

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL DISTRICT.

CASE NO. 2025041199

DECISION

AUGUST 27, 2025

On April 25, 2025, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming New Haven Unified School District, called New Haven. On May 12, 2025, Student filed an amended complaint. On June 19, 2025, OAH granted the parties' request for a continuance. Administrative Law Judge Jeanie Min heard this matter by videoconference on July 8, and 10, 2025.

Parent represented Student and attended all hearing days on Student's behalf. Attorneys Ankita Sheth and Laurie Reynolds represented New Haven. Sarah Kappler, Director of Special Services, attended all hearing days on New Haven's behalf.

At the parties' request, the matter was continued to July 31, 2025, for written closing briefs. New Haven timely filed a closing brief. Student did not submit a closing brief. OAH closed the record and submitted the matter on July 31, 2025.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

The ALJ renumbered the issues in chronological order. Additionally, during hearing, both parties established Issue 3 pertained to a March 2025 request, not April 2025, as it was clarified at the June 30, 2025 prehearing conference. The ALJ redefined Issue 3 in this Decision for clarity. The ALJ did not make any substantive changes to the issues. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189.)

1. Did New Haven deny Student a FAPE during the 2024-2025 school year by failing to implement all of the speech service hours offered in Student's November 2024 IEP?
2. Did New Haven deny Student a FAPE by failing to provide Student's full academic records from his kindergarten year and his complete speech logs for the period September 2024 to January 2025 pursuant to Parent's February 2025 request for records?
3. Did New Haven deny Student a FAPE during the 2024-2025 school year by failing to fund an independent psychoeducational evaluation for Student pursuant to Parent's March 2025 independent educational evaluation request?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as 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, 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).)

Here, Student filed the complaint and 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 eight years old and in second grade at the time of hearing. Student was eligible for special education under speech and language impairment. Student resided within New Haven's geographic boundaries at all relevant times.

ISSUE 1: DID NEW HAVEN DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO IMPLEMENT ALL OF THE SPEECH SERVICE HOURS OFFERED IN STUDENT'S NOVEMBER 2024 IEP?

Student contends New Haven failed to implement 240 minutes of speech and language services monthly, as offered in Student's November 19, 2024 IEP. Student also contends New Haven failed to implement compensatory speech and language services, owed to Student from kindergarten during the 2021-2022 school year.

New Haven contends it materially implemented the speech and language services offered in Student's November 2024 IEP. Specifically, New Haven contends Student was not entitled to either services during holiday breaks or make-up services for Student's absences. Additionally, New Haven contends it did not owe Student compensatory speech and language services from his kindergarten year.

Student did not meet his burden of proving that New Haven materially failed to implement the speech and language services offered in the November 2024 IEP. Student also did not prove that New Haven materially failed to implement compensatory speech and language services, owed to him from his kindergarten 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 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), 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, 300.501.)

In general, a student 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 the student to make progress appropriate in light of the student's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034, 3048, 73 L.Ed.2d 690] (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000, 197 L.Ed.2d 335].)

NEW HAVEN'S DUTY TO PROVIDE A FAPE FROM SEPTEMBER 9, 2024 THROUGH JANUARY 31, 2025

Student attended kindergarten in New Haven during the 2021-2022 school year. Student disenrolled from New Haven at the end of the 2021-2022 school year and was parentally placed at Union City Christian Academy, a private school. Student reenrolled in New Haven on September 6, 2024, for the 2024-2025 school year. Student began attending third grade at Alvarado Elementary School on September 9, 2024, after the school year began on August 7, 2024. In October 2024, New Haven placed Student in second grade, after discovering Union City Christian Academy retained Student. On January 31, 2025, Student disenrolled from New Haven and was parentally placed at Union City Christian Academy.

While school districts must make a FAPE available to public school children with disabilities, private school children with disabilities do not have an individual entitlement to a FAPE. (34 C.F.R. § 300.137; *Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1138.) Parentally placed private school children with disabilities are children with disabilities enrolled by their parents in private, including religious, schools or facilities. (20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. § 300.130.) Consequently, once a parent unilaterally enrolls the student in private school, the student meets the definition of a private school child with a disability and does not have an individual entitlement to special education and related services. (*Capistrano, supra*, at pp. 1138-40.) However, a parent of a privately placed child may ask for a new IEP at any time, which triggers the requirement of the school district to offer the student a FAPE. (*Id.* at p. 1138.)

Parent privately placed Student after disenrolling him from New Haven on January 31, 2025. On February 5, 2025, School Psychologist Monique Toledo offered Parent the option of an Individual Services Plan, which is "a written statement that describes the special education and related services the [district] will provide to a parentally-placed child with a disability." (34 C.F.R. § 300.37.) Parent did not request New Haven to develop an Individual Services Plan. On February 5, 2025, Toledo also offered to convene an IEP team meeting. Parent declined to hold an IEP team meeting and did not request a new IEP for Student.

The evidence demonstrated that New Haven was not required to make special education and related services available to Student after January 31, 2025. Therefore, during the 2024-2025 school year, New Haven was responsible for providing Student a FAPE from September 9, 2024, through January 31, 2025.

MONTHLY SPEECH AND LANGUAGE SERVICES PURSUANT TO THE NOVEMBER 2024 IEP

As soon as possible after the development of an IEP, the district must make special education and related services available to the student in accordance with that IEP. (34 C.F.R. § 300.323(c).) Where a student alleges a FAPE denial based on an IEP implementation failure, the student must prove that the failure was “material,” which 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, 822.) No statutory requirement of perfect adherence to the IEP exists, nor is there any reason rooted in the statutory text to view minor implementation failures as FAPE denials. (*Id.* at p. 821.) “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” (*Id.* at p. 815.) A material failure to implement an IEP constitutes a substantive violation of the IDEA. (*Id.* at pp. 819-823.)

When Student returned to New Haven on September 9, 2024, Student’s IEP from the 2021-2022 school year was the last agreed to IEP. New Haven implemented this IEP at the start of the 2024-2025 school year. Student was entitled to speech and language services pursuant to this IEP. However, New Haven did not have a speech and language pathologist available to implement Student’s speech and language services until October 2024. Student began receiving speech and language services on October 16, 2024 from speech and language pathologist Christine Lynch.

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New Haven held an IEP team meeting on November 19, 2024, to review a speech and language evaluation report and update Student's IEP. New Haven offered 240 minutes of speech and language services per month in a group setting. Parent consented to the IEP on Saturday, November 23, 2024. Due to the Thanksgiving break from November 25, through November 29, 2024, New Haven began implementing the November 2024 IEP when school returned to session on December 2, 2024. New Haven implemented the speech and language service minutes by providing 30-minute sessions, approximately twice per week.

Student alleges New Haven did not implement all 240 minutes of speech and language services per month, as offered in the November 2024 IEP. Parent testified that Student received 30 minutes of speech services in one month, less than 100 minutes in another month, and 130 minutes in another, without reference to specific months. Student presented a copy of an email Parent sent to Lynch, on an unknown date, asserting that Student received 150 minutes of speech services in October, 30 minutes in November, and 150 minutes in December. Student did not present other documentary or testimonial evidence to corroborate Parent's assertion that New Haven materially failed to implement Student's speech and language services.

At hearing, the weight of the evidence established that New Haven materially implemented Student's speech and language services. New Haven presented a document titled "Student Treatment Detail Log" in support of its contention that it materially implemented these services. Megan Foster, Assistant Principal at Alvarado Elementary and Coordinator of Special Services at New Haven during the 2024-2025 school year, testified that the log accurately reflected the amount of speech and language services Student received during the 2024-2025 school year. The Student Treatment Detail Log, corroborated by Foster's testimony, was more persuasive than

Parent's testimony in establishing that New Haven materially implemented speech and language services pursuant to Student's November 2024 IEP. New Haven demonstrated that it provided the following services from December 2, 2024:

- Five 30-minute sessions in December 2024, totaling 150 minutes of speech and language services;
- Seven 30-minute sessions, not including a compensatory speech session, in January 2025, totaling 210 minutes of regular speech and language services; and
- One 30-minute compensatory speech session in January 2025.

The November 2024 IEP informed Parent that services would be provided when Student is in attendance, and consistent with the district of service calendar and scheduled services, excluding holidays, vacations, and non-instructional days unless otherwise specified. Lynch also informed Parent via email on January 9, 2025, that Student was entitled to make-up sessions for missed services that were due to Lynch's absences, but not for Student's absences or school holidays.

After Parent consented to the IEP on Saturday, November 23, 2024, New Haven had a Thanksgiving break from Monday, November 25, through Friday, November 29, 2024. Student was not entitled to speech and language services during the holiday break. Thus, any speech and language services that were not implemented in November did not constitute a material failure.

New Haven returned from the Thanksgiving break on December 2, 2024. Each week in December 2024, until the start of the winter break, Student received two 30-minute speech sessions, except on December 4, 2024, when Student was absent.

Student was not entitled to a make-up session for his absence. New Haven had a winter break from December 23, 2024 through January 3, 2025. Student was not entitled to speech and language services during the winter break. Of the 240 minutes of speech and language services offered in the November 2024 IEP, New Haven implemented 150 minutes. The 60 minutes of speech services that New Haven did not implement during the winter break and the 30 minutes of speech services that New Haven did not implement on December 4, 2024, did not constitute a material failure to implement Student's speech and language services because Student was not entitled to either services during the winter break or a make-up session for his absence. Student did not present persuasive evidence documenting calculations contrary to the log. Student did not prove New Haven materially failed to implement speech and language services in December 2024.

On January 6, 2025, New Haven returned to session from the winter break. During the first week of January 2025, Student received two 30-minute speech sessions and was absent on the third session, on January 10, 2025. During the second week, Student received two 30-minute sessions and one 30-minute session of compensatory speech and language services. During the third week, Student received one 30-minute session. During the last week of January, Student received two 30-minute speech sessions, and was absent for the third session on January 31, 2025. New Haven implemented 210 minutes of speech and language services, not including compensatory speech services. New Haven attempted to implement additional speech sessions on two occasions, but Student was absent. Student was not entitled to services on absent days or make-up sessions for those absences.

Thus, the 30 minutes of speech services that New Haven did not implement did not constitute a material failure to implement Student's speech and language services. Student did not present persuasive evidence that refuted the log's entries. Student did not prove New Haven materially failed to implement speech and language services in January 2025.

Student did not prove by a preponderance of the evidence that New Haven materially failed to implement Student's speech and language services between November 25, 2024, and January 31, 2025. Student failed to prove that New Haven denied Student a FAPE during the 2024-2025 school year, by materially failing to implement speech and language services, pursuant to the November 2024 IEP.

COMPENSATORY SPEECH AND LANGUAGE SERVICES

Student contends the November 2024 IEP incorporated an offer of 1,000 minutes of compensatory speech and language services, which New Haven failed to implement. Student believes New Haven owed him 1,000 minutes of speech and language services as compensatory services for missed speech and language services during kindergarten, in the 2021-2022 school year. New Haven contends it did not offer any compensatory services for this time period.

The November 2024 IEP did not offer, or make any reference to, compensatory speech and language services. Student did not present evidence that New Haven offered any compensatory speech and language services for owed services from Student's kindergarten year, in the 2021-2022 school year, other than Parent's assertions. Kappler testified that New Haven offered compensatory speech services for the missed services between September 9, 2024, when Student began attending school in New Haven, and

October 16, 2024, when Lynch began implementing speech services. Kappler testified that New Haven's offer of compensatory speech services was only for the one month of missed services at the beginning of the 2024-2025 school year, and did not include any compensatory speech services for kindergarten. Kappler testified she directed Foster to work with Student's IEP team to calculate Student's compensatory speech services. Foster testified she worked with Lynch and a program specialist to calculate the amount of compensatory speech service minutes owed to Student. Foster testified that New Haven only offered compensatory speech services for the missed services from September 9, 2024, through October 16, 2024. The January 17, 2025 prior written notice, issued by Foster, and the February 20, 2025 prior written notice, issued by Kappler, summarized New Haven's offer of compensatory speech services, which did not include any reference to compensatory services for kindergarten. Kappler's and Foster's testimonies, corroborated by the November 2024 IEP and the two prior written notices, were more persuasive than Parent's testimony in establishing that New Haven's offer of compensatory speech and language services was only for missed services for the period September 9, 2024, through October 16, 2024, during the 2024-2025 school year.

The threshold issue, and a necessary element, in determining whether New Haven failed to implement 1,000 minutes of compensatory speech and language services, for Student's kindergarten year, is whether New Haven offered such. Student failed to establish that New Haven offered 1,000 minutes of speech and language services, as compensatory services for Student's kindergarten year. Therefore, Student failed to meet his burden of proving New Haven denied Student a FAPE by materially failing to implement 1,000 minutes of compensatory speech and language services.

New Haven prevailed on Issue 1.

ISSUE 2: DID NEW HAVEN DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT'S FULL ACADEMIC RECORDS FROM HIS KINDERGARTEN YEAR AND HIS COMPLETE SPEECH LOGS FOR THE PERIOD SEPTEMBER 2024 TO JANUARY 2025 PURSUANT TO PARENT'S FEBRUARY 2025 REQUEST FOR RECORDS?

Student contends New Haven failed to produce Student's complete educational records pursuant to Parent's February 21, 2025 request, denying Student a FAPE. In its opening argument, New Haven conceded that it unintentionally failed to provide a portion of Student's cumulative file from kindergarten, but that this mistake did not deny Student a FAPE. However, in its closing brief, New Haven argued it responded to Parent's records request in a timely manner.

One of the procedural safeguards afforded to parents under the IDEA is the right to examine all records relating to the student. (20 U.S.C. § 1415(b)(1).) To guarantee parents the ability to make informed decisions about their child's education, the IDEA grants parents the right to examine all relevant records in relation to their child's special education identification, evaluation, educational placement, and receipt of a FAPE. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a); Ed. Code, § 56504.) The school district must provide the parent with a copy of the student's records, within five days of the verbal or written request by the parent. (Ed. Code, §§ 56043, subd. (n), 56504.)

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A state must comply both procedurally and substantively with the IDEA. (*Rowley, supra*, at p. 206.) Not every procedural flaw constitutes a denial of a FAPE. A procedural violation results in a FAPE denial only if it:

- impeded the child's right to a FAPE,
- significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the child, or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subds. (f)(2), (j); see *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

On February 21, 2025, Parent requested a copy of Student's complete educational records, via electronic mail. However, neither Student nor New Haven presented any evidence of when New Haven responded to Parent's request, if it did. Student did not present evidence of which documents were missing, if any. New Haven did not present evidence that it provided Parent all of Student's records, if it did.

If New Haven did fail to provide records responsive to Parent's request, as conceded in its opening argument, New Haven's failure to provide a portion of Student's kindergarten records amounted to a procedural violation under the IDEA. However, Student did not prove how such procedural violation amounted to a denial of a FAPE.

At the time Parent requested records on February 21, 2025, Student was withdrawn from New Haven and was attending a private school. As determined in Issue 1, New Haven was not responsible for providing Student a FAPE after

January 31, 2025. If New Haven did not owe Student a FAPE, even if it committed a procedural violation by failing to produce a complete copy of Student's educational records, it could not impede Student's right to a FAPE. Further, New Haven could not deprive Student of an educational benefit after February 21, 2025, because Student was not entitled to special education and related services from New Haven. Student offered no evidence otherwise explaining how a failure to receive records pursuant to Parent's February 21, 2025 request impeded his right to a FAPE or deprived him of an educational benefit.

Student did not present any evidence demonstrating how absent records, if any, hindered Parent from participating in the decision-making process regarding a FAPE. Testimonies by Parent and Toledo established that, on February 5, 2025, Parent declined further district evaluations, an IEP team meeting, and an Individual Services Plan. New Haven did not owe Student a FAPE and no decision-making process regarding a FAPE existed at that time. New Haven could not significantly impede Parent's opportunity to participate in the decision-making process regarding the provision of Student's FAPE by failing to produce records pursuant to Parent's February 21, 2025 request.

For the reasons stated above, Student failed to meet his burden to show New Haven's failure to provide records, if any, in response to Parent's February 21, 2025 request denied him a FAPE. New Haven prevailed on Issue 2.

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ISSUE 3: DID NEW HAVEN DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO FUND AN INDEPENDENT PSYCHOEDUCATIONAL EVALUATION FOR STUDENT PURSUANT TO PARENT'S MARCH 2025 INDEPENDENT EDUCATIONAL EVALUATION REQUEST?

Student contends New Haven should have funded an independent psychoeducational evaluation during the 2024-2025 school year pursuant to Parent's request. New Haven contends it had no such duty because Parent disallowed New Haven from completing its own psychoeducational evaluation.

The procedural safeguards of the IDEA provide that, under certain conditions, a parent is entitled to obtain an independent evaluation of a child at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1), (b)(1) & (2); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent has the right to request an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the school district, and only has a right to one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.) The terms are used interchangeably herein.

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On December 3, 2024, New Haven provided Parent an assessment plan proposing to assess in psychoeducation. On December 3, 2024, Parent signed consent to the assessment plan. In December 2024, Resource Specialist Radhika Raman began assessing Student in academic achievement. In January 2025, School Psychologist Monique Toledo began assessing Student in the social emotional area of psychoeducation and conducted her first observation in Student's general education classroom.

On February 5, 2025, Toledo attempted to conduct the parent interview portion of the evaluation, when Parent informed Toledo that she wished to discontinue Student's psychoeducational evaluation. Based on Parent's request, New Haven discontinued the psychoeducational evaluation. Neither Raman nor Toledo completed their areas of the psychoeducational evaluation. On February 21, 2025, New Haven sent Parent a prior written notice, dated February 20, 2025, via electronic mail, confirming Parent's withdrawal of consent to the evaluation.

On February 21, 2025, Parent emailed Kappler, seeking a private psychoeducational evaluation. New Haven did not immediately understand that Parent was requesting an independent educational evaluation at public expense. On March 12, 2025, Parent clarified and confirmed her request for an independent psychoeducational evaluation. On March 18, 2025, New Haven sent Parent a prior written notice declining to fund an independent psychoeducational evaluation.

New Haven did not have an opportunity to complete a district psychoeducational evaluation. Parent is entitled to request an independent evaluation at public expense when she disagrees with a district evaluation. Here, there was no district psychoeducational evaluation for Parent to disagree with. Student did not prove he was entitled to an

independent evaluation at public expense. Therefore, Student did not meet his burden of proving New Haven denied Student a FAPE by failing to fund an independent psychoeducational evaluation.

New Haven 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:

New Haven did not deny Student a FAPE during the 2024-2025 school year by failing to implement all of the speech service hours offered in Student's November 2024 IEP.

New Haven prevailed on Issue 1.

ISSUE 2:

New Haven did not deny Student a FAPE by failing to provide Student's full academic records from his kindergarten year and his complete speech logs for the period September 2024 to January 2025 pursuant to Parent's February 2025 request for records.

New Haven prevailed on Issue 2.

ISSUE 3:

New Haven did not deny Student a FAPE during the 2024-2025 school year by failing to fund an independent psychoeducational evaluation for Student pursuant to Parent's March 2025 independent educational evaluation request.

New Haven prevailed on Issue 3.

ORDER

All of Student's claims for relief are 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.

Jeanie Min

Administrative Law Judge

Office of Administrative Hearings