

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

MORAGA SCHOOL DISTRICT.

CASE NO. 2025110028

DECISION

JULY 10, 2026

On October 31, 2025, the Office of Administrative Hearings, called OAH, received Student's request for a due process hearing, naming Moraga School District. OAH continued the due process hearing for good cause on November 21, 2025. Administrative Law Judge Robert G. Martin heard this matter by videoconference on April 14, 15, 16, 23, 28, 29, and 30, and May 5, 6, 7, 8, and 11, 2026.

Parent represented Student. Attorney Erin Frazor represented Moraga. Moraga Superintendent Dr. Julie Parks attended all hearing days on Moraga's behalf. At the parties' request, the matter was continued to June 8, 2026, for written closing briefs. District submitted a timely closing brief. Student did not submit a closing brief. The record was closed and the matter was submitted on June 8, 2026.

ISSUES

In this Decision, a free appropriate public education is called a FAPE. An individualized education program is called an IEP. Issues 1 and 2 have been reordered from the prehearing conference to provide a better chronological narrative.

1. Did Moraga deny Student a FAPE from October 31, 2023, to February 20, 2024, by failing to offer Student placement at Los Perales Elementary School?
2. Did Moraga deny Student a FAPE from October 31, 2023, to the filing of Student's complaint on October 31, 2025, by failing to assess Student's need for:
 - A. Educationally related mental health services?
 - B. Occupational therapy?
3. Did Moraga's December 19, 2024, initial IEP for Student, completed February 3, 2025, deny Student a FAPE by failing to offer Student:
 - A. An adequate amount of specialized academic instruction?
 - B. An adequate amount of speech and language services?
 - C. An adequate amount of counseling services?
 - D. Any occupational therapy services?
4. Did Moraga deny Student a FAPE from the start of the 2025-2026 school year to the filing of the complaint on October 31, 2025, by requiring Parent to complete an interdistrict permit application as a condition to allowing Student to attend school?

5. Did Moraga violate Parent's procedural rights and deny Student a FAPE by failing to timely provide a copy of Student's educational records after Parent, through Student's attorney, requested them on May 23, 2025?

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 free appropriate public education, called 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 and Education Code afford 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

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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 requested the hearing and therefore had the burden of proving the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was eight years old and in second grade at the time of hearing. Student resided within Moraga's geographic boundaries until summer 2023, when his family was forced to move outside the district so that repairs could be made to their dwelling. Student thereafter remained enrolled in Moraga either based on residence within Moraga's geographic boundaries, or under the McKinney-Vento Homeless Assistance Act's Education for Homeless Children and Youth Program (hereafter McKinney-Vento) (42 U.S.C. §§ 11431-11435) until September 2025, when Parent enrolled Student in a different school district.

Based on Student's initial evaluation in December 2024, Student's IEP team found Student eligible for special education and related services under the categories of specific learning disability and speech or language impairment. The IEP team also found Student required educationally related mental health services. However, Parent disagreed with the IEP and did not consent to any part of it, and Student has never received special education services.

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ISSUE 1: DID MORAGA DENY STUDENT A FAPE FROM OCTOBER 31, 2023, TO FEBRUARY 20, 2024, BY FAILING TO OFFER STUDENT PLACEMENT AT LOS PERALES ELEMENTARY SCHOOL?

Student contended Moraga denied Student a FAPE by failing to place Student at Moraga's Los Perales Elementary School for the 2023-2024 school year, as it was required to do under provisions of McKinney-Vento. Moraga contended that OAH does not have jurisdiction over claimed violations of McKinney-Vento Act, and that Moraga reasonably was unaware Student was eligible for McKinney-Vento protections. Moraga also contended Student was not eligible for special education during the relevant period and therefore could not have been denied a FAPE, and, in any event, an offer of placement at a particular school site would not have been required to provide Student a FAPE.

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 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

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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].)

At the start of the 2022-2023 school year, Student resided in Moraga's geographical area, within the attendance boundary of Rheem Elementary School. Because Rheem did not have a transitional kindergarten program, Student attended Los Perales Elementary School for his transitional kindergarten 2022-2023 school year. Knowing Student's school of residence was Rheem, but preferring Los Perales, Parent near the end of the 2022-2023 school year submitted an intradistrict transfer request to Moraga, requesting approval for Student to attend Los Perales for his 2023-2024 kindergarten school year so that he could remain with his friends there. District denied the intradistrict transfer request in early June 2023, explaining Los Perales did not have space in its kindergarten classes for students who lived outside its attendance area.

Student's contentions regarding McKinney-Vento arose because, in the fall of 2022, the building where Student's family lived suffered structural damage, and they were forced to vacate their apartment. Parent and Student were still temporarily living with family members at the start of the 2023-2024 school year. They did not move to a permanent address in Oakland until September 2023.

Student contended Moraga knew Student was unhoused and therefore entitled under provisions of McKinney-Vento to continue to attend Los Perales Elementary School for the 2023-2024 school year. Moraga denies it knew Student's status, in part

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because Parent did not return registration documents sent by Moraga for the 2023-2024 school year. These included an annual housing questionnaire Moraga relied on to identify students who lacked permanent housing and might be eligible for McKinney-Vento protections. In light of the legal conclusions in the following sections, it is not necessary to determine what Moraga knew about Student's housing situation, or when.

A VIOLATION OF MCKINNEY-VENTO IS NOT A FAPE DENIAL, AND OAH DOES NOT HAVE JURISDICTION TO DECIDE A CLAIM THAT IS BASED SOLELY ON MCKINNEY-VENTO

Student's placement arguments focused on Moraga's alleged violation of McKinney-Vento. McKinney-Vento is part of the No Child Left Behind Act of 2001. Its purpose is to ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education as provided to other children and youths. (42 U.S.C. § 11431.) Its principal provisions are incorporated in Education Code sections 48850 to 48859, Education of Pupils in Foster Care and Pupils Who Are Homeless.

McKinney-Vento and the Education Code define homeless children and youths as those lacking a fixed, regular, and adequate nighttime residence, including children and youths who are sharing the housing of other persons due to loss of housing. (42 U.S.C. § 11434a(2)(A) and (B)(1); Ed. Code, § 48859, subd. (c).) Such children are entitled for the duration of their homelessness to attend their "school of origin," the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled. (42 U.S.C. § 11432(g)(3)(A)(i) and (I)(i); Ed. Code, § 48852.7, subd. (a); § 48859, subd. (c).) If the child's family finds permanent housing during a

school year, the child is entitled to remain in their school of origin for the remainder of the school year; or, in the case of high school students, through the rest of high school. (42 U.S.C. § 11432(g)(3)(A)(i)(II); Ed. Code, § 48852.7, subd. (b).)

