

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

CASE NO. 2024100512

DECISION

May 14, 2025

On October 15, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Fresno Unified School District, called Fresno. Continuances were granted on November 22, 2024, January 10, 2025, and February 14, 2025. Administrative Law Judge Ted Mann heard this matter in Los Angeles by videoconference on March 25, and 26, 2025.

Student's mother, referred to as Parent, as a self-represented party, represented Student. Parent's advocate, Ann Ware, attended both hearing days on Student's behalf. Attorney Diandra Vantrease represented Fresno. Patrick Morrison, district's special education director, attended both hearing days on Fresno's behalf.

At the parties' request the matter was continued to April 14, 2025, for written closing briefs. The record was closed, and the matter was submitted on April 14, 2025.

## ISSUES

1. Did Fresno deny Student a free appropriate public education, called a FAPE, from April 22, 2024, through October 15, 2024, by failing to find Student eligible for special education under the eligibility category of other health impairment at the April 22, 2024 individual educational program, called an IEP, meeting?
2. Did Fresno deny Student a FAPE, from April 22, 2024, through October 15, 2024, by requiring Parent to obtain a medical diagnosis for Student in order for Fresno to find Student eligible for special education?
3. Did Fresno deny Student a FAPE by failing to provide Student with special education services and supports from April 22, 2024, through October 15, 2024, in the areas of:
  - a. reading supports;
  - b. behavioral supports; and
  - c. accommodations?

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## 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.) 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. 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).)

Student was seven years old and in first grade at Bullard Talent Elementary School at the time of hearing. Student resided within Fresno's geographic boundaries at all relevant times. Student was not determined eligible for special education through the time of hearing.

ISSUE 1: DID FRESNO DENY STUDENT A FAPE FROM APRIL 22, 2024, THROUGH OCTOBER 15, 2024, BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION UNDER THE ELIGIBILITY CATEGORY OF OTHER HEALTH IMPAIRMENT AT THE APRIL 22, 2024 IEP MEETING?

Student contends that they should have been found eligible under the eligibility category of other health impairment at the April 22, 2024 IEP meeting and that a failure to find them eligible denied Student a FAPE. Student contends that their inattention and distractibility at school should have made them eligible for special education.

Fresno contends that the IEP team correctly determined that Student was not eligible for special education under the category of other health impairment as Student did not require special education services or supports to satisfactorily access their education.

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 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].)

It is the duty of the IEP team to determine whether a student is eligible for special education and related services. (20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. §§300.305(a)(1) & (2); 300.306(a)(1); Ed. Code, § 56026, subd. (a).) Further, an administrative law judge has the authority to determine whether a student is eligible for special education and related services under the IDEA. (*Hacienda La Puente Unified School District v. Honig*, 976 F.2d 487, 492-493.)

Not every student with a disability qualifies for special education. A student is eligible for special education and related services if they are a "child with a disability" such as a specific learning disability, other health impairment, or emotional disturbance, and who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); See Ed. Code, § 56026, subds. (a) & (b) [uses term "individual with exceptional needs"].) California law further specifies that the student must require instruction and services which cannot be provided with modification of the regular school program. (Ed. Code, § 56026, subd. (b).) A student shall not be determined to be a child with a disability if the student does not otherwise meet the eligibility criteria under federal and California law. (20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b)(2); Ed. Code, § 56329, subd. (a)(2)(D).) A student whose educational needs are primarily the result of a social maladjustment is not an individual with exceptional needs. (Ed. Code, § 56026, subd. (e).)

A student meets eligibility criteria pursuant to the category of other health impairment if they have limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to a chronic or acute health problem such as attention deficit hyperactivity disorder and which adversely affects their educational performance. (20 U.S.C. § 1401(3)(a)(i)34 C.F.R. § 300.8(c)(9); Cal. Code Regs., tit. 5, § 3030, subd. (b)(9); Ed. Code, § 56339, subds. (a) [attention deficit hyperactivity disorder may be a qualifying health condition for other health impairment, but all other requirements of the definition still must be met].) Special education eligibility criteria also require that the student, as a result of his disability, requires special education instruction and services to receive a FAPE. (20 U.S.C. § 1401(3)(A)(ii); Ed. Code § 56026, subd. (b).)

