

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2022030687  
CASE NO. 2022040604

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THE CONSOLIDATED MATTERS INVOLVING

PARENT ON BEHALF OF STUDENT,

AND

LOS ANGELES UNIFIED SCHOOL DISTRICT.

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**DECISION**

AUGUST 27, 2022

On March 18, 2022, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, naming Los Angeles Unified School District. The Office of Administrative Hearings is called OAH. Los Angeles Unified School District is called Los Angeles. On April 19, 2022, Los Angeles filed a complaint naming Student. On April 20, 2022, OAH granted Student's Motion to Amend, and deemed Student's amended complaint filed on that date. On April 28, 2022, OAH consolidated the two cases.

Administrative Law Judge Tara Doss presided over the hearing via videoconference using the Microsoft Teams and Zoom applications, on June 7, 8, 9, 14, 15, and 16, 2022, and July 13, 14, and 15, 2022. An Administrative Law Judge is called ALJ. Attorney Allison Hertog represented Student. Parent attended on all days of hearing. Student did not attend the hearing. Attorney Lauri Arrowsmith represented Los Angeles. Genetha Hicks-Cleveland, Research Resolution Specialist, attended eight days of hearing on behalf of Los Angeles. Juan Tojaya, Early Resolution Specialist, attended one day of hearing on behalf of Los Angeles.

At the parties' request, OAH continued the matter to August 8, 2022, to file written closing briefs. OAH closed the record and submitted the case for decision on August 8, 2022.

## ISSUES

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. On the first day of hearing, Student withdrew Issues 2a, 2e, and 3b, as stated in the May 27, 2022 Order Following Prehearing Conference. Further, Student withdrew Issue 2b related to the March 9, 2021, and May 3, 2021 IEPs, and clarified that Issues 3f, 3g, 3h, and 3i only relate to the March 4, 2022 IEP. In its closing brief, Student further clarified that Issue 2b only relates to the March 5, 2020 IEP. OAH reorganized and renumbered the issues to reflect these changes.

## STUDENT'S ISSUES

1. Beginning March 18, 2020, through the 2019-2020 school year, including extended school year, did Los Angeles deny Student a FAPE by failing to:
  - a. Implement, during distance learning, Student's operative IEP, specifically, specialized academic instruction, behavior services and supports, and counseling?
  - b. Offer appropriate academic services and instruction?
  - c. Offer appropriate behavior services and supports?
  - d. Offer required technology and internet access for distance learning?
2. During the 2020-2021 school year, including extended school year, did Los Angeles deny Student a FAPE by failing to:
  - a. At the March 5, 2020 IEP team meeting, consider Student's strengths, Parent's concerns, evaluation results, Student's academic, developmental, and functional needs, and the use of positive behavior interventions, supports, and strategies?
  - b. Invite Parent to the May 3, 2021 IEP team meeting?
  - c. Adequately explain Parent's rights and the IEP offer at each IEP team meeting?
  - d. Implement, during distance learning, Student's operative IEP, specifically, specialized academic instruction, behavior services and supports, and counseling?
  - e. Offer appropriate academic services and instruction?
  - f. Offer appropriate behavior services and supports?
  - g. Offer required technology and internet access for distance learning?

3. During the 2021-2022 school year, through April 20, 2022, did Los Angeles deny Student a FAPE by failing to:
  - a. Identify Student as eligible for special education under the category of specific learning disability?
  - b. Adequately explain Parent's rights and the IEP offer at each IEP team meeting and its intent to offer a nonpublic school at the February 2022 IEP team meeting?
  - c. Provide prior written notice for changes made to Student's IEPs, despite Parent's disagreement to the offers of a nonpublic school and City of Angels Virtual Academy in the February, and March 2022 IEPs?
  - d. Implement Student's operative IEP, specifically, specialized academic instruction, behavior services and supports, and counseling?
  - e. Offer appropriate academic services and instruction in the March 4, 2022 IEP?
  - f. Offer appropriate behavior services and supports in the March 4, 2022 IEP?
  - g. Offer necessary equipment and internet access for City of Angels Virtual Academy in the March 4, 2022 IEP?
  - h. Offer placement in the least restrictive environment in the March 4, 2022 IEP?

## LOS ANGELES'S ISSUE

4. Did the March 4, 2022 IEP offer Student a FAPE in the least restrictive environment, such that Los Angeles may implement the IEP without Parent's consent?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000, et seq.) The main purposes of the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter related 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) and (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62;

and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student has the burden of proof on the issues raised in Student's case, and Los Angeles has the burden of proof on the issue raised in Los Angeles's case. The factual statements below constitute the written findings of fact required by the IDEA and California law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).) All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

Student was nine years old at the time of hearing. Student resided within Los Angeles's attendance boundaries at all relevant times. Student was eligible for special education under the category of other health impairment, as a result of inattention and heightened alertness impacting Student's ability to pay attention in class.

## THE COVID-19 PANDEMIC AND DISTANCE LEARNING

Issues 1 and 2 in this case stem from the global outbreak of a novel coronavirus, called COVID-19. According to the national Centers for Disease Control and Prevention, called the CDC, COVID-19 is a respiratory disease that spreads when an infected person breathes out droplets and very small particles that contain the virus, and another person breathes in those droplets or the droplets land on their eyes, nose, or mouth. As a result of the COVID-19 pandemic, on March 4, 2020, Governor Gavin Newsom declared a state of emergency in California.

On March 13, 2020, Los Angeles announced the cancellation of at least two weeks of school, beginning on March 16, 2020. Los Angeles, like many other public-school districts in California, did not return to in-person learning for the 2019-2020 school year, or for a portion of the 2020-2021 school year. In lieu of in-person instruction, Los Angeles offered instruction to all students through a distance

learning model, using a combination of online learning with a teacher, and independent study. In mid-April 2021, Los Angeles resumed in-person learning for elementary school students.

ISSUE 1a: BEGINNING MARCH 18, 2020, THROUGH THE 2019-2020 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO IMPLEMENT, DURING DISTANCE LEARNING, STUDENT'S OPERATIVE IEP, SPECIFICALLY, ACADEMIC INSTRUCTION, BEHAVIOR SERVICES AND SUPPORTS, AND COUNSELING?

ISSUE 1b: BEGINNING MARCH 18, 2020, THROUGH THE 2019-2020 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE ACADEMIC SERVICES AND INSTRUCTION?

ISSUE 1c: BEGINNING MARCH 18, 2020, THROUGH THE 2019-2020 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE BEHAVIOR SERVICES AND SUPPORTS?

In its closing brief, Student conceded that from March 18, 2020, through June 2020, Los Angeles adequately offered services and instruction, and implement Student's IEP. Accordingly, Student withdrew the request for relief for alleged FAPE denials during the 2019-2020 school year. Further, Student admitted there was insufficient evidence to establish Student received inadequate counseling services from March 18, 2020,

through June 2020. Because Student conceded Issues 1a, 1b, and 1c, OAH will not analyze the merits of these issues. Los Angeles prevailed on Issues 1a, 1b, and 1c.

ISSUES 1d: BEGINNING MARCH 18, 2020, THROUGH THE 2019-2020 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER REQUIRED TECHNOLOGY AND INTERNET ACCESS FOR DISTANCE LEARNING?

ISSUE 2g: DURING THE 2020-2021 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER REQUIRED TECHNOLOGY AND INTERNET ACCESS FOR DISTANCE LEARNING?

Student contends from March 18, 2020, until Student's school reopened for in-person learning in April 2021, Los Angeles failed to provide Student with the necessary technology and internet access to consistently access distance learning. Student also contends that when Los Angeles unilaterally changed Student's placement to City of Angels Virtual Academy in the March 4, 2022 IEP, Los Angeles failed to provide Student with the necessary equipment and internet access for virtual learning. As a result, Student argues Los Angeles deprived Student of meaningful educational benefit.

Los Angeles contends from March 18, 2020, through the end of the 2020-2021 school year, and after the March 4, 2022 IEP, it did all that it could to facilitate internet connectivity in Student's home and to ensure Student had the resources necessary to access distance learning. Specifically, Los Angeles contends Student's teacher hand delivered textbooks, iPads, and Chromebook laptops. Further, Los Angeles contends

Student's teacher helped secure a hotspot for Student so that the Los Angeles-issued electronic devices could access the internet. Finally, Los Angeles contends the school administrator at Student's school provided step-by-step instructions to Parent on how to connect to Student's virtual classroom.

On March 13, 2020, Governor Newsom issued Executive Order N-26-20, which allowed schools that closed due to COVID-19 to provide educational opportunities to the extent feasible, through distance learning or independent study. On March 20, 2020, the California Department of Education, called CDE, issued guidance urging local educational agencies to continue providing special education and related services as outlined in a student's IEP, through a distance learning model. (Cal. Dept. of Educ., Special Education Guidance for COVID-19 (March 20, 2020).)

CDE defined distance learning as instruction in which the student and instructor are in different locations, which could include

- delivering instruction and check-in time with the teacher,
- video or audio instruction,
- instructional television,
- telecourses, or
- other instruction that relies on computer or communications technology.

(Cal. Dept. of Educ., Distance Learning Considerations (March 18, 2020).) Distance learning could also include the use of print materials incorporating assignments that are the subject of written or oral feedback. (*Ibid.*)

On June 29, 2020, Governor Newsom approved Senate Bill 98, which added provisions related to distance learning to the California Education Code. Specifically, for the 2020-2021 school year, school districts that offered distance learning had to confirm

or provide access for all students to connectivity and devices adequate to participate in the educational program and to complete assigned work. (Ed. Code, § 43503, subd. (b)(1).)

## LOS ANGELES PROVIDED ADEQUATE TECHNOLOGY AND INTERNET ACCESS DURING THE 2019-2020, AND 2020-2021 SCHOOL YEARS

Student did not prove from March 18, 2020, through when Student returned to in-person learning in April 2021, Los Angeles failed to offer Student adequate technology and internet access to participate in distance learning. When Los Angeles closed its schools due to COVID-19 on March 16, 2020, Student was in the first grade at 20th Street Elementary School. 20th Street Elementary School will be called 20th Street. 20th Street distributed iPads to its students beginning on March 27, 2020. 20th Street also provided textbooks, paper worksheets, and other school supplies to all of its students, including Student.

Parent picked up an iPad for Student on April 2, 2020. Student's first grade teacher, Maria Nunag, helped Parent download the applications Nunag used to communicate with parents, deliver distance learning instruction, and post class assignments. When Parent told Nunag the iPad was having technical issues, Nunag dropped off a new iPad and worksheets for Student at Parent's workplace.

When Parent continued to complain about internet connectivity issues, Nunag shared resources with Parent on how to obtain free internet at home. Nunag also informed Parent that 20th Street had available hotspots, which would allow Student's iPad to connect to the internet without the need for internet at home. Nunag informed Parent about the hotspot on April 28, 2020, but Parent did not pick up the hotspot until

June 10, 2020, two days before the end of the school year. Student's attendance and work completion during distance learning in the 2019-2020 school year, was minimal.

When the 2020-2021 school year began in August 2020, Nunag continued to help Parent sign onto Student's virtual classroom and access assigned work. Due to continued technical issues, Los Angeles provided a Chromebook laptop to Student. With this device, Student's attendance improved but was still inconsistent and unpredictable. In January 2021, Parent told Nunag they could not find the school-provided hotspot.