The IDEA requires that any state receiving IDEA funds must ensure that the IDEA's provisions are available to children and youths with disabilities who qualify as homeless under McKinney-Vento. (20 U.S.C. § 1412(a)(11)(A)(iii); 34 CFR § 300.149(a)(3).) McKinney-Vento requires districts to coordinate the provision of services under McKinney-Vento with the provision of programs for children with disabilities under the IDEA. (42 U.S.C.A. § 11432 (g)(5)(D).) However, neither the IDEA nor McKinney-Vento provide that compliance with McKinney-Vento's terms is required to provide a student a FAPE. (See, Ed. Code, § 48852.7, subd. (d) ("It is the intent of the Legislature that this section [regarding homeless students' rights to attend their school of origin] shall not supersede or exceed other laws governing special education services for eligible homeless children.")) An alleged violation of McKinney-Vento's school of origin provisions is not a denial of a student's right to a FAPE under the IDEA or Education Code.

OAH does not have jurisdiction to decide a claim that is based solely on McKinney-Vento. OAH's jurisdiction is limited to those matters the IDEA and Education Code authorize parties to bring before OAH for a due process hearing. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) These are, a complaint regarding a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child, the provision of a FAPE to a child,

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the refusal of a parent or guardian to consent to an assessment of a child, or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility. (*Ibid.*; 20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

OAH's jurisdiction therefore does not extend to claimed violations of McKinney-Vento provisions. Disputes between parents and school districts concerning a homeless student's right to a particular placement under McKinney-Vento or California law are addressed through an appeals process that does not involve OAH. (42 U.S.C. § 11432(g)(3)(E)(ii).) California's procedures are set forth in a January 30, 2007, letter from the California Department of Education. www.cde.ca.gov/sp/hs/cy/disputeres.asp.) The California Department of Education's established process to resolve these disputes does not grant OAH jurisdiction to determine whether Student is entitled to the protections of McKinney-Vento. To the extent Student is claiming a right to relief because Moraga's failure to place him at Los Perales Elementary at the start of the 2023-2024 school year violated McKinney-Vento, OAH lacks jurisdiction to decide such a claim.

MORAGA WAS NOT REQUIRED TO OFFER STUDENT A FAPE DURING THE PERIOD FROM OCTOBER 31, 2023, TO FEBRUARY 20, 2024

To prevail on a FAPE claim against a school district based on an inappropriate placement offer, a student must prove either that they had been found eligible for special education at the time of the alleged violation, or that the district should have found them eligible at the time. (*R.B., ex rel. F.B. v. Napa Valley Unified School Dist.*

(9th Cir. 2007) 496 F.3d 932, 942 (*R.B. v. Napa Valley*)["a child ineligible for IDEA opportunities in the first instance cannot lose those opportunities merely because a procedural violation takes place.... In other words, a procedural violation cannot qualify an otherwise ineligible student for IDEA relief."].)

As discussed in Issue 2 that follows this section, Student did not prove that Moraga should have found Student eligible for special education until after February 20, 2024. Moraga was therefore not required to offer Student a FAPE, or a placement qualifying as appropriate for Student as a child with a disability, during the relevant period for Student's Issue 1.

NO FAPE REQUIREMENT TO OFFER STUDENT PLACEMENT AT LOS PERALES

Even if Student had begun the 2023-2024 school year eligible for special education, a student with a disability under the IDEA is only entitled to placement at a particular school other than his school of residence if the other school is the only one able to meet the needs of the student's IEP. (See, *Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (PS 79) v. N.Y.C. Bd. of Educ.* (2d Cir.1980) 629 F.2d 751, 756; *N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.)

In this case, Student identified no needs relating to any of his ultimately identified disabilities that could not be met at Rheem Elementary School and required him to be placed at Los Perales Elementary School.

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Student failed to prove that Moraga denied him a FAPE by failing to offer him placement at Los Perales Elementary School from October 31, 2023, to February 20, 2024.

Moraga prevailed on Issue 1.

ISSUE 2A: DID MORAGA DENY STUDENT A FAPE FROM OCTOBER 31, 2023, TO THE FILING OF STUDENT'S COMPLAINT ON OCTOBER 31, 2025, BY FAILING TO ASSESS STUDENT'S NEED FOR EDUCATIONALLY RELATED MENTAL HEALTH SERVICES?

Student contended Moraga denied him a FAPE by failing to conduct an educationally related mental health services assessment of Student, despite his symptoms of anxiety and depression caused by bullying that started in kindergarten in the fall of 2023. Moraga contended its December 2024 psychoeducational evaluation of Student was timely, and included an educationally related mental health services assessment that looked specifically at Student's social and emotional functioning and determined he had an emotional disability and a need for specialized counseling as an educationally related mental health service.

Educationally related mental health services are mental health services provided to students who have social, emotional, or behavioral issues that interfere with their educational progress. (Bus. & Prof. Code, § 4989.14, subd. (a).) Such services may include regular and intensive individual counseling, group counseling, parent counseling and training, staff consultation, social work services, and mobilizing school and community resources. (*Ibid.*) A need for educationally related mental health services is not itself a

category of disability under the IDEA or Education Code. However, a determination that a student qualifies for educationally related mental health services necessarily includes a determination that the student is eligible for special education, because a student must be eligible for special education to qualify for related services. (20 U.S.C.A. § 1401 (26) (related services mean transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education); Ed. Code, § 56363, subd. (a).) To qualify for educationally related mental health services, a student may be found eligible for special education under the category of emotional disability, or any of the other 12 categories of disability identified in California Code of Regulations, title 5, section 3030, subdivision (b). The law does not require that a child be classified by their disability, as long as each child who has a listed disability and needs special education and related services as a result of the disability receives the special education and related services he or she needs to access her education. (Ed. Code, §56301, subd. (a).)

A school district's obligation to conduct an initial evaluation of a student is triggered when the district has notice that the student has displayed symptoms of a disability potentially requiring special education. (*Timothy O.*, *supra*, 822 F.3d at pp. 1119-20.) A district may be put on notice through concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or by less formal indicators, such as the child's behavior at school. (*Id.* at pp. 1119-1121 [citing *Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

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Once a school district is on notice that a child may have a disability, it has a duty to propose an assessment. (*D.O. By and Through Walker v. Escondido Union School District* (9th Cir. 2023) 59 F.4th 394, 408 (*D.O. v. Escondido*).) This is so regardless of the subjective views of its staff members concerning the likely outcome of such an assessment. This is because the identification and assessment of children who have disabilities should be a cooperative and consultative process, and parents are entitled to notification of, and the opportunity to contest, conclusions regarding their children. (*Timothy O., supra*, 822 F.3d at 1121.)

A district may not delay its assessment of a student with a suspected disability on the basis that it is waiting to determine the effectiveness of general education interventions such as a response to intervention process. (See Office of Special Education Programs (OSEP) *Memorandum 11-07 to State Directors of Special Education, A Response to Intervention Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the IDEA* (January 21, 2011) 56 IDELR 50.) Similarly, a district cannot delay assessing a student while waiting to see whether a 504 Plan can address the student's needs. In *N.N. v. Mountain View-Los Altos Union High School District* (N.D. Cal., Aug. 4, 2022, No. 20-CV-08010-VKD) 2022 WL 3109588 (*N.N. v. Mountainview*), the court rejected the contention that Education Code section 56303's requirement that districts consider, and where appropriate utilize, resources of the regular education program before referring a pupil for special educational instruction and services, applied to referring students for assessments. (*Id.* at *27.) The court further noted that such an

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interpretation would be unenforceable in any event, because state law cannot override the IDEA's requirements regarding the child find obligation. (*Ibid.*, citing *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947; see also, *D.O. v. Escondido*, *supra*, 59 F.4th 394, 409 [State standards must be consistent with federal standards under the IDEA to be enforceable in federal court].)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).) However, some consideration of subsequent events may be permissible if the additional data "provide[s] significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." (*E.M. v. Pajaro Valley Unified School Dist.*, 652 F.3d 999, 1006 (9th Cir. 2011) (quoting *Adams*, 195 F.3d at 1149) (*E.M. v. Pajaro*).)

The procedural violation of failing to assess a student does not automatically require a finding that a FAPE was denied. A due process decision on a case brought by a student must be based on substantive grounds when determining whether a child has

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been offered a FAPE. (Ed. Code, § 56505, subd. (f)(1).) A due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- Impeded the right of the child to a FAPE.
- Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child.
- Caused a deprivation of educational benefits.

(Ed. Code, § 56505, subd. (f)(2).)

MORAGA'S DUTY TO ASSESS STUDENT FOR SPECIAL EDUCATION AND EDUCATIONALLY RELATED MENTAL HEALTH SERVICES

Student's 2022-2023 school year in transitional kindergarten at Los Perales was uneventful. He enjoyed school and exhibited no behavioral issues or signs of anxiety or depression. His attendance was fair. He was present for 96 percent of the 180 days of the school year. Student was tardy 28 times, with three being over 30 minutes late. Student had two unexcused absences during the 180-day school year.

Student made progress in reading, writing, and math, and in his social-emotional development. On a three-tiered grading scale of meets grade level standards, approaching grade level standards, and below grade level standards, Student met grade level standards in 27 of 41 areas of academic skills and social-emotional development, and was approaching grade level standards in 11 other areas. Student's skills were below grade level in just three areas, counting to 20, recognizing

common shapes, and working independently. Student also exhibited some speech articulation difficulties. Moraga prepared a speech and language assessment plan for Student. Parent declined Moraga's offer of assessment, preferring to wait and see if Student would outgrow the speech issues on his own.

2023 TO FEBRUARY 2024 SCHOOL YEAR AT RHEEM

Student attended Rheem Elementary School for most of his kindergarten year. During the first trimester, from August 15 through November 3, 2023, Student's attendance and academic progress were similar to his prior school year. Student did, however, experience at least two incidents of physical aggression by two peers. On September 25, 2023, one of them spit water on Student and a classmate during recess. On October 5, 2023, the two offending students hit and scratched Student when he blocked a slide during gym class. Student's teacher did not observe similar incidents in her class, and she did not consider the peers' physical aggression to be repetitive and ongoing, or part of a pattern of bullying directed at Student. However, Student told Parent he was afraid of the other students. At a parent-teacher conference on October 24, 2023, Parent told Student's teacher Parent was concerned about Student being bullied by the two peers. Parent and teacher also discussed that Student had recently been sleeping in class. Parent said Student had begun staying up late playing video games, and asked that Student not be allowed to sleep in class.

In the weeks following the October 24, 2023, parent-teacher conference, Moraga developed a plan to separate Student from the two peers involved in the prior conflicts. Student's classroom teacher, and a designated classroom aide at recess and lunch, kept Student separated from the two peers involved in incidents with Student. Student's

teacher also made similar efforts to keep distance between the three peers in the classroom. No verbal or physical altercations between Student and peers were observed by his teacher in class.

From November 2023, Student's anxiety and attendance issues began noticeably affecting Student's educational progress. By winter break, Student's school attendance declined from 95 percent to 72 percent. Despite Moraga's efforts to prevent further incidents directed at Student, and the reduced incidence and intensity of peer aggression directed towards him, Student's educational progress declined markedly in the second trimester. Student began having trouble at the start of each day transitioning to school from Parent's car. Student would refuse to leave the car, telling Parent he was too tired to go to school, or afraid something bad would happen at school. Initially, Parent and Moraga staff could usually convince Student within a half-hour or so to leave the car and come to school, but as the problem worsened Student sometimes could not be convinced to leave the car at all and would miss entire days of school.

On December 1, 2023, Rheem's principal Brian Sullivan and school counselor Andrea Nishimi held a conference with Parent to discuss Parent's report that Student was contemplating self-harm, and had made comments about wishing to be dead. On December 4, 2023, Nishimi conducted a risk assessment to determine the likelihood of Student engaging in self-harm and determined the risk of Student hurting himself was low. Nishimi reported the results of her risk assessment to Parent, who requested counseling for Student. Nishimi agreed to provide Student eight weekly half-hour sessions of school counseling, beginning December 14, 2023, focused on helping Student develop strategies for dealing with peers. On December 19, 2023, Nishimi also began assisting Parent to transition Student from Parent's car into school each morning.

Moraga was aware of Parent concerns of other bullying incidents that Moraga could not independently verify. Parent told staff in mid-January 2024 that the two peers continued to sometimes chase and be mean to Student on the playground. In late January 2024, Student was bumped when he stopped in the bathroom, causing him to fall and cut his lip. Parent later reported a fourth incident when one of the peers allegedly whispered the N-word in Student's ear.

Moraga was also aware that Student's anxiety and poor attendance pattern continued after winter break. Parent was actively trying to get Student to school. Some days, Student would not get out of Parent's car until after Parent drove away and later returned. Other days, nothing Parent or Nishimi tried could convince Student to transition to school, and he would miss the entire day. Nishimi believed at the time that Student's school refusal might be due to several factors, including poor sleep, and anxiety over peer conflicts and academic demands. Whether Student's anxiety and school refusal were caused by alleged additional acts of bullying that Moraga did not believe were occurring, or another cause, was irrelevant to the question of whether Student was exhibiting symptoms of an emotional disability that might require special education and educationally related mental health services.

Student demonstrated increased academic struggles after November 2023. Student struggled with new reading, writing and speaking skills introduced in the second trimester. His foundational academic skills were below grade level in nine of 24 areas graded, including phonics, decoding or sight-reading simple words, and reading beginning reader texts. He could not write upper- and lower-case letters, write simple words phonetically, or express ideas through drawing, dictating and writing. He continued to have trouble speaking in clear and complete sentences.

Student's teacher and Moraga staff continued to be concerned about Student's poor attendance and progress in his second semester. Rheem's school psychologist Jennifer Esposito scheduled a student response team meeting held February 7, 2024, for Student's teacher, counselor Nishimi, and other Rheem staff to develop a plan to address concerns about Student's lack of academic progress, which included an actual decline in his reading skills, poor attendance, poor speech intelligibility, and Parent concerns regarding bullying. At the conclusion of the meeting, the team assigned members to explore a speech observation of Student, and to meet with Parent to discuss possible positive behavior interventions and supports for Student, and holding a student study team meeting with Parent to consider other options.

Based on the above facts, Moraga had a duty as of the February 7, 2024, student response team meeting to refer Student for an initial evaluation for a suspected emotional disability that might require special education and educationally related mental health services. Moraga was clearly on notice that Student was displaying symptoms of such a disability, including a marked tendency over the previous four months to develop physical symptoms or fears associated with personal or school problems. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(4)(E).)

Student was struggling with significant attendance and academic issues, which were not resolving with general education counseling and what Moraga believed were successful attempts to eliminate bullying. Counselor Nishimi as of the student response team meeting believed Student's difficulty transitioning to school could be due to anxiety over peer interactions and school demands, and sleep issues which could also be associated with depression and anxiety.

Moraga should have begun the assessment process on February 7, 2024, by referring Student for assessment and preparing an assessment plan to submit to Parent for their consent. Moraga's failure to refer Student for assessment, hold an IEP team meeting, and offer him a FAPE significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and impeded Student's right to a FAPE.

Student proved by a preponderance of the evidence that Moraga denied him a FAPE by failing to refer him for assessment for special education and educationally related mental health services as of February 7, 2024.

FEBRUARY 2024 THROUGH 2024-2025 SCHOOL YEAR AT LOS PERALES

The student response team at Rheem did not go forward with its follow-up plans for Student because Parent removed Student from Rheem as of February 6, 2024, and requested an intradistrict transfer to Los Perales Elementary School based on the alleged ongoing bullying of Student. On February 13, 2024, Moraga granted Parent's transfer request. Student began attending Los Perales on February 20, 2024.

Student's transfer to Los Perales resolved concerns of ongoing bullying by peers, with no further incidents reported. However, it did not help with Student's attendance or academic issues. During the 63 schooldays of his third trimester of kindergarten at Los Perales, Student continued to be absent on 25-percent of school days and was tardy on two-thirds of the remaining school days. Student demonstrated grade level skills in only one of 29 graded academic areas measured. His skills were below grade level in 20 others, including 14 of 17 reading and language arts areas.

SEPTEMBER 27, 2024, STUDENT STUDY TEAM MEETING

Student's academic and attendance issues continued in Student's 2024-2025 first grade year at Los Perales Elementary School. Los Perales referred Student for a student study team meeting with Parent to consider options. The meeting was held on September 27, 2024, and led to additional support for Student, and a referral for an initial evaluation.

After the September meeting, Los Perales school counselor Roxana Rojas was assigned to help Student with his transitions from Parent's car to school. Rojas had helped Parent three times a month earlier, meeting Parent and Student at their car and helping get Student into class. This arrangement was now formalized. Rojas would meet Student at the car when he arrived, transition him to her office for a short check-in conversation to reassure him that she was there for him and help him feel comfortable being at school, and then bring him to class.

Student was also encouraged to come on his own to Rojas' office to talk with her, which he sometimes did. Rojas met with Student 58 times between October 3, 2024, and May 1, 2025, for a total of 16 hours over 26 weeks. In October through mid-February, these were usually quick five-minute check-in and check-out to class, with Rojas devoting approximately 30 minutes per week to Student. However, from mid-February through April 2025, Rojas usually spent between 25 minutes to an hour helping get Student from the car and getting him comfortable to attend class. This amounted to 90 minutes to two hours of Rojas' services per week, although most of her time was focused on transitioning Student from the car, rather than in broader conversations with Student. Rojas believed Student needed formal school-based counseling services in addition to her transitioning interventions. She wanted to offer

Student 25 minutes per week of group counseling sessions, but did not because she believed his erratic attendance, with missed days and late arrivals, would interfere with his ability to participate in group sessions at scheduled times.

Despite Rojas' transitioning support, Student's attendance worsened during first grade at Los Perales. He was tardy 42-percent of the days he attended school, and absent 31-percent of the 157 days of school before Parent removed him from school entirely on May 2, 2025.

STUDENT'S INITIAL EVALUATION

At the conclusion of the September 27, 2024 ,student study team meeting, in addition to providing transitioning support, the team referred Student for a comprehensive initial evaluation of his eligibility for special education and related services.

On October 15, 2024, Moraga developed an assessment plan for assessments of Student's academic achievement, health, intellectual development, language and speech communication development, and social, emotional, and behavior development. Parent signed consent to the assessment plan on October 22, 2024.

The psychoeducational evaluation, documented in a report dated December 18, 2024, was conducted by Jennifer Esposito, the school psychologist for both Rheem and Los Perales Elementary Schools. Esposito's undisputed testimony established that her evaluation of Student included an educationally related mental health assessment including observations of Student, information from parent, teachers, and Student's outside therapist, and social-emotional testing including rating scales and a mental status examination. Based on her educationally related mental health services

assessment, Esposito concluded Student met the eligibility criteria for an emotional disability and needed educationally related mental health services in the form of specialized counseling from a school psychologist.

Moraga's initial December 19, 2024, IEP offered Student eligibility for special education under the categories of specific learning disability and speech or language impairment. It also offered Student 20 minutes per week of individual school-based counseling from a school psychologist to address his emotional disability. Parent did not consent to any of the IEP.

Following the December 19, 2024 IEP team meeting, until the filing of Student's complaint on October 31, 2025, Parent did not ask Moraga to reassess Student in any area. Also, Student did not contend that there was any change in Student's circumstances or needs during that period that should have triggered Moraga to initiate a reassessment of Student's educationally related mental health.

Student proved by a preponderance of the evidence that Moraga denied him a FAPE by failing to refer him for assessment for special education and educationally related mental health services as of February 7, 2024. Student failed to prove that Moraga denied him a FAPE by failing to refer him for assessment during the period from October 31, 2023, through February 6, 2024, or by failing to refer him for reassessment of his need for educationally related mental health services between February 8, 2024, and October 31, 2025.

Student and Moraga each partially prevailed on Issue 2A.

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ISSUE 2B: DID MORAGA DENY STUDENT A FAPE FROM OCTOBER 31, 2023, TO THE FILING OF STUDENT'S COMPLAINT ON OCTOBER 31, 2025, BY FAILING TO ASSESS STUDENT'S NEED FOR OCCUPATIONAL THERAPY?

Student contended Moraga denied Student a FAPE by failing to assess his need for occupational therapy, particularly after receiving teacher rating scales and Parent's input as part of Student's 2024 initial psychoeducational evaluation and IEP that identified problems with attention. Student contended his attention issues indicated a potential issue with sensory processing that might require occupational therapy. Moraga contended there was no reason to suspect Student had any needs requiring occupational therapy.

Student failed to sustain his burden of proof on this issue. Student's only evidence was the psychoeducational evaluation's finding that Student had attention issues. Student's argument that this alone was a symptom of a possible sensory processing disability requiring occupational therapy was unsupported by any expert testimony and refuted by psychologist Esposito. Esposito's initial psychoeducational evaluation found Student's visual perception and visual motor integration skills were average, and his gross and fine motor skills appropriate. There was no indication of unmet sensory needs, and he was able to appropriately participate in his educational environment. Student presented no evidence of occupational therapy needs between the December 2024 IEP and October 31, 2025.

Student did not prove by a preponderance of the evidence that Moraga should have assessed Student's need for occupational therapy during the relevant time period. Moraga prevailed on Issue 1B.

ISSUES 3A, 3B, 3C AND 3D: DID MORAGA'S DECEMBER 19, 2024, INITIAL IEP FOR STUDENT, COMPLETED FEBRUARY 3, 2025, DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT AN ADEQUATE AMOUNT OF SPECIALIZED ACADEMIC INSTRUCTION, SPEECH AND LANGUAGE SERVICES, COUNSELING, AND OCCUPATIONAL THERAPY?

Student contended Moraga's initial IEP for Student denied him a FAPE by failing to offer an adequate amount of specialized academic instruction, speech and language services, counseling, and occupational therapy to meet his needs. Moraga contended it offered Student the amount of services recommended by Student's initial evaluators and which were reasonably calculated to allow Student to meet his goals.

A claim that an IEP failed to offer a FAPE is evaluated in light of information available at the time the IEP was developed; the IEP is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F. 3d 1141, 1149.) An IEP is a snapshot, not a retrospective. (*Ibid.*, citing *Furhmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

Considering a child's academic, developmental, and functional needs, an IEP must include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) Related services should enable the child to advance appropriate toward attaining annual goals, be involved in and make progress in the general education curriculum, and to be educated and participate with disabled and nondisabled peers. (Ed. Code, § 56345, subd. (a)(4).)

STUDENT'S INITIAL EVALUATION

Moraga conducted its initial evaluation of Student between November 2024 and January 2025. The evaluation included assessments in the areas of intellectual development, social-emotional and behavioral needs, academic achievement, language and speech communication development, and health. On April 9, 2025, Parent requested an independent psychoeducational evaluation, which Moraga granted, but Student did not dispute the appropriateness of Moraga's assessments in this action. Parent had not selected an independent educational evaluator as of the hearing.

STUDENT'S INITIAL IEP

Student's initial IEP team met three times. It first met on December 19, 2024. Because Student's speech and language evaluation had not been completed, the IEP team met again on February 3, 2025, when that evaluation was done. Moraga made a complete FAPE offer at that meeting. The team met a final time on May 2, 2025, to discuss the pending IEP and FAPE offer, but made no changes to either one, other than adding the day's meeting notes to the IEP.

At the February 3, 2025, IEP team meeting, the team reviewed Student's speech and language evaluation, discussed Student's eligibility for special education, and reviewed Moraga's FAPE offer to Student. Moraga offered Student eligibility for special education under the primary category of specific learning disability, and the secondary category of speech or language impairment. Parent verbally consented to eligibility at the IEP team meeting but never gave required written consent. (See 34 C.F.R. § 300.9(b).)

The IEP team discussed goals to address Student's areas of need, and Moraga offered Student nine goals to address Student's needs, one each in reading decoding, reading comprehension, writing, math, expressive language, and social-emotional coping skills, and three addressing Student's specific speech articulation issues. Student, in his complaint, did not claim the goals were inappropriate.

Moraga offered Student general education placement, with extended school year services of specialized academic instruction for 900 minutes per week for four weeks, and the additional services described below to support Student's goals.

ISSUE 3A: SPECIALIZED ACADEMIC INSTRUCTION

Moraga's offer of specialized academic instruction was based on school psychologist Esposito's psychoeducational evaluation of Student and credentialed special education teacher Nicole Doyle's academic achievement assessment of Student. Esposito found that Student's short-term and long-term verbal memory were significant areas of strength, falling within the average range. His scores in visual short and long-term memory fell in the low average or below average range. Student's attention and concentration scores were in the below average range. Student's phonological awareness scores fell within the low average to very low ranges, indicating Student struggled with a phonological processing disorder, likely dyslexia.

Special education teacher Doyle used standardized, norm-referenced testing to measure Student's academic achievement. Student's academic skills were significantly below average in all areas except listening comprehension. In that area, Student's listening vocabulary and ability to remember details and make inferences from sentences and passages read to him placed his skills in the average range. Student's

fluency with writing letters of alphabet fell in the low average range, as did his fluency with math addition, and math problem solving. In all other areas, including basic reading skills, sight vocabulary, reading comprehension, sentence writing fluency, written expression, and math subtraction, Student's skills were in the very low to extremely low range, between the first and seventh percentiles.

Esposito recommended Student's eligibility for special education under the category of specific learning disability. This was based on a significant discrepancy between Student's average intellectual functioning reflected in standardized assessments, and his very low and academic performance in the areas of mathematics calculation, reading comprehension, written expression, basic reading skills, and reading fluency.

In the initial IEP, Moraga offered specialized academic instruction provided by a special education teacher for 120 minutes per week, in three 30-minute sessions with Student pulled out from class, and one 30-minute session with the special education teacher working with Student in class. Moraga offered these services to support four academic annual goals in reading, reading comprehension, writing, and math for Student to work on through December 18, 2025.

Doyle testified that the specialized academic instruction services Moraga offered would allow Student to make progress on his reading, writing, and math goals. Student did not offer evidence that the specialized academic instruction services Moraga offered were insufficient to allow Student to make progress towards his goals. Student did not prove by a preponderance of the evidence that Moraga's initial IEP failed to offer Student sufficient specialized academic instruction services.

Moraga prevailed on Issue 3A.

ISSUE 3B: SPEECH AND LANGUAGE SERVICES

Speech and language pathologist Debbie Greeley completed an initial speech and language evaluation of Student, documented in a report dated January 27, 2025. Greeley assessed Student's skills in receptive and expressive language, social communication, and speech articulation. Student demonstrated strengths in receptive language. He understood and responded appropriately to questions about a visual narrative. He could describe actions, make inferences about emotions, and predict future events. Student's expressive language skills were weaker. His responses were often brief, lacking in descriptive details or expanded sentence structures. Additionally, he sometimes struggled with clear articulation that made him difficult to understand.

Although Student exhibited a few strengths in the many skills required for social communication, his overall social communication skills fell in the third percentile, indicating he had significant difficulty with everyday social interactions and academics.

Student exhibited strong awareness of social context. He understood teasing, sarcasm, and manipulation, and showed empathy, humor comprehension, and flexibility in handling changes and unfavorable outcomes. Student exercised appropriate inhibitions, negotiated respectfully, and did not overly fixate on fairness. On the other hand, Student exhibited limited social intent. He struggled with initiating interactions, group participation, and confidence in social settings, where he was often anxious and fidgety. He had difficulty understanding nonliteral language, implied meanings, and maintaining a broad perspective. Academically, Student was sometimes overwhelmed by class pace and workload and required support to complete assignments. His speech could be unclear, requiring him to repeat himself, and he struggled with conversational

skills such as asking questions, staying on topic, providing details, and recognizing listener cues. He had difficulty repairing conversational breakdowns and engaging in pretend play or role-playing activities.

Student's speech articulation skills also fell within the very low to severe range, with articulation at the second percentile compared to peers his age. Student's articulation deficits significantly impacted Student's speech intelligibility, hindering his communication in both academic and social contexts and potentially affecting his confidence in verbal interactions.

Greeley recommended Student's eligibility under speech and language impairment due to his articulation and intelligibility difficulties, limited expressive language and social communication skills. Student's deficits negatively impacted his social-emotional functioning and his ability to effectively communicate in the academic environment.

Greeley recommended Student receive 30 minutes per week of direct speech and language intervention, targeting his articulation and intelligibility, and his pragmatic language skills, to improve his overall communication abilities at school.

In Student's initial IEP, Moraga offered language and speech services provided to Student individually by a speech pathologist on a pull-out basis for 30-minutes per week, to support the following annual goals addressing needs in articulation and intelligibility difficulties, limited expressive language and social communication.

Greeley testified that Moraga's offer of speech and language services was sufficient for Student to make progress on these goals. Student did not challenge the proposed goals, and did not offer evidence that the speech and language services

Moraga offered were insufficient to allow Student to make progress towards them. Student did not prove by a preponderance of the evidence that Moraga's initial IEP failed to offer Student sufficient speech and language services.

Moraga prevailed on Issue 3B.

ISSUE 3C: COUNSELING SERVICES

Assessing Student in the areas of social-emotional and behavioral development and mental health, Esposito found Student had strengths in the areas of controlling his impulses, following school rules, adapting to changes in his routine, and social skills. However, Student scored in the clinically significant range, indicating a high level of maladjustment, in the areas of feelings of anxiety and depression, learning problems, atypical behavior, withdrawal, study skills, and functional communication. Student's symptoms of anxiety and depression included worrying, fearfulness, seeming lonely, and easily becoming upset and crying.

Student met the criteria for eligibility for special education based on an emotional disability. Student demonstrated a general pervasive mood of unhappiness or depression, with reports from his teacher, private therapist, and rating scales indicating Student struggled with significant feelings of depression. He also displayed a tendency to develop physical symptoms or fears associated with personal or school problems, experiencing significant feelings of anxiety and fear around school, with struggles to transition from Parent's car to school that caused him to be frequently absent or tardy. To address these issues, Esposito recommended Student receive educationally related mental health services in the form of weekly individual counseling.

In Student's initial IEP, Moraga offered Student individual counseling and guidance services provided by a school psychologist on a pull-out basis for 20 minutes per week to address the following annual coping skills goal developed by Esposito:

- When given a hypothetical scenario describing a person experiencing an upsetting emotion, Student will name the emotion and verbally describe one way the person could manage their emotions in the upsetting situation, in three out of four opportunities as measured by an observation checklist.

Student did not challenge the adequacy of this goal. Esposito's testimony established her proposed goal, adopted by the IEP team, appropriately targeted anxiety reduction through teaching Student how to identify and name upsetting emotions, and problem solve ways of handling those situations. Her testimony also established the 20 minutes per week of educationally related mental health counseling services offered was appropriate to work on the coping skills goal, and was an appropriate amount of time based on Student's needs, age, and developmental level.

Student presented no evidence at hearing that services Moraga offered in the initial IEP were inappropriate or inadequate to address his needs in counseling.

Moraga prevailed on Issue 3C.

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ISSUE 3D: OCCUPATIONAL THERAPY SERVICES

As decided in Issue 2B, Student failed to prove by a preponderance of the evidence that Moraga during the 2024-2025 school year had reason to suspect that Student might have a disability affecting his education and potentially requiring occupational therapy services. Moraga therefore had no obligation either to assess Student's need for occupational therapy services, or to provide such services.

Moraga prevailed on Issue 3D.

ISSUE 4: DID MORAGA DENY STUDENT A FAPE FROM THE START OF THE 2025-2026 SCHOOL YEAR TO THE FILING OF THE COMPLAINT ON OCTOBER 31, 2025, BY REQUIRING PARENT TO COMPLETE AN INTERDISTRICT PERMIT APPLICATION AS A CONDITION TO ALLOWING STUDENT TO ATTEND SCHOOL?

Student contended Moraga denied Student a FAPE by requiring Parent to complete an interdistrict transfer application as a condition to allowing Student to attend school in Moraga, because Student was legally entitled under the McKinney-Vento Act to attend school at Los Perales without completing an interdistrict transfer application. Moraga contended OAH lacks jurisdiction over this claim, but if it did have jurisdiction, Parent's admission at hearing that Student has permanently resided in Oakland since September 2023 would require a determination that the McKinney-Vento Act did not apply. Moraga further contended it did not require an interdistrict transfer for Student to attend Los Perales, and even if it had, such a requirement would not constitute a denial of FAPE.

As discussed previously in Issue 1A, OAH does not have jurisdiction to adjudicate a claim and award Student relief for an alleged violation of the McKinney-Vento Act. Even if it did, Moraga is correct that Parent testified that Student has had a permanent residence in Oakland since September 2023, which would appear to cut off any rights under the McKinney-Vento Act as of the end of the 2023-2024 school year. (See 42 U.S.C. § 11432(g)(3)(A)(i)(II); Ed. Code, § 48852.7, subd. (b).) However, no determination of Parent's rights under McKinney-Vento is included in this Decision.

Finally, Student cited no authority for the proposition that requiring a Parent to complete allegedly unnecessary paperwork as a condition of placement is a procedural violation of the IDEA or Education Code, or that doing so impeded Student's right to a FAPE, or significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. Student did not prove by a preponderance of the evidence that Moraga denied him a FAPE by requiring Parent to complete an interdistrict transfer application for the 2024-2025 school year.

Moraga prevailed on Issue 4.

ISSUE 5: DID MORAGA VIOLATE PARENT'S PROCEDURAL RIGHTS AND DENY STUDENT A FAPE BY FAILING TO TIMELY PROVIDE A COPY OF STUDENT'S EDUCATIONAL RECORDS AFTER PARENT, THROUGH STUDENT'S ATTORNEY, REQUESTED THEM ON MAY 23, 2025?

Student contended that Moraga denied him a FAPE by failing to produce all of Student's educational records after Student's attorney requested them on May 23, 2025. Student contended Moraga thereby deprived Parent of the right to participate in the development of Student's IEP. Moraga contended it timely produced Student's

educational records, and that any failure to produce documents Student contended were missing from its production did not interfere with Parent's participation in the IEP process or otherwise deny Student a FAPE.

The IDEA and state educational statutes grant parents of a child with a disability 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, §§ 56501(b)(3) & 56504.) This assists parents in making informed decisions about their child's education, including being able to fully participate in all aspects of the IEP process.

A school district must permit parents to inspect and review any education records relating to their child that are collected, maintained, or used by the district. (34 C.F.R. § 300.613(a).) The district must comply with a request without unnecessary delay. (*Ibid.*) While federal regulations require that educational records be provided within 45 days of request, California law affords parents the right to receive copies of all school records within five business days of the request. (*Ibid.*; Ed. Code, § 56504.) The right to inspect and review educational records includes the right to receive an explanation and interpretation of the records; the right to receive copies of the records if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative inspect and review the records. (34 C.F.R. §300.613(b).)

The IDEA does not include a definition of educational records and adopts the Family Educational Rights and Privacy Act (FERPA) definition of education records. (34 C.F.R. § 300.611 (b).) In general, educational records are defined as records which are personally identifiable to the student and maintained by an educational agency. (20

U.S.C § 1232g(a)(4)(A); 34 C.F.R. §§ 99.3. In California, Education Code section 49061 similarly defines a "Pupil Record," which is the term used in California statutes and regulations. Education Code section 49062 requires school districts to establish, maintain and destroy pupil records according to regulations adopted by the State Board of Education. The California Code of Regulations further defines a pupil record as "information relative to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record." (Cal. Code Regs., tit. 5, § 430, subd. (d).)

The Supreme Court, after conducting an analysis of FERPA provisions related to educational records, defined the word "maintained" in this context by its ordinary meaning of "preserve" or "retain." (*Owasso Independent School Dist.No.I-011 v. Falvo* (2002) 534 U.S. 426, 434 [122 S. Ct. 934, 151 L.Ed.2d 896].) Educational records are those maintained by a district in the normal course of business by a single, central custodian, rather than every document ever created that pertains to a given student. (*N.F. v. Antioch Unified School Dist.* (N.D. Cal., Mar. 30, 2021) No. 4:19-CV-02453-KAW, 2021 WL 1746366, at *6 (*N.F. v Antioch*), aff'd sub nom. *N.F. v. Antioch Unified School Dist.* (9th Cir., May 2, 2022) No. 21-15781, 2022 WL 1301882.)

Educational records do not include documents which are in the sole possession of the maker thereof, are not accessible or revealed to any other person except a substitute and are used only as a personal memory aid. (20 U.S.C. § 1232g(a)(4)(b)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3(b)(1).) This exception does not exclude from the category of educational records detailed notes that record direct observations or evaluations of student behavior. (*Letter to Baker*, Office of Innovation and

Improvement, Complaint No. 1251, December 28, 2005 [comprehensive notes of observations and evaluations by a speech therapist, though kept in the sole possession of the maker, were not used solely as a memory aid and therefore were educational records subject to disclosure].) "School officials may not unilaterally remove records from the protections of FERPA through administrative decisions about where certain records are maintained or how they are categorized." (*Ibid.*; but see, *S.A. v. Tulare County Office of Ed.* (E.D.Cal. Sept. 24, 2009) 2009 WL 3126322 at *4 (emails concerning a student that are not maintained by being kept in one place with a single record of access, such as in a hard copy file or a secure database are not educational records).)

Failure to provide a parent with information related to the assessment of his or her child may significantly impede the parent's opportunity to participate in the decision-making process and result in liability. In *Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F. 3d 877, 892-895, the Ninth Circuit held that a failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents' right to participate in the IEP process, resulting in compensatory education award. In *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 855-856, a district's failure to provide parents assessment data showing their child's lack of progress in district's response to intervention program left the parents "struggling to decipher his unique deficits, unaware of the extent to which he was not meaningfully benefitting from the [individualized services plan], and thus unable to properly advocate for changes to his IEP." The court concluded that the failure to provide the assessment data prevented the parents from meaningfully participating in the IEP process and denied their child a FAPE.

MORAGA TIMELY PROVIDED PARENT STUDENT'S EDUCATIONAL RECORDS WHEN STUDENT'S ATTORNEY REQUESTED THEM

On May 23, 2025, Student's attorney requested Moraga produce all of Student's educational records. The District emailed records to Student's counsel within five business days, on May 28, 2025. Student contended the response was inadequate because Moraga failed to produce copies of certain documents, specifically:

- Several emails between Parent and Moraga.
- An intradistrict transfer request filed by Parent in the spring of 2023.
- A referral by Moraga staff to child protective services of concerns regarding Student.
- Complaints Parent filed with Moraga for various violations of the Education Code with respect to Student.

Testimony of Moraga witnesses established that Moraga did not maintain referrals to child protective services as part of students' educational records. Student did not demonstrate that the failure to produce copies of the other categories of allegedly missing documents that were originally created by Parent, or previously sent to Parent, left Parent unaware of information necessary for her to participate in the decision-making process regarding the provision of a FAPE to Student. Parent argued Parent no longer had copies of her complaints to Moraga and could not recall their

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exact contents. However, Moraga did produce copies of its responses to Parent's complaints, which outlined and addressed each of Parent's contentions. Parent did not argue that Moraga's responses misstated Parent's contentions.

Parent did not prove by a preponderance of the evidence that Moraga failed to timely produce Student's educational records, or that the omission of any documents from the production interfered with Parent's participation in the IEP process or otherwise denied Student a FAPE.

Moraga prevailed on Issue 5.

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:

Moraga did not deny Student a FAPE from October 31, 2023, to February 20, 2024, by failing to offer Student placement at Los Perales elementary school.

Moraga prevailed on Issue 1.

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ISSUE 2A:

Moraga did not deny Student a FAPE from October 31, 2023, to the filing of Student's complaint on October 31, 2025, by failing to assess Student's need for educationally related mental health services. Moraga did deny Student a FAPE from February 7, 2024, through September 26, 2024, by failing to refer Student an assessment of his need for educationally related mental health services.

Student and Moraga each partially prevailed on Issue 2A.

ISSUE 2B:

Moraga did not deny Student a FAPE from October 31, 2023, to the filing of Student's complaint on October 31, 2025, by failing to assess Student's need for occupational therapy services.

Moraga prevailed on Issue 2B.

ISSUE 3A:

Moraga's December 19, 2024, initial IEP for Student, completed February 3, 2025, did not deny Student a FAPE by failing to offer Student an adequate amount of specialized academic instruction.

Moraga prevailed on Issue 3A.

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ISSUE 3B:

Moraga's December 19, 2024, initial IEP for Student, completed February 3, 2025, did not deny Student a FAPE by failing to offer Student adequate speech and language services.

Moraga prevailed on Issue 3B.

ISSUE 3C:

Moraga's December 19, 2024, initial IEP for Student, completed February 3, 2025, did not deny Student a FAPE by failing to offer Student adequate counseling services.

Moraga prevailed on Issue 3C.

ISSUE 3D:

Moraga's December 19, 2024, initial IEP for Student, completed February 3, 2025, did not deny Student a FAPE by failing to offer Student any occupational therapy services.

Moraga prevailed on Issue 3D.

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ISSUE 4:

Moraga did not deny Student a FAPE during the 2025-2026 school year, by requiring Parent to complete an interdistrict permit application as a condition to allowing Student to attend school.

Moraga prevailed on Issue 4.

ISSUE 5:

Moraga did not deny Student a FAPE by failing to timely provide a copy of Student's educational records after Parent, through Student's attorney, requested them on May 23, 2025.

Moraga prevailed on Issue 5.

REMEDIES

Student partially prevailed on Issue 2A. Student proved by a preponderance of the evidence that Moraga should have referred Student for an evaluation of his need for educationally related mental health services and special education as of February 7, 2024. Instead, Moraga did not refer Student for such an evaluation until September 27, 2024, and only offered Student educationally related mental health counseling services in its initial IEP on December 19, 2024.

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Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove, supra*, 557 U.S. 230, 244, n. 11.)

As a remedy for Moraga's FAPE denials, Student's complaint requested an order directing Moraga to provide compensatory education according to proof. However, Student presented no evidence on remedies. An appropriate remedy absent evidence supporting an alternative is to award Student compensatory education based on the 20 minutes per week of educationally related mental health individual counseling Moraga offered Student in its December 19, 2024 IEP, for the period Student would have received such services if Moraga had referred Student for assessment on February 7, 2024.

Upon referral for an assessment, a school district has 15 calendar days to develop the proposed assessment plan, not counting days between the pupil's regular school sessions or days of school vacation in excess of five school days, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code, § 56043, subd. (a).) If Moraga had sent a timely assessment plan to Parents on February 22, 2024, Parents would have had at least 15 days to review, sign, and return the proposed assessment plan by March 8, 2024. (Ed. Code, § 56043, subd. (b).) The evidence of Parent's consent to an assessment plan the following school year to evaluate the same ongoing issues is sufficient to prove Parent would have consented to an appropriate assessment plan. Moraga would then have had 60 calendar days from the date of Parent's consent for assessment, not counting days between regular school

sessions, terms, or days of school vacation in excess of five school days, to complete the assessment and develop an initial IEP. (Ed. Code, § 56344, subd. (b).) Moraga had no days between regular school sessions, terms, or days of school vacation in excess of five school days' between February 7, 2024, and the end of the 2023-2024 school year. Accordingly, an initial IEP and offer of services would have been due on May 7, 2024.

As compensatory education, Student is entitled to seven hours and 20 minutes of educationally related mental health individual counseling services, calculated at 20 minutes per school week for the 22-school weeks from May 7, 2024, to the December 19, 2024, IEP in which Moraga offered Student such services.

Because Student has resided in Oakland since September 2023, and enrolled in Oakland Unified School District on September 4, 2025, Moraga is no longer the local educational agency responsible for providing Student a FAPE. Moraga will therefore be ordered to offer Student the seven hours and 20 minutes of educationally related mental health services through a nonpublic agency provider meeting Moraga's qualifications to provide such services, except that any geographical location requirements are to be based on the location of Student's residence, rather than Moraga's location.

All other Student requests for relief are denied.

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ORDER

1. Within 10 business days of this Decision, Moraga will send Parent via U.S. Mail and email a copy of its criteria for providers of educationally related mental health services providers, and any list maintained by Moraga of nonpublic agency providers meeting Moraga's criteria.
2. Within 30 calendar days of receiving the above information from Moraga, Parent will notify Moraga, by U.S. Mail and email, of Parent's choice of an initial provider of compensatory educationally related mental health services for Student. This provider may be one of the providers identified by Moraga, or another nonpublic agency provider of Parent's choosing who meets Moraga's criteria, with the exception of any geographic location criteria that are based on Moraga's location. Any such requirements, such as a requirement that providers be located within a 60-mile radius of Moraga's location, are to be based on the location of Student's residence instead.
3. Within 30 calendar days of receiving Parent's choice of a provider who meets Moraga's criteria and has confirmed their willingness and availability to provide services to Student, Moraga will contract with the provider for the provision of 15 hours of educationally related mental health services, to be paid directly by Moraga.
4. These services will be available to Student until September 30, 2027, so as to be available to assist Student with transitioning to school at the start of the 2027-2028 school year.

5. Any compensatory hours not used by September 30, 2027, will be lost.
6. All other requests 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.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings