

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

CASE NO. 2023110888

DECISION

MARCH 29, 2024

On November 28, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Los Angeles Unified School District. OAH continued the matter for good cause on January 5, 2024. Administrative Law Judge Linda Dowd heard this matter by videoconference on February 13 and 14, 2024.

Parent represented Student. Student did not attend the hearing. Attorney Patrick Balucan represented Los Angeles Unified. Andrew Vazquez, Los Angeles Unified's due process specialist, attended all hearing days on Los Angeles Unified's behalf.

At the parties' request, OAH continued the matter to February 23, 2024, for written closing arguments. On February 21, 2024, OAH granted the parties' request to extend the closing brief due date to March 1, 2024. The record was closed, and the matter was submitted on March 1, 2024.

## ISSUE

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. At the beginning of the hearing, Student clarified the issue was limited to the 2022-2023 school year.

Did Los Angeles Unified deny Student a FAPE from May 16, 2023, to June 9, 2023, by failing to implement his behavior intervention services in compliance with the May 10, 2023 IEP?

## 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 et seq. (2006); Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, Student filed the complaint and has the burden of proof on the issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 11 years old and in fifth grade at the time of hearing. Student resided within Los Angeles Unified's geographic boundaries at all relevant times. Student was eligible for special education under the category of autism.

**ISSUE: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM MAY 16, 2023, TO JUNE 9, 2023, BY FAILING TO IMPLEMENT HIS BEHAVIOR INTERVENTION SERVICES IN COMPLIANCE WITH THE MAY 10, 2023 IEP?**

Student contends Los Angeles Unified failed to implement the behavior intervention implementation services offered in the May 10, 2023, IEP. Student further contends the documentation Los Angeles Unified gave Parent to verify the services were implemented was misleading because it listed the assistant principal as the behavior intervention implementation service provider.

Los Angeles Unified contends it implemented Student's behavior intervention implementation services as offered in the May 10, 2023 IEP. Los Angeles Unified further contends the California Department of Education, or CDE, already determined Los Angeles Unified provided Student with the behavior intervention implementation services.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321 and 300.501.)

Where a student alleges a FAPE denial based on an IEP implementation failure, the student must prove that the failure was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822.) No statutory requirement of perfect adherence to the IEP exists, nor is there any reason rooted in the statutory text to view minor implementation failures as FAPE denials. (*Id.* at p. 821.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Id.* at p. 815.)

Student proved Los Angeles Unified denied him a FAPE from May 16, 2023, to June 9, 2023, by failing to implement his behavior intervention services in compliance with the May 10, 2023 IEP. Student was in fourth grade in Elizabeth Acevedo's general education classroom for the 2022-2023 school year. Student was very quiet in Acevedo's

class. He blended in, was not vocal, and did not often play with other students. Student also refused to participate in physical education. Acevedo tried multiple strategies to get Student involved with other students during physical education but was unsuccessful.

Because of Student's behaviors, Los Angeles Unified conducted a functional behavior assessment for Student in spring 2023 in anticipation of his three-year review IEP team meeting in May 2023. A functional behavior assessment is an assessment that evaluates a student's maladaptive behaviors to determine the antecedents and functions, or what the student achieves from the maladaptive behaviors, and then proposes a plan to retrain student to meet those needs in an alternative way. It requires direct observation of the behaviors to gather data concerning their occurrence, frequency, and triggers. Michael Goldberg, the assistant principal elementary instruction specialist at Student's school, conducted the functional behavior assessment and drafted the report.

Student's concerning behaviors were making a clawed hand, not beginning tasks, and refusing to comply with directions. Acevedo observed the behaviors daily, one to four times, depending on the behavior. Goldberg observed Student six times in four different settings for the functional behavior assessment. Goldberg found the behaviors only occurred with classroom tasks or academic demands in the general education classroom. Goldberg did not observe Student making a clawed hand in any setting and did not observe noncompliant behavior in the pullout special education resource classroom or other non-general education settings.

Los Angeles Unified held a two-part IEP team meeting for Student in May 2023. Los Angeles Unified held part one on May 10, 2023. There was some confusion about the second IEP team meeting date. Parent and her advocate, Steven Figueroa, remembered the second IEP team meeting being held on May 15, 2023. However, when looking at his

calendar, Figueroa had an appointment listed for Student's IEP team meeting on May 16, 2023. No one else had an independent recollection if the second IEP team meeting was held on May 15, 2023, or May 16, 2023. The notes page for the May 10, 2023, IEP team meeting stated the team would reconvene at 8:15 a.m. on Tuesday, May 16, 2023. Additionally, the signature page for the second IEP team meeting was printed at 7:34 a.m. on May 16, 2023. The evidence demonstrated the second IEP team meeting was held on May 16, 2023.

The May 10, 2023 IEP offered Student, among other things,

- 1,800 minutes weekly of behavior intervention implementation in a collaborative model,
- special education resource specialist program services,
- language and speech services,
- adapted physical education, and
- educationally related intensive counseling services.

Los Angeles Unified offered the behavior intervention implementation services on a limited term basis through December 22, 2023. The behavior intervention implementation services were offered to address Student's off task and noncompliant behaviors, and to work on Student's behavior goal. Los Angeles Unified drafted one behavior goal for Student that, when given a task or direction, Student would begin the task within one minute and remain on task for a minimum of 15 minutes independently with no more than two prompts on three out of five independent tasks, as measured by the classroom teacher.

Parent consented to the May 10, 2023 IEP at the end of the second IEP team meeting on May 16, 2023. The behavior intervention implementation services had a start date effective upon Parent's signature. Therefore, these services should have begun on May 16, 2023.

Goldberg attended the May 2023 IEP team meetings and was responsible for assigning a paraprofessional to implement Student's behavior intervention implementation services. Goldberg assigned Kristina Rangel as Student's behavior intervention implementation provider. Rangel was a special needs paraprofessional who was already assigned as a behavior intervention implementation provider to another student in Student's classroom. Goldberg met with Rangel in mid-May 2023 and told Rangel she would be providing behavior intervention implementation services to two students, one of which was Student, through the end of the 2022-2023 school year. Goldberg neither observed Rangel provide behavior intervention implementation services to Student, nor discussed them with Rangel.

Rangel confirmed Goldberg met with her in mid-May 2023, and told her she would be Student's behavior intervention implementation service provider for the remainder of the 2022-2023 school year. However, Rangel did not remember exactly when that conversation took place. Additionally, Rangel did not attend either May 2023 IEP team meeting, have a copy of Student's IEP, or meet with anybody to discuss how to implement the behavior intervention implementation services for Student. Rangel was also not aware of Student's behavior goal. Rangel thought it would have been important to read Student's IEP, but no one gave it to her, nor did she ask for it.

Between May 16, 2023, and June 9, 2023, Rangel occasionally redirected Student when he was in Acevedo's classroom. Rangel estimated she redirected Student three to

five times per day. During those redirections Rangel walked around Student to make sure he was on the correct page or using the correct book during academic work. Rangel also reminded Student to bring his sketch book to recess.

Rangel accompanied Student to his pullout services, either the special education resource specialist program services or language and speech therapy, when the services did not conflict with her break. Rangel did not offer any specific information about how often she accompanied Student to the services.

Desiree Rudisel, speech language pathologist at Student's school, provided language and speech services to Student between May 16, 2023, and June 9, 2023. Rudisel remembered Rangel attending group language and speech sessions with Student and her other assigned student. Special education teacher Leslie Perez provided resource specialist program services to Student during the 2022-2023 school year and did not remember Rangel ever accompanying Student to her classroom.

Parent volunteered in Student's general education classroom during the 2022-2023 school year. Parent was present in the classroom for about an hour on most days during May and June 2023. Rangel did not provide behavior intervention implementation services to Student when Parent was in Acevedo's classroom. Parent worked with a group of students that included Student. Neither Parent nor Acevedo saw Rangel redirect Student or provide any behavior intervention implementation services to Student when Parent was present. Rangel did not provide behavior intervention implementation services to Student when Parent was in the classroom because Parent was working with Student. Rangel thought it would be too much support if both Rangel and Parent were redirecting Student at the same time. Acevedo was clear in her testimony that Rangel did not provide behavior intervention



implementation services to Student at all between May 16, 2023, and June 9, 2023.

Acevedo was an experienced teacher who knew Student well and displayed considerable familiarity with Student and his history. Acevedo remembered details about Student, his behavior in class, and his needs, which bolstered her credibility. Thus, Acevedo's testimony was given substantial weight.

While Acevedo may not have seen Rangel provide behavior intervention implementation services to Student, that does not mean Rangel did not redirect Student and Acevedo missed the interaction. Acevedo had an entire classroom to supervise so it is possible she may have missed the three to five times daily that Rangel redirected Student. However, three to five redirections throughout the school day does not constitute 1,800 minutes weekly of behavior intervention implementation services. While it is reasonable that Acevedo may have missed the three to five times daily that Rangel redirected Student, it is unreasonable to believe Acevedo missed 1,800 weekly minutes of behavior intervention implementation.

Rangel's testimony was evasive when answering if she provided behavior intervention implementation services to Student. Rangel was slow to answer questions from Parent but readily answered questions from Los Angeles Unified's attorney. Rangel's answers were vague, and she often said she could not understand the question or could not recall any specific information. When Parent asked Rangel if she remembered Parent being in the classroom while she was providing behavior intervention implementation services Rangel could not answer. However, Rangel remembered Parent volunteering in the classroom at some point during the 2022-2023 school year. Rangel's testimony was inconsistent, unclear, and she appeared to be uncooperative at times. Therefore, her testimony was unpersuasive and given little weight.

Parent emailed Goldberg on June 1, 2023, to ask if Student would have a dedicated one-to-one aide for the 2023-2024 school year. Goldberg's response was that Student would receive 1,800 minutes of behavior intervention implementation services from a qualified staff member during the fall semester. Parent interpreted that to mean Student had not received behavior intervention implementation services during the 2022-2023 school year. However, that is not what Goldberg said. Parent asked about the 2023-2024 school year and Goldberg responded about the 2023-2024 school year. Neither Parent's question, nor Goldberg's response, related to the 2022-2023 school year.

Similarly, Parent interpreted text messages between Acevedo and Rangel to mean Rangel admitted she did not provide behavior intervention implementation services to Student during the 2022-2023 school year. On August 7, 2023, Acevedo sent a text message to Rangel about starting the 2023-2024 school year. Acevedo and Rangel exchanged several text messages about the 2023-2024 school year. Acevedo asked Rangel if Rangel knew if she was going to provide behavior intervention implementation services to only Student or if she would be providing services to more than one student. Rangel replied that she did not know yet. Neither Acevedo's question, nor Rangel's response, related to the 2022-2023 school year.

Parent filed a compliance complaint with CDE alleging Los Angeles Unified failed to provide the behavior intervention implementation services for Student during the 2022-2023 school year. CDE concluded Los Angeles Unified provided the behavior intervention implementation services to Student based on the service logs and provider timesheet Los Angeles Unified gave to CDE. The evidence presented to CDE is not persuasive in this case.

Goldberg's testimony was inconsistent with the services logs Los Angeles Unified provided to CDE. Goldberg was listed as the service provider for the behavior intervention implementation service. Goldberg did not provide any behavior intervention implementation services to Student, but simply entered Rangel's time, which resulted in his name being listed as the provider. Goldberg was clear that he did not speak to Rangel about the behavior intervention implementation services she provided to Student, yet Goldberg entered Rangel's time each day for her. Without speaking to Goldberg everyday about the behavior intervention implementation services she provided, the time Goldberg entered was simply a guess.

The logs included the full number of minutes, 360, or six hours a day, for all 18 school days between May 16, 2023, and June 9, 2023. This included Tuesday, May 16, the day Parent signed the IEP. The second IEP team meeting started at 8:15 a.m. on May 6, 2023, Rangel was not at that IEP team meeting so Goldberg would have had to find Rangel after the meeting to tell her to start providing behavior intervention implementation services to Student. Even if Goldberg told Rangel immediately after the May 16, 2023 IEP team meeting to provide behavior intervention implementation services to Student, it is not reasonable that Rangel would have provided the full 360 minutes on May 16, 2023. Additionally, 360 minutes per day were entered for the 18 school days without regard for any shortened school days.

Goldberg often entered the minutes before the end of the school day. For example, Goldberg entered 360 minutes for May 17, 2023, and marked them as complete at 11:55 a.m. on May 17, 2023. This was again the case on May 18, 2023. On May 19, 2023, the 360 minutes were marked complete at 9:58 a.m. for the day. These discrepancies, and Los Angeles Unified's failure to explain the discrepancies, rendered the service logs unreliable and unpersuasive.

In addition to the service logs, Los Angeles Unified provided Rangel's timesheets to support the assertion that Rangel provided 1,800 minutes of weekly behavior intervention implementation services to Student. Rangel logged six hours a day, or 360 minutes, for the 18 school days between May 16, 2023, and June 9, 2023. However, Rangel provided behavior intervention implementation services to another student in Acevedo's classroom during the 2022-2023 school year. Therefore, Rangel's timesheet alone does not prove she provided 1,800 minutes weekly of behavior intervention implementation services to Student.

Student proved Los Angeles Unified failed to materially implement his behavior intervention implementation services. There was more than a minor discrepancy between the behavior intervention implementation services Los Angeles Unified provided to Student and the services required in his May 10, 2023 IEP. Rangel provided some redirection to Student but did not know his behavior goal, had not reviewed his IEP, and had not discussed with anyone how to provide the behavior intervention implementation services to Student. Additionally, the service logs and Rangel's timesheet were unreliable and unpersuasive. Moreover, Acevedo's testimony contradicted the service logs and Rangel's testimony, and was more credible and persuasive. For these reasons, Student prevailed on the only issue in the case.

## 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:

Los Angeles Unified denied Student a FAPE from May 16, 2023, to June 9, 2023, by failing to implement his behavior intervention services in compliance with the May 10, 2023, IEP.

Student prevailed on the sole issue heard and decided in this case.

## REMEDIES

Student proved Los Angeles Unified denied him a FAPE by failing to materially implement his behavior intervention implementation services between May 16, 2023, and June 9, 2023.

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 370 (*Burlington*); *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*)). In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA, specifically providing Student with a FAPE which emphasizes special education and related services to meet Student's unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra*, 471 U.S. at p. 374.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d at p. 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft "appropriate relief" for a

party. (*Puyallup, supra*, 31 F.3d at p. 1496.) An award of compensatory education need not provide "day-for-day compensation." (*Id.* at p.1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact specific. (*Ibid.*)

Student prevailed on the only issue in this case and is entitled to a remedy for Los Angeles Unified's failure to materially implement his behavior intervention implementation services. Student did not present evidence or testimony regarding remedies. However, the behavior intervention implementation services were offered to support Student's off task behavior. Therefore, it is appropriate to award Student compensatory services in the areas of behavior or academics, as without the behavior intervention implementation services Student may have missed out on instruction. There were 18 school days between May 16, 2023, and June 9, 2023. It is not equitable to award Student hour-for-hour compensatory education because Student failed to prove he did not receive some educational benefit between May 16, 2023, and June 9, 2023.

Because Student did not offer any evidence regarding how Los Angeles Unified's failure impacted him, an hour for each day Los Angeles Unified failed to materially implement the behavior intervention implementation services is reasonable. Additionally, because Los Angeles Unified fell significantly short in providing behavior intervention implementation services to Student throughout the regular school year it is equitable to order Los Angeles Unified provide the services through a nonpublic agency. Therefore, Student is awarded 18 hours of compensatory education in behavior or academics from a nonpublic agency.

## ORDER

1. Los Angeles Unified must fund 18 hours of compensatory education from a certified nonpublic agency of Parent's choice to be used for behavior or academic services.
2. Within 30 days of the date of this Decision, Los Angeles Unified must give Parent a list of nonpublic agencies it has contracts with to provide compensatory services.
3. If Parent selects a nonpublic agency Los Angeles Unified does not have a contract with, Los Angeles Unified must establish direct payment to the certified nonpublic agency Parent selects.
4. The compensatory education hours awarded will be available until the end of the 2024-2025 regular school year and any hours that remain at that time will be forfeited.
5. 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.

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings