answer before OAH for its alleged breach of the ADR. Mother must seek a different forum to enforce the ADR, and no findings are made here about whether District did, or did not, eventually provide all the compensatory hours it owed.

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IEP NEVER AMENDED TO OFFER EXTENDED SCHOOL YEAR 2025

As mentioned above, the April 4, 2025 IEP had not offered extended school year. The ADR stated that the parties understood the importance of placing Student in extended school year for the upcoming summer session, which would run from June 23, 2025 to July 18, 2025. The failure to offer extended school year was not settled or waived by the ADR. As confirmed by the drafter Arata, the ADR only settled compensatory education for implementation failure prior to its execution.

After the ADR, Mother's multiple attempts to ensure Student's placement in extended school year 2025 were unsuccessful, due to Sacramento City's lack of responsiveness. Mother got no reply to an email she sent on June 3, 2025, just after the June 2, 2025 ADR meeting. She wrote again on June 20, 2025, and was told that staff were working to ensure Student's placement in extended school year for the summer of 2025. On June 23, 2025, Mother filled out an online application on Sacramento City's website for the extended school year. She was again told that staff were working on ensuring the placement. Mother wrote again on June 27, 2025. Simmons confirmed at hearing that because the April 4, 2025 IEP had not offered extended school year, an IEP amendment was a necessary precursor to placing Student there.

Sacramento City, however, never accomplished that IEP amendment to offer extended school year for the summer of 2025. Instead, Sacramento City sent an email to Mother on July 1, 2025, advising her that the April 4, 2025 IEP had not authorized extended school year. SELPA administrator Arata became aware at the beginning of July

2025 that Sacramento City had not enabled Student to attend extended school year. Arata attempted to remedy the situation, but by then it was too late, because the sessions had already commenced on June 23, 2025.

Thus, despite his need for educational services at the first opportunity, after his IEP for the 2024-25 regular school year could not be implemented, Student was not placed in a summer program.

As discussed above, Student was denied a FAPE at the April 4, 2025 IEP team meeting when Sacramento City failed to offer extended school year for the summer of 2025. That denial of FAPE continued with the failure to amend the IEP to make that offer. Sacramento City denied Student a FAPE by failing to offer special education services and supports, specifically extended school year for the summer of 2025, in the April 4, 2025 IEP or by any IEP amendment.

Student therefore prevailed on Issue 2(A).

ISSUE 2(B): DID SACRAMENTO CITY DENY STUDENT A FAPE BY FAILING TO IMPLEMENT SPECIAL EDUCATION SERVICES AND SUPPORTS, BEGINNING IN THE SUMMER OF 2024, THROUGH THE DATE OF FILING, FEBRUARY 2, 2026?

Student contends that Sacramento City denied Student a FAPE by failing to implement Student's special education services and supports beginning in the summer of 2024, through the date of filing, February 2, 2026. In its Motion to Dismiss, Sacramento City contended that the June 11, 2025 ADR barred this claim prior to June 11, 2025. Sacramento City also argued there were no further material implementation failures

thereafter. Sacramento admits that speech and language services were delayed at the beginning of the school year, but contends the services were eventually provided and that Student suffered no denial of FAPE.

FAILURE TO IMPLEMENT SPEECH SERVICES IN 2025-26

As found above, it is undisputed that there was a failure of implementation for the 2024-25 school year, which was addressed by the compensatory hours in the ADR.

Thereafter, at the beginning of the 2025-26 school year, which began on August 18, 2025, District began implementing portions of Student's April 2025 IEP. Student was placed in a program in special education teacher Christina Torrey's classroom.

However, District did not implement Student's April 2025 IEP speech services. The April 4, 2025 IEP had offered 50 sessions of speech therapy services at 30 minutes each, for a total of 1500 yearly minutes, and Parent consented to eligibility and implementation of such services on April 7, 2025. As detailed below, speech services were not commenced until late October 2025.

A FAPE requires services to be provided "in conformity with" a child's IEP. (20 U.S.C. § 1401(9)(D).) When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was material. A material failure to implement an IEP means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 820-822.) A material failure occurs only when there is more than a minor discrepancy

between the services provided to the disabled child and those required by the IEP. There is no statutory requirement of perfect adherence to an IEP. A material failure to implement an IEP may deprive a child of a FAPE. (*Id.* at p. 821.)

On September 23, 2025, four weeks after the August 18, 2025, start of the school year, Sacramento City Interim Special Education Director Betty Jo Wessinger sent a letter to parents, including Mother, that no speech language pathologist was available to implement speech services district-wide. Wessinger was new to Sacramento City and had just taken over the newly-created position of Director of Special Education.

By September 29, 2025, Sacramento City secured a speech pathologist, but Mother did not receive any official communication to that effect. Mother therefore wrote to Carney on October 2, 2025, asking in part about the ongoing speech issues among other things. On October 3, 2025, Wessinger replied, referring Mother to the new speech therapists Ginger Nocero and Catherine Darezzo. Between October 3 and October 21, Mother's follow-up inquiries to Nocero, Arata and others went unanswered.

Arata ultimately intervened between October 21, 2025, and October 28, 2025, to get speech services started. Student's speech therapy sessions offered by his April 4, 2025 IEP did not begin until sometime in late October 2025. On November 5, 2025, Mother received a group email apparently sent to many parents, captioned as "welcome from the speech team." In that email, a speech therapist, Melanie Keffer, said she was supervising a speech pathologist Elise Ezekiel. The letter did not clarify why Wessinger, on October 3, 2025, had referred parents to Ginger Nocero and Catherine Darezzo, whereas in November the speech team was apparently Keffer and Ezekiel.

The delay in providing Student the speech hours that were owed in the 2025-26 school year pursuant to his IEP, post-dated and were not settled by nor waived in the June 11, 2025 ADR, and denied Student a FAPE.

Sacramento City argues that the speech services, although not begun until late October, were ultimately provided over the course of the 2025-26 school year. The evidence did not support that contention, and Sacramento City offered no service logs or provider testimony to corroborate it.

Sacramento City also argued, inconsistently, that although not yet provided by the time of hearing, the missing hours would be provided prior to the end of the 2025-26 school year. Sacramento City also contends that the IEP offer of 50 sessions of speech therapy services at 30 minutes each, for a total of 1500 yearly minutes, allowed Sacramento City discretion to implement those hours later in the year as opposed to weekly. Sacramento City also confusingly compounded the compensatory speech hours from the 2024-25 school year, that were settled and waived in the ADR, together with the hours at issue in Issue 2(A) that were not implemented in the 2025-26 school year. None of these arguments are persuasive.

An approximate two-month delay in beginning speech services was material under the circumstances of this case. Student had been without any program or services since aging out of Early Start on his third birthday in early November 2024. His program for 2024-25, after ultimately being offered on April 4, 2025 was not implemented, nor was he offered extended school year. Given his autism and nonverbal status, and the fact he had been without any program yet, the failure to implement speech services immediately at the beginning of the 2025-26 school year was material.

Because of the failure to offer extended school year for the summer of 2025, and the failure to implement speech services with fidelity in the year 2025-26, Student prevails on Issues 2(A) and (B). Remedies are discussed below.

ISSUE 3. DID SACRAMENTO CITY DENY STUDENT A FAPE BY FAILING TO CONDUCT A TIMELY ALTERNATIVE AND AUGMENTATIVE COMMUNICATION ASSESSMENT OF STUDENT BEGINNING IN THE SUMMER OF 2024 THROUGH THE DATE OF FILING, FEBRUARY 2, 2026?

Student contends that Sacramento City failed to conduct a timely alternative and augmentative communication assessment. Sacramento City contends it conducted an assessment timely and did not deny Student a FAPE.

A school district is required to provide any assistive technology device that is necessary to provide a FAPE to a child with a disability. (34 C.F.R. § 300.105; Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires assistive technology devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v); Ed. Code, § 56341.1, subd. (b)(5).) An assistive technology device is any piece of equipment that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities. An assistive technology service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. (20 U.S.C. §§ 1401(1), (2); Ed. Code, § 56020.5.)

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A local educational agency must assess a special education student in all areas of suspected disability, including if appropriate,

- health and development,
- vision,
- hearing,
- motor abilities,
- language function,
- general intelligence,
- academic performance,
- communicative status,
- self-help,
- orientation and mobility skills,
- career and vocational abilities and interests, and
- social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether commonly linked to the disability category of the child. (34 C.F.R.

§ 300.304(c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); Ed. Code, § 56320, subds.(e) & (f).)

A reassessment of a student shall be conducted if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment. (34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School Dist.* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (nonpub. opn.)) For a reassessment to occur within a year of the initial or annual assessment, the parties must agree it is necessary. (*Id.*; Ed. Code, § 56381, subd. (a)(1).)

A school district's failure to conduct appropriate assessments, or to assess in all areas of suspected disability, may constitute a procedural denial of a FAPE. (See *Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1032.) The failure to obtain critical assessment information about a student renders the accomplishment of the IDEA's goals -- and the achievement of a FAPE -- impossible. (*N.B. v. Hellgate Elementary Sch. Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 [quoting *Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 894]; *Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1124.)

Sacramento City was on notice of Student's need for alternative and augmentative communication, called AAC, as early as his initial assessment in March 2025 and initial IEP dated April 4, 2025, as evidenced by a speech goal that stated Student should "activate a device" to request, protest, share, comment, and/or participate at least eight times

during a speech therapy session. Although the April 4, 2025 IEP speech goal mentioned “a device,” Sacramento City offered no such device in the IEP and had failed to conduct an assessment in the area of alternative and augmentation communication at that time.

The subsequent ADR stated, without settling or waiving this claim, that the parties discussed the importance of doing an AAC assessment. Thus, Sacramento City was on notice of this area of need, and the parties agreed to reassess Student for AAC, by the June 11, 2025 ADR, if not before. At the very latest, according to the statutes and timelines discussed above, because of the summer break, Mother should have been provided with an assessment plan within 15 days of the August 18, 2025, start of the school year, or September 2, 2025. (Ed. Code, § 56321 [a parent shall be given, in writing, a proposed assessment plan within 15 calendar days of the referral for assessment not counting school breaks]; see also Ed. Code, § 56043.) An IEP team meeting to review the assessment should have been convened within 60 days of Mother’s consent to the assessment. (Ed. Code, §§ 56302.1, subd. (a); 56043.) Assuming Mother signed the assessment plan promptly, that IEP should have occurred on or about November 3, 2025.

Instead, Sacramento City repeatedly failed to generate an assessment plan for the AAC device despite Mother’s multiple inquiries and District’s own promises to do so, including District’s emails on July 8, 2025, and October 3, 2025. In July 2025, a teacher named Alma Lepis attempted on Student’s behalf to obtain the assessment plan from a District office, but she was turned away. At the beginning of the 2025-26 school year in August, when Student was placed in Torrey’s class, Mother told Torrey about the untimely AAC assessment plan that she had not yet been given. Torrey shared that she

had already notified administration about her nonverbal students who were in need of AAC devices, including Student. Arata ultimately intervened on October 28, 2025, after Mother inquired again.

On October 30, 2025, Mother finally got a call from an AAC specialist Karely Gamboa, who explained that Student's AAC assessment would not be completed until January 2026, but that a trial device would be provided beforehand. The trial device could only be used by Student in the classroom. Student was not permitted to take it home until the assessment process was completed.

Sacramento City did not generate an AAC assessment plan until November 6, 2025. Mother signed it on November 17, 2025. Sacramento City did not conduct its AAC assessment and issue its report until on or around January 12, 2026, and held an IEP team meeting to review it.

The AAC assessor, Gamboa, identified Student as an "emergent-transitional" communicator, which meant he was beginning to use symbols to communicate, and was on the verge of understanding the cause and effect of touching a button to communicate a desire for the item it represented.

Gamboa administered a variety of tests to determine Student's best means of communication. Results of the testing indicated that Student had many of the skills necessary for effective use of a speech generating AAC device.

In class, Student was working on identifying letters of the alphabet. The assessor determined Student would benefit from access to printed words as well as icon symbols and a full keyboard to continue supporting literacy learning.

Student required an AAC device that provided:

- A direct access device with a dynamic display and synthesized speech;
- Skill development in accessing larger vocabulary sets, with at least 42 icons per page;
- A language system that was organized based on categories or associations, and lent itself to language expansion;
- A language system that helped to build motor plans, enhance speed and accuracy of access;
- A symbol-based system that displayed text along with symbols, to enhance literacy learning;
- Access to a full keyboard; and
- Portability - small enough to be carried from setting to setting independently

Gamboa recommended possible devices that would meet these technical specifications. She recommended that Sacramento City:

- Obtain and set up an AAC system;
- Conduct in-service with Parents and appropriate staff; and
- Consult with staff to support Student.

In her assessment report, Gamboa also recommended a new goal. It required Student to independently take out his AAC device at the start of each instructional activity and safely transport it between at least three school settings.

This AAC assessment, long overdue, demonstrated Student's communicative and educational potential, if given the appropriate interventions. At the January 12, 2026 IEP team meeting to review the AAC assessment, Sacramento City offered Student a specific AAC goal, and permitted Student to take the device he had already been provided home. The goal stated that by April 2026, given visual supports, verbal reminders, and environmental cues, Student would independently take out his AAC device at the start of each instructional activity and safely transport it between at least three school settings (e.g., classroom, speech room, cafeteria) in three out of five opportunities. The January 12, 2026 IEP also added an accommodation that Student could use the AAC system throughout the school day. It included consultation between school staff, Parents, and the AAC team regarding implementation of the AAC system, for 100 minutes annually. The consultation would support staff and parents in the use of AAC across academic and home settings. Services were to include preparation of materials, modification of devices, and collaboration with the family, school staff, and any outside providers.

The delay in assessing Student for AAC, which resulted in a delay in offering and providing these much-needed AAC services, goals and accommodations, had persisted from as early as Student's initial assessment and IEP, when a goal stated he needed "a device" but offered none. Sacramento City offered no AAC goal or services until the January 12, 2026 IEP. The delay in providing the necessary goals and services was not cured by the provision of a trial device sometime in October 2025, that Student was unable to take home with him, and lacked any accompanying specific goals and services Sacramento City ultimately offered in January 2026.

The failure to timely assess in all areas of suspected disability may constitute a denial of FAPE only if it has deprived the student of educational opportunity. (*Park, supra*, 464 F.3d 1025, 1031-1033.) Here, given Student's nonverbal status, Sacramento City deprived Student of educational benefit by failing to timely conduct an AAC assessment, denying him a FAPE. Sacramento City's closing brief argues that there was no procedural violation and no denial of FAPE, by starting the timeline at Gamboa's first outreach to Mother on or about October 30, 2025, and ignoring the delays preceding it. Sacramento City's arguments, that there was no procedural violation and no denial of FAPE, are unpersuasive on their face, given Student's nonverbal status.

Student prevailed on Issue 3.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1:

Sacramento City denied Student a FAPE, by failing to timely conduct an initial assessment of Student ahead of his potential eligibility for special education.

Student prevailed on Issue 1.

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ISSUE 2:

Sacramento City denied Student a FAPE by failing to (A) offer Student and (B) implement special education services and supports, beginning in the summer of 2024, through the date of filing, February 2, 2026.

Student prevailed on Issues 2(A) and (B).

ISSUE 3:

Sacramento City denied Student a FAPE by failing to conduct a timely alternative augmented communication assessment of Student beginning in the summer of 2024 through the date of filing, February 2, 2026.

Student prevailed on Issue 3.

REMEDIES

A student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *School Committee of Burlington v. Dept. of Education* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (*Burlington*).) ALJ's have broad latitude to fashion equitable remedies appropriate for denial of FAPE. (*Burlington, supra*, at p. 370; *Parents v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.) Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(2)(C)(iii); see also *Burlington, supra*, 471 U.S. at 369.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due

process matter. (*Forest Grove School Dist. v. T.A* (2009) 557 U.S. 230, 243, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Burlington, supra*, 471 U.S. at p. 374.)

Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Park, supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].)

A hearing officer may render a decision that results in placement at a nonpublic school, or services provided by a nonpublic agency, so long as the school or agency has been certified pursuant to Education Code Section 56366.1. (See Ed. Code, § 56505.2.)

Given Student's young age, nonverbal status, social delays and autism, Sacramento City's delays in placing him in a program, as soon as possible, were egregious. Sacramento City denied Student a FAPE by:

- delaying his initial assessment plan, assessment and IEP, then not placing him in any program for the 2024-25 school year,
- failing, in the April 4, 2025 IEP, or at any time thereafter, to offer him extended school year for the summer of 2025,
- failing in the 2025-26 school year to implement his speech services in a timely fashion, and
- delaying his AAC assessment and offer until January 2026.

These failures were accompanied by repeated non-responsiveness to Mother's continual, persistent, distraught but overall polite, entreaties. Although compensatory education was waived and shall not be awarded here for the period prior to June 11, 2025, other equitable remedies are not waived. Moreover, the FAPE denials persisted after that date.

At hearing, multiple witnesses laid responsibility for the bulk of the delays on administrator Dorinda Chu-Ewing, who no longer worked at Sacramento City and did not testify at hearing. Chu-Ewing left the District in January 2026. Before then, she was supervisor to both Carney and Simmons, who referred Mother's inquiries to her. Interim Director of Special Education Betty Jo Wessinger did not assume management of the special education department until the beginning of the 2025-26 school year. Prior thereto the department had no director, as this was a new position. Unbeknownst to Mother at the time, but made clear at hearing, there was a division of responsibilities between the SELPA personnel including Arata and SELPA Director Geovanni Linares, whose job was to facilitate dispute resolution, and the Sacramento City special education department personnel, specifically Chu-Ewing. Mother therefore reached out periodically to different combinations of these personnel. The testimony of Carney, Simmons, Arata, and Assistant Superintendent Becky Bryant made it clear that all the individuals to whom Mother sent her emails expected Chu-Ewing to reply, and when she did not do so, there was no one correcting that. Arata, as a SELPA employee, occasionally intervened, but only to prompt Chu-Ewing, and only after many delays had already occurred.

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Assistant Superintendent Bryant was Chu-Ewing's supervisor. Bryant testified at hearing. When questioned how she ensured her employees followed through on their responsibilities, Bryant replied only that she had "an expectation" that whoever took on a duty should fulfill it, but not that she had a plan if they failed to do so.

Ultimately it is irrelevant which individuals caused the denials of FAPE, in that Sacramento City bears responsibility for the acts or omissions of all its personnel. However, Sacramento City had no safeguards in place to ensure that Student was appropriately served. The failure of the chain of command to ensure accountability justifies the staff training that is ordered below.

In the January 2026 IEP to discuss the AAC assessment, Sacramento City offered Student extended school year for the upcoming summer of 2026. The extended school year program is to run from June 22 through July 17. In addition to extended school year, Sacramento City is ordered to offer Student, beginning in the upcoming summer of 2026, 40 hours of social skills programming to be provided by a nonpublic agency, with transportation and use of his AAC device. Sacramento City shall contract with the nonpublic agency to provide the services, which Mother may schedule at her convenience. The hours shall be used beginning in the summer of 2026 and shall expire at the end of the 2026-27 school year, if not used before then. Mother was especially concerned for Student's social skills development. Mother particularly wanted Student to socialize with others in a safe educational environment. Mother was distraught that her reliance on the Regional Center and Sacramento City to serve her son resulted in such lengthy and unexplained delays. She did not have the resources to privately place her son elsewhere and seek reimbursement.

Teacher Torrey, whose class Student attended in 2025-26, established that Student is capable of progressing educationally and socially with the proper supports. She described him as a happy boy who loves letters and numbers and is excited about learning. He can find a card printed with the letter "A," bring it to her and show it to her, say the sound "A," and try to sing it with her. In other words, he has communicative intent. He wants her to repeat words he has just said. Torrey uses charts with her nonverbal students that show faces with different emotions such as happy, sad, silly, tired or hungry. Student could indicate which one applied to him, by taking a stick and pointing to the face that indicated how he was feeling. He did not understand this task at the beginning of the school year, but he has learned it. He was also able to use a request card to ask for Play-Doh. That was, in Torrey's words, "huge," and it occurred within the month prior to her testimony at hearing. However, Torrey acknowledged that he was nonverbal, that she had difficulty understanding him, and that it was not always clear what wants and needs he was expressing.

Sacramento City's own assessments reflected the program Student required in order to receive FAPE. He needed a program with ample opportunities to engage in language and social-based activities. He should be exposed to a wide variety of experiences, explaining what is happening, naming objects and actions, and answering questions. He should have access to high-quality learning opportunities including exposure to rich and varied vocabulary, access to printed material, involvement in

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structured and unstructured individual and group play interactions and conversations. He should be provided activities that develop perceptual, coordination, and fine and gross motor skills, such as use of

- scissors,
- crayons,
- finger paints,
- beads,
- balls, and
- puzzles.

He should be in a structured environment maintaining consistent behavioral expectations and positive reinforcements, utilizing pictures to illustrate behavior expectations. He should explicitly be taught social skills and problem-solving skills through visual pictures, role playing, and frequent conversations to increase pro-social behavior. These recommendations are taken verbatim from Sacramento City's own initial assessment, and support the order for Student to be provided a social skills program, provided by a nonpublic agency beginning in the upcoming summer of 2026.

As a further equitable remedy, for the time periods after June 11, 2025, that are not subject to the compensatory education waiver, Sacramento City is ordered to provide compensatory education to Student for the delay in offering him an AAC device to take home with appropriate goals and services, from the June 11, 2025 waiver date to the January 12, 2026 IEP that ultimately offered those services, a total of approximately half a year. Since the IEP called for 100 annual minutes, 50 compensatory minutes are ordered, to be provided beginning immediately.

Sacramento City is also ordered to provide compensatory speech services to compensate for the time period from August 18, 2025, until late October, when Student was not provided the approximately 30 minutes weekly speech services his IEP called for, for a total of approximately ten weeks or 300 minutes.

The remedies are equitable because Sacramento City's eventual IEP offers of placement, services, goals, extended school year, and AAC, were unreasonably delayed, and because Sacramento City failed to supervise its staff, and repeatedly failed to respond to Mother.

ORDER

1. Sacramento City shall offer Student 40 hours of social skills programming to be provided by a nonpublic agency, with transportation and use of his AAC device. The program shall begin in the upcoming summer of 2026, with transportation and use of Student's AAC device. Sacramento City shall contract with the nonpublic agency to provide the services, which Mother may schedule at her convenience. The hours shall be made available beginning in the summer of 2026 and shall expire at the end of the 2026-27 school year, if not used before then.
2. Sacramento City shall provide compensatory education consisting of 50 additional minutes of AAC consultation services in addition to those called for in Student's IEP, to be made available beginning immediately.
3. Sacramento City shall provide compensatory education consisting of 300 additional minutes of speech and language services in addition to those called for in Student's IEP, to be made available beginning immediately.

4. Sacramento City shall provide no less than 10 hours of training for all currently employed special education, supervisory or SELPA staff named in this Decision, including Bryant, Wessinger, Carney, Arata, Simmons, and Linares, concerning the procedural rights under the IDEA and California special education laws. This training shall be in a classroom setting attended simultaneously by the named participants. The training shall not be provided by a Sacramento City or SELPA employee or by an employee of the attorney's office representing Sacramento City. Rather, it must be provided by an independent expert in state and federal special education laws, who shall be directed to read this Decision and the admitted hearing exhibits, prior to conducting the training and shall tailor the training to the facts presented herein. This training shall be arranged and completed by December 31, 2026.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

June Lehrman

Administrative Law Judge

Office of Administrative Hearings