BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025041199

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE

JUNE 30, 2025

On June 30, 2025, Administrative Law Judge Penelope Pahl, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent appeared on behalf of Student. Attorney Nikita Sheth appeared on behalf of New Haven Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

NEW HAVEN'S REQUEST FOR HEARING CONTINUANCE

At the beginning of the PHC counsel for New Have made an oral motion to continue the hearing because Student had not filed a PHC statement. New Haven asserted a continuance was needed to clarify the issues. New Haven had no explanation for failing to file the motion three days prior to the PHC or for failing to file any written motion in advance of the PHC with a declaration as to the lack of timeliness. New Haven failed to ask for specific dates of continuance.

OAH must conduct a due process hearing and render a decision within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Issue clarification is a usual part of every PHC. New Haven failed to offer any good cause for continuing the hearing. The continuance request was denied.

DUE PROCESS HEARING

The hearing will take place on July 8, 9, and 10, 2025. After the scheduled dates, the hearing shall continue day to day, as needed, Mondays and Fridays included, at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at

3:30 PM, unless otherwise ordered. Additional hearing dates, if needed will be discussed with the ALJ during the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

ISSUES AND PROPOSED RESOLUTIONS

Pursuant to discussions with the parties during the PHC, the ALJ has clarified the statement of some issues and re-numbered the issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist*. (9th Cir. 2002) 291 F.3d 1086, 1090. No change in substance has been made.

ISSUES:

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

The parties are responsible for carefully reviewing the issues as stated in this prehearing conference order. These will be the hearing issues. A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing, prior to the first day of hearing, preferably by the Friday prior to the first day of hearing, stating its concern and referring to supporting portions of the complaint.

PROPOSED RESOLUTIONS

The resolutions requested by Student include provision of an independent psychoeducational evaluation at New Haven's expense, reimbursement for Student's tuition at Union City Christian Academy for the 2024-2025 school year as well as payment of tuition at Union City Christian Academy in the future.

New Haven filed its response to Student's complaint on September 4, 2024. (34 C.F.R. § 300.508(e)(1).)

EXHIBITS

Exhibits must be uploaded electronically to Case Center according to the Order Setting Procedures for Filing Exhibits Electronically which was attached to the Scheduling Order in this case. This order gives detailed instructions for naming and identifying exhibits.

Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed regarding exhibit uploads, please contact OAH at OAHSEOps@dgs.ca.gov. It is not necessary to file exhibits or witness schedules with OAH if they have been uploaded into Case Center.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) and this order, shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits for example, S-1, S-2, etc. New Haven must use the letter D before the number to identify New Haven's exhibits, for example, D-1, D-2 etc. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically

number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document with all of its pages. Different documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be uploaded into Case Center in chronological order.

Parties should include resumes or curriculum vitae for each witness who will testify to their professional credentials. New Haven 's exhibits must include a color copy of the school calendar for each school year in question.

Electronic copies of exhibits must be uploaded to Case Center by 5:00 PM at least five business days before the first day of hearing. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

WITNESSES

The parties shall disclose witnesses they intend to call to each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed, unless good cause is shown for the necessity of the witness, and for the reason the witness was not disclosed before the disclosure deadline, in a written and sworn declaration under penalty of perjury. Permission to present a witness who was not disclosed by the deadline is at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this

Order. Participants who have not previously used the Zoom application, may find informative instructions by visiting, Getting Started with Zoom at https://support.zoom.us/hc/en-us/categories/200101697.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer, and appear by videoconference, unless they do not have the necessary computer equipment. More information about this in in the "Audio Only or Telephonic Testimony" section later in this order.

The parties are responsible for making sure their own witnesses attend the hearing, unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing.

The ALJ has discretion to limit the number of witnesses, and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), gives the ALJ authority to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

Parties will be expected to be prepared for hearing. Parties will be expected to prepare questions they need to ask witnesses before the hearing begins. Parties are allowed to ask witnesses questions about documents, events relevant to the issues being decided, and about their opinions if a witness' opinions are relevant to the case.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, or does not help the judge to understand a parties' arguments. The judge may also refuse to hear evidence if the evidence is too time consuming to justify the time it would take to hear compared to the value of the information it will provide to the judge.

