

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022100623

PARENT ON BEHALF OF STUDENT

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

DECISION

February 1, 2023

On October 20, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent, on behalf of Student, naming Los Angeles Unified School District as respondent. Administrative Law Judge Penelope Pahl heard this matter via videoconference on December 6, 7, 8, 12, 13, 14, 15, and 19, 2022.

Attorney Lynda Williams represented Student. Attorney Robert Burgermeister also appeared for Student for part of the first day of hearing. Parent attended on

Student's behalf. Attorney Dee Ann Hassanpour represented Los Angeles and was assisted by law clerk Lucy Nadzharyan. Patrick Johnson, Los Angeles Unified School District's Research and Resolution Specialist attended the hearing on Los Angeles' behalf.

At the parties' request, the matter was continued to January 12, 2023 for written closing briefs. The record was closed, and the matter submitted on January 12, 2023.

ISSUES

1. Did Los Angeles Unified School District deny Student a free, appropriate public education, or FAPE, during the 2020-2021 school year, beginning October 10, 2020, by:
 - a. Failing to assess Student for eligibility under the category of emotional disturbance;
 - b. Assigning Student to distance learning without conducting a distance learning assessment;
 - c. Failing to implement the in-person components of Student's IEP during distance learning, specifically behavior intervention and implementation, also called BII support, counseling, and resource support services;
 - d. Failing to implement the accommodations in Student's operative IEP during distance learning;
 - e. Failing to offer sufficient supports in math and Spanish;
 - f. Failing to offer home-based applied behavior analysis therapy and clinic meetings;

- g. Starting May 27, 2021, failing to offer goals that met Student's social-emotional, behavioral support, and math needs;
 - h. Denying Parents' May 27, 2021, requests for behavior intervention services during Neighborhood Academic Initiative instruction and for increased academic support in math and Spanish; and
 - i. Failing to offer extended school year services to address regression?
- 2. Did Los Angeles Unified School District deny Student a FAPE during the 2021-2022 school year, by:
 - a. Failing to assess Student for eligibility under the category of emotional disturbance;
 - b. Failing to offer goals that met Student's social-emotional and math needs;
 - c. Failing to offer parent training in attention-deficit hyperactivity disorder, anxiety disorder, and the primary eligibility of other health impairment;
 - d. Denying Parent requests at the May 26, 2022, IEP team meeting for additional supports during Neighborhood Academic Initiative instruction for BII services, and Parent requests for increased academic support in math and Spanish; and
 - e. Failing to offer extended school year services during 2022?
- 3. Did Los Angeles Unified School District deny Student a FAPE during the 2022-2023 school year through October 20, 2022 by failing to assess Student for emotional disturbance?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, 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 Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

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

In this case, Student had the burden of proof by a preponderance of the evidence. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 12 years old and in the seventh grade at the time of hearing. Although not a resident of the Los Angeles Unified School District, Student's right to attend the Charter, and then the Magnet school he attended in Los Angeles, was not in dispute. Student was eligible for special education under the category of other health impairment.

ISSUES 1a, 2a, AND 3: DID LOS ANGELES UNIFIED SCHOOL DISTRICT DENY STUDENT A FREE, APPROPRIATE PUBLIC EDUCATION, OR FAPE, DURING THE 2020-2021 SCHOOL YEAR, BEGINNING OCTOBER 20, 2020, THE 2021-2022 SCHOOL YEAR AND THE 2022-2023 SCHOOL YEAR, THROUGH OCTOBER 20, 2022, BY FAILING TO ASSESS STUDENT FOR ELIGIBILITY UNDER THE CATEGORY OF EMOTIONAL DISTURBANCE?

Student asserts that Los Angeles should have assessed Student for emotional disturbance due to Student's behaviors. Los Angeles argues that his behaviors did not warrant an emotional disturbance assessment and no such assessment was ever requested by a Parent or teacher during the period at issue.

A FAPE, means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel

develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see, Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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 Education 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 school district must reassess a student eligible for special education at least once every three years; but may not assess more than once a year unless Parents agree. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381(a)(2).) The school district must assess or reassess the educational needs of a child with a disability if requested by Parent, or a teacher; or if the district determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation." (Ed. Code, § 56381(a).)

Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time, and to a marked degree, that adversely affects a child's educational performance:

- A. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

- C. Inappropriate types of behavior or feelings under normal circumstances.
- D. A general pervasive mood of unhappiness or depression.
- E. A tendency to develop physical symptoms or fears associated with personal or school problems.

(34 C.F.R. § 300.8(c)(4); Cal. Code Regs., tit. 5, § 3030, subd. (b)(4).)

Student failed to prove that Los Angeles should have assessed Student for emotional disturbance eligibility between October 20, 2020 and October 20, 2022. Student argued that an emotional disturbance assessment was warranted because one was recommended by School Psychologist Paul Vogel in Student's initial assessment in the 2018-2019 school year. At that time, Parents did not consent to the assessment. Student's behaviors during third grade, prior to any special education interventions, were more uncontrolled and frequent than they were October 20, 2020, when Student was in fifth grade.

Marina Delgado, was the district psychiatric social worker who worked with Student before he was found eligible for special education. According to Delgado, Student's behavior improved after he began receiving special education behavior supports. Stacey Johnson was the behavior aide supervisor who worked with Student while supervising his behavior aide during fourth and fifth grade. S. Johnson observed Student's behavior improve in the classroom and during distance learning. She attributed some of the improvement to Student's remote interactions with his peers, and some to his ongoing maturity. Both Mother and Father also acknowledged behavior improvement during distance learning. Mother, as Student's sixth grade English language arts and history teacher, said Student's transition to middle school

went well. Mother attributed this to Student being older. No evidence was offered of behavior issues during the first few weeks of the 2022-2023 school year through October 20, 2023.

No teacher or school psychologist has recommended an assessment for emotional disturbance since Student's initial eligibility assessment. Parents never requested an emotional disturbance assessment. Student did not show by a preponderance of the evidence that Parents expressed concerns about behaviors indicating emotional disturbance that should be assessed. Nor was evidence presented that the District was on notice Student exhibited conduct which would warrant assessment in this area. No expert testified that Student should have been assessed for emotional disturbance. Student did not prove by a preponderance of the evidence that he would have met the criteria for emotional disturbance at any time from October 2020 through October 2022.

There was no evidence that Student had an inability to learn. His grades were excellent from October 20, 2020 through October 20, 2022. No other evidence established that Student could not learn, or that his ability to access his education was impeded by behaviors indicating an emotional disturbance.

Student did not prove he had an inability to build satisfactory relationships with peers and adults. Student had difficulties with some peers due to his excessive competitiveness, however, these problems were not evidence of an emotional disturbance. Rather, Student exhibited an overly developed desire to be recognized for his academic achievements in class, and would occasionally become emotional when he did not receive the desired recognition. Student offered no reliable evidence of the frequency or intensity of these incidents.

Further, Student did not establish that he was unable to have satisfactory relationships with peers. Student was seen to have friends and get along with classmates and adults when he was calm. He was observed having conversations about mutual interests with Students at lunch and on breaks. Student did not establish he was unable to establish satisfactory relationships with peers.

Similarly, there was no evidence that Student was unable to have good relationships with adults. School Psychologist Kylie Amely described him as an enthusiastic participant in online counseling. Resource teacher Azzizza Johnson mentioned that Student was so chatty he would get distracted from his work, so she created a show and tell session during the last few minutes of his specialized academic instruction to allow him free time to talk with her. School Psychologist Nancy Castillo described him as a joy and said he always came to counseling happy.

There was no evidence that Student suffered from a general mood of unhappiness or depression or that he tended to develop physical symptoms or fears associated with school or personal problems. There was no evidence Student refused to go to school or that getting him to attend was a struggle. There was no evidence that Student had unexplained illnesses, such as stomach aches, that resulted in missed school. Testimony from district witnesses confirmed Student's attendance was excellent. School records also confirmed good attendance.

Nor did Student demonstrate inappropriate behaviors or feelings under normal circumstances that would raise emotional disturbance concerns. Father, who admitted he did not understand what emotional disturbance really meant in the special education context, said he was told by Kaiser anxiety was "under the emotional disturbance umbrella" and said Student had been diagnosed with anxiety by Kaiser. However, Student

offered no evidence that anxiety interfered with his ability to access his education or impeded his educational performance. Nor did Student offer expert or other testimony that supported a conclusion that Student's anxiety warranted an emotional disturbance assessment. Parents never requested an emotional disturbance assessment.

No Parent, teacher, or school administrator saw Student as a threat to himself or others. While there was one instance, in February of 2022, when Student lost his temper and hit two peers with a plastic field hockey stick during physical education class, the outburst was impulsive. No injuries were reported. While not downplaying the seriousness of fighting at school, the assistant principal, Federman Carrillo did not consider it an alarming incident. Student was assigned to clean up duty on campus as a consequence, as opposed to suspension or even detention. There was no evidence that Student was ever disciplined at school again.

Kylie Amely, described the types of conduct that would trigger concerns of emotional disturbance. Amely was the school psychologist who worked with Student during the last half of his fifth-grade year, during distance learning. Amely listed concerns normally leading to an emotional disturbance assessment as

- being the need for multiple threat assessments of a student,
- suicidal ideation,
- aggression,
- multiple disciplinary incidents, and
- ongoing depression or anxiety.

Although she received reports of outbursts by Student, Amely received no reports of significant outbursts such as those requiring a class evacuation or an intervention from an adult for safety concerns. She did not observe, or receive reports of, conduct that would have resulted in her recommendation for an emotional disturbance assessment. Nor did Amely receive a request for an emotional disturbance assessment from Parents, teachers, or administrators.

School Psychologist Lela Bohannon is working with Student during the current school year, 2022-2023. Bohannon described the primary marker leading to a referral for an emotional disturbance assessment as a student being a danger to himself or others, that is, repeated attempts to harm or injure someone, including himself, at school or in the home. Her list of concerns also included suicidal ideation, mental health holds, parental feedback and medications that might make children highly aggressive or withdrawn. She did not observe, or receive reports of, conduct that would have resulted in her recommendation for an emotional disturbance assessment.

Student failed to prove that he had special education needs that were reasonably suspected to be based on an emotional disturbance, warranting an emotional disturbance assessment. Student's primary issues leading to in-class dysregulation involved his tendency to be ultra-competitive. Student was driven to display his knowledge by being called on first, finishing assigned work first, or saying the answer first. This led Student to blurt out responses out of turn, and become overly disappointed when he was not called on or, worse, if he gave an incorrect answer. He was his own worst critic and had a range

of displays of disappointment, from responses such as, "Oh, Man!" to crying, and in some instances yelling. Student's ultra-competitive bent impeded his ability to work in groups at times. However, the evidence established that Student exhibited his most strident behaviors less frequently as he matured.

Student did not prove that he displayed conduct that would warrant Los Angeles to have concerns he was dangerous or disturbed. Nor did Student prove that he displayed any emotional disturbance characteristic to a marked degree over a long period of time, resulting in an adverse effect to his academic performance that would have warranted Los Angeles' obligation to assess for emotional disturbance. (34 C.F.R. § 300.8(c)(4); Cal. Code Regs., tit. 5, § 3030, subd. (b)(4).)

The failure to assess is a procedural violation. Solely technical defects do not rise to the level of a denial of FAPE. (*Amanda J. v. Clark County. School District* (9th Cir. 2001) 267 F.3d 877, 892; 34 C.F.R. § 300.510(a)(2).) A denial of FAPE resulting from a procedural violation exists only if it is established that the procedural violation resulted in a denial of educational benefit or a failure to provide Parents a meaningful opportunity to participate in the development of Student's IEP. (*Doug C. v. Hawaii Dept. of Educ.*, (9th Cir. 2013) 720 F. 3d. 1038, 1046.)

Here, Student failed to establish that Los Angeles should have assessed in the area of emotional distress. However, even had Student established a need to assess, Student offered no evidence that lack of assessment deprived Student of access to education or deprived Parents of a meaningful opportunity to participate in the IEP

development process. Student offered no evidence that the failure to assess Student resulted in a loss of instruction due to the failure to assess for emotional disturbance. Nor did Student prove Parents were denied information necessary to participate in IEP teams meetings. Student did not prove, by a preponderance of the evidence, that assessment for emotional disturbance was warranted during the period from October 20, 2020 through October 20, 2022 or that Student was denied a FAPE for failure to assess for emotional disturbance.

ISSUE 1b: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR, BEGINNING OCTOBER 10, 2020, BY ASSIGNING STUDENT TO DISTANCE LEARNING WITHOUT CONDUCTING A DISTANCE LEARNING ASSESSMENT?

Student asserts that prior to placing Student in distance learning during the 2020-2021 school year, Los Angeles had an obligation to assess him. Los Angeles argues that Student failed to offer any legal authority mandating a "distance learning assessment," or defining what kind of assessments that would require. Los Angeles further argues that Student did not demonstrate the district had any reason to think Student would be unable to access distance learning, or that Student was unable to do so.

Student had been thoroughly assessed in June of 2019 when he was evaluated for special education eligibility. Assessments are only required to be conducted every three years absent a request from a Parent or teacher; or a district's knowledge of a need to reassess. (20 U.S.C. § 1414(a)(2)(A); see also Ed. Code, § 56381(a).)

Student presented no evidence that assessments were requested by either Parents or a teacher prior to distance learning in the 2020-2021 school year. Student also failed to establish areas of need that should have been assessed prior to Student's participation in distance learning during the 2020-2021 school year. Student presented no evidence that Los Angeles had information warranting the need for further assessments to address concerns about Student's ability to function in the distance learning program in the 2020-2021 school year.

Student argues in his closing brief that Los Angeles should have assessed because of Student's inability to access distance learning during the 2019-2020 school year. Yet, Student presented no evidence of how Student adapted to distance learning during the 2019-2020 school year.

Student contends that Parents testified Student "never adapted well to school in front of a computer screen." In addition to being a mischaracterization of Parents' testimony, the preponderance of the evidence does not support this argument. Mother testified that Student went off camera daily because he got frustrated. Mother also testified he was usually off camera for only a couple of minutes. When Student went off camera, his behavior aide contacted him and, according to Mother, between the aide and Father, Student would return to class. Virtual learning was difficult at first, but improved.

Father testified that Student attended all Zoom sessions for distance learning during the 2020-2021 school year. At the beginning of the year, technical problems frustrated Student. However, Father acknowledged the problems were frequent only

the first week or two, and diminished significantly after the third week of school. By the last three months of school, the technical problems had ended. Father described what he called "meltdowns," when Student would get frustrated, yell, and turn off his camera. Father said Student would talk back or push a point when someone disagreed with him, and he would get into trouble.

Father said "meltdowns" occurred almost daily, resulting in Student being "written up" or Parents receiving phone calls from teachers or the assistant principal. However, this was not supported by other evidence. Student presented no evidence of Student being repeatedly "written up" for misconduct. Nor did teachers support Parents assessment of Student's conduct or of repeated communications with Father.

Student failed to demonstrate his conduct during distance learning demonstrated a need for an assessment. Student's behaviors were consistent with those behaviors he had exhibited in the classroom, and which were addressed by his IEP and behavioral aide. However, despite the behaviors, the evidence established Student was accessing his education via distance learning. Student attended a dual immersion Spanish program which meant Student's courses were presented in both English and Spanish. Student had an online behavior aide that assisted him with academics and with regulating emotions. The behavior aide's supervisor, who observed Student weekly, believed Student transitioned well to distance learning, noting that Student worked with his aide both during synchronous teaching and in break out rooms during asynchronous work in the afternoons.

Maria Sanchez, Student's fifth grade English language teacher for Student's dual language immersion program, stated that Student's attendance was as consistent as it had been during in-person learning prior to the pandemic. She did not recall Student having difficulty staying on camera. While Sanchez was aware Student turned off his camera occasionally, she noted students were allowed to have their cameras off while participating in class activities.

Spanish teacher, Daniela Schatz, did not recall having regular problems with Student. She recalled that he would get upset if she did not call on him. To manage that, she began calling on students to give answers by saying "[Student A] first, then [Student]." Student was able to access and benefit from his education program during distance learning. Student failed to demonstrate, by a preponderance of the evidence, that he exhibited conduct warranting assessment prior to beginning or during distance learning during the 2020-2021 school year.

The failure to assess is a procedural violation. Solely technical defects do not rise to the level of a denial of FAPE. (*Amanda J. v. Clark County. School District, supra*, 267 F.3d at p. 892; 34 C.F.R. § 300.510(a)(2).) Even had Student demonstrated a need for assessment, which he did not, Student presented no evidence that the lack of assessment resulted in either a denial of educational benefit, or a deprivation of Parents' right to participate in the IEP development process.

Student failed to prove that Los Angeles denied him a FAPE by assigning him to distance learning in the 2020-2021 school year without assessing Student.

ISSUE 1c AND 1d: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR, DURING DISTANCE LEARNING, BEGINNING OCTOBER 10, 2020, BY FAILING TO IMPLEMENT THE IN-PERSON COMPONENTS OF STUDENT'S IEP, SPECIFICALLY BEHAVIOR INTERVENTION AND IMPLEMENTATION, COUNSELING, AND RESOURCE SUPPORT SERVICES, AND BY FAILING TO IMPLEMENT THE ACCOMMODATIONS IN STUDENT'S OPERATIVE IEP?

Student asserts that he was denied FAPE during the pandemic school closures due to Los Angeles' failure to provide in-person behavior intervention and implementation support service, specifically:

- an in-person, one-to-one behavior aide;
- in-person counseling; and
- in-person resource support for math.

Los Angeles argues that Student received all required behavior aide support and resource services. Los Angeles concedes Student did not receive all of the required counseling, but demonstrated that Student was given extra services to compensate for the loss.

DISTANCE LEARNING MODEL INSTRUCTION MODIFICATIONS ALLOWED

Pursuant to state and federal guidance, Los Angeles was allowed to offer Student alternatives to in-person services such as distance learning, so long as the alternative methods of instruction offered FAPE. (*Supplemental Fact Sheet Addressing the Risk of*

COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020, Office of Civil Rights and OSEP) at p. 2.; *Special Education Guidance for COVID-19* (CA Dept. of Education, 3-31-2020) p. 1, § 2.) Los Angeles provided all instruction to Student via distance learning during the 2020-2021 school year.