Los Angeles provided multiple electronic devices, a hotspot to connect to the internet, and paper materials to Student so that Student could participate in distance learning. Los Angeles also provided resource and assistance to Parent to access the internet and the applications used for distance learning. Student did not prove Los Angeles failed to provide Student adequate technology or internet access for distance learning. Therefore, Los Angeles did not deny Student a FAPE. Accordingly, Los Angeles prevailed on Issues 1d and 2g.

ISSUE 2a: DURING THE 2020-2021 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO, AT THE MARCH 5, 2020 IEP TEAM MEETING, CONSIDER STUDENT'S STRENGTHS, PARENT'S CONCERNS, EVALUATION RESULTS, STUDENT'S ACADEMIC, DEVELOPMENTAL, AND FUNCTIONAL NEEDS, AND THE USE OF POSITIVE BEHAVIOR INTERVENTIONS, SUPPORTS, AND STRATEGIES?

Student contends, at the March 5, 2020 IEP team meeting, Los Angeles failed to consider Student's strengths, Parent's concerns, evaluation results, and Student's

academic, developmental, and functional needs. Student also contends, at the March 5, 2020 IEP team meeting, Los Angeles failed to consider the use of positive behavior interventions, supports, and strategies to address Student's behavior.

Los Angeles contends it considered Student's strengths, Parent's concerns, evaluation results, Student's academic, developmental, and functional needs, and the use of positive behavior interventions at the March 9, 2021, and May 3, 2021 IEP team meetings.

With two limited exceptions, a party must file a due process complaint within two years from the date they knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C); Ed. Code, § 56505, subd. (l).) This time period is commonly referred to as the statute of limitations. The two-year statute of limitations does not apply to a parent who was prevented from requesting the due process hearing because either the educational agency misrepresented that it had solved the problem forming the basis of the due process request or if the educational agency withheld information from the parent that it was legally required to provide. (20 U.S.C. § 1415(f)(3)(D); Ed. Code, § 56505, subd. (l).) These are the only two exceptions in the IDEA and California Education Code that allow for tolling the statute of limitations.

The March 5, 2020 IEP team meeting occurred more than two years before Student filed its complaint on March 18, 2022. Student did not allege, in its complaint, during the hearing, or in its closing brief, that either of the two exceptions to the statute of limitations apply in this case. Thus, Issue 2a is outside of the relevant time period for this case, which began on March 18, 2020. Neither party prevailed on Issue 2a.

ISSUE 2b: DURING THE 2020-2021 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO INVITE PARENT TO THE MAY 3, 2021 IEP TEAM MEETING?

ISSUE 2c: DURING THE 2020-2021 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO ADEQUATELY EXPLAIN PARENT'S RIGHTS AND THE IEP OFFER AT EACH IEP TEAM MEETING?

Student contends Los Angeles impeded Parent's meaningful participation in the IEP process by failing to explain to Parent that Student had a right to receive a meaningful educational benefit which included academic instruction, services, and supports during distance learning. Student also contends Los Angeles held a May 3, 2021 IEP team meeting for Student without Parent's knowledge and participation.

Los Angeles contends it did not impede Parent's meaningful participation in the IEP process. Specifically, Los Angeles contends it provided Parent notice of parental rights and procedural safeguards at the two IEP team meetings held for Student during the 2020-2021 school year, and that Los Angeles did not propose any changes to Student's IEP that required explanation. Further, Los Angeles contends Parent was invited to, and participated in, the May 3, 2021 IEP team meeting. Los Angeles also contends Parent's participation in the IEP process was evidenced by Parent's consent to the May 3, 2021 IEP.

A FAPE means special education and related services provided to a child with a disability at public expense, that meet state educational standards and conform with the

child's IEP. (20 U.S.C. §§ 1401(9) and 1412(a)(1); 34 C.F.R. §§ 300.17 and 300.101(a).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14) and 1414(d)(1); 34 C.F.R. §§ 300.320, 300.321, and 300.501; see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a).)

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) An IEP is a written statement for each child with a disability that is developed, reviewed, and revised based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); 34 C.F.R. § 300.320; Ed. Code, § 56032.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000].)

The IDEA requires state or local educational agencies to establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) School districts must provide parents a notice of procedural safeguards including a full explanation of the procedural safeguards relating to independent

educational evaluations, prior written notice, parental consent, and nine other areas. This must be provided at least one time a year, and also whenever parents request a copy. (20 U.S.C. § 1415(d)(1)(A).)

Parent participation in the IEP process is one of the cornerstones of the IDEA. Parents must have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of a FAPE to their child. (20 U.S.C. § 1415(b)(1); Ed. Code, § 56341.5, subd. (a).) Parents are required members of the IEP team. (20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b)(1).) The school district must notify parents of the IEP team meeting early enough to ensure an opportunity to attend. (Ed. Code, § 56341.5, subd. (b).) The meeting must be scheduled at a mutually agreed-upon time and place. (Ed. Code, § 56341.5, subd. (c).) The school district may conduct an IEP team meeting without a parent if the school district cannot convince the parent to attend. (Ed. Code, § 56341.5, subd. (h).) If this is the case, the school district must maintain a record of its attempts to arrange a mutually agreed-upon time and place for the IEP team meeting. (*Ibid.*)

A parent has meaningfully participated in the development of an IEP when they are informed of the child's problems, attend the IEP meeting, express disagreement regarding the IEP team's conclusions, and request revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 [a parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

School districts have an obligation to make a formal, written offer in the IEP that clearly identifies the proposed program. This requirement creates a clear record that

helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d. 431, 459-460.)

Procedural flaws do not automatically require a finding of a denial of a FAPE. (*W.G., et al. v. Bd. of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,1484, superseded by statute on other grounds by IDEA Amendments of 1997.) A procedural violation only constitutes a denial of FAPE if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

Los Angeles held two IEP team meetings for Student during the 2020-2021 school year. Los Angeles held an annual IEP team meeting on March 9, 2021, while Student still received instruction through distance learning. Los Angeles held an amendment IEP team meeting on May 3, 2021, after Student returned to in-person learning.

Student did not prove Los Angeles impeded Parent's meaningful participation at the March 9, 2021 IEP team meeting, by failing to explain Parent's rights and the IEP offer. Student proved Los Angeles failed to invite Parent to the May 3, 2021 IEP team meeting early enough to ensure Parent had the opportunity to attend. Because Parent did not have the opportunity to attend the May 3, 2021 IEP team meeting, Student also

proved Los Angeles did not explain its IEP offer or allow Parent to meaningfully participate in the decision-making process regarding the provision of FAPE to Student.

### MARCH 9, 2021 IEP TEAM MEETING

At the March 9, 2021 IEP team meeting, Los Angeles provided Parent with a copy of its procedural safeguards notice entitled "A Parent's Guide to Special Education Services including Procedural Rights and Safeguards" as part of the March 9, 2021 IEP team meeting. Student did not offer any evidence that proved Los Angeles's procedural safeguards notice was deficient and failed to explain Parent's and Student's special education rights. Los Angeles met its obligation to provide Parent notice of procedural safeguards for the 2020-2021 school year.

Additionally, Student's March 9, 2021 IEP clearly identified the program Los Angeles proposed for Student to receive a FAPE. Specifically, the IEP offered placement in a special day program for students with specific learning disabilities at 20th Street, with mainstreaming opportunities in a general education classroom. The IEP also offered school-to-school transportation, 120 minutes a month of educationally related intensive counseling services, and extended school year services. Student did not offer any evidence that proved Parent did not understand Los Angeles's offer of special education placement and services. Los Angeles met its obligation to present Parent with a formal, written offer, consistent with *Smith* and *J. W.*

Finally, Parent meaningfully participated in the March 9, 2021 IEP team meeting. Parent participated in the meeting via telephone. Parent expressed frustration with ongoing technology issues, shared concerns regarding Student's ability to stay focused

and organized, and received suggestions from Los Angeles's IEP team members on how to make Student's distance learning experience more successful. Parent consented to all parts of the IEP on April 16, 2021.

### MAY 3, 2021 IEP TEAM MEETING

Los Angeles procedurally violated the IDEA and California Education Code with respect to inviting Parent to the May 3, 2021 IEP team meeting and explaining Los Angeles's proposed program to Parent. On Friday, April 30, 2021, a 20th Street staff person called to invite Parent to an IEP team meeting on Monday, May 3, 2021. Parent indicated an intent to attend the meeting but did not give Los Angeles permission to hold the IEP team meeting without parental participation. Notifying Parent one business day before the IEP team meeting was not early enough to allow Parent the opportunity to attend. Student's IEP team at 20th Street knew Parent worked full-time and would need more than one day to arrange time off from work.

Instead of rescheduling the IEP team meeting at a mutually agreed-upon time, Los Angeles held the May 3, 2021 IEP team meeting without Parent present and without Parent's permission to proceed without parental participation. Consequently, Los Angeles did not explain its proposed program that included 1,800 minutes a week of behavior intervention implementation services, and 300 minutes a month of behavior intervention development services to Parent. Further, Parent could not ask questions or provide input on the proposed behavior services. These procedural violations significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Student, and resulted in a denial of FAPE from May 3, 2021, through the end of the 2020-2021 extended school year.

Ultimately, Parent consented to Los Angeles implementing the May 3, 2021 IEP. However, Los Angeles's argument that Parent's consent to the May 3, 2021 IEP proved Parent meaningfully participated in the IEP process is unpersuasive. Developing an IEP without parental participation and then presenting the IEP document to Parent for ratification does not constitute meaningful participation. As discussed, Los Angeles denied Parent the opportunity to provide input, ask questions, and express agreement or disagreement with Los Angeles's offer of FAPE.

In sum, while Los Angeles met its obligation to explain Parent's rights and its IEP offer at the March 9, 2021 IEP team meeting, it did not meet its obligation to invite Parent to the May 3, 2021 IEP team meeting early enough to allow Parent the opportunity to attend. This failure significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Student. Accordingly, Student prevailed on Issues 2b and 2c.

**ISSUE 2d: DURING THE 2020-2021 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO IMPLEMENT, DURING DISTANCE LEARNING, STUDENT'S OPERATIVE IEP, SPECIFICALLY, SPECIALIZED ACADEMIC INSTRUCTION, BEHAVIOR SERVICES AND SUPPORTS, AND COUNSELING?**

Student contends Los Angeles materially failed to implement Student's specialized academic instruction, behavior services and supports, and counseling during distance learning, from the beginning of the 2020-2021 school year, until Student returned to in-person learning on April 16, 2021. Specifically, Student contends Los Angeles's failure to provide Student with adequate technology and internet access

interfered with Student's ability to receive specialized academic instruction and counseling services. Similarly, Student contends Los Angeles's failure to implement Student's behavior services and supports impacted Student's ability to receive and benefit from specialized academic instruction.

Los Angeles contends it implemented Student's specialized academic instruction throughout distance learning. It further contends that Student did not require behavior services and supports during distance learning because his behaviors were related to in-person interactions with peers and staff. Finally, Los Angeles contends Student's counselor made numerous attempts to provide counseling services, but Student did not appear online to receive the services.

On April 9, 2020, CDE issued guidance about implementation of students' IEPs during the COVID-19 pandemic. Specifically, CDE offered the opinion that

"[u]nder this unique circumstance...it is not necessary for [a local educational agency] to convene an IEP team meeting or propose an IEP amendment ... solely for the purpose of discussing the need to provide services away from school, because that change must necessarily occur due to the COVID-19 pandemic."

CDE went on to say, "[t]he IEP that was in effect at the time of physical school closure remains in effect, and [local educational agencies] should, to the greatest extent possible, continue to provide the services called for in those IEPs in alternative ways." (Cal. Dept. of Educ., Special Education Guidance for COVID-19 (April 9, 2020).)

A school district violates the IDEA if it fails to provide special education and related services in conformity with a student's IEP. (20 U.S.C. § 1401(9)(D).) When a

school district does not conform exactly with the IEP, the district only violates the IDEA if it materially failed to implement the IEP. (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 815, 822.) A material failure occurs when there is more than a minor discrepancy between the services provided and those required in the IEP. (*Id.* at p. 822.) However, the materiality standard does not require that the student suffer demonstrable educational harm in order to prevail. (*Ibid.*) The student's educational progress, or lack thereof, may be indicative of whether there was more than a minor discrepancy in the services provided. (*Ibid.*) There is no statutory requirement of perfect adherence to the IEP, nor is there any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Id.* at p. 821.)

Student's operative IEP from the beginning of the 2020-2021 school year, until April 16, 2021, was dated March 5, 2020. Parent did not sign consent to the March 9, 2021 IEP until April 16, 2021, so the March 5, 2020 IEP was Student's operative IEP throughout distance learning. The March 5, 2020 IEP offered Student the following special education placement and related services:

- placement in a special day class for students with emotional disturbance for 94 percent of the school day at San Fernando Elementary School;
- 1,800 minutes a week of behavior intervention implementation services;
- 600 minutes a month of behavior intervention development services; and
- 120 minutes a month of educationally related intensive counseling services.

Although the IEP offered placement in a special day class for students with emotional disturbance, Student never attended that placement. When Parent tried to enroll Student at San Fernando Elementary School, the school's administrator told

Parent a class for students with emotional disturbance was not appropriate for Student. Instead, Los Angeles offered Student placement in a special day class for students with specific learning disabilities at 20th Street. Neither party offered into evidence an IEP that reflected Student's change of placement from San Fernando Elementary School to 20th Street. Nevertheless, Student started attending 20th Street during the week of March 9, 2020. Student was only on the 20th Street campus for a few days before Los Angeles's schools closed due to COVID-19 on March 16, 2020 and switched to a distance learning model.

## LOS ANGELES MATERIALLY FAILED TO IMPLEMENT STUDENT'S BEHAVIOR SERVICES AND SUPPORTS DURING DISTANCE LEARNING IN THE 2020-2021 SCHOOL YEAR

Student proved Los Angeles materially failed to implement Student's behavior intervention implementation and behavior intervention development services during distance learning in the 2020-2021 school year. Behavior intervention implementation services consisted of one-to-one support from an adult trained in behavior strategies. The assigned adult, called a BII, helped implement Student's behavior intervention plan and reinforce positive replacement behaviors so that Student could effectively receive academic instruction. Behavior intervention development services consisted of supervision from an adult, called a BID, with a higher level of training in behavior strategies. The BID supervised the BII and ensured Student's behavior intervention plan was implemented with fidelity. Student's March 5, 2020 IEP offered behavior services and supports from a BII and a BID so that Student could receive educational benefit. Student's need for behavior services did not change when Los Angeles implemented Student's IEP through distance learning.

Los Angeles did not offer or attempt to provide behavior services through the distance learning model. Student did not have the support of a BII or BID during synchronous or asynchronous instruction. Los Angeles did not convene an IEP team meeting to discuss its proposal to change the behavior services in Student's special education program.

Los Angeles's argument that Student did not require behavior services because Student was not on a school campus and because Student's behaviors related to in-person interactions with staff and peers is not persuasive. Student's social-emotional present levels of performance in the March 5, 2020 IEP indicated Student had a high frustration level, was overly active with a short attention span, gave up easily, and had poor concentration. Further, Student was eligible to receive special education due to attention challenges. The IEP team drafted a behavior goal for Student to use coping skills to communicate needs and frustration with adults and peers. The IEP did not state Student only had these challenges when on a school campus or during in-person interactions with peers and adults.

Student had extreme difficulty participating in academic instruction and counseling services during distance learning. Some of the difficulty was due to technology issues. But there was sufficient evidence to show that even when Student had functional technology, Student was unable to consistently sign onto the virtual classroom and remain in the classroom for the entire class session without adult support. At hearing, Nunag recalled that asynchronous, independent work was difficult for Student and that Nunag relied on Parent to support Student. Parent was often working during school hours and could not always monitor Student's virtual class

sessions. Further, Parent was not trained on how to effectively implement the strategies in Student's behavior intervention plan. Most importantly, Los Angeles, and not Parent, had the affirmative duty to implement Student's IEP.

Prior to the COVID-19 pandemic, Student required one-to-one behavior support from a BII, and supervision from a BID. This need continued throughout distance learning, as evidenced by the fact that Student attended very few virtual classroom and counseling sessions and completed minimal assigned class work. As a result, Student suffered a loss of educational opportunity. Los Angeles's failure to offer or attempt to attempt to provide BII and BID services to Student during distance learning was a material failure to implement Student's March 5, 2020 IEP, and resulted in a denial of FAPE during the 2020-2021 school year.

### LOS ANGELES MATERIALLY FAILED TO IMPLEMENT STUDENT'S SPECIALIZED ACADEMIC INSTRUCTION DURING DISTANCE LEARNING IN THE 2020-2021 SCHOOL YEAR

Student proved Los Angeles materially failed to implement Student's specialized academic instruction during distance learning in the 2020-2021 school year. When school started on August 18, 2020, Student was in second grade and continued in Maria Nunag's special day class for students with specific learning disabilities. All instruction in Nunag's class was specialized academic instruction. However, the specialized academic instruction taught in Nunag's class was tailored to meet the needs of students with learning disabilities or attention deficits. As discussed, the March 5, 2020 IEP offered Student specialized academic instruction in a classroom for students with emotional

disabilities. Presumably, the special education teacher in that classroom taught specialized academic instruction tailored to meet the needs of students with emotional deficits. The difference between the two types of special day classes is material.

The preponderance of the evidence showed that pursuant to the March 5, 2020 IEP, Los Angeles should have implemented Student's specialized academic instruction within a special day class for students with emotional disturbance. Failure to do so was a material failure to implement Student's specialized academic instruction during distance learning in the 2020-2021 school year and resulted in a denial of FAPE.

Even if Student was placed in Nunag's special day class pursuant to a valid IEP, Los Angeles still failed to implement Student's specialized academic instruction during distance learning in the 2020-2021 school year. As discussed, Student could not access the specialized academic instruction without behavior support from a BII and BID.

During the 2020-2021 school year, Nunag provided four hours of synchronous or live instruction to students and two hours of asynchronous or independent work each day. Nunag rotated the students through different 30-minute stations using online breakout rooms. The school day began and ended with whole group instruction. In between those times, students rotated through different breakout rooms where they participated in small group stations with Nunag or Nunag's classroom aide, or students completed independent work.

Student's attendance in Nunag's virtual classroom was inconsistent and unpredictable. In the first two weeks of the school year, Student had difficulty logging into the virtual classroom due to internet access issues. Los Angeles gave Student a new

electronic device with a hotspot to access the internet. After receiving the new device and hotspot, Student attended the virtual classroom three to four days a week but would often join the class late and/or leave early. At times, Student would turn off the device's camera to avoid participating in a lesson or leave the virtual classroom altogether. Parent worked during school hours and could not always ensure Student attended the virtual classroom.

In September 2020, Student moved in with a relative who could help monitor Student's school attendance. During this time, Student attended the virtual classroom daily and remained for the entire class period. After about a month, Student returned home with Parent, and Student's attendance once again became unpredictable and inconsistent.

The preponderance of the evidence showed Student was absent for the majority of synchronous instructional time during the 2020-2021 school year, and that Student did not complete the majority of assigned asynchronous schoolwork. The preponderance of the evidence also showed that due to Student's learning and behavioral needs, Student could not access specialized academic instruction without BII or BID support. Los Angeles's failure to offer or attempt to implement Student's behavior services during distance learning directly impeded Student's ability to access specialized academic instruction. This failure was a material failure to implement Student's specialized academic instruction and resulted in a denial of FAPE.

## LOS ANGELES MATERIALLY FAILED TO IMPLEMENT STUDENT'S EDUCATIONALLY RELATED INTENSIVE COUNSELING SERVICES DURING DISTANCE LEARNING IN THE 2020-2021 SCHOOL YEAR

Student proved Los Angeles materially failed to implement Student's educationally related intensive counseling services during distance learning in the 2020-2021 school year. Counselor Erika Garcia provided Student's educationally related intensive counseling services during distance learning in the 2020-2021 school year. Beginning in September 2020, Garcia offered to provide virtual counseling to Student afterschool. Student had difficulty signing onto the online platform, so in October 2020, Garcia arranged to join Nunag's virtual classroom and pull Student out to a breakout room for counseling. Garcia signed into Nunag's class on a weekly basis, but Student was usually absent. Garcia and Student only connected a few times during distance learning due to technology issues and Student's inconsistent virtual classroom attendance.

The preponderance of the evidence showed Los Angeles made counseling services available to Student on a weekly basis, consistent with the March 5, 2020 IEP. However, as discussed, due to Student's learning and behavioral needs, Student could not access distance learning, including counseling services, without BII and BID support. Like with specialized academic instruction, Los Angeles's failure to offer or attempt to implement Student's behavior services during distance learning directly impeded Student's ability to access educationally related intensive counseling services. This failure was a material failure to implement Student's counseling services and resulted in a denial of FAPE.

Accordingly, Student prevailed on Issue 2d.

ISSUE 2e: DURING THE 2020-2021 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE ACADEMIC SERVICES AND INSTRUCTION?

ISSUE 2f: DURING THE 2020-2021 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE BEHAVIOR SERVICES AND SUPPORTS?

Student contends Los Angeles failed to offer Student an academic program that allowed Student to make meaningful progress. Student further contends Los Angeles failed to offer appropriate behavior services and supports. Los Angeles contends it offered Student appropriate academic instruction and behavior services and supports.

An IEP describes a student's needs, and academic and functional goals related to those needs. It also provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the student to:

- advance in attaining the goals,
- make progress in the general education curriculum, and
- participate in education with disabled and nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

The student's needs must be described through a statement of present levels of academic achievement and functional performance, including how the student's disability affects the involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1).) The IEP must show a direct

relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to constitute a FAPE under the IDEA, it must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with educational benefit appropriate in light of the student's circumstances, in the least restrictive environment. (*Ibid.*; *Endrew F.*, *supra*, 580 U.S. \_\_\_\_ [137 S.Ct. at p. 1000.]

Whether an IEP offers a student a FAPE is assessed in light of information available at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective;" it must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.* (quoting *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

To determine whether Los Angeles offered Student appropriate academic instruction and behavior services and supports, an analysis of Student's present levels of performance and goals at the time Los Angeles offered the services is necessary. As discussed, Los Angeles held two IEP team meetings during the 2020-2021 school year. An annual IEP team meeting on March 9, 2021, and an amendment IEP team meeting on May 3, 2021.

## LOS ANGELES OFFERED STUDENT APPROPRIATE ACADEMIC SERVICES AND INSTRUCTION

Student did not prove Los Angeles offered inappropriate academic services and instruction during the 2020-2021 school year. Student's present levels of performance in the March 9, 2021 IEP did not reflect Student's current functioning. Instead, they reflected Student's academic performance as of March 16, 2020, when Los Angeles's schools closed due to COVID-19. Because Student did not consistently attend the virtual classroom sessions or turn in assigned work during distance learning, Los Angeles did not have updated academic performance information.

The IEP team kept the same academic goals Student had in the March 5, 2020 IEP and added a new goal in math and reading fluency. In the March 9, 2021 IEP, Student had academic goals in reading fluency, writing, and math. Los Angeles continued to offer the same placement in a special day class for students with specific learning disabilities.

Nunag was responsible for working towards Student's IEP goals and delivering Student's academic instruction during the 2020-2021 school year. Nunag had approximately 15 years of experience as a special education teacher in the United States. Prior to that, Nunag taught for 12 years in the Philippines. Nunag's class consisted of students in transitional kindergarten, through second grade. Student was in second grade. Nunag had approximately four second graders. The students had various special education eligibilities, including other health impairment like Student. Nunag differentiated instruction and grouped students according to grade and

performance levels. Student worked with higher functioning students. Student liked one-to-one instruction, so Nunag typically paired Student with only one other student. Student had difficulty working in larger groups.

Student did not present any evidence that proved Nunag's special day class did not offer appropriate academic instruction and services for Student at the time of the March 9, 2021 IEP team meeting. Student did not attend enough of Nunag's virtual class sessions during the 2020-2021 school year to determine whether the academic instruction provided was appropriate.

As discussed in Issue 2c, Los Angeles held the May 3, 2021 IEP team meeting without Parent and without Parent's permission to proceed without parental participation. The present levels and IEP goals remained the same, except that the behavior present level was updated to reflect Student's behavior after returning to in-person learning on April 16, 2021. Los Angeles continued to offer the same placement in Nunag's special day class.

When classes returned to in-person learning, Student had the most academic challenges with reading fluency and math word problems. Student's relative strength was math fluency. At times, Nunag worked with Student individually. The structure of how Nunag provided academic instruction did not change significantly when the students returned to in-person learning in April 2021. Student did not present any evidence that proved Los Angeles offered inappropriate academic instruction and services in the May 3, 2021 IEP.

Accordingly, Los Angeles prevailed on Issue 2e.

## LOS ANGELES DID NOT OFFER APPROPRIATE BEHAVIOR SERVICES AND SUPPORTS

Student proved Los Angeles offered inappropriate behavior services and supports during the 2020-2021 school year. At the March 9, 2021 IEP team meeting, Los Angeles did not offer Student any behavior services despite the IEP including a behavior goal and a behavior intervention plan. As discussed in Issue 2d, Student required BII and BID services to receive an educational benefit. Los Angeles's failure to offer BII and BID services at the March 9, 2021 IEP left Student without behavior services during the remainder of distance learning, and when school resumed in person on April 16, 2021. Within the first two weeks of returning to school, Student struggled paying attention in class and had trouble controlling frustration. These behaviors impacted Student's ability to access the curriculum and led Los Angeles to convene an IEP team meeting on May 3, 2021, to add BII and BID services back to Student's program. The delay in offering appropriate behavior services resulted in a loss of educational opportunity for Student and resulted in a denial of FAPE.

Although Los Angeles offered BII and BID services in the May 3, 2021 IEP, as discussed in Issues 2b and 2c, Los Angeles's failure to include Parent at the meeting, resulted in a denial of FAPE. Moreover, it is unclear how Los Angeles determined its offer of 1,800 minutes a week of BII and 300 minutes a month of BID would appropriately meet Student's behavior needs. Los Angeles had not conducted any recent behavior assessments of Student to determine Student's present levels or to determine the level of behavioral support Student required to successfully transition

back to in-person learning. Consequently, the behavior services Los Angeles offered at the May 3, 2021 IEP were inappropriate and not reasonably calculated to confer educational benefit to Student in light of the circumstances.

Accordingly, Student prevailed on Issue 2f.

ISSUE 3a: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO IDENTIFY STUDENT AS ELIGIBLE FOR SPECIAL EDUCATION UNDER THE CATEGORY OF SPECIFIC LEARNING DISABILITY?

Student contends Los Angeles should have found Student eligible for special education under the category of specific learning disability as a result of its November 2021 psychoeducational assessment. Specifically, Student contends Los Angeles's school psychologist did not adequately complete Student's psychological processing testing, and as a result, incorrectly concluded Student did not have a processing disorder. Further, Student contends Los Angeles should have re-tested Student to yield conclusive results.

Los Angeles contends its school psychologist correctly concluded there was not sufficient information to establish Student met the eligibility criteria for specific learning disability. Los Angeles further contends that regardless of Student's eligibility, Los Angeles recognized Student's academic challenges and addressed those by offering specialized academic instruction in a special day class.

In evaluating a child with a disability, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs,

whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).) Upon completion of assessments and other evaluation measures, a group of qualified professionals and the parent determines whether the child is a child with a disability, and the needs of the child. (34 C.F.R. § 300.306(a)(1).) A child must not be determined to be a child with a disability due to lack of appropriate instruction in reading or math. (34 C.F.R. § 300.306(b)(1).) School districts are not required to classify a child by their disability so long as the child meets eligibility criteria under the IDEA and is recognized as a child with a disability. (20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. § 300.111(d); Ed. Code, § 56301(a).)

The IDEA and California Education Code define specific learning disability as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (20 U.S.C. § 1401(30).) Specific learning disabilities do not include learning problems that are primarily the result

- of visual, hearing, or motor disabilities,
- of intellectual disability,
- of emotional disturbance, or
- of environmental, cultural, or economic disadvantage.

(Cal. Code. Regs., tit. 5, § 300, subd. (10)(A).)

School districts are not required to use a severe discrepancy between intellectual ability and achievement when determining whether a child has a specific learning disability. (34 C.F.R. § 300.307(a)(1).) Instead, school districts may consider whether the child failed to make sufficient progress to meet age or grade-level standards in one or more academic area based on the child's response to scientific, research-based

intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development. (34 C.F.R. § 300.309(a)(1)-(2).)

Student did not prove Los Angeles denied Student a FAPE by not identifying Student as eligible under the category of specific learning disability following Los Angeles's November 9, 2021 psychoeducational assessment of Student.

Los Angeles's school psychologist, Jimena Del Pozo, conducted a comprehensive assessment of Student in October, and November 2021. Student was in the third grade. As part of the assessment, Del Pozo considered whether Student met eligibility criteria for specific learning disability and other health impairment. Del Pozo administered a cognitive processing assessment and Student's special education teacher administered an academic assessment. In addition to the cognitive processing assessment, Del Pozo attempted to administer several psychological processing assessments, but Student refused to complete the tasks. The assessments Student refused to complete would have tested Student's auditory processing, visual processing, phonological processing, and visual motor abilities. Because Student did not complete these assessments, no scores were generated, and the results were inconclusive.

In addition to the psychological testing, Del Pozo administered several rating scales to determine Student's social emotional and behavioral functioning, reviewed Student's records, interviewed Parent, Student, and other staff at 20th Street that worked with Student, and observed Student in various school settings. On the rating scales, Student's teacher and Parent rated Student as having learning problems, particularly understanding, and completing academic work. Further, Student's teacher revealed in the interview that Student's maladaptive behaviors were triggered when the

teacher presented Student with academic tasks. Student's behavior intervention plan also identified academic tasks being an antecedent to Student's elopement and aggressive behaviors.

Using alternative assessment procedures, Del Pozo estimated Student's cognitive ability was in the high-average range. The assessment report did not identify which alternative assessment procedures Del Pozo relied upon. Academically, Student scored in the very low to well-below average range on almost all assessment areas. Student's academic scores were consistent with Student's significantly below grade level academic performance in the classroom.

Del Pozo concluded there was a severe discrepancy between Student's cognitive ability and academic achievement in basic reading skills, reading comprehension, math reasoning and calculations, and written expression. However, Del Pozo concluded this discrepancy was not primarily due to a psychological processing disorder because while the assessment data revealed a processing disorder in attention, there was insufficient data to conclude Student had any other processing disorders. Del Pozo did not conclude the severe discrepancy was due to Student's lack of instruction in reading or math or that any other disqualifying factors existed to preclude a specific learning disability eligibility.

Based on Del Pozo's interpretation of the assessment results, the report concluded Student's attention deficits and impulsive behaviors adversely affected Student's educational performance, and that Student met the eligibility criteria for other health impairment, due to characteristics associated with attention deficit hyperactivity disorder.

The preponderance of the evidence showed there was sufficient data in the November 9, 2021 psychoeducational assessment report, coupled with Student's below-grade level achievement and aversion to completing academic tasks, to conclude Student met the criteria for specific learning disability. However, the IDEA does not require school districts to identify students as eligible for special education under multiple categories or based on each of their disabling conditions. Instead, once a child with a disability is eligible for special education under any category, the IDEA requires school districts to offer special education to meet the unique needs of the child and related services to assist the child in benefiting from special education. Here, Los Angeles determined Student continued to qualify for special education under the category of other health impairment. Student did not prove Los Angeles's failure to identify Student as a student with a specific learning disability as opposed to a student with other health impairment, denied Student a FAPE.

Student's contention that Del Pozo inadequately conducted the psychological processing assessments speaks to a broader issue of whether Los Angeles appropriately assessed Student in the November 9, 2021 psychoeducational assessment. The appropriateness of the November 9, 2021 assessment was not raised as an issue in Student's complaint or identified as an issue for hearing at the May 27, 2022 prehearing conference, and therefore, will not be addressed in this Decision.

Accordingly, Los Angeles prevailed on Issue 3a.

ISSUE 3b: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO ADEQUATELY EXPLAIN PARENT'S RIGHTS AND THE IEP OFFER AT EACH IEP TEAM MEETING AND ITS INTENT TO OFFER A NONPUBLIC SCHOOL AT THE FEBRUARY 2022 IEP TEAM MEETING?

Student contends Los Angeles failed to explain, or inform, Parent of critical information to ensure Parent adequately participated in Student's IEP process. Specifically, Student contends Los Angeles failed to invite and/or give Parent reasonable notice of the February, and March 2022 IEP team meetings. Student also contends Los Angeles's failure to inform Parent of its intention to unilaterally transfer Student to City of Angels Virtual Academy, and then, to a nonpublic school impeded Parent's opportunity to participate in educational decisions for Student.

Los Angeles contends Student failed to present evidence to establish Parent did not understand parental rights or any IEP offer. Further, Los Angeles contends it was not legally required to inform Parent of its intent to offer a nonpublic school placement or any change of placement because to do so would result in predetermination in violation of special education laws.

Student did not prove Los Angeles failed to adequately explain Parent's rights or its IEP offers during the 2021-2022 school year. Los Angeles held six IEP team meetings during the 2021-2022 school year. The meetings were held on September 13, 2021, November 10, and 15, 2021, January 27, 2022, February 24, 2022, and March 4, 2022. Parent participated at each of these meetings, except the March 4, 2022 meeting. Parent typically participated over the telephone and would later pick up Student's IEP

and supporting documents from Student's school. Each of the IEP documents indicated Los Angeles gave Parent a notice of its "Parent's Guide to Special Education Services including Procedural Rights and Safeguards." Los Angeles satisfied the requirement to provide Parent notice of procedural safeguards once a year. Student did not refute Parent's receipt of the notice.

At each of the six IEP team meetings, the IEP team discussed Student's academic, social emotional, and behavioral needs. The IEP team also discussed the appropriateness of Student's placement and the services Student required to access the curriculum. Los Angeles first proposed a nonpublic school placement in the November 10, 2021 IEP team meeting, but Parent disagreed. Instead, the IEP team, including Parent, agreed to change Student's school from 20th Street to Estrella. By the time Student transferred to Estrella in mid-November 2021, Student exhibited significant elopement, aggression, and noncompliant behaviors at school and on the bus. Student's behaviors included shouting profanity, hitting, kicking, and throwing things at peers and adults. Student also eloped from the classroom on an almost daily basis and exhibited dangerous behavior while roaming around the campus.

At the January 27, 2022 IEP team meeting, Los Angeles increased Student's educationally related intensive counseling services from 30 minutes a week to 60 minutes a week, and increased BID services. Both increases were to address Student's escalating aggressive and elopement behaviors.

The IEP team discussed nonpublic school again at the February 24, 2022 IEP team meeting because Student's BII and BID could not successfully redirect Student's behaviors, which had become increasingly dangerous for Student and for others at

Estrella. As a result, the Los Angeles IEP team members explained why they believed a nonpublic school setting would better address Student's academic and behavioral needs.

Each IEP document from the 2021-2022 school year, clearly stated Los Angeles's placement and services offer. A preponderance of the evidence showed Parent meaningfully participated at the IEP team meetings, as evidenced by the discussion notes in the IEPs. Parent asked questions, made requests, and expressed disagreement when appropriate. For example, at the January 27, 2022 IEP team meeting, Parent requested a recreation therapy assessment, and at the February 24, 2022 IEP team meeting, Parent requested a dyslexia assessment. Parent consented to the November 10, 2021, and January 27, 2022 IEPs. Parent disagreed with Los Angeles's offers in the February 24, 2022, and March 4, 2022 IEPs, and exercised procedural safeguards by hiring an attorney and filing a request for due process hearing.

Accordingly, Los Angeles prevailed on Issue 3b.

**ISSUE 3d: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO IMPLEMENT STUDENT'S OPERATIVE IEP, SPECIFICALLY, SPECIALIZED ACADEMIC INSTRUCTION, BEHAVIOR SERVICES AND SUPPORTS, AND COUNSELING?**

Student contends Los Angeles failed to implement Student's specialized instruction during the 2021-2022 school year, because Student's teachers and behavior support team allowed too many breaks outside of the classroom, which caused Student

to lose instructional time. Student further contends Los Angeles failed to implement Student's behavior services and supports because Student's BII spent most of the time trailing behind Student during Student's breaks, instead of supporting Student in the classroom. Student did not make any specific contentions related to Los Angeles's failure to implement Student's counseling services.

Student raised for the first time in its closing brief, that Los Angeles failed to implement Student's general education mainstreaming as offered in the September 9, 2021, November 10, 2021, and January 27, 2022 IEPs. However, the complaint did not allege, and Student did not raise at the prehearing conference, any issue related to Los Angeles's failure to implement general education mainstreaming. Los Angeles did not consent at any time to amending the issues for hearing. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i) [the party requesting the hearing may not raise issues at the due process hearing that were not raised in the complaint unless the other party agrees].) Therefore, this Decision will not address whether Los Angeles failed to implement Student's general education mainstreaming during the 2021-2022 school year.

Los Angeles contends it implemented Student's specialized academic instruction, behavior services and supports, and counseling services during the 2021-2022 school year, in conformity with Student's IEPs. Specifically, Los Angeles contends the academic instruction provided at 20th Street and Estrella met Student's educational needs. Los Angeles also contends it implemented Student's BII and BID services, behavior intervention plan, and behavior treatment plan.

LOS ANGELES MATERIALLY FAILED TO IMPLEMENT STUDENT'S  
SPECIALIZED ACADEMIC INSTRUCTION FROM FEBRUARY 28, 2022  
THROUGH APRIL 20, 2022

Student proved Los Angeles materially failed to implement Student's specialized academic instruction during the 2021-2022 school year. While Los Angeles implemented Student's specialized academic instruction from the beginning of the 2021-2022 school year, through February 28, 2022, Los Angeles materially failed to implement specialized academic instruction from February 28, 2022, through April 20, 2022.

Student's operative IEPs were the March 9, 2021 annual IEP, as amended on May 3, 2021, and the November 10, 2021 triennial IEP. Student's placement was in a special day class for students with specific learning disabilities for the majority of the school day. Student received specialized academic instruction within this program. From the beginning of the 2021-2022 school year, until approximately November 15, 2021, Student attended 20th Street and was in the third grade.

Student's third grade teacher was Julia Simpson until October 2021. Simpson's classroom consisted of approximately 10 students in grades one through three. Simpson had a classroom aide to assist with instructing the students. Student was the oldest in the class. Simpson differentiated instruction depending on the students' academic performance and grade levels. Simpson taught using a combination of whole group and small group instruction, as well as independent work.

In October 2021, Student moved into a different special day class for students with specific learning disabilities at 20th Street. Maritoni Villaflor taught this class.

Villaflor's class consisted of approximately 11 students in grades three through five. Villaflor had a classroom aide and a student teacher to assist with instructing the students. The school administration in collaboration with Simpson and Villaflor initiated the change to balance the number of students in each class. Additionally, Student did not like being the oldest student in Simpson's class and wanted to socialize with older students. The students in Villaflor's class had a range of academic abilities. Villaflor differentiated instruction based on the students' grade and ability levels.

At the November 15, 2021 IEP team meeting, the IEP team agreed Student would leave 20th Street and enroll at Estrella. Student rode the bus to 20th Street and often exhibited behaviors on the bus that triggered continuing behavior challenges at school. Estrella was Student's neighborhood school and did not require bus transportation.

Student attended Estrella from mid-November 2021, until February 28, 2022. Haelim Han was Student's teacher. Han taught a special day class for students with specific learning disabilities. Han's class consisted of approximately eight students in grades three through five. Han differentiated instruction based on students' academic skills and shortened instructional time to accommodate students' shortened learning spans.

As the 2021-2022 school year progressed, Student's elopement, aggressive, and noncompliant behaviors escalated. As a result, Student spent increasing amounts of time outside of the classroom. Student did not receive academic instruction during these times. Student's BID reviewed Student's behavior intervention plan with Simpson, Villaflor, and Han. Each teacher worked collaboratively with Student's BII and BID to implement the strategies in the behavior intervention plan, including allowing Student to take breaks. Despite their efforts, Student's behavior did not improve.

Although Student's behaviors prevented Student from receiving consistent specialized academic instruction, Simpson, Villaflor, and Han attempted to implement the services consistent with Student's March 9, 2021, May 5, 2021, and November 10, 2021 IEPs. Student did not prove the academic instruction provided in Simpson's, Villaflor's, and Han's classrooms deviated from what Student's IEP required. Therefore, Los Angeles implemented Student's specialized academic instruction during the 2021-2022 school year, through February 28, 2022.

However, once Los Angeles changed Student's placement to City of Angels Virtual Academy, Student no longer received specialized academic instruction within the special day class setting pursuant to the November 10, 2021 IEP. Student required specialized academic instruction to access the general education curriculum and receive educational benefit. Thus, Los Angeles materially failed to implement Student's specialized academic instruction from February 28, 2022, through April 20, 2022.

### LOS ANGELES MATERIALLY FAILED TO IMPLEMENT STUDENT'S BEHAVIOR SERVICES AND SUPPORTS FROM FEBRUARY 28, 2022, THROUGH APRIL 20, 2022

Student proved Los Angeles failed to implement Student's behavior services and supports during the 2021-2022 school year. While Los Angeles implemented Student's behavior services from the beginning of the 2021-2022 school year, through February 28, 2022, Los Angeles materially failed to implement behavior services from February 28, 2022, through April 20, 2022.

Student's May 5, 2021 IEP called for 1,800 minutes a week of BII services and 300 minutes a month of BID services. The IEP also included a behavior intervention plan

that targeted Student's escalating aggression pattern of hitting with a closed fist and using inappropriate language. The behavior intervention plan called for the following positive reinforcement strategies: specific praise, recognition of Student's strengths, and time on the computer. Other strategies included prompting Student to request a break or to communicate frustration, and reminding Student of conflict resolution strategies.

Los Angeles contracted with a nonpublic agency called Behavior Therapy Clinic to implement Student's BII and BID services. The BID assigned to work with Student was Maria Morin. Morin started working with Student at the beginning of the 2021-2022 school year, and remained Student's BID until February 28, 2022, Student's last day at Estrella. Morin was a clinical supervisor with Behavior Therapy Clinic. In that role, Morin developed the behavior treatment plan and behavior intervention plan for Student, and supervised Student's assigned BII to ensure the BII implemented the behavior strategies in Student's behavior intervention plan with fidelity. Morin had a bachelor's degree in psychology and a master's degree in teaching with an emphasis on applied behavior analysis. Morin had completed all the required coursework to become a board-certified behavior analyst but had yet to take the certification exam. Morin had worked in the behavior intervention field for approximately 16 years.

Student was the only student Morin worked with at 20th Street and Estrella. Morin often spent more time than Student's IEP called for supporting Student and Student's BIIs. Throughout the 2021-2022 school year, Morin participated in meetings with Student's teachers and other school staff to discuss the effectiveness of the behavior strategies being used with Student. Morin drafted a behavior treatment plan for Student in September 2021, and revised the treatment plan in November 2021. Morin also collaborated with Los Angeles staff to conduct a functional behavior

assessment of Student in preparation for Student's November 10, 2021 IEP team meeting. Morin consistently implemented the BID services called for in Student's IEP.

At least three different BIIIs worked with Student during the 2021-2022 school year. Krystal Kirkland was Student's BII from the beginning of the school year, until October 7, 2021. Parent requested Behavior Therapy Clinic remove Kirkland as Student's BII because Parent questioned Kirkland's ability to manage Student's behaviors. Christopher White was Student's BII from October 15, 2021, until January 21, 2022. Parent requested Behavior Therapy Clinic remove White as Student's BII because Parent believed White provoked Student's behaviors. Arthur Sabian was Student's BII from January 31, 2022, until Student's last day at Estrella on February 28, 2022. Morin or other substitute BIIIs covered in the absence of Student's assigned BII. Morin trained each BII on how to implement the behavior strategies in Student's behavior intervention plan. Student's behaviors escalated each time a new BII was assigned.

Student's assigned BIIIs kept track of the time they spent with Student in service logs. The logs showed BII service entries from the first day of school on August 16, 2021, through February 8, 2022. During that time, there were approximately five days in which BII services were not logged as being provided. Although, there were no entries from February 9, through 28, 2022, behavior incident reports throughout February 2022 showed that Student's assigned BII was present on most days. The logs and incident reports showed Los Angeles consistently implemented Student's BII services, even in light of Parent's requests to change the BII provider. Missing a few days of services over a seven-month period does not constitute a material failure to implement BII services. Student did not present any evidence that challenged the accuracy of the BII service logs.

However, Los Angeles did not provide any BII or BID services to Student after February 28, 2022. When Los Angeles unilaterally changed Student's placement to City of Angels Virtual Academy in the March 4, 2022 IEP, Los Angeles also removed BII and BID services without Parent's consent. There was no evidence that Student no longer required BII and BID services to access the general education curriculum at City of Angels or to receive educational benefit. Los Angeles's failure to provide Student behavior services from February 28, 2022, through April 20, 2022, was a material deviation from what Student's January 27, 2022 IEP required.

### LOS ANGELES MATERIALLY FAILED TO IMPLEMENT STUDENT'S EDUCATIONALLY RELATED INTENSIVE COUNSELING SERVICES FROM FEBRUARY 28, 2022, THROUGH APRIL 20, 2022

Student proved Los Angeles materially failed to implement Student's counseling services during the 2021-2022 school year. While Los Angeles implemented Student's counseling from the beginning of the 2021-2022 school year, through February 28, 2022, Los Angeles materially failed to implement counseling from February 28, 2022, through April 20, 2022.

Student's March 9, 2021 IEP called for 120 minutes a month of educationally related intensive counseling services. Del Pozo provided Student's counseling services at 20th Street from August 16, 2021, until Student transferred to Estrella in mid-November 2021. Sharon Lee provided Student's counseling services at Estrella from mid-November 2021, until Student's last day on February 28, 2022. The January 27, 2022 IEP increased Student's educationally related intensive counseling services to 60 minutes a week. Parent consented to the IEP on February 7, 2022.

Both Del Pozo and Lee recorded the counseling they provided to Student in service logs. The service logs showed Student received 30 minutes a week of counseling services every week school was in session, from August 16, 2021, through January 28, 2022, except for the week of November 15, 2021, when Student transferred to Estrella. Lee provided counseling services that week but had not yet been assigned as Student's counselor in Los Angeles's electronic data management system and could not log the service. Lee did not log any counseling services between January 28, 2022, and February 28, 2022, but persuasively testified Student received counseling services in February 2022. Lee also persuasively testified that Student received more counseling than Student's IEP called for because Lee was often called to counsel Student when Student exhibited severe maladaptive behaviors. Student did not present any evidence that refuted Lee's testimony or that challenged the accuracy of the counseling service logs.

However, Lee did not provide any counseling services to Student after February 28, 2022. Lee was waiting for Student to enroll in City of Angels before resuming counseling with Student virtually. However, either due to enrollment challenges or technology issues, Lee never met with Student. Los Angeles had an affirmative duty to implement Student's counseling services. Student's social-emotional needs did not change when Los Angeles unilaterally changed Student's placement to City of Angels. Los Angeles's failure to implement educationally related intensive counseling services to Student from February 28, 2022, through April 20, 2022, was a material deviation from what Student's January 27, 2022 IEP required.

Student proved Los Angeles materially failed to implement Student's specialized academic instruction, behavior services and supports, and counseling services during the 2021-2022 school year, from February 28, 2022, through April 20, 2022. Accordingly, Student prevailed on Issue 3d.

ISSUE 3c: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE FOR CHANGES MADE TO STUDENT'S IEP, DESPITE PARENT'S DISAGREEMENT, SPECIFICALLY THE OFFERS OF NONPUBLIC SCHOOL AND CITY OF ANGELS VIRTUAL ACADEMY IN THE FEBRUARY, AND MARCH 2022 IEPS?

ISSUE 3e: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE ACADEMIC SERVICES AND INSTRUCTION IN THE MARCH 4, 2022 IEP?

ISSUE 3f: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE BEHAVIOR SERVICES AND SUPPORTS IN THE MARCH 4, 2022 IEP?

ISSUE 3g: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER NECESSARY EQUIPMENT AND INTERNET ACCESS FOR CITY OF ANGELS VIRTUAL ACADEMY IN THE MARCH 4, 2022 IEP?

ISSUE 3h: DURING THE 2021-2022 SCHOOL YEAR, THROUGH APRIL 20, 2022, DID LOS ANGELES DENY STUDENT A FAPE BY FAILING TO OFFER PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT IN THE MARCH 4, 2022 IEP?

ISSUE 4: DID THE MARCH 4, 2022 IEP OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT, SUCH THAT LOS ANGELES MAY IMPLEMENT THE IEP WITHOUT PARENT'S CONSENT?

Student contends the March 4, 2022 IEP did not offer Student a FAPE. Specifically, Student contends Los Angeles's placement offers at City of Angels Virtual Academy and Slauson Learning Center were not the least restrictive environment for Student. Student contends virtual instruction and independent study were not appropriate given Student's attention and behavioral challenges, and that Los Angeles did not provide Student with adequate equipment for virtual learning. Student also contends Los Angeles inappropriately removed BII and BID services from Student's IEP. Finally, Student contends Los Angeles failed to provide Parent with prior written notice before its decision to unilaterally change Student's placement at the March 4, 2022 IEP team meeting.

Los Angeles contends it had no choice but to recommend a change in placement at the March 4, 2022 IEP team meeting, due to Student's aggressive and dangerous behaviors. Los Angeles further contends the 45-day placement at City of Angels Virtual Academy was intended to ease Student's transition to a nonpublic school. Finally, Los Angeles contends a nonpublic school placement is the least restrictive environment for Student because Student received minimal educational and non-academic benefits from a comprehensive public-school campus, and the public-school campus did not have the resources to support Student's behaviors.

There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the school district has complied with the procedures set forth in the IDEA. (*Rowley*, supra, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit appropriate in light of the child's circumstances. (*Ibid*; *Andrew F.*, supra, 137 S.Ct. at p. 1000.)

Unless the parent and school district have agreed otherwise, a school district must ensure that the IEP team includes:

- the child's parents;
- at least one of the child's regular education teachers if the child is, or may be, participating in the regular education environment;
- at least one of the child's special education teachers, or, where appropriate, one of the child's special education providers;
- a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of

children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources;

- someone who can interpret any assessment results;
- at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the child; and
- whenever appropriate, the child.

In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a); Ed. Code, § 56341.1, subd.

(a.) If a child's behavior impedes the learning of the child or other children, the IEP team must consider the use of positive behavioral interventions and supports. (20 U.S.C. § 1414(d)(3)(B)(i); Ed. Code, § 56341.1, subd. (b)(1).)

The student's needs must be described through a statement of present levels of academic achievement and functional performance, including how the student's disability affects the involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1).)

The goals must be measurable and designed to meet the student's needs so that the student can be involved in and make progress in the general education curriculum and meet each of the other educational needs. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i).) The IEP must also describe how progress towards the goals developed will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3).)

Annual goals should describe what a student with a disability can reasonably be expected to accomplish within a 12-month period of the special education program. (Letter to Butler, 213 IDELR 118 (United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS) (1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7).) The IEP must include an explanation of any extent to which the student will not participate with nondisabled students in the regular class and extracurricular and nonacademic activities. (20 U.S.C. § 1414(d)(1)(A)(i)(V); 34 C.F.R. § 300.320(a)(5).) Further, an IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).) Extended school year services must be provided if the IEP team determines they are necessary for a student to receive FAPE. (34 C.F.R. § 300.106(a)(2).) Extended school year services are special education and related services that are provided beyond the normal school year, in accordance with the student's IEP, and at no cost to parents. (34 C.F.R. § 300.106(b).)

Parents must be members of any group making decisions on the educational placement of their child. (20 U.S.C. § 1414(e); 34 C.F.R. § 300.327; Ed. Code, § 56342.5.) When considering placement decisions, a school district must educate a child in the least restrictive environment, which means to the maximum extent appropriate, children

with disabilities are educated with nondisabled peers; and that special classes or separate schooling occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a).)

In determining the educational placement of a child with a disability, a school district must ensure that:

- placement decisions are made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- placement decisions satisfy least restrictive environment requirements;
- placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home;
- unless the IEP specifies otherwise, the child attends the school that he or she would if nondisabled;
- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- a child is not removed from age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116; Ed. Code, § 56342.)

When analyzing whether a school district complied with the IDEA's least restrictive environment requirements, the court must consider:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the nonacademic benefits of interaction with children without disabilities;
3. the effect the student's presence would have on the teacher, and other students in the general education classroom; and
4. the cost of placing the student in a general education classroom.

*(Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H., et. al. (9th Cir. 1994) 14 F.3d 1398, 1400-1401.)*

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires a further determination of whether the child has been mainstreamed to the maximum extent appropriate in light of the continuum of program options. *(Daniel R.R. v. State Bd. of Educ. (5th Cir. 1989) 874 F.2d 1036, 1050.)* Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. *(M.L. v. Federal Way School Dist. (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)*

School personnel may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative education setting. (20 U.S.C. § 1415(k)(1)(B) 34 C.F.R. § 300.530(b)(1).) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the child's IEP team must review all relevant information in the student's

file, to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the school district's failure to implement the child's IEP. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).) This is referred to as a manifestation determination meeting.

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child has inflicted serious bodily injury upon another person while at school. (20 U.S.C. § 1415(k)(1)(G)(iii); 34 C.F.R. § 300.530(g)(3).) Serious bodily injury means bodily injury which involves:

- a substantial risk of death;
- extreme physical pain;
- protracted and obvious disfigurement; or
- protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365(h)(3).)

On the date the school district decides to change the child's placement to an interim alternative educational setting, it must notify the parents of that decision, and provide them with a procedural safeguards notice. (20 U.S.C. § 1415(k)(1)(H); 34 C.F.R. § 300.530(h).) The child must continue to receive educational services to enable the child to continue to participate in the general education curriculum and to progress toward meeting the child's IEP goals. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d)(i).)

A school district must provide a parent with prior written notice in a reasonable time before the school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must be provided so that parents have enough time to fully consider the change and respond to the action before it is implemented. (*Letter to Chandler*, 59 IDELR 110 (OSEP 2012).)

Prior written notice must include:

- a description of the action proposed or refused by the school district;
- an explanation of why the school district proposes or refuses to take the action;
- a description of each assessment procedure, test, record, or report used as a basis for the proposed or refused action;
- a description of any other factors relevant to the school district's proposal or refusal;
- a statement that the parents have protection under the procedural safeguards of IDEA; and
- sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

The IEP may serve as the school district's prior written notice if it meets all the legal prior written notice requirements. (OSERS, Analysis of Comments and Changes to 2006 IDEA part B Regulations, 71 Fed.Reg. 46591, 46691 (Aug. 14, 2006).)

For the most part, the March 4, 2022 IEP duplicated the content in the February 24, 2022 annual IEP. The major difference in the March 4, 2022 IEP was Los Angeles's placement offer. A behavioral incident involving Student on February 28,

2022, prompted Los Angeles to hold the March 4, 2022 IEP team meeting. On February 28, 2022, Student exhibited elopement and physically aggressive behaviors throughout the school day. Student's behaviors included:

- climbing on school building structures in an unsafe way;
- willful destruction of school property;
- willful destruction of another student's property;
- kicking, hitting, and choking other students;
- punching the BII, BID, assistant principal, and other staff members;
- knocking glasses off of the BII's face; and
- hitting the classroom aide with a basketball.

Estrella's administration called the police because Student would not calm down. The BII received treatment from the school nurse and the paramedics and took a one-week medical leave. This incident was similar to many other behavioral incidents that occurred during the 2021-2022 school year. In fact, Student's BIIs and BID completed nearly 30 behavior incident reports throughout the school year. In more than 20 of the 30 reported incidents, Student physically attacked another student or adult at school. Los Angeles did not allege Student caused or threatened to cause serious bodily injury in any of these instances, and did not recommend removing Student to an interim alternative educational setting.

## THE MARCH 4, 2022 IEP DID NOT COMPLY WITH IDEA PROCEDURAL REQUIREMENTS AND DID NOT OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT

### IEP TEAM MEMBERS

All required participants attended the March 4, 2022 IEP team meeting, including Parent, Assistant Principal Cofield, Special Education Teacher Han, Counselor Lee, and a general education teacher. However, there was not a team member present who was familiar with and could answer Parent's questions about City of Angels Virtual Academy or Slauson Learning Center. Also, Student's BID, who usually attended IEP team meetings when Student's behavior was discussed, was not present.

### PRESENT LEVELS OF PERFORMANCE AND IEP GOALS

The IEP team considered Student's strengths and Parent's concerns about Student's academic performance. The team also considered results from a recent classroom-based academic assessment. The IEP team considered Student's need for positive behavioral intervention and included behavior goals and a behavior intervention plan in the IEP.

The IEP included Student's progress on annual goals and described Student's present levels of performance in behavior, reading, writing, math, and social-emotional functioning. When calm, Student was friendly and responded well to behavior intervention support in the classroom with moderate adult prompting. However, Student often eloped from the classroom and displayed increased frequency and intensity of physical aggression towards others. Student struggled to recover

after behavioral incidents, which led to extended time outside of the classroom. Academically, Student was performing below grade level in all areas. Student's relative strength was in math. Student's reading skills were estimated to be at the first-grade level. The present levels appropriately reflected Student's academic and developmental functioning.

The IEP included seven goals in reading, writing, math, behavior support, and social-emotional functioning. The IEP goals were measurable and designed to meet Student's needs. The goals described skills the IEP team believed Student could achieve within a year. The goals were directly related to Student's present levels in the IEP. Progress towards the goals was measured primarily through observation and work samples. Per the IEP, Los Angeles would send progress reports to parents three times a year. The IEP goals were procedurally and substantively appropriate.

## RELATED SERVICES AND ACCOMMODATIONS

The preponderance of the evidence showed Los Angeles failed to offer appropriate academic instruction and behavior services in the March 4, 2022 IEP. For reasons described below, there was no evidence that City of Angels or Slauson Learning Center could offer Student appropriate academic instruction. There was also no evidence that City of Angels or Slauson Learning Center could appropriately address Student's behavioral needs.

Los Angeles offered Student 60 minutes a week of educationally related intensive counseling services and extended school year services. Los Angeles also offered various accommodations, including breaks, small group instruction, praise, positive

reinforcement, and individual instruction. These counseling services, accommodations, and supports were appropriate and based on Student's social-emotional and instructional needs.

However, there was not a direct relationship between Student's IEP behavior goals and the behavior services Los Angeles offered. The March 4, 2022 IEP had three behavior goals. The goals addressed Student's need to decrease elopement and aggressive behaviors. While the IEP contained a behavior intervention plan that included behavior strategies to reduce Student's behaviors, Los Angeles did not offer any direct behavior services to enable Student to make progress towards achieving the goals. The IEP did not explain why Student no longer required BII and BID services. Further, Los Angeles did not offer any evidence at the hearing that proved Student no longer required BII and BID services. Los Angeles's failure to offer behavior services did not meet Student's unique needs and was not reasonably calculated to enable Student to receive educational benefit in light of Student's circumstances.

## PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT

### CITY OF ANGELS WAS NOT AN APPROPRIATE PLACEMENT

In response to Student's February 28, 2022 behavioral incident, the Los Angeles IEP team members decided to remove Student from Estrella and place Student in a 45-day interim alternative educational setting with City of Angels Virtual Academy. City of Angels offered a combination of virtual instruction and independent study. Students were expected to complete at least 30 hours of schoolwork each week. Los Angeles did not offer evidence that City of Angels offered specialized academic instruction or could help Student make progress towards IEP goals.

Los Angeles did not adhere to IDEA procedures when deciding to change Student's placement to City of Angels. Los Angeles never convened a manifestation determination meeting with Parent and relevant IEP team members to determine whether Student's conduct on February 28, 2022 was caused by, or had a direct and substantial relationship to Student's disability, or was the direct result of Los Angeles's failure to implement Student's IEP. Los Angeles sent Parent a prior written notice letter on March 10, 2022. The letter indicated Los Angeles made the decision to remove Student from Estrella at a manifestation determination meeting held on March 4, 2022. However, the March 4, 2022 IEP does not reference a manifestation determination meeting. Moreover, neither Lee nor Han, who attended the March 4, 2022 IEP team meeting, recalled whether a manifestation determination meeting occurred.

Further, the preponderance of the evidence did not show Student inflicted serious bodily injury upon another person at school, so as to justify removing Student to an interim alternative placement without conducting a manifestation determination. There was no evidence that the injuries to Student's BII on February 28, 2022 resulted in a substantial risk of death, extreme physical pain, obvious disfigurement, or a protracted loss of function of a body part. Los Angeles did not offer any medical records or other proof of the BIIs injuries, other than anecdotal opinions from Estrella staff who witnessed the incident. Had Student's BII suffered serious bodily injury, the BII would have likely had to take more than one-week off from work.

Finally, the instructional model at City of Angels did not meet Student's unique needs and was not the least restrictive environment for Student. Student struggled academically during distance learning in the 2019-2020, and 2020-2021 school years. Los Angeles knew Student had difficulties managing the technology required to participate in a virtual educational program. Los Angeles also knew Student had

significant academic and attention challenges and required adult prompting and sometimes individual instruction to complete work. Student was already two years behind grade level in reading. Changing Student's placement to City of Angels, was setting Student up to fall even further behind academically. Additionally, independent study isolated Student and removed Student's opportunity to interact with peers.

### SLAUSON LEARNING CENTER WAS NOT APPROPRIATE

The preponderance of the evidence showed that Slauson Learning Center did not offer Student a FAPE in the least restrictive environment. Los Angeles did not offer any specific evidence to show how its offer of Slauson Learning Center was reasonably calculated to enable Student to receive educational benefit appropriate in light of Student's circumstances. None of the March 4, 2022 IEP team members had ever visited Slauson Learning Center. Consequently, none of Los Angeles's IEP team members could specifically explain why Slauson Learning Center met Student's academic, behavior, and social-emotional needs.

Further, a nonpublic school is a more restrictive environment than a special day class on a public-school campus. All students at nonpublic schools have special needs. Student would not have the opportunity to interact with nondisabled peers. Without specific evidence about the services and supports Slauson Learning Center provided, a comparison of the academic and nonacademic benefits of Student's placement at a comprehensive elementary school versus placement in a nonpublic school is impossible. Accordingly, without specific evidence as to why a nonpublic school was appropriate for Student, pursuant to *Daniel R. R., supra*, placement in a special day class on a public-school campus with mainstreaming opportunities in general education represents the least restrictive environment for Student.

## LOS ANGELES PROVIDED ADEQUATE EQUIPMENT AND INTERNET ACCESS FOR STUDENT TO ATTEND CITY OF ANGELS VIRTUAL ACADEMY IN MARCH 2022

Although City of Angels was not an appropriate placement for Student, the preponderance of the evidence showed that Los Angeles offered adequate electronic equipment and internet access to participate in the virtual program. At the March 4, 2022 IEP team meeting, Los Angeles offered Student an electronic device to access the program at City of Angels. Staff from Estrella contacted Parent several times to pick up a device and other instructional materials, but Parent was not comfortable visiting Estrella after Los Angeles changed Student's placement. Instead, Estrella's Assistant Principal, Chisa Cofield, dropped off the device and materials at Student's home. Later, Los Angeles provided Student another device with embedded internet service. Thus, Los Angeles fulfilled its obligation to ensure Student had the equipment needed to access the independent study program.

### PRIOR WRITTEN NOTICE

Los Angeles did not provide Parent with prior written notice in a reasonable time before proposing to change Student's placement to City of Angels, and ultimately Slauson Learning Center. Los Angeles did not give Parent any time to consider or respond to Student's placement change. Student was not allowed to return to Estrella after February 28, 2022. Los Angeles did not send the March 10, 2022 prior written notice letter until after it had already changed Student's placement.

In sum, Los Angeles's failure to offer appropriate academic and behavior services and supports in the March 4, 2022 IEP, deprived Student of a FAPE. Los Angeles's failure to adhere to IDEA procedures when placing Student in an interim alternative educational setting also deprived Student of a FAPE and resulted in a loss of educational benefit. Finally, neither City of Angels nor Slauson Learning Center substantively offered Student a FAPE in the least restrictive environment.

Accordingly, Student prevailed on Issues 3c, 3e, 3f, 3g, 3h, and 4.

## CONCLUSIONS AND PREVAILING PARTY

Pursuant to 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. The parties prevailed on the issues as follows:

1. On Issue 1:

Student did not prove that beginning March 18, 2020, through the 2019-2020 school year, including extended school year, Los Angeles denied Student a FAPE by failing to implement, during distance learning, Student's operative IEP, specifically, specialized academic instruction, behavior services and supports, and counseling. Los Angeles prevailed on Issue 1a.

- a. Student did not prove that beginning March 18, 2020, through the 2019-2020 school year, including extended school year, Los Angeles denied Student a FAPE by failing to offer appropriate academic services and instruction. Los Angeles prevailed on Issue 1b.

- b. Student did not prove that beginning March 18, 2020, through the 2019-2020 school year, including extended school year, Los Angeles denied Student a FAPE by failing to offer appropriate behavior services and supports. Los Angeles prevailed on Issue 1c.
  - c. Student did not prove that beginning March 18, 2020, through the 2019-2020 school year, including extended school year, Los Angeles denied Student a FAPE by failing to offer required technology and internet access for distance learning. Los Angeles prevailed on Issue 1d.
2. On Issue 2:
- a. Student did not prove that during the 2020-2021 school year, including extended school year, Los Angeles denied Student a FAPE by failing to, at the March 5, 2020 IEP team meeting, consider Student's strengths, Parent's concerns, evaluation results, Student's academic, developmental, and functional needs, and the use of positive behavior interventions, supports, and strategies. This issue was outside of the statute of limitations. Neither party prevailed on Issue 2a.
  - b. Student proved that during the 2020-2021 school year, including extended school year, Los Angeles denied Student a FAPE by failing to invite Parent to the May 3, 2021 IEP team meeting. Student prevailed on Issue 2b.
  - c. Student proved that during the 2020-2021 school year, including extended school year, Los Angeles denied Student a FAPE by failing to adequately explain Parent's rights and the IEP offer at each IEP team meeting. Student prevailed on Issue 2c.

- d. Student proved that during the 2020-2021 school year, including extended school year, Los Angeles denied Student a FAPE by failing to implement, during distance learning, Student's operative IEP, specifically, specialized academic instruction, behavior services and supports, and counseling. Student prevailed on Issue 2d.
  - e. Student did not prove that during the 2020-2021 school year, including extended school year, Los Angeles denied Student a FAPE by failing to offer appropriate academic services and instruction. Los Angeles prevailed on Issue 2e.
  - f. Student proved that during the 2020-2021 school year, including extended school year, Los Angeles denied Student a FAPE by failing to offer appropriate behavior services and supports. Student prevailed on Issue 2f.
  - g. Student did not prove that during the 2020-2021 school year, including extended school year, Los Angeles denied Student a FAPE by failing to offer required technology and internet access for distance learning. Los Angeles prevailed on Issue 2g.
3. On Issue 3:
- a. Student did not prove that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to identify Student as eligible for special education under the category of specific learning disability. Los Angeles prevailed on Issue 3a.
  - b. Student did not prove that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to adequately explain Parent's rights and the IEP offer at

each team meeting and its intent to offer a nonpublic school at the February 2022 IEP team meeting. Los Angeles prevailed on Issue 3b.

- c. Student proved that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to provide prior written notice for changes made to Student's IEPs, despite Parent disagreement to the offers of a nonpublic school and City of Angels Virtual Academy in the February, and March 2022 IEPs. Student prevailed on Issue 3c.
- d. Student proved that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to implement Student's operative IEP, specifically, specialized academic instruction, behavior services and supports, and counseling. Student prevailed on Issue 3d.
- e. Student proved that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to offer appropriate academic services and instruction in the March 4, 2022 IEP. Student prevailed on Issue 3e.
- f. Student proved that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to offer appropriate behavior services and supports in the March 4, 2022 IEP. Student prevailed on Issue 3f.
- g. Student did not prove that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to offer necessary equipment and internet access for City of

Angels Virtual Academy in the March 4, 2022 IEP. Los Angeles prevailed on Issue 3g.

h. Student proved that during the 2021-2022 school year, through April 20, 2022, Los Angeles denied Student a FAPE by failing to offer placement in the least restrictive environment in the March 4, 2022 IEP. Student prevailed on Issue 3h.

4. On Issue 4: Los Angeles did not prove the March 4, 2022 IEP offered Student a FAPE in the least restrictive environment, such that Los Angeles may implement the IEP without Parent's consent. Student prevailed on Issue 4.

## REMEDIES

Student prevailed on Issues 2b, 2c, 2d, 2f, 3c, 3d, 3e, 3f, 3h, and 4, and is entitled to a remedy for the denials of FAPE.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Comm. of the Town of Burlington, Mass. v. Dept. of Educ.* (1985) 471 U.S. 359.) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process case. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Appropriate relief means relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497.) The award must be fact-specific and be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.)

This Decision finds that Los Angeles denied Student a FAPE during portions of the 2020-2021, and 2021-2022 school years. Los Angeles failed to implement Student's behavior services, specialized academic instruction, and counseling during distance learning in the 2020-2021 school year. To remedy this failure, Student requests 300 hours of one-to-one compensatory tutoring and 700 hours of applied behavior analysis therapy. Pursuant to Student's March 5, 2020 IEP, Student was entitled to receive 1,800 minutes a week of BII and 300 minutes a month of BID. Student not receiving BII and BID services, impeded Student's ability to access academic instruction through distance learning. As a result, Student fell further behind academically. During the 2020-2021 school year, Los Angeles provided four hours a day of small group synchronous instruction from a special education teacher. Instead of awarding compensatory BII and BID services, Student would likely benefit more from compensatory one-to-one academic instruction. Because the compensatory

services will be one-to-one and not in a small group, Student is entitled to two hours a day of academic instruction from the beginning of the 2020-2021 school year, through April 16, 2021, when Student returned to in-person instruction. There were approximately 140 instructional days during this period. Therefore, Student is awarded 360 hours of one-to-one compensatory academic instruction.

Pursuant to the March 5, 2020 IEP, Student should have received 120 minutes a month of educationally related intensive counseling services during distance learning in the 2020-2021 school year. There were approximately eight instructional months from the beginning of the 2020-2021 school year, through April 16, 2020. Therefore, Student is awarded 16 hours of compensatory counseling services.

While this Decision does not determine Los Angeles's November 9, 2021 psychoeducational assessment was inappropriate, due to Del Pozo's conclusion that there was insufficient information to determine whether Student had a specific learning disability, and the fact that Student did not attend school from February 28, 2022, through the end of the 2021-2022 school year, an appropriate remedy to help Los Angeles and Parent determine the full range of Student's special education and related service needs would be a comprehensive psychoeducational assessment that considers whether Student meets eligibility criteria under the categories of other health impairment, specific learning disability, and emotional disturbance. Accordingly, Los Angeles is ordered to conduct a comprehensive psychoeducational reevaluation of Student.

From February 28, 2022, through April 20, 2022, Los Angeles failed to offer Student placement in the least restrictive environment, and failed to implement

Student's specialized academic instruction, BII and BID services, and counseling services. To remedy these failures, Student seeks placement in a special day class at a public school of Parent's choice with appropriate supports. In addition, Student requests that Los Angeles hire Dr. Sunny Kim as Student's BID to provide behavior intervention supports as described below. Additionally, Student requests 600 hours of compensatory academic instruction.

Dr. Sunny Kim testified as Student's expert. Dr. Kim had a bachelor's degree in psychology, a master's degree in education with an emphasis on special education, a doctoral degree in education with an emphasis on special education, and a mild to moderate special education teaching credential. Dr. Kim was also a board-certified behavior analyst. Dr. Kim was the founder of Sunny's Behavior Services, a private company that provided behavior consultation and services in Los Angeles and other parts of California. Dr. Kim was highly qualified in the field of behavior intervention. Dr. Kim's testimony was persuasive and given significant weight.

Dr. Kim observed Student over the course of three days in April, and May 2022. Dr. Kim observed Student working with an academic tutor in a one-to-one setting at a public library. In total, Dr. Kim observed Student for approximately four hours. Dr. Kim also review Student's school records, including Student's behavior treatment plan, behavior intervention plan, and functional behavior assessment. In Dr. Kim's opinion, Student could be successful on a public-school campus if Student's BII, BID, and other school personnel are trained on how to implement the behavior intervention plan with fidelity.

Dr. Kim recommended that Student systematically reintegrate into a school setting under the close supervision of a board-certified behavior analyst. For example, Dr. Kim recommended the following reintegration schedule:

**Table 1 Reintegration Schedule**

<b>Week/Day</b>	<b>Time at School</b>	<b>Activity</b>
Week 1: Monday, Tuesday, Wednesday	1 hour	Eat lunch and join recess
Week 1: Thursday and Friday	1.5 hours	Eat lunch, join recess, and transition to class for no more than 30 minutes
Week 2: Monday, Tuesday, Wednesday	2 hours	Eat lunch, join recess, and transition to class for one hour
Week 2: Thursday, Friday	3 hours	Arrival one hour before lunch, eat lunch, join recess, and transition to class for one hour
Week 3: Monday, Tuesday, Wednesday	4 hours	Arrival one hour before lunch, eat lunch, join recess, and transition to class for the remainder of the school day
Week 3: Thursday, Friday	5 hours	Arrival two hours before lunch, eat lunch, join recess, and transition to class for the remainder of the school day
Week 4: Monday, through Friday	Full day	Provide as many breaks as requested

Once Student is fully reintegrated into school, Dr. Kim recommended a board-certified behavior analyst conduct a functional behavior assessment and develop a behavior intervention plan. Additionally, Dr. Kim recommended the following:

- Initial BII training for four hours to occur within the first week Student reintegrates fully into school;
- Full-day BII services;
- 120 minutes a week of BID support from a board-certified behavior analyst for six weeks;
- Weekly data analysis conducted by the BID; and
- After four weeks of Student's behavior intervention team implementing Student's behavior intervention plan with fidelity, a team meeting to review data and Student's overall progress.

Finally, Dr. Kim opined that the six weeks of BID support as described above would amount to 20 service hours.

Dr. Kim's recommendations were carefully thought out, clearly articulated, and reasonable. Accordingly, as a remedy for Los Angeles's failure to offer Student placement in the least restrictive environment in the March 4, 2022 IEP, and its failure to implement Student's behavior intervention services from February 28, 2020, through April 20, 2022, Student is entitled to 20 hours of compensatory BID services from a board-certified behavior analyst. Additionally, Student is entitled to placement in a special day class on a public-school campus as close to Student's current residence as possible. To allow Student to begin with a clean slate, placement cannot be at a school Student has already attended. Los Angeles is ordered to implement Dr. Kim's reintegration plan as described above.

Student is entitled to compensatory education for Los Angeles's failure to implement Student's specialized academic instruction and counseling services from February 28, 2022, through April 20, 2022. Los Angeles offered three hours of academic instruction through City of Angels at the March 4, 2022 IEP. Accordingly, Student is entitled to three hours a day of one-to-one compensatory academic instruction for the days he was not enrolled at Estrella. There were approximately 30 instructional days during that time period. Therefore, Student is entitled to 90 hours of one-to-one compensatory academic instruction. Pursuant to Student's January 27, 2022 IEP, Student should have received 60 minutes a week of counseling services. Los Angeles failed to implement approximately seven weeks of counseling services. Therefore, Student is entitled to seven hours of compensatory counseling services.

## ORDER

1. Within 20 calendar days of the date of Order, Los Angeles must convene an IEP team meeting with all required IEP team members to offer Student placement in a special day class on a public-school campus as close to Student's residence as possible. To allow Student to start with a clean slate, the placement must not be at a school Student has already attended. Los Angeles must consider offering transportation if the school is not Student's school of residence. Student must have a full-time BII and a BID who is a board-certified behavior analyst assigned on the first day of school.

2. Within 30 calendar days of the date of this Order, Los Angeles must:
  - a. Contract with a nonpublic agency to assign Student a full-time BII provider consistent with Student's January 27, 2022 IEP;
  - b. Contract with a nonpublic agency to assign a board-certified behavior analysis as Student's BID provider; and
  - c. Begin integrating Student into school consistent with Dr. Kim's re-integration plan described above;
3. Los Angeles must fund 20 hours of compensatory BID services to be used within the first six weeks of Student attending school.
4. Within 15 days calendar days of Student being fully reintegrated onto a public-school campus, Los Angeles must present Parent with an assessment plan to conduct a functional behavior assessment and a comprehensive psychoeducational assessment. The psychoeducational assessment must consider whether Student meets eligibility criteria for other health impairment, specific learning disability, and emotional disturbance.
5. Within 45 calendar days of the date of this Order, Los Angeles must contract with a nonpublic agency to fund:
  - a. 450 hours of one-to-one academic instruction; and
  - b. 23 hours of counseling services.
6. Student will have until December 31, 2025, to use the compensatory academic instruction and until December 31, 2023, to use the compensatory counseling services. Any hours remaining after those dates will be forfeited.
7. All other relief requested by Student and Los Angeles is denied.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

*/s/*

Tara Doss

Administrative Law Judge

Office of Administrative Hearings