## FRESNO'S INITIAL PSYCHOEDUCATIONAL REPORT FOR STUDENT

Pursuant to Parent request, based upon Parent's concerns about distractibility and focus, Fresno conducted an initial assessment of Student in spring of 2024. School Psychologist Bryce Grijalva, School Nurse Lacey Richardson, and Special Education Teacher Kelsey Jones assessed Student in February, March, and April 2024. The assessment considered multiple sources of information including student, parent, and teacher interviews; a review of medical and educational history; observations of Student at school; and standardized assessments. A report was prepared and dated April 2024.

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## BACKGROUND INFORMATION AND STUDENT HISTORY

School Nurse Richardson reviewed and summarized Student's medical history. It was unremarkable, including normal birth and normal developmental milestones. Parent shared custody of Student with Student's father. Parent also reported mental health concerns and substance abuse issues on both sides of the family, including Student's older sister.

Student enrolled in kindergarten at Bullard Talent in August 2023. Student had a poor attendance rate of 91 percent, falling below Fresno's 95 percent minimum target. Student had not been previously assessed, had no formal interventions of any kind and did not receive outside services. Student did not have any discipline history and was well-behaved at school.

## EXISTING DISTRICT AND STATE ASSESSMENTS

Student had existing assessments through both state and district assessment that were given to all students to assess educational progress. These assessments included the Foundational Skills Assessment and the I-Ready Diagnostic.

The Foundational Skills Assessment was administered three times per year for students in kindergarten to measure the progress they are making towards kindergarten language arts and mathematics standards. Student's second of three foundational skills assessments showed Student had mastered nearly all the foundational skills tested and was where they were expected to be academically based on the assessment.

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The I-Ready Diagnostic was a computer-based assessment individually tailored to a student that tests a student's ability levels and progress compared to K-12 common core state standards in reading and math. The most recent I-Ready scores were from the end of 2023, about four months before the assessment. At that time, Student scored at the early kindergarten level in English language arts and the emerging kindergarten level in math. In both English language and math, Student showed improvement from their previous I-Ready scores in all tested areas. Student performed well within expected ranges for a kindergarten student.

## OBSERVATIONS AND INTERVIEWS

Grijalva observed and interviewed Student before and during test sessions. Student communicated easily with Grijalva and presented as a typical kindergarten Student with regard to friends, family, interests, and school interests. Overall, Student was cooperative and attentive during all testing times, although Student was observed to move in their seat frequently without affecting their focus.

Grijalva interviewed Parent about Student's strengths and weaknesses. Parent described Student as happy, outgoing and as loving to sing. Parent also described Student as a very loving child that gets along well with everyone and is well-behaved. Parent reported that Student's two older sisters both required special education services during school and were now both in college. Parent expressed concerns about Student's math and reading abilities as well as Student's ability to focus and pay attention. Parent reported that Student does not have medical or mental health diagnoses and was not taking medication or receiving outside services.



Grijalva interviewed Student's father about Student's strengths and weaknesses. Student's father reiterated many of the same strengths for Student as Parent. Student's father had no academic concerns for Student, describing Student as articulate and expressive, having no need for special education. Student's father agreed that Student had some attentional issues, which father believed were primarily motivation related.

Grijalva interviewed Student's Kindergarten Teacher, Joleen Watson, about Student's strengths and weaknesses related to Student's education. Watson described Student as very sweet, creative and well-behaved in class. Watson opined that Student performed academically at grade level. She did not have any concerns about Student academically. Watson explained that Student had a harder time completing independent work without a buy-in, but that Student was easily redirected.

Grijalva conducted two time-sampling observations of Student in class on April 4, 2024, and April 18, 2024, for 27 minutes and 30 minutes, respectively. Time-sampling, a behavior assessment methodology, consisted of an observation period divided into intervals, with behavior during each interval noted as an occurrence, if the behavior occurred at the moment the interval ended. Thirty second intervals were used for each observation. Student was attentive, well-behaved, compliant and on task for 90 percent of the time in each observation. Student followed directions, raised their hand to answer questions and completed assignments. Student's behavior was equivalent to a same gender peer used as a control by Grijalva.

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## STANDARDIZED TESTING

Grijalva conducted standardized testing of Student in the areas of intellectual and cognitive assessment, academic achievement assessment, and social-emotional and behavioral assessment.

Grijalva assessed Student using the Kaufman Assessment Battery for Children, Second Edition. The Kaufman cognitive assessment was a norm-referenced measure of intellectual achievement and cognitive ability, including short-term memory, visual processing, long-term storage and retrieval, fluid reasoning, and crystalized ability. Student obtained average scores in all except long-term memory where Student scored in the above-average range.

Grijalva assessed Student using the Dynamic Indicators of Basic Early Literacy Skills, Eighth Edition. The Dynamic Indicators assessment measured the acquisition of literary and reading skills. Student met or exceeded all assessed reading benchmarks for a middle-of-the-year assessment, indicating that Student was performing at or above grade level in their reading abilities.

Grijalva assessed Student using the Kaufman Test of Educational Achievement, Comprehensive Form, Third Edition. The Kaufman Educational Achievement assessment was an individually administered measure of academic achievement for students in grades prekindergarten through 12 and evaluated key reading, math, written language and oral language skills. Student's scores were all within the average range.

Grijalva assessed Student using the Conners Rating Scales, Third Edition, Full Length Forms. The Connors used rating scales from different individuals to evaluate symptoms of attention deficit hyperactivity disorder, called ADHD, and potential

comorbid problems in a student. Grijalva obtained responses from Parent and Watson for Student. Both respondents' scales were rated acceptable on impression and consistency bases. Grijalva also provided a rating scale to Student's father, but he was unable to complete it by the time of the April IEP team meeting.

Parent's rating of Student on the Connors assessment placed Student in the very elevated range for four out of eight rating areas, including learning problems, executive functioning, and both ADHD inattentive and hyperactive/impulsivity. In contrast, Watson's scores were all average, except for ADHD hyperactive/impulsivity which Watson rated as very elevated. The hyperactivity/impulsivity scale referred to

- high activity levels,
- restless and/or impulsive behaviors,
- difficulty being quiet,
- interrupting others and/or
- easily excitable.

Grijalva noted that discrepancies between parent and teacher ratings were likely a result of, at least partially, differences in home and school settings and may have reflected different perceptions of what is typical behavior for a child of Student's age.

## GRIJALVA'S SUMMARY AND RECOMMENDATIONS

Grijalva presented a lengthy, thoughtful discussion of Student in the report summary and recommendations. Grijalva's testimony at hearing was similarly reflective, thoughtful and considered, and her observations and conclusions were given significant weight. Grijalva presented a detailed analysis of Student's academic performance in

contrast to Student's challenges with attention and focus, finding that Student was able to perform to expectations academically and that attention or focus issues did not significantly affect their school performance.

Grijalva specifically analyzed Student under the eligibility category of other health impairment regarding Parent's concerns about ADHD. As noted above, eligibility under other health impairment considers potential limited strength, vitality and alertness in a student and whether, if present, such conditions adversely affect a child's educational performance. Grijalva found that although Student did present with some difficulties with hyperactivity and focus, Student's academic performance was not affected, and as a result Student did not meet the eligibility requirements for other health impairment.

#### THE APRIL 22, 2024 IEP AND ELIGIBILITY DETERMINATION

Following the completion of the initial assessment of Student, an initial IEP meeting was held on April 22, 2024, to review the initial assessment and allow the IEP team to consider Student's potential eligibility for special education under the category of other health impairment.

Student, Parent, Student's father, Watson, Grijalva, Jones, the school principal, and Lora Reynolds, Fresno's special education administrator and case manager, all attended the IEP meeting on April 22, 2024. Fresno informed Parents of their educational rights, discussed Student's present levels of performance and reviewed assessment results. The team found that Student did not qualify for special education under the eligibility category of other health impairment due to Student's academic performance not being adversely affected by attentional or focus issues. Neither parent disagreed with the IEP determination at the time of the IEP team meeting.

Here, Parent failed to meet their evidentiary burden in establishing that it was more likely than not that Student was eligible for special education under the eligibility category of other health impairment. To the contrary, the evidence at hearing established that although Student had some attentional and focus issues, those issues did not interfere with Student's ability to access their education. In fact, at the time of the April 22, 2024 IEP, Student was performing at expected levels for a kindergartener and in keeping with her own skills and abilities.

Therefore, Fresno prevailed on Issue 1.

ISSUE 2: DID FRESNO DENY STUDENT A FAPE, FROM APRIL 22, 2024, THROUGH OCTOBER 15, 2024, BY REQUIRING PARENT TO OBTAIN A MEDICAL DIAGNOSIS FOR STUDENT IN ORDER FOR FRESNO TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION?

Parent contends that Fresno teachers and administrators conditioned Student's receipt of special education services and supports on Parent obtaining a medical diagnosis of ADHD for Student, and that by making this requirement Student was denied a FAPE.

Fresno contends that no teacher or administrator ever advised Parent that she must obtain a medical diagnosis of ADHD to obtain special education services or supports for Student. Fresno further contends that any discussions related to ADHD or a medical diagnosis of ADHD for Student were misunderstood or misconstrued by Parent.

Parent testified at hearing that she had several discussions with Fresno's school personnel, including Student's first grade, General Education Teacher Cinda Newberry, that led her to understand that she needed to obtain a medical diagnosis of ADHD for Student to be eligible for special education. Under cross examination by Fresno, Parent wavered in describing Watson's, Newberry's, Grijalva's or Bullard Talent Principal Catherine Aujero's statements as requiring a medical diagnosis of ADHD for Student to receive special education services and supports.

In her Closing Brief, Parent again asserted that Kindergarten Teacher Watson told her that the only way to get help was with a medical diagnosis and medication.

However, such an assertion was contrary to the fact that Fresno assessed Student and held an IEP team meeting to determine if Student was eligible for special education.

Parent also generally asserted that she didn't understand what her child was entitled to by way of special education, including eligibility, services or supports, and that contributed to her believing a medical diagnosis was necessary. However, this was belied by the fact that Parent had two children, Student's older siblings, that had participated in special education, based at least in part on ADHD, and subsequently went on to college. Given Parent's experiences with her two older children, Parent's testimony was unconvincing in this regard and in that she believed a medical diagnosis was a required basis for special education. For his part, Student's father denied anyone had ever told him that Student needed a medical diagnosis for special education eligibility.

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Fresno's witnesses, including Kindergarten Teacher Watson, First Grade Teacher Newberry and School Psychologist Grijalva, all denied that they told Parent that Student must have a medical diagnosis of ADHD to be eligible for special education services and supports. Those witnesses each did describe having discussions with Parent about Student's possible ADHD and how to address it. Watson described discussing children in general and ADHD and her experiences with them. Newberry related her own experiences with her kids and ADHD to Parent, and Parent indicated to Newberry that she would take Student to the doctor based on that discussion. Watson and Newberry testified directly, without wavering, and were unimpeached on cross-examination. Both Watson and Newberry were credible and believable regarding their testimony generally and specifically regarding the medical diagnosis issue.

Here, Parent failed to meet their evidentiary burden in establishing that it was more likely than not that she was told by Fresno personnel that a medical diagnosis of ADHD was necessary for Student to be eligible for special education. To the contrary, the evidence at hearing supported that Parent was, at best, confused or mistaken about her discussions with Watson, Newberry and Grijalva.

Therefore, Fresno prevailed on Issue 2.

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ISSUE 3: DID FRESNO DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT WITH SPECIAL EDUCATION SERVICES AND SUPPORTS FROM APRIL 22, 2024, THROUGH OCTOBER 15, 2024, IN THE AREAS OF READING SUPPORTS, BEHAVIORAL SUPPORTS, AND ACCOMMODATIONS?

Student contends that Fresno denied Student a FAPE from April 22, 2024, through October 15, 2024, by failing to provide Student with special education services and supports in the areas of reading, behavior and accommodations.

Fresno contends that Student was not eligible for special education and made educational progress during the relevant timeframe.

Student had been determined to be ineligible for special education and related services by the IEP team as of April 22, 2024. This decision affirms the IEP team's determination as explained in Issue 1, above.

Districts are not obligated to provide FAPE as defined by the IDEA and state special education laws, to a child who is not eligible for special education. (*R.B. v. Napa Valley Unified School District*, (2007) 496 F. 3d 932, 942.)

Here, since Student was not eligible for special education, Student was not entitled to a FAPE provided by Fresno from April 22, 2024, through October 15, 2024. As such, Fresno did not deny Student a FAPE from April 22, 2024, through October 15, 2024.

Therefore, Fresno 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:

Fresno did not deny Student a FAPE by failing to find Student eligible for special education under the eligibility category of other health impairment at the April 22, 2024 IEP meeting.

Fresno prevailed on Issue 1.

### ISSUE 2:

Fresno did not deny Student a FAPE by requiring Parent to obtain a medical diagnosis for Student in order for Fresno to find Student eligible for special education.

Fresno prevailed on Issue 2.

### ISSUE 3:

Fresno did not deny Student a FAPE by failing to provide Student with special education services and supports from April 22, 2024, through October 15, 2024, in the areas of reading supports, behavioral supports and accommodations.

Fresno prevailed on Issue 3.

## ORDER

All relief sought by Student is denied.

## 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.

TED MANN

Administrative Law Judge

Office of Administrative Hearings