BEHAVIOR INTERVENTION AND IMPLEMENTATION SUPPORT

Student argues in his closing brief that, during distance learning, online behavior aide services were inadequate because services ended anytime Student turned off his camera. This was not supported by the evidence. Student also argues that the online IEP services were not “genuine” because the services were not offered in person, a position unsupported by evidence or legal authority. Additionally, Student contended that Student did not make progress because of Student’s lack of services.

Los Angeles argued that Student was provided the 1,800 minutes of behavior intervention support per week provided in his IEP.

A district’s material failure to implement the child’s IEP may violate the IDEA. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J*, (9th Cir. 2007) 502 F.3d 811, 815.)

The preponderance of the evidence established that Los Angeles materially implemented Student’s behavior support services. No witness testimony or documentary evidence, such as service logs, established a lack of services. Student implies in his closing argument that Student’s behavior aide service minutes were reduced because of the times Student was off camera. However, Student did not

establish how often that happened, how long it lasted or how it impacted Student's education. Nor did Student establish that the behavior aide did not offer services when Student was off camera.

Student did not call his one-to-one behavior aide to testify to her approach when he was off camera. However, Behavior Supervisor, S. Johnson described the procedure. If the camera was off without permission, and Student was no longer participating in the lesson, the aide would wait a short time, and then message him to see if he would log back on. If only the camera was off, the aide would verbally prompt him to turn the camera back on. S. Johnson acknowledged that Student sometimes turned off his camera and did not return to work for a period of time. The length of time was not established. Sometimes when off camera, Student had emotional outbursts. However, Student failed to demonstrate that he received no behavior support when he was off camera.

Nor did the evidence establish that Student's frustrations materially impacted his ability to access his education. Mother recalled disagreements between Father and son during distance learning due to his behavior, but could not quantify how often or how long they lasted with any specificity. Father admitted that when he got involved in Student's behavior difficulties, it made them worse, and noted it was better when he let the behavior aide do her job. Father acknowledged that, in early 2021 when Father was ill and could not be on the computer with Student, Student was better behaved.

Father did not quantify the number of times Student was off camera due to a behavior, or the length of time behavior issues lasted. Notably, students were not

required to have their cameras on all of the time during synchronous learning sessions. Student failed to prove by a preponderance of the evidence that there was material failure to implement behavior aide services when he was off camera.

Nor did Student prove that providing his behavior aide services via computer was a material failure to implement his IEP. Mother and Father both testified to long stretches of time doing homework, implying homework lasted longer because of the lack of in-home behavior aide services. Mother testified that she worked with Student on math two hours each day. Father initially stated he “sometimes” worked on homework with Student until midnight, but later shifted to stating he routinely worked with Student until midnight to get all of his homework done.

Parents were not very reliable witnesses. Mother answered most questions with “I don’t recall.” Father was asked mostly leading, self-serving questions during direct examination. Some of Father’s answers seemed rehearsed and were repetitive. Student offered no evidence of homework assigned or any specific evidence of time spent doing homework time on a daily or weekly basis. Nor were written records offered of time devoted to homework. Overall, the Parents’ testimony regarding Student being off camera and struggling to complete homework because of a lack of in-person services, was unpersuasive.

Nor did other evidence prove that in-person behavior support would have resulted in Student’s on camera class participation improving during distance learning. Student’s operative IEP, for the 2020-2021 school year, included a goal for working on his behaviors, as well as a behavior implementation plan. Student also lost some class time when working with an in-person behavior support aide, both before and after distance learning. The evidence did not establish how much instruction Student lost

because he turned off his camera. However, his participation would not have been perfect because he was learning to manage his behaviors and that sometimes required that he take a break or be taken out of class for a quick talk with his behavior aide.

Los Angeles delivered Student's behavior intervention services with fidelity during the 2020-2021 school year. Student failed to prove by a preponderance of the evidence that the provision of a remote behavior aide resulted in more than a minor discrepancy in the services provided in Student's IEP, or that having an online behavior aide caused Student a material loss of educational access.

COUNSELING

Student argues that he did not receive the in-person counseling offered in his IEP during distance learning. Los Angeles concedes that it was unable to provide all of Student's required counseling, but established that Parents accepted compensatory counseling minutes for the time Student did not receive.

Counseling did not begin until mid-year, which was more than a minor discrepancy in the services Student was due, according to his IEP. The evidence did not establish exactly when services restarted or how many sessions Student missed. Los Angeles conceded that it had been unable to staff online counseling until the second semester of the 2020-2021 school year.

The evidence was inconsistent regarding the number of sessions Student received during the school year, however, the number of sessions missed was material. Mother thought only approximately three sessions were delivered all year. Amely testified that she conducted counseling sessions for Student in the evenings at Parents request, but could not recall the number of sessions she provided. The sessions did not

begin prior to January 2021. Student established that he was denied a FAPE due to Los Angeles' material failure to deliver the counseling services he was due during the 2020-2021 school year.

RESOURCE SUPPORT

Student asserted that the online resource support provided to Student during the 2020-2021 school year was not "genuine" because he did not receive the in-person resource support provided by his IEP. Los Angeles argued that it delivered all IEP required resource support to Student during the 2020-2021 school year.

Los Angeles educational specialist Azzizza Johnson provided resource support to Student during the 2020-2021 school year. A. Johnson and Student worked on Student's math goal. The operative IEP for that year was the June 5, 2020 IEP which included a math goal to help Student subtract multi-digit numbers. Student received specialized academic instruction twice a week for 30 minutes each session using worksheets A. Johnson created based on the IEP goal. A. Johnson, or Ms. Randall, the "baseline aide," would work with Student on worksheets via Zoom. Sometimes the three of them worked together.

Student offered no evidence establishing that the online services constituted a material failure to implement Student's IEP. Nor did Student prove the alternate instructional methods implemented during distance learning failed to provide Student with FAPE, during the Covid-19 school closures. (*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (March 21, 2020, Office of Civil Rights and OSEP) at p. 2.; *Special Education Guidance for COVID-19* (CA Dept. of Education, 3-31-2020) p. 1, § 2.)

Sometimes Student's behavior impeded his ability to work, as it did when he was attended class in person. Sometimes Student would turn off the camera and would not comply with A. Johnson's instructions. A. Johnson stated this did not happen often. A few times, Student exhibited behaviors that interfered in A. Johnson's ability to provide resource services. She estimated that once, every two weeks, Student might turn the camera off and refuse to cooperate. In those instances, his behavior aide would take Student into a Zoom breakout room to speak with him. Student would usually then turn the camera back on. Student also liked to chat with A. Johnson and, a couple of times, brought items to the session that were distracting. To manage this, A. Johnson created a one-to-two-minute show and tell at the end of their resource sessions. Los Angeles' response to behaviors that occasionally interfered with Student's resource services was consistent with Student's IEP behavior interventions.

Father claimed that the resource support sessions were inadequate; but did not argue specifically how the specialized academic instruction failed to meet Student's needs. Student offered no evidence establishing that the specialized academic instruction failed to meet Student's needs. Student failed to prove, by a preponderance of the evidence, that Los Angeles' online delivery of resource support services was a material failure to implement Student's IEP during distance learning or that online service delivery resulted in any deprivation of educational access or benefit.

ACCOMMODATIONS

Student argues that Los Angeles failed to deliver behavior aide services or accommodations and, therefore, Student did not make progress on his IEP goals. Los Angeles contends it provided Student with his required accommodations.

Student's argument confuses a failure to implement services with a failure to implement accommodations. As explained above Student did not prove that Los Angeles failed to implement behavior aide services. Student also failed to prove Los Angeles did not implement Student's accommodations.

On March 20, 2020, the California Department of Education, also called CDE, issued guidance that stated local educational agencies must create access to the instruction for students with disabilities, including planning for appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality when providing instruction through a distance learning model. (Cal. Dept. of Educ., Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities (March 20, 2020).)

Student's June 5, 2020 IEP provided accommodations, specifically:

- extended time on tests and quizzes and on class assignments as needed;
- breaks as needed;
- noise buffers made available to Student for all tests including state standardized tests;
- the opportunity to test in a small setting;
- multiplication chart;
- headphones to block noise as needed and monitored by behavior aide;
- preferential seating near the point of instruction; and
- shortened assignments.

Student failed to prove he was denied the accommodations designated for in his IEP. Mother expressed concern that the school did not provide “fidgets” for Student. However, no fidget accommodations such as spinners or therapy-putty, were listed in Student’s operative IEP for the 2020-2021 school year. S. Johnson acknowledged Student was not supported with “social stories” during distance learning. However, social stories were also not listed as an accommodation on Student’s June 2020 IEP.

Parents expressed concern that Los Angeles did not provide all of Student’s accommodations. However, Parents did not explain why some accommodations, which the IEP identified as situational, were needed. For example, standardized tests were not given during the 2020-2021 school year due to the school closures, so there was no basis for providing noise buffers for standardized tests. While the IEP stated noise buffers were to be made available, it did not say Student would always need them. Student did not offer evidence that noise buffers were ever needed during the 2020-2021 school year. Similarly, during the shelter-in-place order, Student was in a small environment when taking tests because he was at home.

Student was encouraged to, and did, take breaks when he needed. No evidence was offered regarding whether Student was given a multiplication chart. Preferential seating was not available during distance learning. However, there was no indication that Student was unable to access his online education due to any seating problems. S. Johnson and Sanchez both confirmed that Student could access the online instruction synchronously with the teachers and asynchronously with the behavior aide.

While Mother testified that Student did not receive shortened assignments, Student offered no evidence of the length of assignments he received. Student provided no corroboration of Father’s assertion that completing Student’s homework

required that he work from six PM to midnight almost daily, even with breaks. Other than saying that Student's behaviors caused delay, Parent did not provide specific information explaining why such an extraordinary amount of time was required to complete homework.

When Parents discussed the long homework hours with teachers, both of Student's teachers informed them the assigned work should not take that long. Sanchez told Father she did not want Student to work more than two hours on homework. Student had his behavior aide supporting him with homework every day in the afternoons, during asynchronous learning, and the resource teacher helping him with schoolwork during twice-weekly resource support sessions. Student's assertion that his schoolwork required the described number of hours lacked credibility and was not persuasive. Nor did Student prove that receiving the accommodations that were allegedly not provided would have improved Student's efficiency in completing his work. Student failed to prove Los Angeles materially failed to implement his accommodations during distance learning.

Student failed to prove by a preponderance of the evidence that he was denied a FAPE due to Los Angeles' failure to implement in-person behavior aide, counselling, or resource support during distance learning. Student also failed to prove Los Angeles denied him a FAPE by failing to implement his accommodations during distance learning.

ISSUE 1E: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2020 2021 SCHOOL YEAR, BEGINNING OCTOBER 10, 2020, BY FAILING TO OFFER SUFFICIENT SUPPORTS IN MATH AND SPANISH?

Student asserts that Los Angeles failed to offer sufficient math and Spanish special education supports during the 2020-2021 school year beginning October 20, 2020. Los Angeles argues that Student never identified or defined what he meant by "sufficient supports." Los Angeles further contends Parents' request for private tutoring outside school hours was not a request for a special education service.

MATH

Student failed to prove he had inadequate specialized academic support in math. The term "sufficient supports" is interpreted to mean, adequate special education and related services in the identified area to meet Student's needs.

Student did not prove that additional specialized academic instruction in math should have been offered. Student failed to offer evidence of math needs that were not being met by the provided resource support. He was pulled out of class twice per week for 30 minutes to work on his math goal. Parents did not request additional resource support in math. Student failed to demonstrate a need for supplementary instruction in addition to the resource support already being provided during the 2020-2021 school year.

Student's resource teacher was not concerned about his ability to grasp math concepts. Student's operative June 5, 2020 IEP noted Student's attention deficit impacted his ability to subtract multi-digit numbers with regrouping, as Student

emerged from fourth grade. Student had a single math goal for the 2020-2021 school year which he met in full by June of 2021. Although Student asserted an inability to perform two-step math calculations, that was a mischaracterization of the evidence.

Student's fifth grade teachers were not concerned about Student's math progress. Progress reports over the 2020-2021 school year show that Student met grade level standards in all mathematical functions being taught over the course of the year. When Student was in the fifth grade at Alexander Science Center, he did not receive letter grades. Student also received the highest mark of "consistently" for "Characteristics and Behavior of a College Prepared and Career Ready Learner." A mark of "consistently" indicated Student effectively communicated and collaborated, understood other's perspectives, and thought critically; solved problems creatively; and valued evidence. Furthermore, Student's May 27, 2021 present levels of performance, as well as the subject matter of the math goals offered in his next IEP, demonstrate Student achieved substantial advancement in mathematics skills over the course of the 2020-2021 school year. This pointed to the adequacy of the specialized academic support offered.

Father believed that Student received the good grades because of Parents' many hours of daily homework support. However, the amount of homework Student was assigned, and the amount of time spent on Student's homework was never established by persuasive evidence. Parents testimony regarding the amount of time spent on homework was not corroborated by evidence of assignments or any other corroborating evidence.

Father requested additional math support in the form of private tutoring through a subscription to Kumon tutoring centers or the program Mathnasium. Father did not want Student removed from class for additional specialized academic instruction. Parents' private tutoring requests were denied.

A FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge to Parents; and implemented in conformity with an IEP. (34 C.F.R. § 300.18 (a) and (d).) Special education services from non-public agencies are only available if required to meet Student's special education or related services needs, and if no appropriate public education program is available to address the need. (Ed. Code § 56365, sub. (a).)

Here, Student failed to prove that the specialized academic instruction offered for math during the 2020-2021 school year was inadequate to address his math needs. Student also failed to offer any legal authority mandating that Los Angeles offer private tutoring, outside school hours from a private organization that was not a certified non-public agency such as Kumon or Mathnasium.

SPANISH

Parents contended that Los Angeles failed to provide adequate support for Spanish immersion. Los Angeles argued that Parents wanted only private tutoring for Spanish, not special education support.

Student failed to prove Los Angeles refused to offer sufficient special education supports for his Spanish instruction during the 2020-2021 school year. Student's operative IEP did not identify special education needs related to Student's Spanish language instruction. Student offered no evidence that he had specialized academic instruction needs related to Spanish instruction that had not been identified by the IEP team. Student's behavior aide provided support during Student's Spanish language coursework to manage the behavior needs associated with Student's attention deficit.

Schatz, Student's fifth-grade Spanish teacher, believed he was performing well for a student his age. She described him as able to communicate and do his writing. Alexander Science Center did not give grades in Spanish. Instead, report cards indicated proficiency level. Student was at the "Intermediate-Low" level which Schatz said was typical of learners Student's age. Schatz expected to see an "Intermediate-Mid" level in middle school and an "Intermediate-High" level in high school. She explained that "Advanced" level proficiency is generally found at the college level. Student offered no evidence to prove his Spanish performance was below expectations or that his special education needs were impacting his ability to access his Spanish instruction such that additional special education supports were necessary.

Parents wanted Los Angeles to provide private Spanish tutoring outside school hours so Student would have more conversation practice. However, Los Angeles was not obligated to provide Spanish tutoring that was not required to meet special education needs. Student did not prove he required specialized academic instruction to access his general education Spanish instruction. Extra tutoring to improve Student's overall skills is not a special education related service. (20 U.S.C. § 1401(9); 34 C.F.R. 300.18 (a) and (d).)

An 'appropriate' public education does not mean the absolutely best or 'potential-maximizing' education for the individual child." *Gregory K. v. Longview Sch. Dist.*, (9th Cir. 1987) 811 F.2d 1307, 1314, quoting *Bd. of Educ. of Hendrick Hudson Dist., Westchester Cty. v. Rowley*, (1982) 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690.)

Student failed to prove that Los Angeles denied him a FAPE during the 2020-2021 school year by failing to offer sufficient supports in math and Spanish.

ISSUE 1f: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR, BEGINNING OCTOBER 10, 2020, BY FAILING TO OFFER HOME-BASED APPLIED BEHAVIOR ANALYSIS THERAPY AND CLINIC MEETINGS?

Student claimed he was entitled to home-based applied behavior analysis therapy, and "clinic meetings." Los Angeles stated that Student did not demonstrate any need for the related service

Student did not offer evidence that Student needed home-based applied behavior analysis therapy. Student did not define what he meant by home-based "clinic meetings." None of the witnesses recalled the subject being discussed. Mother was unfamiliar with the term applied behavior analysis. Student did not offer any evidence that applied behavior analysis therapy would have met a special education need. Student failed to prove that Los Angeles denied him a FAPE by failing to offer home-based applied behavior analysis therapy and clinic meetings.

ISSUE 1g: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR, BEGINNING MAY 27, 2021, BY FAILING TO OFFER GOALS THAT MET STUDENT'S SOCIAL-EMOTIONAL, BEHAVIOR SUPPORT AND MATH NEEDS?

SOCIAL-EMOTIONAL GOALS

Student failed to prove that the May 27, 2021 IEP did not offer goals that met Student's social emotional needs. The May 2021 IEP offered Student a social-emotional goal to teach him to "evaluate and apply strategies for coping with negative feelings and the effectiveness of those strategies in four out of five trials per session with minimal adult support as measured by teacher/counselor input." This goal was written by Kylie Amely, the substitute school psychologist who provided counseling to Student during the second half of the 2020-2021 school year.

Amely developed the goal based on her counseling sessions with Student, and her interviews with teachers and Parents via telephone and email. Neither Parents nor teachers mentioned any needs related to social skills. Amely would have included any such comments in her description of his present levels of performance. Amely was told Student's needs were related to his limited attention span, and his emotional dysregulation when he became frustrated. The May 27, 2021 social emotional goal was developed to teach Student that he had choices when he became frustrated.

Student failed to prove he needed a goal to address an unmet social emotional need. As reflected in the May 27, 2021 IEP, Parents stated Student had friends, but had trouble maintaining relationships due to emotional regulation difficulties. However, Student offered no evidence that these concerns were not being addressed by the

combination of the behavior goal, with its behavior intervention plan, and the social emotional goal already included in Student's IEP. No expert, or other witness, testified to any specific goals required to meet unmet social emotional needs.

Student's closing brief was peppered with inaccurate descriptions of evidence and misquoted testimony in an attempt to persuade this tribunal that Los Angeles failed to offer goals that met Student's social-emotional needs. Student attributed a description of behavior observed during Student's third grade, initial, IEP assessment, to Student's fifth-grade school psychologist, and contended it described Student's behavior in fifth grade. Student also mischaracterized Parents' description of Student's behavior during distance learning as an inability to pay attention, or remain on camera for "significant portions of Student's learning day." Student also argued Parents testified that, "by the end of distance learning, Student rarely engaged in class activities at all." This misrepresents Parents' testimony.

Mother stated Student's behavior improved over the course of the 2020-2021 year as he got used to the distance learning process. Even when dysregulated, Mother stated Student would go back to work in a "a couple of minutes." Although Father described Student's dysregulated behavior during distance learning, Father acknowledged Student's conduct improved over the year. Contrary to assertions in Student's closing argument, Parents did not say Student "rarely engaged in class activities at all," by the end of the 2020-2021 school year. Father clearly testified that Student attended all distance learning Zoom sessions, including afternoon asynchronous learning sessions with his behavior aide and several office hours sessions.

Mother testified to concerns about Student's social life during the 2020-2021 school year. However, Parents' concerns were centered on the isolation resulting from

Covid-19 shelter in place orders rather than a lack of social skills impacting his ability to interact with peers. Mother specifically mentioned that, during that year, Student had no friends and no social interactions except with his behavior aide. The credibility of that is questionable, however, as Amely testified that she agreed to provide Student's counseling services in the evenings to accommodate Student's after school sports and tutoring activities. Student did not describe those afterschool activities.

Student presented no evidence of any specific need for which an additional social-emotional goal should have been developed during the 2020-2021 school year beginning May 27, 2021. Nor did Student demonstrate that the IEP's social-emotional goal was inadequate to meet Student's needs during the remaining few days of the 2020-2021 school year after Parent consented to the IEP

BEHAVIOR SUPPORT GOAL

Student offered no evidence that the behavior support goal offered in the May 27, 2021 IEP was inadequate to meet Student's needs during the 2020-2021 school year through June 10, 2021 when the school year ended. Nor did any expert, or any other witness, testify to a behavior need for which a goal should have been developed. Nor did Parents or any other IEP team member request additional behavior goals or question the adequacy of the offered goal.

MATH GOAL

Student's contention regarding the inadequacy of the math goals offered in the May 2021 IEP was unclear, particularly in relation to the 2020-2021 school year.

Student's closing brief failed to identify any specific inadequacy of the IEP's math goals. Nor did any evidence or witness establish that Student had unmet math needs for which additional goals should have been offered.

Student failed to prove that Los Angeles denied him a FAPE during the 2020 2021 school year, beginning May 27, 2021, by failing to offer goals that met student's social-emotional, behavior support, and math needs.

ISSUES 1h: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR, BEGINNING MAY 27, 2021, BY DENYING PARENTS' REQUESTS FOR BEHAVIOR INTERVENTION SERVICES DURING ACADEMIC INITIATIVE INSTRUCTION AND REQUESTS FOR INCREASED ACADEMIC SUPPORT IN MATH AND SPANISH?

Student asserts that Los Angeles denied Parents' requests for additional special education supports made during the May 27, 2021 IEP team meeting. Student contends Parents requested behavior aide support during the Neighborhood Academic Initiative Program's summer bridge program. Student also asserts Parents requested more academic supports for math and Spanish

Los Angeles asserts Student did not prove he had a need for special education or related services during the afterschool parts of the Neighborhood Academic Initiative program. Los Angeles further argues Student did not prove he required additional special education supports in math or Spanish.

MAY 27, 2021 NEIGHBORHOOD ACADEMIC INITIATIVE PROGRAM SUMMER BRIDGE PROGRAM BEHAVIOR AIDE SUPPORT REQUEST

No evidence was offered of the content of the Neighborhood Academic Initiative Program summer bridge program. However, more fundamentally, Student did not prove by a preponderance of the evidence that he requested behavior aide support for the 2021 Neighborhood Academic Initiative summer bridge program. Father testified that he had "concerns" as Student started the Neighborhood Academic Initiative Program. However, Father did not describe the concerns he shared with the IEP team on May 27, 2021, or whether those concerns included the summer bridge program. Although he recalled asking for support for the Neighborhood Academic Initiative program, he could not say what he requested. He recalled being told to ask at Student's middle school, but did not testify to what he was asking for from the middle school.

Student failed to establish by a preponderance of the evidence that Parents requested behavior support services for the 2021 summer bridge program and that Los Angeles denied the request.

MAY 27, 2021 INCREASED ACADEMIC SUPPORT IN MATH AND SPANISH REQUESTS

Student offered no credible evidence that Parents requested additional specialized academic instruction in math, or specialized academic instruction in Spanish, beginning May 27, 2021 for the 2020-2021 school year which ended June 10, 2021. Instead, Parents asked Los Angeles to provide supplemental math and Spanish tutoring, from private organizations outside school hours.

During the May 27, 2021 IEP, Parents sought private tutoring in math and Spanish for Student, from programs offered by either Kumon or Mathnasium. Parents were concerned that Student's specialized academic instruction was taking Student away from the regular instruction in his math class and Parents did not want additional resource support that would result in Student missing his regular math class. Parents did not request additional specialized academic instruction in math. Nor did Parents request any specialized academic instruction for Spanish. Nor was evidence offered of any additional need for additional specialized academic instruction in math or any need for specialized academic instruction in Spanish. Student's grades in both classes met grade level standards and his teachers had no concerns about his ability to access the coursework. Student offered no evidence of an inability to access either his math or Spanish general education instruction from any other source.

As discussed previously in 1e, even had Parents established that Student had additional specialized academic instruction needs in math or Spanish, Parents failed to prove that either Kumon or Mathnasium met the statutory requirements to provide the specialized academic instruction. State and federal law require that special education services not available in a public school district be provided by a certified non-public agency. (34 C.F.R. § 300.18 (a) and (d).)

Parents failed to prove by a preponderance of the evidence that they either requested, or were denied requests for additional special education services in math or Spanish from May 27, 2021 to the beginning of the 2021-2022 school year. Nor did Student prove Los Angeles was obligated to provide Student private tutoring through Kumon or Mathnasium.

ISSUE 2b: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY FAILING TO OFFER GOALS THAT MET STUDENT'S SOCIAL-EMOTIONAL, AND MATH NEEDS?

Los Angeles offered Student social-emotional, and math goals in two IEPs during the 2021-2022 school year: Student's May 27, 2021 IEP and Student's May 26, 2022 IEP. Student asserts the goals were not sufficiently ambitious. Student claimed that Los Angeles should have offered a social skills goal and failed to offer adequate math goals, for the 2021-2022 school year. Los Angeles argues that the social-emotional and math goals it offered met Student's needs.

The purpose of goals is to permit the IEP team to evaluate whether a student is making progress in an area of need. (Ed. Code §56345.) In developing the IEP, the IEP team is required to consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation (or most recent evaluation) of the child, and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code § 56345, subd. (a)(2).)

MAY 27, 2021 SOCIAL-EMOTIONAL GOAL

Student also contends that, during the 2021-2022 school year, he should have been offered a social skills goal in addition to the IEP's social-emotional goal. However, Student failed to prove that social skills was an area of need that required a goal.

Student offered no evidence establishing that the social skills goal offered was not sufficiently ambitious. Furthermore, as previously discussed, Student failed to offer evidence that Student had social emotional needs that were unmet by the goals in the May 27, 2021 IEP. No one questioned whether the goals offered in the May 27, 2021 IEP met Student's needs. Nor was evidence offered that the goals did not meet Student's needs. Student offered no evidence of changed circumstances that should have triggered a re-evaluation of the IEP during the 2021-2022 school year. A Student's IEP is required to be evaluated at least annually, unless there is a request by a parent to consider new information about a child or a lack of expected progress towards annual goals. (20 U.S.C. § 1414(d)(4); (34 C.F.R. § 300.324 (b)(1); Ed Code § 56341.1, subd. (d).)

Student offered no evidence that Student's social emotional goals required re-evaluation during the 2021-2022 school year prior to his next annual IEP. Parents and teachers noted Student had friends. There was no evidence that, Student had no friendships or was unable to make friends. Student was seen on the playground engaged in discussions of mutual interests with friends. Teachers described Student as having friends in class. Student had to be separated from friends in the classroom by the resource teacher and redirected by his behavior aide so they could limit Student's impromptu competitions with his friends and have him focus on his schoolwork.

Mother, who was Student's sixth grade English language arts and social studies teacher, noted that Student transitioned well to middle school, and his behavior had improved. She attributed the improvement to some maturity. Occasionally, Student had difficulty working in groups, but teachers, including Mother, attributed that to Student's behavior needs, that is, his need to learn to regulate his emotions. That need was being addressed in the IEP's social-emotional and behavioral goals.

Mother testified that when she observed Student on the playground during sixth grade, she saw a student without a friend group. According to Mother, Student would tell you he had lots of friends, but when closely observed on the playground he floated from group to group. Groups would listen to him for a while, and then drift away. She thought Student did not know where to go afterwards. Mother opined that Student's excessively competitive actions put off his classmates and that he didn't know how to talk to people. No evidence was offered as to whether these impressions resulted from a single observation of Student on the playground or several. Furthermore, Student offered no evidence that, at any time during the 2021-2022 school year, any Parent or teacher, including Mother, raised concerns about Student's social skills that should have triggered an IEP team meeting. While other teachers and the behavior supervisor agreed Student's competitiveness impacted his interactions in the classroom, the preponderance of the evidence did not establish that Student was unable to interact with other students outside of class.

Student asserted in his closing brief that Parents testified the issue of Student's social skills needs was raised at every IEP team meeting. However, that assertion was not supported by the evidence. Mother could not recall whether social skills were discussed at the May 27, 2021 IEP. Father stated that Parents did not request any goals at the May 2021 IEP team meeting. Parents' written comments on Student's June 18, 2019 initial IEP consent form, stating that additional goals would need to be discussed at the beginning of the following school year, indicated that Parents clearly knew how to advocate for additional goals as members of the IEP team if they believed they were necessary.

Student also failed to prove the existing social-emotional and behavior goals in Student's IEP were inadequate to address Student's social skills concerns. The impact of Student's excessive competitiveness on his peer interactions was being addressed by

both the social emotional and behavior goals. As previously discussed, Amely's opinion after working with Student was that he knew the strategies to apply when he became frustrated with others. Teachers said emotional dysregulation occurred when he got an answer wrong or was not first to be called on or to complete a task. Student had difficulty applying the behavior management strategies in the moment. Applying coping skills to manage negative feelings was the focus of the 2021-2022 school year social-emotional goal.

Student's behavior goal included instruction to curb his overenthusiastic competitiveness by requiring him to raise his hand before blurting out answers and learning to ask for breaks when he felt frustrated. His behavior intervention plan was focusing on better communication skills and self-management systems. Student presented no evidence that his existing social emotional and behavior goals failed to meet Student's social-emotional needs.

MAY 26, 2022 SOCIAL-EMOTIONAL GOAL

Goals were discussed at Student's next annual IEP, on May 26, 2022. During his sixth-grade year, Mother, and Student's other teachers, saw continued emotional dysregulation in class. He continued to require the one-to-one behavior aide. The evidence established that emotional dysregulation was primarily triggered by Student's excessively competitive bent, and his impatience with making errors or being thought by his peers to have made an error. However, Student's conduct was improving.

Both Mother and Jennifer Nagelin, Student's sixth grade math and science teacher, observed his occasional difficulties working in groups. Mother saw Student have "moments when he had significant issues with his peers." According to Mother

Student would have arguments, yell, or need to leave the class to cool off. Mother said this happened approximately three times per week in her class and that he was usually back after just a minute or two from his break. Compared to descriptions from his other teachers, Student's dysregulated conduct was more frequent and intense in Mother's classroom than with Student's other teachers.

Nagelin stated Student worked with small groups to accomplish goals "pretty well." He had a few problems during the year. However, none of those rose to a level of intensity requiring that Student receive discipline. Once or twice, Nagelin had to take him out into the hall to discuss his conduct; but it was always managed at the classroom level. Most of the time his behavior aide redirected him and avoided significant dysregulation.

Emilce Peralta was Student's Spanish teacher for one semester during the 2021-2022 school year. She said he was an excellent Student in the Introduction to Spanish class because of his prior Spanish experience. Peralta noted Student struggled with attention and would sometimes be distracted. He occasionally was caught playing games on his computer rather than doing his work but could be redirected. He had only one outburst during her class in which he got a question wrong and slammed his computer shut. His behavior aide managed the situation. She saw Student as having generally appropriate relationships with peers. However, Student was highly competitive, racing to raise his hand first to answer a question or finishing assignments faster than others. Peralta did not believe his behaviors interfered with his ability to access his Spanish instruction.

The May 2022 IEP described Student's social-emotional present levels of performance as a continuing struggle to apply the coping strategies he understood

could be used when he was having negative feelings. The IEP also noted Student struggled to understand people's opinions. He tended to call other people "dumb" or "idiots" when he disagreed with them and continued to struggle to regulate his emotions when upset. Continued counseling was recommended to work on his IEP goal. The goal offered was: "[Student] will demonstrate strategies for dealing with upsetting situations (e.g., deep breathing, self-talk, relaxation, etc.) in four out of five trials per month, with minimal adult support as measured by counselor."

Student argues without evidence or authority, that the social skills goal offered in the May 26, 2022 IEP was not sufficiently ambitious. The sole evidence offered was a comparison of the wording of the two goals. No witness testified the goals were not sufficiently ambitious. Nor did an expert testify that a comparison of the two goals indicated that the May 26, 2022 social skills goal was not sufficiently ambitious.

Student also failed to prove by a preponderance of the evidence that he had unmet social skills needs. Student did not prove he was without friends. Student's occasional difficulties on the playground stemmed from the competitiveness that was the subject of his existing social emotional and behavior goals. Student's behaviors were improving. Student's behavior plan described his behavior needs as "moderate," as opposed "serious," as they had been described in the May 27, 2021 IEP behavior intervention plan. At the May 2022 IEP team meeting, none of the team members, including Parents, suggested Student needed a social skills goal.

Student did not prove by a preponderance of the evidence that Los Angeles failed to offer goals that met Student's social-emotional needs during the 2021-2022 school year.

MAY 27, 2021 AND MAY 26, 2022 MATH GOALS

Student asserts that the math goals offered during the 2021-2022 school year were inadequate to meet his needs. Los Angeles claims the goals met Student's math needs.

The May 27, 2021 IEP offered Student two math goals. The first required that he graph points in all four quadrants of the coordinate plane and use coordinate and absolute value to find distances between points with the same first or same second coordinate independently as measured by student work samples in two out of three trials with 80% accuracy. The second required that, when given 10 multiplication and division of fraction problems, Student would demonstrate the least common multiple and greatest common divisor in each problem and use them to correctly calculate the answer with 80% accuracy in three trials as measured by student work samples/criterion assessment.

Mother vaguely testified to requesting a math goal at the May 2021 IEP, but could not recall what was requested or whether it was one of the goals ultimately included in the IEP. Father did not request any goals. Student offered no evidence that Los Angeles was aware of math needs that should have resulted in an IEP team meeting being called to review Student's math goals. Goals are reviewed annually unless a request is made by a parent to consider new information about a child, or the student demonstrates a lack of expected progress towards annual goals. (20 U.S.C. § 1414(d)(4); (34 C.F.R. § 300.324 (b)(1); Ed Code § 56341.1, subd. (d).) Student did not offer evidence that either of these circumstances triggered an obligation by Los Angeles to review the goals offered.

As discussed earlier, Student argued that he was incapable of completing two-step math problems. However, no evidence of this was presented at hearing. Student also argued generally that he regressed in academics. Student offered no evidence of math regression. Nagelin testified that Student's May 21, 2021 math goals encompassed topics she was working on with the entire sixth-grade class. The whole class required extra work in those areas due to the need to fill in skill gaps from elementary school, and because of some students' extended absences due to illness.

The May 26, 2022 IEP offered Student one math goal which was, "[Student] will fluently add, subtract, multiply and divide multi-digit decimals using the standard algorithm for each operation with minimal support as measured by teacher created assessment in four out of five trials with 75% accuracy." Telona Monette, Student's 2021-2022 resource teacher, wrote this goal for Student to address a weakness identified in the academic assessments conducted prior to the May 26, 2022 IEP. Monette identified the goal as mirroring one of the standards being worked on in Nagelin's class and a standard for seventh grade. As Student was struggling with the concept in his math class, Monette believed it was an appropriate goal.

Student offered no evidence that the math goals offered in the May 27, 2021 IEP or the May 26, 2022 IEP were inadequate during the 2021-2022 school year. No expert or other witness testified that Student had math needs during the 2021-2022 school year for which a different or additional goal should have been offered. Nor did Student offer any evidence that either goal was not sufficiently ambitious, despite arguing this in his closing brief.

Los Angeles IEP team members did not recall any requests for additional goals from the parents or any concerns being expressed about the offered goals. Nagelin and

Monette did not believe additional math goals were necessary and neither expressed any concerns about Student's abilities to understand the math concepts being taught. Both believed he was doing well in math.

Student earned straight A's in his math course during sixth grade, except for a B for the first quarter marking period. While Father testified that, at home, student took hours to do assignments and became aggressive and dysregulated because he was not able to do his math work, his testimony was not supported by Nagelin's observations of Student's work in class. Student did not prove that the math goals in the two IEPs failed to meet Student's math needs during the 2021-2022 school year.

Student failed to meet his burden of proving that Los Angeles denied him a FAPE by failing to offer adequate goals to meet his social-emotional and math needs.

ISSUE 2c: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY FAILING TO OFFER PARENT TRAINING IN ATTENTION-DEFICIT HYPERACTIVITY DISORDER, ANXIETY DISORDER, AND TRAINING REGARDING THE ELIGIBILITY CATEGORY OF OTHER HEALTH IMPAIRMENT?

Student asserts that Los Angeles denied him a FAPE when it failed to offer Parents training regarding his attention-deficit and anxiety disabilities and the nature of his primary eligibility category of "other health impairment." Los Angeles argues that Parents were offered training during routine training invitations sent to Parents of special education students and that Parents never requested training regarding any specific topic.

Special Education related services include Parent counseling and training that assist parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP. (34 C.F.R. § 300.84 (c)(8).) A special education student's related services, including parent training, must be stated on the child's IEP. (20 U.S.C. § 1414(d)(1)(A)(i)(IV).)

Student failed to prove that Los Angeles was on notice that Student required parent training as a related service so Student could access his education or meet his special education needs, during the 2021-2022 school year. Los Angeles' obligation to offer parent training would have required information establishing the training as a needed related service. "Related services" in an IEP include "developmental, corrective, and other supportive services...as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26)(A); Pope v. Spokane School District No. 81 (W.D. Wash., Dec. 12, 2022, No. C21-1079-JCC-SKV) 2022 WL 17581663, at *2.)

Parents offered no evidence of a training request, much less one establishing a training need to assist Student in benefitting from his education. Nor was evidence presented of any discussions with Los Angeles special education administrators, school psychologists or teachers that would have put Los Angeles on notice that Student needed Parents to have training to access his education.

Father testified that he requested Parent training during the May 27, 2021 IEP. He did not recall the type of training requested; but remembered telling the team Parents were having difficulty dealing with the meltdowns and tantrums. According to Father, he was told Los Angeles would "get back to him," but never did. Father could not recall to whom he addressed the request and could not identify who told Parents

they would get back to him. Student presented no evidence of the type of training sought or the purpose of the training. Nor did Student present evidence that the training was necessary for him to be able to access his education. Father's testimony lacked credibility and was uncorroborated.

There was no reliable evidence establishing the severity or frequency of "meltdowns" and "tantrums." Mother initially said Student transitioned well to middle school and was demonstrating some maturity in his peer interactions. Then she said there were "moments when he had significant issues with his peers." Mother then testified that Student would "get upset and have a meltdown" sometimes three times per week when working in group settings. However, Mother acknowledged Student would cool down and return to the class within "a minute or two."

None of the other teachers described "meltdowns" or incidents of the intensity described by Parents. Mother, Nagelin and Peralta all agreed that difficulties did not occur every time Student worked in a group. Student did not prove by a preponderance of the evidence that parent training would have contributed to Student's ability to access his education. Nor did Student prove circumstances existed obligating Los Angeles to offer Parents training.

Finally, none of the Los Angeles IEP team members recalled Parents requesting training at any time during the 2021-2022 school year. Lela Bohannon, a school psychologist at Foshay Learning Center, has been working with Student during the 2022-2023 school year. She also had a single contact with Student during the 2021-2022 school year, involving the disciplinary incident in February 2022, because Student's regular counselor was not on campus that day. Bohannon received no requests for training from Parents in the 2021-2022 school year. Monette, who attended the May 26, 2022 IEP, was

certain no training requests were made during that IEP team meeting. No evidence was offered that Student was denied access to any aspect of his education due to the lack of parent training being offered as a related service.

Parents did not prove that Los Angeles denied Student a FAPE by failing to offer training in the areas of attention-deficit hyperactivity disorder, anxiety disorder or the special education eligibility category of other health impairment.

ISSUE 2D: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2021 2022 SCHOOL YEAR BY DENYING PARENTS' REQUESTS AT THE MAY 26, 2022 IEP TEAM MEETING FOR ADDITIONAL SUPPORTS OF BEHAVIOR INTERVENTION SERVICES DURING ACADEMIC INITIATIVE INSTRUCTION AND REQUESTS FOR INCREASED ACADEMIC SUPPORT IN MATH AND SPANISH?

Student asserted that Los Angeles denied Parents' requests for additional supports during the May 26, 2022 IEP "thereby offering a predetermined IEP." Predetermination of the IEP was not one of the issues being heard in this case. Therefore, the issue of predetermination of the May 26, 2022 IEP will not be addressed in this decision.

NEIGHBORHOOD ACADEMIC INITIATIVE PROGRAM SUPPORT

Student asserts that he should have received behavior aide support during Neighborhood Academic Initiative's Saturday school and summer bridge programs. Los Angeles argues that the Neighborhood Academic Initiative Program Saturday school and summer bridge programs are not general education programs for which special

education support was required. Rather, they are a parent-choice program that offered additional programs to help students forge a path towards attendance at the University of Southern California upon graduation from high school.

Student failed to prove that Los Angeles was obligated to provide special education and related services to support Student in the Saturday school or summer bridge sessions of the Neighborhood Academic Initiative program. Little evidence was offered describing the Neighborhood Academic Initiative Program's Saturday school or summer bridge program elements. Student failed to submit documentary evidence describing the program.

Witnesses had limited information and were unsure of some of the information they shared. For instance, Nagelin, one of the two program teachers to testify, stated she thought students received additional math and writing instruction on Saturdays. However, when probed, Nagelin was uncertain exactly what was taught during Saturday school, or whether it was graded. Nagelin was sure Student's performance at Saturday school did not impact Student's middle school grades. Mother, the other Neighborhood Academic Initiative program teacher who testified, said she believed Saturday assignments were graded, but was unclear on whether the grades impacted Student's middle school report card. She offered no specific information of the content of the Saturday assignments.

Student failed to prove that Saturday school offered educationally related activities. Student offered no reliable evidence of the content of Saturday school instruction. The evidence did not establish whether, or not, Student received grades on Saturday school assignments or more fundamentally, that there were assignments at all. While the middle school faculty and staff members agreed Saturday school was a

required part of the Neighborhood Academic Initiative program, and was held on the University of Southern California campus, no one knew what the Saturday sessions involved or even how many Saturdays students attended. Saturday school sessions were offered online until March of 2022. Student offered no evidence of the topics discussed or work completed during the online sessions. Student failed to prove that the Neighborhood Academic Initiative Saturday school was a program for which Student was legally entitled to special education support.

Los Angeles initially provided, but then discontinued, behavior aide support for Saturday school. Assistant Principal Jeremiah Lockwood received approval to provide the aide for Saturday school sessions and offered the aide following the March 18, 2022 IEP meeting. At the May 26, 2022 IEP team meeting, Lockwood told Parents that Los Angeles could not continue to provide the behavior aide. The evidence did not establish why the aide was initially offered or why it was discontinued.

Student offered even less evidence regarding the summer bridge program. Student offered no information regarding the length of the summer school days, the number of weeks over the summer the program extended or the content of the program. There was no evidence the summer bridge program impacted Student's grades, or even that participation was required for Student to maintain his place in the Neighborhood Academic Initiative during the regular school year. Student failed to prove the summer bridge program was an educationally related program.

The U.S. Supreme Court has declared that, "for children receiving instruction in the regular classroom, [the IDEA's guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. (Endrew

F. ex rel., Joseph F. v. Douglas County School Dist. (2017) 580 U.S. ___, 137 S.Ct. 988, 996.) The Ninth Circuit Court of Appeal has emphasized that “states are obligated to provide ‘a basic floor of opportunity’ through a program ‘individually designed to provide educational benefit to a handicapped child,’ ” rather than “potential maximizing” education. (Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1314.)

While attendance at Saturday school and the summer bridge program may enhance Student’s education, Student failed to meet his burden of proof that he was entitled to special education related services, that is, his behavior aide, for either the Saturday school or summer bridge program. Nor did Student cite legal authority obligating Los Angeles to provide special education services for the Neighborhood Academic Initiative’s Saturday or summer programs to provide Student with FAPE.

REQUESTS FOR PRIVATE MATH AND SPANISH TUTORS

Student asserts that Los Angeles should have provided private tutoring to address regression Student demonstrated in math and Spanish after distance learning. Los Angeles argues that Student failed to prove regression or any needs in either subject that were not being addressed by the IEP.

Student failed to identify any requests for additional special education supports in math or Spanish that Los Angeles denied at the May 26, 2022 IEP team meeting. During the May 26, 2022 IEP team meeting, Los Angeles offered Parents 90 minutes per week of specialized academic instruction in math, which was an increase of 30 minutes per week.

Previously, resource support in math was split between support provided in the classroom (push in) and support given outside the classroom (pull out). Resource

specialist Monette was trying to balance addressing Student's distractions due to his competitiveness with his resistance to being seen as "different" when he was pulled out of class. Monette also described time lost to walk to her office to provide services and distractions from the gym next door where noisy physical education classes were often in progress.

Monette decided that 90 minutes of push in service would provide the increased services Student needed. The additional time also allowed her to work with the behavior aide to address the competitiveness, and allow her to work with other Students in the room occasionally so Student would not feel as though he was standing out. This approach also addressed Parents concerns that Student missed his regular math class to receive specialized academic instruction. Assistant Principal Jeremiah Lockwood recalled that Parents asked Monette to work on certain skills they believed Student needed help recouping after distance learning and she agreed to do so. The skills allegedly requiring Monette's focus were not described.

In addition to the 90 minutes per week of specialized academic instruction in math, Los Angeles also offered Student 30 minutes per month of compensatory specialized academic instruction in math to address general regression due to distance learning in math. Father recalled that during the May 26, 2022 IEP, at each stage of the IEP, Lockwood read a statement about distance learning and asked whether Student needed compensatory minutes for that section. When the IEP team discussed math, Father asked Lockwood what Los Angeles could offer as compensatory services for math. Lockwood offered 30 minutes. Parent did not request additional compensatory education in math. Student did not show evidence of the regression he claimed, so

there was no way to tell whether the additional 30 minutes offered was to address actual regression or presumed regression. Student was earning straight A's in math at the time the services were offered.

Father did not think the specialized academic instruction in math met Student's needs. During the May 26, 2022 IEP team meeting Parents asked for a private tutor instead. Father claimed Student was unable to progress through a math problem at the same rate that he could in the fourth grade, prior to distance learning. According to Father, student took hours to do assignments at home; and became aggressive and dysregulated because he was not able to perform. This description of Student's abilities and conduct was not consistent with Nagelin's observations of Student during her math classes. No expert or other witness testified to math needs that were not being met by the offered specialized academic instruction. Student earned A's in his sixth grade Math class for both semesters. Los Angeles denied Parents' request for a private math tutor, after school hours, through Kumon Tutoring Centers, or Mathnasium.

Student failed to prove that he required additional special education supports in his Spanish language class to access or benefit from the instruction. Parents claimed that Student lost his ability to speak Spanish as well as he could prior to distance learning. However, no evidence was offered to support that contention. Parents wanted Student to receive private tutoring to improve his Spanish language conversational skills.

Peralta, Student's sixth grade Spanish teacher, described Student's work as excellent. She opined his performance was partly due to Student's prior Spanish language experience in elementary school. Student earned an A for the semester he was enrolled in the class. As previously discussed, Peralta noted Student sometimes

failed to pay attention in class, playing video games on his computer rather than working on classwork as expected. However, when redirected, he returned his focus to Spanish. Peralta stated that Student's special education needs, related to his attention deficit, were managed by his behavior aide and Student's attention deficit did not impede Student's ability to access his Spanish education.

Student offered no evidence that Los Angeles denied requests for specialized academic instruction for Spanish or math during the May 26, 2022 IEP team meeting. Parents did not request special education or related services. Instead, Parents requested a private tutor for both subjects. Student failed to establish that private tutoring meets the definition of special education or related services. (34 C.F.R. § 300.18 (a) and (d); Ed. Code § 56365, subd. (a).) Student cited no legal authority establishing that Los Angeles was required to grant a request that did not constitute special education or related services as defined by state or federal law. Nor did Student cite any legal authority obligating Los Angeles to provide additional conversation mastery practice for Spanish as a special education related service, that was not related to a special education need.

Student failed to prove, by a preponderance of the evidence, that Los Angeles denied Student a FAPE during the 2021-2022 school year by denying Parents' requests at the May 26, 2022 IEP team meeting for additional behavior intervention services for the Neighborhood Academic Initiative Saturday or summer bridge programs; or for increased academic support in math and Spanish.

ISSUES 1i AND 2e: DID LOS ANGELES DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR, BEGINNING OCTOBER 20, 2020; AND DURING THE 2021-2022 SCHOOL YEAR BY FAILING TO OFFER EXTENDED SCHOOL YEAR SERVICES?

Student asserts that Los Angeles should have offered Student extended school year services during the summer of 2021 and during the summer of 2022 to address regression. Los Angeles argues that there was no evidence that Student needed extended school year services.

Extended school year services are offered when the IEP team determines that a Student requires special education and related services in excess of the regular school year because interruption of the pupil's educational programming during the summer break may cause regression. (34 C.F.R. § 300.106; Cal. Code Regs., tit. 5, § 3043.)

Student presented no evidence that extended school year services were needed to provide Student a FAPE. Student did not show that he regressed over summer breaks. No expert or other witness established that Student required extended school year services to avoid regression during the summer. Student offered no evidence that Student regressed because of being denied extended school year services in either the summer of 2021 or the summer of 2022. Student failed to prove that Los Angeles denied him a FAPE by failing to offer extended school year services for the 2021 and 2022 summers.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1a:

Los Angeles Unified School District did not deny Student a free, appropriate public education, or FAPE, during the 2020-2021 school year, beginning October 20, 2020, by failing to assess Student for eligibility under the category of emotional disturbance.

Los Angeles prevailed on Issue 1a.

ISSUE 1b:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year, beginning October 10, 2020, by assigning Student to distance learning without conducting a distance learning assessment.

Los Angeles prevailed on Issue 1b.

ISSUE 1c:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year, beginning October 10, 2020, by failing to implement the in-person components of Student's IEP during distance learning, specifically

behavior intervention and implementation, also called BII support, and resource support services. Los Angeles did deny Student a FAPE during the 2020-2021 school year, beginning October 10, 2020, by failing to implement the counseling element of Student's IEP. Los Angeles prevailed on Issue 1c, except for implementation of counseling.

Student prevailed as to Los Angeles' failure to implement counseling services during the 2020-2021 school year.

ISSUE 1d:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year, beginning October 10, 2020, by failing to implement the accommodations in Student's operative IEP during distance learning.

Los Angeles prevailed on Issue 1d.

ISSUE 1e:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year, beginning October 10, 2020, by failing to offer sufficient supports in math and Spanish.

Los Angeles prevailed on Issue 1e.

ISSUE 1f:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year, beginning October 10, 2020, by failing to offer home-based applied behavior analysis therapy and clinic meetings.

Los Angeles prevailed on Issue 1f.

ISSUE 1g:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year, starting May 27, 2021, by failing to offer goals that met Student's social-emotional, behavioral support, and math needs.

Los Angeles prevailed on Issue 1g.

ISSUE 1h:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year by denying parents' May 27, 2021, requests for behavior intervention services during Neighborhood Academic Initiative instruction and for increased academic support in math and Spanish.

Los Angeles prevailed on Issue 1h.

ISSUE 1i:

Los Angeles Unified School District did not deny Student a FAPE during the 2020-2021 school year beginning October 20, 2020 by failing to offer extended school year services during the summer of 2021 to address regression.

Los Angeles prevailed on Issue 1i.

ISSUE 2a:

Los Angeles Unified School District did not deny Student a free, appropriate public education, or FAPE, during the 2021-2022 school year, by failing to assess Student for eligibility under the category of emotional disturbance.

Los Angeles prevailed on Issue 2a.

ISSUE 2b:

Los Angeles Unified School District did not deny Student a free, appropriate public education, or FAPE, during the 2021-2022 school year, by failing to offer goals that met Student's social-emotional, and math needs

Los Angeles prevailed on 2b.

ISSUE 2c:

Los Angeles Unified School District did not deny Student a free, appropriate public education, or FAPE, during the 2021-2022 school year, by failing to offer parent training in Attention-deficit hyperactivity disorder, Anxiety Disorder, or the primary eligibility of Other Health Impairment.

Los Angeles prevailed on 2c.

ISSUE 2d:

Los Angeles Unified School District did not deny Student a free, appropriate public education, or FAPE, during the 2021-2022 school year, by failing to offer parent training in Attention-deficit hyperactivity disorder, Anxiety Disorder, the primary eligibility of Other Health Impairment.

Los Angeles prevailed on 2d.

ISSUE 2e:

Los Angeles Unified School District did not deny Student a free, appropriate public education, or FAPE, during the 2021-2022 school year, by denying Parent requests at the May 26, 2022 IEP team meeting for additional supports during Neighborhood Academic Initiative instruction for BII services, and Parent requests for increased academic support in math and Spanish.

Los Angeles prevailed on 2e.

ISSUE 2f:

Los Angeles Unified School District did not Student a free, appropriate public education, or FAPE, during the 2021-2022 school year, by failing to offer extended school year services during the summer of 2022.

Los Angeles prevailed on 2f.

ISSUE 3:

Los Angeles Unified School District did not deny Student a free, appropriate public education, or FAPE, during the 2022-2023 school year, through October 20, 2022, by failing to assess Student for eligibility under the category of emotional disturbance.

Los Angeles prevailed on Issues 3.

REMEDIES

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496. In remedying a FAPE denial, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA, specifically providing Student with a FAPE which emphasizes special education and related services to meet Student’s unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra*, 471 U.S. 359, 374.)

Los Angeles denied Student a FAPE when they failed to provide counseling during the 2020-2021 school year, beginning October 20, 2020. However, Los Angeles compensated Student for the lost counseling sessions by offering, and delivering, more than a year of additional counseling services during the 2021-2022 school year. There were 38 weeks of instruction in the 2020-2021 school year. The time frame applicable to this issue was October 20, 2020 to June 10, 2021, a total of 28 weeks. Pursuant to the claims in this case, Student was entitled to one, 30-minute counseling session for 28 weeks, for a total of 840 minutes.

To make up for Student's lost counseling services, Los Angeles gave Student 1,200 compensatory counseling minutes in the May 27, 2021 IEP, which amounted to 40 weekly, 30 minute sessions. Parents accepted Los Angeles' offer and the compensatory counseling minutes were included in the Student's May 21, 2021 IEP. School Psychologist Nancy Castillo provided the compensatory counseling minutes to Student during the 2021-2022 school year, when Student attended middle school for sixth grade. Student offered no evidence that the 1,200 minutes of compensatory services provided by Los Angeles was inadequate to compensate Student for the counseling not provided during the 2020-2021 school year. Student failed to prove he was entitled to any additional remedy for the failure to implement counseling services during the 2020-2021 school year.

ORDER

1. Student proved that Los Angeles materially failed to implement the counseling due to Student during the 2020-2021 school year; however, no further remedy is ordered.

2. Student failed to prove any of his other claims by a preponderance of the evidence.
3. All of Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings