

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

NEWPORT-MESA UNIFIED SCHOOL DISTRICT.

CASE NO. 2025071064

DECISION

JANUARY 16, 2026

On July 25, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming the Newport-Mesa Unified School District. On August 14, 2025, OAH continued the matter at the request of the parties. Administrative Law Judge Charles Marson heard this matter by videoconference on November 4, 5, 6, 12, and 13, 2025.

Timothy A. Adams and Damian R. Fragoso, Attorneys at Law, represented Student. Student's Father attended all hearing days in whole or part on Student's behalf. Cynthia A. Yount and Andrea Moos, Attorneys at Law, represented Newport-Mesa. Sara Jocham, Superintendent of Special Education, attended all hearing days on Newport-Mesa's behalf.

On November 13, 2025, at the parties' request, the matter was continued to December 9, 2025, for written closing briefs. The record was closed, and the matter was submitted on December 9, 2025.

In this Decision, the Individuals With Disabilities Act is referred to as the IDEA, a free appropriate public education is referred to as a FAPE, and an individualized education program is referred to as an IEP.

ISSUES

1. Did Newport-Mesa deny Student a FAPE during the 2023-2024 school year by failing to fulfill its child find obligation to Student when it failed to timely refer her for a special education assessment?
2. Did Newport-Mesa deny Student a FAPE by failing to conduct, pursuant to the April 26, 2024 assessment plan, assessments in:
 - A. occupational therapy; and
 - B. auditory processing?
3. Did Newport-Mesa deny Student a FAPE during the 2023-2024 school year by failing to offer appropriate accommodations and services to address her needs in:
 - A. social and interpersonal skills;
 - B. social-emotional functioning;
 - C. working independently and in groups;
 - D. academics;

- E. organization; and
 - F. problem-solving?
4. Did Newport-Mesa deny Student a FAPE by failing to offer appropriate goals in the IEPs dated September 6, 2024, February 25, 2025, and April 22, 2025, to address her needs in:
- A. executive functioning;
 - B. organization and planning;
 - C. problem-solving;
 - D. social skills;
 - E. self-regulation;
 - F. depression;
 - G. anxiety;
 - H. withdrawal;
 - I. working in groups;
 - J. working independently;
 - K. sensory processing;
 - L. staying on task; and
 - M. inattention?

(This space is intentionally left blank. Text continues on the following page.)

5. Did Newport-Mesa deny Student a FAPE by failing to offer appropriate services in the IEPs dated September 6, 2024, February 25, 2025, and April 22, 2025, to address her needs in:

- A. executive functioning;
- B. organization and planning;
- C. problem-solving;
- D. social skills;
- E. self-regulation;
- F. depression;
- G. anxiety;
- H. withdrawal;
- I. working in groups;
- J. working independently;
- K. sensory processing;
- L. staying on task, and
- M. inattention?

6. Did Newport-Mesa deny Student a FAPE by failing to offer an appropriate placement in the IEPs of September 6, 2024, February 25, 2025, and April 22, 2025, to address her needs in:

- A. executive functioning;
- B. organization and planning;

- C. problem-solving;
- D. social skills;
- E. self-regulation;
- F. depression;
- G. anxiety;
- H. withdrawal;
- I. working in groups;
- J. working independently;
- K. sensory processing;
- L. staying on task; and
- M. inattention?

JURISDICTION

This hearing was held under 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 (2006); 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, 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 11 years old at the time of hearing and in seventh grade at Fusion Academy, a private school. Student resided within Newport-Mesa's geographic boundaries at all relevant times. Student was eligible for special education after September 6, 2024, under the categories of autism and language or speech impairment.

(This space is intentionally left blank. Text continues on the following page.)

ISSUE 1: DID NEWPORT-MESA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO FULFILL ITS CHILD FIND OBLIGATION TO STUDENT WHEN IT FAILED TO TIMELY REFER HER FOR A SPECIAL EDUCATION ASSESSMENT?

Student and her family moved to Newport-Mesa in 2022. For the 2022-2023 school year, Student attended fourth grade in a general education classroom at Newport-Mesa's Harbor View Elementary School. She did not have an IEP.

Student contends that during the 2023-2024 school year, when she was in fifth grade, Newport-Mesa violated its child find duties because it should have suspected before April 2024 that she may have had a disability and may have needed special education to address it. Student was not assessed for special education until the summer of 2024 and not made eligible for special education until September 6, 2024. By that time, Parents had withdrawn her from Harbor View Elementary School and privately placed her at Fusion Academy.

Newport-Mesa contends that until April 2024 it had no reason to suspect that Student may have had a disability that may have affected her education, and that it then timely assessed her in the summer of 2024 and timely offered her a FAPE in September 2024.

THE CHILD FIND DUTY

The IDEA imposes on school districts an obligation known as child find. A district must ensure that all disabled children within its boundaries "are identified, located, and evaluated." (20 U.S.C. § 1512(a)(1)(3)(A).) The purpose of the child-find evaluation is to

provide access to special education. (*Fitzgerald v. Camdenton R-III Sch. Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) Once a school district is on notice that a child may have a disability, it has a duty to propose an assessment. (34 C.F.R. § 300.111(a)(2006); Ed. Code, § 56301; *D.O. v. Escondido Union Sch. Dist.* (9th Cir. 2023) 59 F.4th 394, 408; *Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.)

A school district's child find obligation toward a specific child is triggered when it has knowledge of, or reason to suspect, that she may have a disability, and reason to suspect that special education services may be needed to address that disability. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawai'i 2001) 158 F.Supp.2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.)

In considering the need for initial assessment, a school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Cari Rae S., supra*, 158 F.Supp.2d at p. 1195.) A district may not take a passive approach and wait for others to refer the student for special education services; the district must seek out IDEA-eligible students. (*Compton Unified Sch. Dist. v. Addison* (9th Cir. 2010) 598 F.3d 1181, 1183-1184.)

A disability is suspected, and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21.) That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at 1121.)

The child find obligation applies to a child even if she is advancing from grade to grade, and regardless of the severity of the disability. (*Cari Rae S., supra*, 158 F.Supp.2d 1190, 1194 ; 34 C.F.R. § 300.111(a)(1) & (c)(1)(2006).) The fact that a student is making adequate educational progress is not a valid reason not to assess. (*Cari Rae S., supra*, 158 F.Supp.2d at p. 1194.) The child find duty applies to gifted students. (*Letter to Delisle* (OSEP 2013) 62 IDELR 240.)

INDICATIONS OF DISABILITY IN FOURTH GRADE

Upon arrival in Newport-Mesa, Student was assigned to the fourth-grade general education class taught by Irene Edler, a general education teacher with 24 years' experience. Edler soon noticed that Student was highly intelligent, hard-working, and eager to participate in class discussions and activities. She excelled at academics and maintained a high grade average. Edler and others sometimes described her as brilliant.

However, the IDEA addresses more than academic performance. IDEA duties extend to social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) In Student's fourth-grade class, Edler also noticed that Student had difficulty relating to her peers. She was dominating in group work, rigid in her thinking, and insistent that the group do things her way. She clung stubbornly to her convictions far longer than appropriate. She became argumentative and tried to divert the topic of conversation to her own concerns. Her voice was

(This space is intentionally left blank. Text continues on the following page.)

frequently too loud. She sometimes walked away from her group. She tattled on her peers. She argued with peers during quiet times. It took her a long time to recover from these incidents.

For example, in May 2023, Student got into a dispute with other girls at the lunch table that led the principal, Gabriel del Real, to feel it necessary to interview Student and other girls separately to attempt to prevent recurrences. He and Student agreed that in the future Student would not sit for lunch with that group of girls. He asked her if there was another group with whom she could eat, but she responded that she would rather just be alone.

Edler also noticed that Student was extremely disorganized and irresponsible with materials. She constantly lost papers and things, even things as important as a Chromebook or a telephone. Her disorganization manifested in various ways, such as causing binders to go tumbling to the floor. Edler once found her sitting inactively on the floor of the hall in a pile of her materials and possessions.

Edler tried numerous methods to assist Student in her difficulties. These included, for example, reteaching, brainstorming, use of planners and check sheets, and Girls' Lunch. Edler made many other such efforts. Edler later reported that, "I tried some things that worked, and some that didn't."

INDICATIONS OF DISABILITY IN FIFTH GRADE

In the school year 2023-2024, Student advanced to fifth grade and was assigned to the general education classroom taught by Kristin Botta, an experienced teacher. Botta and Edler were longtime friends and spoke nearly every day. They frequently discussed

possible ways to address Student's challenges with her peers and her organization. At one point, Edler sent Botta a list of general education interventions she had tried, and Botta tried those and others. These included

- problem-solving strategies,
- frontloading,
- assigning leadership roles,
- fluid groupings with peers,
- allowing the option to work independently,
- review of expectations,
- check-ins, and
- the use of a daily organizational checklist.

Some of these methods helped, but others failed.

In an October 30, 2023 email to Parents, Botta described some of the difficulties she had in grouping Student with peers:

Truly, the biggest obstacle in class is [Student] working in any sort of small group or with a partner. Maybe if we eliminate that all together, things will improve. I just thought that if I tried different strategies, different students, different materials, etc., I would be able to teach [Student] how to work with others in small groups and create close friendships for her along the way. She longs to have relationships with her peers, so I have

tried to give her every opportunity to do this and thrive. *I am sorry that it has not been successful thus far, but there have been some small wins along the way.* (Emphasis added.)

Botta's efforts to help Student in organization also had mixed results. In May 2024, in an email to Parents close to the end of Student's fifth-grade year, Botta conceded:

[Student] is extremely disorganized in her thoughts and actions. She loses personal belongings on a daily basis. I have tried many different systems to help [Student] with her organization, [social emotional learning] needs, and behavior, but there are a few hits, and a lot of misses.

Thus, by the fall of 2023, Student's fourth and fifth-grade teachers had tried repeatedly, with numerous general education interventions, to address Student's inability to work in groups and her extreme disorganization, with no sustained success. At least by the time of Botta's October 30, 2023 email concerning her lack of success in aiding Student, the two teachers, and therefore Newport-Mesa, had ample reason to suspect that Student may have had a disability, and that the disability may have been interfering with the non-academic aspects of her education. However, neither teacher referred Student for a special education assessment.

DOCTOR TAN'S NEUROPSYCHOLOGICAL ASSESSMENT

Parents struggled with Student's problems at home, where she was

- argumentative,
- poor at social communications,
- rigid,

- lacking social awareness,
- inconsistent in eye contact,
- restrictive in her interests, and
- prone to engage in repetitive behaviors.

In addition, Student was quick to anger, had poor impulse control, and had developed night terrors. Seeking some solution, Parents employed Dr. Alexander Tan, a licensed pediatric neuropsychologist, to assess Student's social-emotional status and behaviors. Dr. Tan assessed Student in January 2024 and provided an extensive report to Parents at the end of the month.

Dr. Tan reviewed records, administered standardized tests, and interviewed Student and Parents. He diagnosed Student as having autism spectrum disorder, and also noticed her difficulties with executive functioning. In his report, Dr. Tan stated that Student's difficulties placed her at risk at school, and recommended further assessment to determine whether she would benefit from a 504 plan. That is a formal plan authorized by section 504 of the Rehabilitation Act of 1973 to provide equal access to education by implementing accommodations for disabled students. (29 U.S.C. § 794.) Dr. Tan also recommended mental health interventions and a wide variety of educational interventions.

NEWPORT-MESA'S REACTION TO DR. TAN'S ASSESSMENT REPORT

On or about January 30, 2024, Parents provided Dr. Tan's report to fifth-grade teacher Botta, who promptly reviewed and annotated it. Rather than requesting an assessment, however, Botta then referred the matter to Newport-Mesa's 504 coordinator.

Botta's failure to refer Student for assessment upon receiving Dr. Tan's assessment report reflected Newport-Mesa's longstanding policy of exhausting all general education interventions before referring a student for a special education assessment. According to Newport-Mesa witnesses, the policy may not have been written anywhere, and may have been only a suggestion. However, the teachers' testimony showed that Newport-Mesa staff understand it to require presentation of the need for assessment to a Student Study Team, called an SST, before actually conducting an assessment.

Botta filled out a lengthy SST form describing her observations of Student, which corroborated the conclusions of Dr. Tan. She informed the SST that Student's behavior included

- extreme disorganization and loss of materials and devices,
- perseverations on preferred subjects such as geography,
- failures at interpersonal relationships,
- a low frustration level, and
- emotional dysregulation.

Botta made these observations earlier in Student's fifth-grade year and before Dr. Tan's assessment. They reflected what Botta had learned in the fall of Student's fifth-grade year.

(This space is intentionally left blank. Text continues on the following page.)

It took Newport-Mesa nearly three months to organize an SST meeting. The staffing of Student's SST was nearly identical to that of an IEP team. The SST included

- a principal,
- general and special education teachers,
- a school psychologist,
- a speech and language pathologist,
- an SST coordinator, and
- Parents.

Newport-Mesa first proposed an SST meeting on February 20, 2024, but Parents could not attend on that date. The next available date given to Parents was April 22, 2024, and the SST met on that day. On that day the SST referred Student for a special education assessment. On April 26, 2024, Newport-Mesa offered Parents an assessment plan, and on April 29, 2024, Parents consented to the plan.

Newport-Mesa attributes part of these delays to Parents. However, placing the burden on parents to identify their child as a student with a disability is "precisely what the Child Find duty forbids." (*Culley v. Cumberland Valley Sch. Dist.* (3d Cir. 2018) 758 Fed.Appx. 301, 306 [nonpub. opn.]) "[T]he IDEA imposes the Child Find obligation upon school districts, not the parents of disabled students." (*Krawietz v. Galveston Indep. School Dist.* (5th Cir. 2018) 900 F.3d 673, 677.)

Newport-Mesa also attributes some of its delays to the difficulty in coordinating the schedules of SST members, and the "availability of dates on the District calendar," which was affected by President's Week and Conference Week. But Newport-Mesa's delay until April 22, 2024, in holding the SST meeting caused great difficulties for

Parents and Student, as described below. Nothing in special education law requires or encourages a school district to restrain a teacher from referring a student for an initial special education assessment by requiring an additional opinion such as from an SST. A referral may be made by a teacher alone, without further approval. (34 C.F.R. § 300.301(b)(2007); Ed. Code, sec. 56029, subd. (b).)

Newport-Mesa also contends that its delay may have been justified by the need to exhaust general education remedies before turning to special education, as required by section 56303 of the Education Code. However, teachers Edler and Botta satisfied that requirement when they employed general education interventions for more than a year before Dr. Tan's assessment. In any event, resort to general education interventions does not justify delaying an assessment that a district suspects may be required. (*Letter to Torres* (OSEP 2009) 53 IDELR 333; Cal. Code Regs., tit. 5, § 3021, subd. (b)(2).)

However, the fact that Newport-Mesa violated its child find duty does not mean that it denied Student a FAPE. In *R.B. v. Napa Valley Unified Sch. Dist.* (2007) 496 F.3d 932, the Ninth Circuit held that a school district had violated the IDEA by not having a special education teacher or provider on an IEP team. But it declined to afford the student any relief for the violation because it also found that the student was not eligible for special education and services: "Because [Student] is substantively ineligible for IDEA relief, we hold that the procedural error in the composition of her IEP team was harmless." (*Id.* at 941.)

S.B. v. San Mateo Foster City Sch. Dist. (N.D.Cal., April 11, 2017, No. 6-cv-01789-EDL) 2017 WL 4856868, is similar to this case. There the District Court affirmed an ALJ's findings that, although the school district had violated the IDEA's child find requirements, the violation was harmless because the student was not eligible for

special education. (*Id.* at pp. 11, 18.) The District Court read *R.B. v. Napa Valley, supra*, as holding: “[W]hen a student is not eligible for IDEA opportunities, she cannot lose those opportunities because of a procedural violation. [Citation.]” (*S.B. v. San Mateo Foster City Sch. Dist., supra*, at p. 18.)

Student relies in part on a “presumption of [Student’s] eventual finding of eligibility” to establish that she was entitled to a FAPE before September 6, 2024. However, Student cites no authority for the existence of such a presumption. Student also relies on the expert testimony of Dr. Marta Shinn, a clinical psychologist, who conducted an independent educational evaluation of Student. Dr. Shinn opined at hearing that Student should have been found eligible for special education long before September 6, 2024, perhaps as early as the fourth grade.

Dr. Shinn’s opinion was admitted without objection. However, it cannot be considered here and does not establish that Student was eligible for special education before September 6, 2024. Student did not plead or prove that she was eligible for special education before that date. The issue statement in the Order Following Prehearing Conference does not address any claim of eligibility. The IDEA prohibits Student from raising an issue in this hearing that was not pled in her complaint. (20 U.S.C. § 1415(f)(3)(B).)

Therefore, although Newport-Mesa violated its child find duty before September 6, 2024, Student has not shown eligibility during that period. Newport-Mesa did not owe Student a FAPE until September 6, 2024, and its child find violation was therefore harmless.

ISSUE 4: DID NEWPORT-MESA DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE GOALS IN THE IEPs DATED SEPTEMBER 6, 2024, FEBRUARY 25, 2025, AND APRIL 22, 2025, TO ADDRESS HER NEEDS IN 13 IDENTIFIED AREAS?

By summer 2024, Parents had become frustrated with Newport-Mesa's slow progress toward conducting an assessment, so they withdrew Student from Newport-Mesa and enrolled her in the Fusion Academy, a private school. Newport-Mesa argues that Parents should not be awarded the costs of Fusion Academy because they privately placed Student before Newport-Mesa's assessments began, showing an intent to leave Newport-Mesa no matter what the assessments showed. But Parents had been waiting for assessments since January, and a new school year was approaching. When Student's fifth-grade year ended on June 7, 2024, Newport-Mesa had not conducted any formal assessment of her, and Student had no educational program for sixth grade other than general education. It was for those reasons that Parents sought a private placement, not just as a prelude to seeking reimbursement.

On August 15, 2024, Parents' attorney notified Newport-Mesa that Parents did not believe Newport-Mesa was providing Student a FAPE and had enrolled her in Fusion Academy. The notice stated that Parents would seek reimbursement for the costs of Fusion Academy, but wanted to continue attending IEP team meetings with Newport-Mesa. Because of that request, Student's IEP team met three more times before this request for a due process hearing was filed.

(This space is intentionally left blank. Text continues on the following page.)

Newport-Mesa contends that even if it violated its child find duties before September 6, 2024, its liability ceases after that date. Newport-Mesa reasons that it should not be held liable for a denial of FAPE after that date because it offered Student a series of legally compliant IEPs that would have gone into effect starting on September 6, 2024, if Parents had consented to them.

Student contends that each of the three IEP offers following her unilateral placement failed to offer her a FAPE for a wide variety of reasons. Student therefore requests reimbursement of Parents' expenses in providing the Fusion Academy placement.

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 (2006).) 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); see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2007), and 300.501 (2006).)

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 Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 304; 73 L.Ed.2d 690]; *Andrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000; 197 L.Ed.2d 335].)

An IEP must contain a statement of the student's present levels of academic achievement and functional performance, including the effects of the student's disability on the student's involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (a)(1)(2007); Ed. Code, § 56345, subd. (a)(1).) The present levels of performance become baselines for designing educational programming and measuring a student's future progress. Toward annual goals.

An annual IEP must contain a statement of measurable annual goals designed to:

1. meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and
2. meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).)

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period under the child's special education program. (*Letter to Butler* (OSERS 1988); 213 IDELR 118; (Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

Parents consented to an assessment plan on April 29, 2024. Newport-Mesa made little if any effort to conduct the authorized assessments before the end of the school year on June 7, 2024. However, upon receipt of Parents' notice of unilateral placement, Newport-Mesa quickly conducted all of its assessments of Student and reported on them at the September 6, 2024 IEP team meeting, a period of 15 days.

Newport-Mesa began a psychoeducational assessment on August 22, 2024, and in the next two weeks also conducted assessments in academic achievement, speech and language, and health. However, by that time Student was enrolled in Fusion Academy, so Newport-Mesa staff had to observe and assess her there. At Fusion Academy, Newport-Mesa assessors were largely limited to Zoom views of Student, since Parents would not authorize in-person observations. Newport-Mesa's assessors were able to watch Student for 45 minutes as she was being instructed by a single teacher, which was Fusion Academy's method of teaching academics. They also watched her for 40 minutes in a small group unstructured setting. Newport-Mesa had no adequate opportunity to observe Student interacting with others in a classroom or other structured group activity, or to evaluate the status of her executive functioning.

Critically, Newport-Mesa had no adequate opportunity to identify Student's present levels of performance in a structured group or classroom setting.

NEWPORT-MESA'S IEP OFFERS

Student's IEP team met on September 6, 2024, to review the recent assessments of her and to determine whether Student was eligible for special education and related services. The team decided that Student was primarily eligible for special education in the category of autism, and secondarily in the category of speech or language impairment. The IEP team developed, and offered Student a full IEP with placement at Harbor View Elementary School for the rest of sixth grade. Under the terms of that IEP offer, Student would have been in general education 97 percent of the time with services and supports. Parents declined the offer, and Student remained in the sixth grade at Fusion Academy.

Student's IEP team met again on February 25, 2025, to consider amending the September 6, 2024 offer, but it did not significantly change the earlier offer. Parents again declined consent.

Student's IEP team met once more, on April 22, 2025, but again did not significantly change the earlier offer. Parents again declined consent. Student finished her sixth-grade year at Fusion Academy and, at the time of hearing, was well into the seventh grade there.

None of those IEP offers overcame Newport-Mesa's fundamental problem of not being able to determine Student's present levels of performance in her relations with peers or in executive functioning, and as a result not being able to write legally compliant goals.

The offer of September 6, 2024, contained six proposed annual goals. They addressed group work with peers, non-literal language, responding to disappointment, and coping skills. In the absence of current present levels of performance, Newport-Mesa recognized that its proposed goals were insufficiently specific and measurable. In the group work goal, the following baseline appears:

According to teacher feedback, [Student] has difficulty with peer interaction in the class during partner/group work. Her teacher reports that she will leave a group, become argumentative, and/or go off topic. *Additional baselines will be added within the first 30 days of attendance in a public school program.* (Emphasis added.)

(This space is intentionally left blank. Text continues on the following page.)

The coping skills goal was written in the same way:

[Student] independently uses a calming strategy appropriately or asks for a break about 25% of the time. Additional baselines will be added within the first 30 days of attendance in a public school program.

In addition, Newport-Mesa's offered goals did not show the required direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040(b).) The offered goals included various numerical values that had no apparent source. For example, the group work goal would have required Student to earn "a rubric score of at least 15/20 - (or equivalent to meeting the standard) in four of five opportunities.

On February 25 and April 22, 2025, Newport-Mesa conducted amendment IEP team meetings for Student and offered annual goals that were the same as the goals offered in September 2024 or only slightly revised. They stated present levels of performance from no defined time period and with no apparent source. For example, a goal offered in the February 25, 2025 document states this present level: "Given disappointing hypothetical or real life social scenarios, (Student) provides an empathetic/supportive response with appropriate tone, with 3% accuracy." Since Newport-Mesa had no recent opportunity to evaluate whether Student provided an empathetic/supportive response with appropriate tone, the source of this present level is unknown.

Some of the goals offered in the February 25 and April 22, 2025 IEP offers again contained the statement that Newport-Mesa would add additional baselines within the first 30 days of Student's return to public school. Newport-Mesa's perception that more was needed was correct, and was a recognition that those goals were inadequate as written.

Newport-Mesa's unwillingness to complete the goals unless Parents returned Student to public school and then waited while observation occurred was particularly unreasonable. Student had already attended six different schools or education environments, and was well embarked on her new program at Fusion Academy. The evidence established that Student, like many children on the autism spectrum, did not handle transitions well. The demand for another change of placement, a few weeks after Student's move to Fusion Academy, was unreasonable and coercive.

Newport-Mesa's failure to offer Student appropriate annual IEP goals denied Student a FAPE during the 2024-2025 school year. The incomplete goals and conditional promises to expand them rendered the September 6, 2024, February 25, 2025, and April 22, 2025 IEPs legally insufficient. The partial present levels in the flawed goals, by themselves, were neither adequately detailed or useful as baselines. The incomplete goals also violated the longstanding principle that an IEP offer must be clear and understandable to parents. (See *Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1527.) Goals that would only have adequate present levels at some time in the future do not equip a parent to make an informed decision whether to consent to an IEP.

The parties make additional arguments concerning the goals, but it is not necessary to resolve them. The flaws noted above were serious enough to invalidate all three IEP offers. Annual goals are the heart of an IEP, and are so important that they must be revised annually even during periods in which the stay put rule is in effect. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1058 [second grade IEP did not provide accurate assessment of student's present levels of performance during third grade.]) The Ninth Circuit once described progress on annual goals as "the correct

standard for measuring educational benefit under the IDEA." (*County of San Diego v. Special Educ. Hearing Office, supra*, 93 F.3d 1458 at p. 1467.) Without measurable goals, that progress cannot be determined.

Student met her burden to prove that the IEP offers of September 6, 2024, and March 25 and April 22, 2025, did not offer her a FAPE. Newport-Mesa is therefore liable for a denial of FAPE from September 6, 2024, to July 25, 2025, the date of filing this request for due process hearing.

There is no need here to resolve Student's remaining contentions regarding services and placement, because the relief afforded here would be the same whether or not those remaining contentions were persuasive.

RELIEF

Student is not personally entitled to relief from Newport-Mesa's child find violation since it was not pled or proved that she was eligible for special education during the time of that violation. However, appropriate relief, such as training of staff, may be required of a school district rather than specifically for a student. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 444 F.3d 1149, 11561157.)

Here the evidence showed that Student's fourth and fifth-grade teachers should have timely referred Student for a special education assessment but did not. It also showed that requiring approval of an assessment by an SST greatly delayed assessment. Newport-Mesa staff should be trained on the relationship between child find duties and general education remedies, with an emphasis on the need to avoid protracted delays in referring a student for assessment.

Student is, however, entitled to relief because of Newport-Mesa's denial of FAPE from September 6, 2024, to July 25, 2025, the date of filing of this request for due process.

In remedying a FAPE denial, the 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) (2006).) The purpose of the IDEA is to provide students with disabilities a FAPE which emphasizes special education and related services to meet their unique needs. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385].)

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parent proves at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c)(2006); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c)(2006); *Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284]. In *C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, the Ninth Circuit set forth the standards to be applied in determining whether a private placement is appropriate for the purpose of reimbursement. There a student had benefited substantially from a private placement, but parents had been awarded only partial reimbursement because the placement did not address all of the student's special education needs. (*Id.* at

pp. 1157-1158.) The Court of Appeals held that parents were entitled to full reimbursement because the IDEA “does not require that a private school placement provide all services that a disabled student needs in order to permit full reimbursement.” (*Id.* at p. 1158; see also *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048; *M.N. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 509 Fed.Appx. 640, 641 [nonpub. opn].)

Newport-Mesa contends that it should not have to reimburse Parents for their Fusion Academy expenses because Fusion Academy was not an appropriate placement. It argues that Student introduced no resumes or otherwise proved the qualifications of the teachers. However, there was no requirement that Student present that specific evidence, and the private placement did not have to conform to state standards of training or credentialing.

Newport-Mesa also relies on the testimony of Susan Hanuschak, an experienced teacher, who opined at hearing that Fusion Academy was an inappropriate placement because it would not allow for sufficient interactions with peers. However, Hanuschak’s only observation of Student interacting with peers at Fusion Academy was over Zoom, lasted 40 minutes, and showed Student participating in an unstructured group setting. Hanuschak did not claim to know how much contact Student had with peers at Fusion Academy.

More persuasive evidence showed that Student’s relationship with peers at Fusion Academy was improving. Father testified that Student was participating in social events, the yearbook club and the debate club, and was developing friendships. That testimony was supplemented by letters and reports from Fusion Academy staff. A letter from Fusion Academy’s Director stated that Student’s experience there “was marked by

her successful integration into the campus community” and that she regularly participated in social activities and developed meaningful relationships with both her teachers and fellow students. Her Earth Science teacher reported that she had shown a strong ability to work collaboratively. These letters and reports were hearsay, but they were admissible to supplement and explain Father’s direct testimony. (Cal. Code Regs., tit. 5, § 3082, subd. (b).) Taken together, this evidence outweighed Hanuschak’s opinion.

Newport-Mesa also contends that Fusion Academy did not address all of Student’s needs as identified by the IEP team or provide the same opportunities that are available in Newport-Mesa’s IEP offers. However, there is no requirement that the private placement address all the needs a district’s IEP team perceives, nor is there any requirement that Parents show a private placement is better than the district's proposed placement.

Student showed that Fusion Academy was an appropriate placement according to the standards set forth in *C.B. v. Garden Grove Unified Sch. Dist., supra*, 635 F.3d 1155, at pp. 1159-1160.) Student introduced documentary proof of expenditures related to Fusion Academy in the amount of \$103,291.80, and nearly six thousand dollars in related expenses. Newport-Mesa does not question that calculation, nor does it disagree with the appropriateness of any particular item if reimbursement is to be awarded. Parents’ reimbursable expenses were:

Expense	Amount
Fusion Academy	\$103,291.80
Grow Therapy	\$424.09
Headway Psychotherapy	\$180.00
Dr. Marta Shinn Assessment	\$1,650.00
Dr. Alexander Tan Assessment	\$3,600.00
Total	\$109,145.89

The 2024-2025 school year at Newport-Mesa began on August 19, 2024, ended on June 7, 2025, and lasted 180 instructional days. The denial of FAPE did not begin until September 6, 2024, so Student is not entitled to reimbursement for the first 13 of those 180 days. Reimbursement for 167 instructional days rather than 180, proportionally reduces the total allowable amount of reimbursement to \$101,263.79.

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:

Newport-Mesa denied student a FAPE by failing timely to identify, locate and assess her when it suspected, or should have suspected, that she may have had a disability that may have required special education and services.

Student prevailed on Issue 1 to the extent that she established that a child find violation occurred. She did not establish that the violation denied her a FAPE.

ISSUE 2:

Newport-Mesa denied Student a FAPE by failing to assess her in the areas of occupational therapy and auditory processing.

This issue was not decided because a finding in favor of Student would only entitle her to the same relief already accorded for other violations.

ISSUE 3:

Did Newport-Mesa deny Student a FAPE during the 2023-2024 school year by failing to offer appropriate accommodations and services to address her needs in six defined categories?

This issue was not decided. If Student met her burden of proof on Issue Three, Student would have established that Newport-Mesa denied her a FAPE beginning on September 6, 2024, when she was first found eligible for special education. That would have made reimbursement appropriate, and is the same period of time for which reimbursement is awarded on other grounds.

ISSUE 4:

Did Newport-Mesa deny Student a FAPE by failing to offer appropriate goals in the IEPs dated September 6, 2024, February 25, 2025, and April 22, 2025, to address her needs in:

- A. executive functioning;
- B. organization and planning;
- C. problem-solving;
- D. social skills;
- E. self-regulation;
- F. depression;
- G. anxiety;
- H. withdrawal

- I. working in groups;
- J. working independently;
- K. sensory processing;
- L. staying on task; and
- M. inattention?

Student prevailed on Issue 4, sub-issues (a), (d), and (i). The other sub-issues were not decided because appropriate relief would not have differed depending on whether Student prevailed or did not prevail on the additional sub-issues.

ISSUE 5:

Did Newport-Mesa deny Student a FAPE by failing to offer appropriate services in the IEPs dated September 6, 2024, February 25, 2025, and April 22, 2025, to address her needs in 13 identified areas?

This issue was not decided because appropriate relief would not have differed depending on whether Student prevailed or did not prevail on the issue.

ISSUE 6:

Did Newport-Mesa deny Student a FAPE by failing to offer an appropriate placement in the IEPs of September 6, 2024, February 25, 2025, and April 22, 2025, to address her needs in 13 identified areas?

This issue was not decided because appropriate relief would not have differed depending on whether Student prevailed or did not prevail on the issue.

ORDER

1. Within 90 days of the date of this Decision, Newport-Mesa shall reimburse Parents for tuition and related expenses in placing Student at the Fusion Academy from September 6, 2024, through June 7, 2025, in the amount of \$101,263.79.
2. Newport-Mesa shall provide its staff with five hours of training on the relationship between child find duties and general education remedies, with an emphasis on the need to avoid protracted delays in referring a student for assessment. This training shall be provided by one or more experienced special education attorneys not affiliated with the law firm that represented Newport-Mesa in this matter. It shall be provided to district-level special education supervisory staff, program specialists, and all special education staff and general education teachers at Harbor View Elementary School.

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.

Charles Marson
Administrative Law Judge
Office of Administrative Hearings