The parties are ordered to meet and confer no later than Thursday July 3, 2025, at 3:00 PM. The parties shall discuss how many witnesses each side will most likely call and how many of those witnesses are on both sides' witness lists. The parties shall discuss scheduling witnesses and an estimate of how much time each side will need to question a witness. The parties shall discuss any concerns related to a witness' inability to appear by videoconference for hearing, use the electronic evidence program Case Center, or the need for witness subpoenas, if any. The parties should attempt to eliminate duplicate exhibits. The parties are encouraged to determine whether they can agree to written stipulations as to facts, contentions, resolutions and the authenticity of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, New Haven will inform Student whether witnesses Student wishes to call are current New Haven employees. Each side will inform the other whether witnesses under their control must be subpoenaed instead of just given notice to attend the hearing on a certain date and time.

Cooperation in providing access to witnesses is expected. However, ultimately, the parties are responsible for making sure their witnesses attend the hearing, unless otherwise ordered by the ALJ. A party's failure to properly notify or subpoena a witness is not an excuse justifying additional hearing time, or a delay in the hearing.

PARTICIPANT INFORMATION FORM

Both parties must ensure OAH has current contact information for all hearing participants and witnesses, including email addresses and telephone numbers. Updated Participant Information forms are required if a party or witness' contact information is not current. Updated forms must be filed two business days before the hearing starts.

The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and bears the burden of proof. Student's case shall be presented first, followed by New Haven unless otherwise ordered.

WITNESS SCHEDULES

The parties must provide a proposed joint witness schedule to the ALJ on the first day of hearing. The schedule should include: the first and last name of all witnesses, the parties believe will be called; the witnesses' title; which party is calling the witness to testify; the date the witness will testify; and the hours each witness is expected to testify.

It is expected that the parties will cooperate to develop the joint witness schedule. In the rare event this is not possible, each party shall prepare a separate written schedule. In this Student-filed case, Student must have witnesses available to start the case.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The parties must schedule their witnesses to avoid delays in the hearing. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, unless needed for rebuttal purposes. All parties must ask the witness all necessary questions when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

"Audio only" means participating in the hearing using a computer without video. Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ prior to the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

Both parties requested permission to make an audio recording of the hearing for the attorney's personal notetaking purposes. Permission to make an audio recording is subject to the ALJ's discretion. Both parties' requests to make an audio recording of the hearing are granted subject to the following conditions:

1. The OAH recording is the only official recording;
2. No programs employing artificial intelligence are to be used to record the hearing;
3. The parties shall turn their recording device off at the same time that the ALJ is off the record to avoid recording conversations while off the record;
4. Problems with the party's recording mechanism will not be allowed to delay the hearing;
5. A party's recording may not be given, provided or played to a witness, or potential witness; and the recording shall not be shared with any non-party, possible witness, or posted online;

6. Participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.
7. All internal comment and chat features of Zoom have been disabled for purposes of the hearing. Use of any of these features is prohibited and shall not be part of the official record.

VIDEO RECORDING

No party, witness or anyone else may video record any part of the proceedings or stream the proceedings live through any means.

RECORDINGS AS EXHIBITS

Neither side anticipates uploading a video or audio recording as an exhibit. Recordings may not be uploaded electronically without the ALJ's permission. However, they must still be exchanged in a timely manner. The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type,

amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

Neither side contemplates additional prehearing motions, and no motions are pending. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants in the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off, or set to silent, during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are

prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither of the parties requested an interpreter. Nor did any of the parties anticipate a need for disability accommodations.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings.

HEARING OPEN TO THE PUBLIC

The hearing is open to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

Student is on notice that by choosing an open hearing, highly sensitive personal information will be seen and heard by observers. Observers do not need to identify themselves, but must have respectful usernames when joining the hearing.

The following Orders apply to observers:

1. Observers will only be admitted to the hearing at the beginning of the hearing day and after the lunch break.

2. Prospective witnesses may not observe the hearing until their testimony is completed, and with the ALJ's permission.
3. Microphone and video shall be off at all times, unless otherwise ordered by the ALJ.
4. Hearing observers will not be allowed to record, photograph, or broadcast the hearing. (California Rules of Court, rule 1.150.) Any person who suspects a member of the public violating this rule, must immediately report the violation to the ALJ.
5. An ALJ may exclude persons whose actions impede the orderly conduct of the hearing, restrict attendance because of the physical limitations of the hearing facility, or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030, subd. (e).)
6. An ALJ may order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case, including to protect a minor witness or a witness with a developmental disability. (Gov. Code § 11425.20, subd. (a).)

Any person who suspects a member of the public violating these orders, must immediately report the violation to the ALJ. Failure to follow these orders may result in sanctions, including removal or other sanctions as the law allows.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at

(916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings