

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2022110638

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PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

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DECISION

March 17, 2023

On November 18, 2022, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Los Angeles Unified School District. Administrative Law Judge Kara Hatfield heard this matter by videoconference on January 19, 24, 25, and 26, 2023.

Attorneys Leroy Sumter and Robert Burgermeister represented Student. Parent attended all hearing days on Student's behalf. Student did not attend the hearing. Attorneys Dee Anna Hassanpour, Jennifer Oliva, and Anisha Asher represented Los Angeles Unified. Los Angeles Unified's Administrative Coordinator, Due Process

Department, Diana Massaria attended on Los Angeles Unified's behalf on January 19, 2023. Los Angeles Unified's Research and Resolution Specialist Juan Tajoya attended on Los Angeles Unified's behalf on January 19 and 24, 2023. Los Angeles Unified's Research and Resolution Specialist Barbara Rainen attended on Los Angeles Unified's behalf on January 25, 2023. Los Angeles Unified's Research and Resolution Specialist Andrew Vazquez attended on Los Angeles Unified's behalf on January 26, 2023.

At the parties' request, OAH continued the matter to February 23, 2023, for written closing arguments. The record was closed, and the matter was submitted on February 23, 2023.

## ISSUES

Free appropriate public education is called FAPE. Individualized education program is called IEP.

As listed below, the Issues reflect the discussion and agreement of the parties on the first day of hearing. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

1. Did Los Angeles Unified deny Student a FAPE from October 2021 to October 2022 by failing to offer sufficient programs and supports to enable Student to receive educational benefit in:
  - a. mathematics; or
  - b. literacy, including English language arts and English language development?

2. Did Los Angeles Unified deny Student a FAPE from October 2022 to the date of filing by failing to offer sufficient programs and supports to enable Student to receive educational benefit in:
  - a. mathematics; or
  - b. literacy, including English language arts and English language development?
3. Did Los Angeles Unified deny Student a FAPE by failing to offer services over the extended school year:
  - a. in the October 22, 2021 IEP for extended school year following the 2021-2022 school year; or
  - b. in the October 12, 2022 IEP for extended school year following the 2022-2023 school year?
4. Did Los Angeles Unified deny Student a FAPE by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to offer appropriate goals in reading, writing, mathematics, and vocational education at the October 12, 2022 IEP team meeting?
5. Did Los Angeles Unified deny Student a FAPE by failing to address Student's risk of regression:
  - a. at the October 22, 2021 IEP team meeting; or
  - b. at the October 12, 2022 IEP team meeting?

## 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.) All

subsequent citations to the Code of Federal Regulations are to the 2006 version, unless otherwise stated. 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected.

(20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the

- identification,
- assessment, or
- educational placement of the child, or
- the provision of a FAPE to the child.

(20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see

20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof on all issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 10 years old and in third grade at the time of hearing. Student resided within Los Angeles Unified's geographic boundaries at all relevant times. Beginning October 22, 2021, Student was eligible for special education and related services under the category of specific learning disability.

#### ISSUES 1(a), 1(b), 3(a), AND 5(a): THE OCTOBER 22, 2021 IEP

##### ISSUE 1(a) AND 1(b): SUFFICIENT PROGRAMS AND SUPPORTS FOR MATH AND LITERACY

Student contends Los Angeles Unified denied her a FAPE from October 2021 to October 2022 by failing in the October 22, 2021 IEP to offer what Student calls "sufficient programs and supports" to enable her to receive educational benefit in mathematics or literacy, including English Language Arts and English Development. Student alleged in her complaint that the October 22, 2021 IEP team "was aware that Student needed much more than merely 60 minutes in Math weekly" and contends in her written closing argument that the October 22, 2021 IEP offered Student 60 minutes weekly of resource support program in math, but Los Angeles Unified "provided no R[esource] S[upport] P[rogram] Math Services for the 2021-2022 School year." But Student's written closing argument also acknowledges Student did in fact receive 60 minutes weekly of resource support program for math, and asserts "no genuine progress was being made as it relates to the math goals or with the service frequency of 60 minutes per week." Student alleged in her complaint that the October 22, 2021 IEP

team “was aware that Student needed much more than merely 120 minutes in Literacy weekly.” Student repeats this assertion in her written closing argument. Student’s complaint and written closing argument did not otherwise explain or describe what “programs” or “supports” she required but Los Angeles Unified did not offer.

Los Angeles Unified contends the October 22, 2021 IEP offered Student an educational program that was reasonably calculated to enable Student make progress in math and literacy that was appropriate in light of her circumstances.

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.) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].)

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

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. 386, 402-403 [137 S.Ct. 988, 1000-1001] (*Endrew F.*.)

School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); Ed. Code, § 56031.)

The continuum of program options includes, but is “not necessarily” limited to, in increasing order of restrictiveness:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication, and instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

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

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

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of such placement;
3. the effect the student has on the teacher and children in the regular class;  
and
4. the costs of mainstreaming the student.



(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)].)

However, the Ninth Circuit has also found that a general education placement is not the least restrictive environment for every special-needs child. In *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830 (*Poolaw*), the Ninth Circuit considered the *Rachel H.* factors and determined that a general education classroom was not the least restrictive environment for the child in question. The Court acknowledged that there was a tension within the IDEA between the requirement that a district provide children with a FAPE to meet their unique needs and the preference for mainstreaming. The Court stated:

In some cases, such as where the child's handicap is particularly severe, it will be impossible to provide any meaningful education to the student in a mainstream environment. In these situations, continued mainstreaming would be inappropriate and educators may recommend placing the child in a special education environment. This allows educators to comply with the Act's main requirement – that the child receive a free appropriate public education. Thus, "the Act's mandate for a free appropriate public education qualifies and limits its mandate for education in the regular classroom." (*Poolaw, supra*, 67 F.3d at p. 834, citing *Daniel R.R., supra*, 874 F.2d at p. 1044.)

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If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R.*, *supra*, 874 F.2d at p. 1050.)

An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Board of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*).) An IEP is "a snapshot, not a retrospective." (*Id.*, citing *Fuhrmann*, *supra*, 993 F.2d at p. 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams*, *supra*, 195 F.3d at p. 1149; *Fuhrmann*, *supra*, 993 F.2d at p. 1041 ("an IEP must take into account what was, and what was not, objectively reasonable ... at the time the IEP was drafted").)

To determine whether a school district substantively offered a student a FAPE, the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1313-1315.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program, and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

Student did not provide evidence to support her claim that Los Angeles Unified denied her a FAPE by failing to appropriately serve her needs in the areas of math and literacy. Student only called Parent and eight employees of Los Angeles Unified as witnesses. None of them testified Student required any additional or alternative goals, placement, related services, accommodations, modifications, or any other type or category of programs or supports for math or literacy than what was offered in the October 22, 2021 IEP.

## HISTORY AND ELIGIBILITY ASSESSMENT RESULTS

Student participated in regular education intervention services starting in October 2018, and for the rest of kindergarten. She participated in regular education intervention services during the first time she attended first grade, starting in September 2019, until school campuses closed in March 2020, due to the global pandemic of the novel coronavirus, called COVID-19. Student received general education interventions in English language arts, principally focused on reading, and specifically phonics and decoding. Student also received general education interventions in math, focused on number recognition.

Student repeated first grade in the 2020-2021 school year. She resumed participating in regular education intervention services in October 2020, and received one-to-one intervention from Victoria Chandler for 30 minutes three times each week, and four times each week for a few months in 2021. Chandler was a credentialed general education teacher who had taught first, second, and fifth grades. She became an intervention teacher, and eventually an intervention coordinator. While she was an intervention coordinator, Chandler selected a few students each year to work with directly, including Student.

Student's progress in literacy was mostly tracked and documented through periodic reading tests using Dynamic Indicators of Basic Early Literacy Skills, often referred to by its acronym DIBELS. DIBELS was a general education assessment tool administered at the beginning, middle, and end of each school year to all elementary school students in Los Angeles Unified to identify students who needed additional instructional support. Los Angeles Unified also used more frequent administration of the DIBELS literacy tests for students already receiving additional support for the purpose of progress monitoring, to evaluate those students' responses to interventions.

DIBELS assessed several types of skills through different instruments, and scores allowed educators to monitor students' abilities in decoding, oral reading fluency, oral reading fluency accuracy, word reading fluency, and reading comprehension. Some DIBELS instruments appeared to contain a fixed level of difficulty, such as lists of three-letter words in the consonant-vowel-consonant pattern. Other DIBELS tools had material that became increasingly complex over time, such as reading passages that advanced in difficulty by grade level. Further, the passages were progressively more difficult for the second and third times tested per school year. Also, the passages used to monitor a student more frequently than three times each year were different every time.

The evidence at hearing included the DIBELS literacy testing data for Student as far back as August 2019, the beginning of the year Student was in first grade for the first time. Student responded to the general education interventions by sometimes improving her DIBELS literacy test scores in various categories, and sometimes having lower scores again after showing improvement. Student's scores were, and remained through April 2021, below or well below benchmark. Benchmark was the level at which same-grade, typical peers performed.

There was no evidence presented at the hearing about Student's historic math performance, apart from information that Student participated in general education interventions in math with Chandler at least in first grade, during the 2019-2020 school year, before the school closures due to COVID-19. Chandler did not provide Student math intervention after the closures. In early 2020, Student struggled to consistently recognize numbers nine through 19. Student's classroom teacher in spring 2021 did extra work with Student to help her learn to consistently recognize and say numbers up to 50.

Student's progress was slow, and then stalled. In April 2021, at Parent's urging, the Student Support and Progress Team recommended Student be assessed for eligibility for special education and related services.

Los Angeles Unified assessed Student when she began second grade and convened an IEP team meeting on October 22, 2021. When compared to others at her age level, Student scored in the first percentile in basic reading skills. She scored below the first percentile in broad reading, reading fluency, broad math, math calculation skills, broad written language, and written expression.

At the time Los Angeles Unified assessed Student for special education in fall 2021, Student's DIBELS literacy test scores were well below benchmark in every category, and overall. The special education teacher who conducted the academic assessment portion of Student's evaluation for special education eligibility summarized Student's DIBELS literacy test scores as "indicating the need for intensive support."

Student's second grade general education teacher was Dawn Hanson. In the early part of second grade, Hanson reported information about Student's performance to the special education teacher who conducted the academic assessment portion of

Student's evaluation for special education eligibility. Student tried very hard in reading but struggled greatly to identify words automatically and to decode basic phonics patterns. In writing, Student could write sentences with a model and other scaffolds like communication guides and word lists. However, she struggled to write independently. Student also struggled to keep up in math, because she had weaknesses in basic number sense like addition and subtraction.

On formal math assessments, Student scored below the first percentile in broad math. She could add and subtract single digit numbers with sums or differences of nine or below. She could not add and subtract two- and three-digit numbers. She struggled to add above nine and was inconsistent with subtracting single-digit numbers.

The school psychologist summarized Student's performance on the standardized tests in math and English language arts administered for the special education eligibility assessment. Student showed low average performance in one area, the word attack subtest, and well below average in the 10 other areas of academic achievement assessed by subtests, as well as all 15 cluster scores derived from the 11 subtests. The school psychologist stated Student's overall performance suggested "a significant educational impact."

Standardized testing of Student's receptive and expressive language skills showed Student had average ability in one area, low average ability in two areas, below average ability in three areas, and well below average abilities in one area. However, classroom teacher Hanson and Parent reported Student's communication as a strength and an area about which they did not have concern. Hanson reported Student adequately expressed ideas verbally, and contributed, participated, and engaged in classroom discussions and

activities. Hanson reported Student followed multiple-step directions. But the psychoeducational report was unclear regarding Student's ability to follow instructions without repetition, because it also documented Hanson's report as "... and [Student] does need information repeated." The school psychologist's observations and interactions with Student showed Student engaged in social communication with peers and adults adequately.

Parent and Hanson reported Student struggled in math, reading, and writing. Hanson reported Student had difficulty grasping new concepts and applying previous learning to new learning situations.

As of 2021, Los Angeles Unified did not assess any of its students for an intelligence quotient. For all students assessed for eligibility for special education and related services, Los Angeles Unified used what it called "alternative procedures for measuring intellectual ability," which included:

- performance on tasks attempted;
- interpretation of processing strengths and areas of need;
- observations, interviews; and
- a review of data.

Based upon the alternative assessment procedures Los Angeles Unified used, the school psychologist concluded Student's cognitive abilities were within the average range. The Los Angeles Unified assessors determined Student's weaknesses in reading, writing, and math were not due to the effects of

- environmental,
- cultural, or economic disadvantage,

- unfamiliarity with the English language,
- limited school experience,
- poor attendance,
- social maladjustment,
- intellectual disability, or
- any visual, hearing, or motor impairment.

Instead, Student's difficulties in reading, writing, and math were caused by deficits in several categories of psychological processing:

- auditory processing;
- phonological processing;
- visual motor integration; and
- conceptualization, expression, and association.

These psychological processing deficits all adversely impacted Student's educational access and performance, and required special education. The school psychologist analyzed Student's assessment data and determined Student was eligible for special education and related services due to her psychological processing deficits, which were identified because of severe discrepancies between her intellectual ability and achievement in all of the categories of academic areas described in California's eligibility regulation, which are:

- oral expression;
- listening comprehension;
- written expression;
- basic reading skills including fluency;
- reading comprehension;



- mathematical calculation; and
- mathematical reasoning.

The school psychologist concluded Student was eligible for special education and related services under the category of specific learning disability.

## OCTOBER 22, 2021 IEP DEVELOPMENT

On October 22, 2021, Los Angeles Unified held an IEP team meeting for Student. The purpose of the meeting was to review the special education eligibility assessment results and to develop an IEP for Student. The IEP team determined Student was eligible for special education and related services. The IEP identified Student's areas of unique need as math, reading, and writing.

In math, Student's present level of performance was based on her scores and functional performance on the standardized tests administered for the eligibility assessment. Student could add and subtract single-digit numbers with sums or differences up to nine. Student's disability, consisting of deficits in auditory processing, phonological processing, and association, conceptualization, and expression, affected her ability to add and subtract. Her difficulty adding and subtracting impacted her involvement and progress in the general education curriculum in the area of math. Student's needs in math were to develop her basic number sense to add and subtract above nine, and to add and subtract two-and three-digit numbers.

The IEP team developed one math goal for Student. By October 2022, Student was expected to add and subtract without regrouping within 500, when given five

problems with modeling and a number line, and based on place value, properties of operations, and/or the relationship between addition and subtraction. She was expected to accomplish this skill with 80 percent accuracy, in three out of five opportunities. Adding without regrouping meant that when adding together digits in the ones, tens, or hundreds place values, the sum never exceeded nine, so it was not necessary to increase the next place value by one. Subtracting without regrouping meant that when subtracting one digit from another digit in the ones, tens, or hundreds place values, the number being subtracted was never larger than the number from which it was subtracted, so it was not necessary to reduce the next place value by one.

The two short-term objectives for this goal described Student would achieve the goal by scaffolding skills. She first would work on four problems with modeling and a number line, to add without regrouping within 50 using strategies and algorithms based on place value, properties of operations, and/or the relationship between addition and subtraction. Next, she would work on four problems with modeling and a number line, to add without regrouping within 100 using strategies and algorithms based on place value, properties of operations, and/or the relationship between addition and subtraction. Finally, she would advance to the skill described in the math goal.

In reading, Student's present level of performance was based on her DIBELS literacy test scores in various skills. Student's disability included deficits in auditory processing, which was described as affecting her short-term memory. Her disability also included deficits in phonological processing, which was described as dyslexia. And additionally, her disability included deficits in association, conceptualization, and expression. These disabilities affected Student's ability to decode words with one

and two syllables. Her difficulty decoding impacted her involvement and progress in the general education curriculum in the area of reading. Student had needs in foundational literacy skills, which were to develop her abilities to decode:

- consonant-vowel-consonant words;
- consonant digraphs;
- blends;
- long vowel patterns;
- blends in isolation;
- some words with short vowels;
- long vowel patterns;
- diphthongs; and
- multisyllabic words.

The IEP team developed one reading goal for Student. By October 2022, Student was expected to read two-syllable words in isolation with one particular phonics pattern, when given a list of words with reminders for sound/spelling correspondence. She was expected to accomplish this skill with 75 percent accuracy, in three out of five trials. The two short-term objectives for this goal described Student would achieve the goal by scaffolding skills. She first would work on a list of four regular or nonsense words with reminders for sound/spelling correspondence, and, with prompting, decode regularly spelled one-syllable words that contained three phonemes, including digraphs. Next, she would work on a list of four regular or nonsense words with reminders for sound/spelling correspondence, and, with prompting, decode regularly spelled one-syllable words that

contained four phonemes, including consonant blends, digraphs, and basic long vowel patterns with blends. Finally, she would advance to the skill described in the reading goal.

In writing, Student's present level of performance was based on her scores and functional performance on the standardized tests administered for the eligibility assessment, and Hanson's description of Student's abilities in the second-grade classroom. Student's disability included deficits in

- auditory processing,
- phonological processing, and association,
- conceptualization, and
- expression.

These deficits impacted Student's ability to sound out words so she could spell and write independently. Her difficulty sounding out words to spell and write impacted her involvement and progress in the general education curriculum in the area of writing. Student's writing needs were to develop her ability to write independently, focused on sounding out words on her own because her spelling impacted what the IEP called "the comprehensibility" of her writing.

The IEP team developed one writing goal for Student. By October 2022, Student was expected to spell two-syllable words in isolation with one particular phonics pattern, when given a list of words with reminders for sound/spelling correspondence. She was expected to accomplish this skill with 75 percent accuracy, in three out of five trials. The two short-term objectives for this goal described Student would achieve the goal by scaffolding skills. She first would work on a list of four regular or nonsense words with

reminders for sound/spelling correspondence, and, with prompting, spell regularly spelled one-syllable words that contained three phonemes, including digraphs. Next, she would work on a list of four regular or nonsense words with reminders for sound/spelling correspondence, and, with prompting, spell regularly spelled one-syllable words that contained four phonemes, including consonant blends, digraphs, and basic long vowel patterns with blends. Finally, she would advance to the skill described in the writing goal.

The October 22, 2021 IEP offered Student placement in a general education class at a general education site because the supports, services, accommodations, and/or modifications in Student's IEP were available in a general education classroom at a general education site. The IEP also offered Student a total of 180 minutes weekly outside of the general education classroom to receive specialized academic instruction from a credentialed education specialist, called a special education teacher, or resource specialist teacher. The IEP team determined the benefits to Student of being outside the general education classroom for some time each week to receive specialized academic instruction to meet her needs, documented in the IEP, outweighed the potentially harmful effect of Student missing general education instruction taught by highly qualified staff.

The IEP specified Student would work on her math, reading, and writing goals in the general education classroom, with some instructional accommodations. The IEP also offered the instructional modification of reading and homework modified to Student's

level, since her independent abilities were below grade level. At the due process hearing, special education teacher Rebecca Feuerman explained the instructional modification regarding reading was necessary because Student needed her reading to be passages that were easily decodable, not things with many different phonics patterns. Teachers had the ability to modify passages to consist of high-frequency and easily decodable words conveying the same or similar meaning. Student's second grade general education teacher Hanson described modifying Student's homework if the standard homework did not meet Student's needs. Hanson used a computer application called Amplify to modify Student's homework and created unique quick response, or QR, codes to send home with Student so Student could access Schoology, the software platform Los Angeles Unified used to make educational applications and information available to students and parents. Student could complete her individually designed homework online, and she could also partially complete paper assignments provided to the whole class.

The 180 minutes per week of special education instruction was allocated to specific subjects. The October 22, 2021 IEP offered Student 60 minutes weekly outside of general education to receive direct instruction from the resource specialist teacher to work on her math goal. The IEP offered Student 120 minutes weekly outside of general education to receive direct instruction from the resource specialist teacher to work on her reading and writing goals.

Parent signed consent to the October 22, 2021 IEP without any exceptions and returned the signed IEP to Los Angeles Unified on November 3, 2021. The IEP document notes section did not indicate Parent disagreed with any goal, placement,

related service, accommodation, or modification offered in the IEP. None of the IEP team members who testified recalled Parent disagreeing with or requesting any different or

- additional goals,
- placement,
- related services,
- accommodations, or
- modifications.

Parent did not assert in her testimony that she disagreed with or requested any different or additional goals, placement, related services, accommodations, or modifications during the October 22, 2021 IEP team meeting.

During the hearing, special education teacher Feuerman testified regarding her academic achievement assessment of Student in fall 2021, her participation in the October 22, 2021 IEP team meeting, and the development of Student's October 22, 2021 IEP. In October 2021, Feuerman had been teaching students with mild to moderate disabilities for approximately 21 years. She was highly qualified to opine on the types and levels of special education interventions that would be reasonably calculated to enable Student to receive appropriate educational benefit.

Feuerman recommended, the IEP team agreed, and Los Angeles Unified offered Student 60 minutes of pull-out special education each week for math, based on several considerations. The factors were the material to be covered - which was one instructional goal in math -, the pace Student could work at, and the fact that Student's general education teacher would also be working with Student on her one math goal. Student

questioned whether Feuerman's workload was a factor in deciding how much specialized academic instruction to offer Student. Feuerman explicitly denied the amount of time proposed was based on her own workload, and emphasized it was based on Student's needs.

Feuerman also considered what was a reasonable amount of time to remove Student from the general education classroom to minimize the impact special education would have on her access to the rest of the regular classroom curriculum. Feuerman believed the offer of 60 minutes each week of special education instruction in math was appropriate to support Student.

Patricia Razo attended the October 22, 2021 IEP team meeting in her administrator capacity as the Assistant Principal Elementary Instructional Specialist. She also was an education specialist, meaning a credentialed special education teacher. She testified the pull-out special education 60 minutes each week to address Student's needs in math was not due to a formula. It was based on Student's needs, after discussion among the IEP team. Razo stated the resource teachers worked with the general education teachers to determine the best time of day to remove a student from the general education classroom to receive the special education supports and services.

Feuerman also testified the same factors guided her recommendation for, the IEP team's agreement to, and Los Angeles Unified's offer of 120 minutes of pull-out special education each week for reading and writing. Razo testified the special education services for reading and writing were determined the same way as she testified about for math: The offer was based on Student's needs in those areas. Feuerman believed the offer of 120 minutes each week of special education instruction in reading and writing was appropriate to support Student.



Student failed to present any testimony or documents to contradict Feuerman's opinion that the pull-out special education Los Angeles Unified offered Student in the October 22, 2021 IEP was appropriate and sufficient. Further, Student failed to present any evidence Student required additional or different programs and supports to receive a FAPE, either in math or literacy. Therefore, the uncontroverted evidence established the 60 minutes of special education weekly in math, and the 120 minutes of special education weekly in literacy, offered in October 2021, were reasonably calculated to enable Student to receive educational benefit appropriate in light of her circumstances.

Student failed to prove by a preponderance of the evidence that Los Angeles Unified denied her a FAPE from October 2021 to October 2022 by failing in the October 22, 2021 IEP to offer her sufficient programs and supports to enable her to receive educational benefit in math or literacy.

### ISSUE 3(a): EXTENDED SCHOOL YEAR SUMMER 2022

Student contends Los Angeles Unified denied her a FAPE by failing to offer extended school year services in the October 22, 2021 IEP for the extended school year following the 2021-2022 school year. Student argues her deficits in auditory processing, phonological processing, and association, conceptualization, and expression – in other words all of the very reasons she was eligible for special education and related services – were why she should have been offered extended school year services following the 2021-2022 school year.

Los Angeles Unified contends that as of October 22, 2021, the IEP team did not have data to support a finding that Student showed significant regression during

instructional breaks, coupled with a limited recoupment capacity. Los Angeles Unified argues Student therefore did not require extended school year services when the October 22, 2021 IEP was developed.

An IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).)

California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for each individual with exceptional needs who requires special education and related services in excess of the regular academic year. Students to whom extended programming must be offered under section 3043:

... shall have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition.

Feuerman testified the IEP team considered the data it had and did not find Student demonstrated significant regression over instructional breaks. Los Angeles Unified relied on the previous school year's DIBELS literacy testing data for the end of the 2020-2021 school year and compared it to Student's scores at the beginning of the 2021-2022 school year. Los Angeles Unified concluded Student did not have a significant drop, and therefore determined Student did not show particular regression over instructional breaks. Based on that analysis, Los Angeles Unified did not offer Student extended school year in the October 22, 2021 IEP. Razo also testified the IEP

team discussed the considerations for extended school year and determined Student did not meet the criteria for extended school year as of October 22, 2021, so Los Angeles Unified did not offer it.

Student's cumulative card contained a summary of her "educational growth and development: teacher observation and test results" following her repeated first-grade year, at the end of spring 2021. One comment among the paragraph her teacher wrote was, "She has difficulty retaining skills taught." This isolated observation was not sufficient to establish Student was a student to whom extended programming must be offered under California Code of Regulations, title 5, section 3043.

Student failed to present any testimony or documents to contradict Feuerman's opinion that based on information available to Los Angeles Unified and the IEP team on October 22, 2021, Student did not exhibit significant regression after instructional breaks coupled with limited recoupment capacity. Further, Student failed to present any evidence that as of October 22, 2021, Student required extended school year services to receive a FAPE. While it might have benefitted Student to continue receiving specialized academic instruction during summer 2022, Student did not establish by a preponderance of the evidence that it was necessary. Therefore, the uncontroverted evidence established that as of October 22, 2021, Student did not require extended school year to enable Student to receive educational benefit appropriate in light of her circumstances.

Student failed to prove by a preponderance of the evidence that Los Angeles Unified denied her a FAPE by failing in the October 22, 2021 IEP to offer services over the extended school year following the 2021-2022 school year.

## ISSUE 5(a): ADDRESSING STUDENT'S RISK OF REGRESSION

Student contends Los Angeles Unified denied her a FAPE in the October 22, 2021 IEP by failing to address her risk of regression. Student argues that due to her educational history, Los Angeles Unified "could have made and educate [sic] presumption that [Student] was at risk of regression." Student also argues "District had ample notice and suspicion that Student was at risk of regression" and did not "address it." Student did not otherwise explain or describe what she required but was not offered to address any risk of regression.

Los Angeles Unified contends regression is addressed through extended school year services. Los Angeles Unified argues Student did not demonstrate regression, and that Los Angeles Unified addressed the question of whether Student was at risk of regression by discussing it at the October 22, 2021 IEP team meeting and determining Student did not exhibit significant regression after instructional breaks, and that she therefore did not require extended school year services.

Student only called Parent and eight employees of Los Angeles Unified as witnesses. None of them testified that as of the October 22, 2021 IEP team meeting, Student exhibited regression or required any additional or alternative program or support in the October 22, 2021 IEP to address regression or risk of regression. Student did not specify, and failed to produce any evidence regarding, what she allegedly required to address regression or risk of regression, apart from extended school year as already addressed in Issue 3(a), above.

Consequently, Student failed to prove by a preponderance of the evidence Los Angeles Unified denied her a FAPE by failing to address Student's risk of regression at the October 22, 2021 IEP team meeting.

## ISSUES 2(a), 2(b), 3(b), 4, AND 5(b): THE OCTOBER 12, 2022 IEP

### ISSUE 4: ADEQUATE GOALS TO RECEIVE EDUCATIONAL BENEFIT

Student contends Los Angeles Unified denied her a FAPE by failing to offer appropriate goals in reading, writing, mathematics, and vocational education at the October 12, 2022 IEP team meeting. Student alleges the 2022 IEP annual goals "were inadequate because they offered nothing more than de minimus increases in goals at best-- mostly, no changes in goals at all--which neither added new skills in areas of need nor made substantive progress in existing skills." Student also alleges and argues the October 12, 2022 IEP's goals "could not be achieved virtually on their face, and therefore were not genuine. Student's lack of progress is attributable to the virtual learning platform."

Los Angeles Unified contends each of the goals in the October 21, 2022 IEP were measurable, appropriately ambitious, and tailored to meet Student's unique needs.

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (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; *Letter to Butler* (OSERS March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D.Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE: "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit." (*Adams, supra*, 195 F.3d at p. 1149.)

The IDEA requires IEP goals to target a student's needs, but does not require an IEP to contain every goal from which a student might benefit. (*Capistrano Unified Sch. Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (34 C.F.R. § 300, Appendix A – Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

Student finished second grade with scores of mostly 2's, indicating she made progress toward grade-level standards, but did not meet grade-level standards. Student

received 3's, indicating she met grade-level standards, in health education, physical education, visual and performing arts, and history-social science. She earned 2's in the content and concepts and constructing relevant questions domains of science. She earned a 3 in the science domain of conducting investigations.

She also earned a 3 in the mathematical practices domain of modeling and using tools. But she earned 2's in all other domains of mathematical practices, and mathematics content. Those categories were:

- problem solving and precision;
- reasoning and explaining;
- seeing structure and generalizing;
- operations and algebraic thinking;
- number operations in base ten;
- measurement and data; and
- geometry.

She earned 2's in all domains of English language arts, which were:

- foundational reading skills;
- making meaning from text;
- language conventions, effective use, and vocabulary;
- effective expression through writing; and
- effective expression through speaking and listening.

Second-grade general education teacher Hanson summarized Student's "educational growth and development: teacher observation and test results" by noting on Student's cumulative card that she showed academic growth "but still need[ed]

additional work with several grade 2 standards.” Specifically, Hanson reported Student continued to work on phonics skills and building fluency, and her number sense was developing.

By the time of Student’s annual IEP team meeting on October 12, 2022, she had been in general education teacher Irma Soria-Riojas’s third-grade class for two months. At the beginning of the school year, Student was very timid and did not participate in class. She quietly sat at her desk with her partner. In October 2022, she struggled to participate in class, even on tasks at her own level of ability. She did not always ask for assistance when she was challenged by a task.

In math, the October 12, 2022 IEP documented Student’s present level of performance based on teacher observations by Soria-Riojas and Feuerman, and Student’s work samples. Feuerman reported Student achieved the math goal of her 2021 IEP to add and subtract multidigit numbers without regrouping. She needed to develop her basic number sense for addition and subtraction with regrouping. Adding with regrouping meant that when adding together digits in the ones, tens, or hundreds place values, the sum could be 10 or higher, so it was necessary to increase the next place value by one. Subtracting with regrouping meant that when subtracting one digit from another in the ones, tens, or hundreds place values, the number being subtracted was larger than the number from which it was subtracted, so it was necessary to reduce the next place value by one. Student also needed to learn multiplication, a concept she did not understand even with modeling. As of October 2022, the only multiplication problems Student could solve were multiplying a number by one, and that required explicit teaching to accomplish.



The IEP team developed one math goal for Student. By October 2023, Student was expected to add and subtract with regrouping within 1,000, when given four problems with modeling and a number line, and using strategies and algorithms based on place value, properties of operations, and/or the relationship between addition and subtraction. She was expected to accomplish this skill with 75 percent accuracy, in three out of five opportunities as measured by her work samples. The two short-term objectives for this goal described Student would achieve the goal by scaffolding skills. She first would work on four problems with modeling and a number line, to add with regrouping within 100 using strategies and algorithms based on place value, properties of operations, and/or the relationship between addition and subtraction. Next, she would work on four problems with modeling and a number line, to subtract with regrouping within 100 using strategies and algorithms based on place value, properties of operations, and/or the relationship between addition and subtraction. Finally, she would advance to the skill described in the math goal.

In reading, the IEP documented Student's present level of performance based on her DIBELS literacy test scores in various skills, an assessment using Language Essentials for Teachers of Reading and Spelling, the San Diego Quick Assessment of reading ability, teacher observations by Soria-Riojas and Feuerman, and Student's work samples. On DIBELS literacy testing, Student continued to score well below basic. Student did not achieve her reading goal from the 2021 IEP, only accomplishing the first short-term objective. Student could decode consonant-vowel-consonant words with time and encouragement. She attempted to read words with digraphs and blends, but was inconsistent and was noted to have been especially inconsistent when she returned from summer break. Student struggled to decode consonant digraphs, blends, and long vowel patterns, despite being taught them over the prior year. She struggled

greatly to read multisyllabic words and identify high-frequency words, which impacted her fluency. She did not volunteer to read aloud to the whole class. Her reading struggles impacted her throughout the school day, across subject areas.

The IEP team developed one reading goal for Student. By October 2023, Student was expected to read multisyllabic words with one target pattern at a time, after highlighting and practicing, and with reminders for sound/spelling correspondence. She was to read with improved accuracy, by using knowledge of letter-sound correspondences and syllabication, decoding the target words with 75 percent accuracy, in three out of five trials measured by teacher-charted records. The two short-term objectives for this goal described Student would achieve the goal by scaffolding skills. She first would work on a list of four regular words with reminders for sound/spelling correspondence, and targeting one sound pattern at a time, to decode regularly spelled one-syllable words that contained consonant digraphs and blends. Next, she would work on a list of four regular words with reminders for sound/spelling correspondence, and targeting one sound pattern at a time, to decode regularly spelled one-syllable words that contained long vowel patterns. Finally, she would advance to the skill described in the reading goal.

In writing, the IEP documented Student's present level of performance based on teacher observations by Soria-Riojas and Feuerman, and Student's work samples. Student did not achieve her writing goal from the 2021 IEP, only accomplishing the first short-term objective. Student could copy sentences from the board. She benefitted from small group support for spelling and writing tasks, including

- assistance to sound out words,
- a word bank or word book,

- modeling,
- communication guides, and
- extensive discussion.

Her sentences were very short and lacked elaboration. She lacked confidence in her ability to sound out words and read her own writing. She did not volunteer to read to the whole class from her journal. Student needed to develop her ability to write comprehensible sentences independently, especially compound and complex sentences.

The IEP team developed one writing goal for Student. By October 2023, Student was expected to produce simple, compound, and complex sentences, following modeling of the skills and some prompting. She was expected to accomplish this skill with 80 percent comprehensibility, in three out of five trials. The two short-term objectives for this goal described Student would achieve the goal by scaffolding skills. She first would work on producing simple, comprehensible sentences with extensive modeling of the skills and moderate prompting. Next, she would work on producing simple and compound, comprehensible sentences with extensive modeling of the skills and moderate prompting. Finally, she would advance to the skill described in the writing goal.

The IEP team noted a new area of need for Student, regarding vocational education. The IEP documented Student's present level of performance based on teacher observations by Soria-Riojas and Feuerman, and Student's work samples. Student tried hard and was friendly and responsible, doing her classroom job. She was generally compliant, except for participating in tasks Student deemed too difficult, such as reading aloud and reading from her journal. She did her homework with

modifications. Student needed to improve her class participation, even on tasks at her level of ability. She did not always ask for help when she was challenged by a task.

The IEP team developed one vocational education goal for Student. By October 2023, Student was expected to raise her hand at least once per day, with prompting, when engaged in a classroom lesson or discussion with teacher support and encouragement. She was expected to accomplish this skill on three out of five days. The two short-term objectives for this goal described Student would achieve the goal by scaffolding skills. She first would work on this skill while being in the small group lesson or discussion environment and participate or raise her hand at least once per lesson, with prompting, on three out of five days. Next, she would work on this skill while being in the small group lesson or discussion environment and participate or raise her hand at least once per lesson, with prompting, on four out of five days. Finally, she would advance to the skill described in the vocational education goal.

Feuerman testified the math goal in the October 12, 2022 IEP was appropriate. Student had learned to add and subtract without regrouping, and she needed to learn how to do it with regrouping. Feuerman explained the second-grade curriculum standards addressed adding and subtracting without regrouping and expected students to master that. The end of the second-grade curriculum included exposure to those math operations with regrouping. The third-grade curriculum works on and expects students to master addition and subtraction with regrouping. The math goal in Student's October 12, 2022 IEP was targeted to grade-level standards and had in mind what the general education teacher was going to be working on with the class. Having worked with Student for one year by the time of the October 2022 IEP team meeting, Feuerman believed Student could achieve the math goal within one year.

Feuerman testified the reading goal in the October 12, 2022 IEP was appropriate. Student was still working on some skills Feuerman had hoped Student would meet by October 2022. Feuerman explained teaching reading is cumulative, and reading skills must be built from lower skills to higher skills for a student to read fluently. Teachers could not jump forward to higher-level skills. Student's reading goal in the 2021 IEP was for foundational skills, and Student had not mastered them yet. Student needed more skills in one-syllable words. The IEP team retained the foundational skills of the reading goal, and also changed Student's annual goal from only two-syllable words to address multisyllabic words, which were more grade-level. Having worked with Student for one year by the time of the October 2022 IEP team meeting, Feuerman believed Student could achieve the reading goal within one year.

Feuerman testified the writing goal in the October 12, 2022 IEP was appropriate. Student's October 2021 IEP writing goal had targeted spelling. As of October 2022, Student was starting to write simple sentences but was not writing comprehensibly. The IEP team wanted Student to work toward comprehensible and lengthier sentences. Writing compound, complex sentences was a grade-level-targeted skill. Having worked with Student for one year by the time of the October 2022 IEP team meeting, Feuerman believed Student could achieve the writing goal within one year.

Feuerman's testimony supported the appropriateness of the vocational education goal. Feuerman proposed this goal because Soria-Riojas reported Student struggled to raise her hand to seek assistance when she needed it. Soria-Riojas also reported Student was reluctant to participate in reading aloud in class. Feuerman developed the goal to target Student's participation and self-advocacy, to build Student's confidence. Feuerman believed Student could achieve the vocational education goal within one year.

Third-grade teacher Soria-Riojas testified about Student's progress on these goal areas at the time of the due process hearing in January 2023. Student could subtract with regrouping within 1,000. She used a white erase board and could show all steps of addition and subtraction with regrouping. Student's prior DIBELS literacy test score was nine words per minute, and her most recent score was 25 words per minute. This score was still well below benchmark during the middle of third grade, but reflected progress in reading. As of January 2023, Student wrote multisyllabic words in her journal. She also volunteered to read her journal out loud in front of the class. She correctly spelled single-syllable words, and was approaching the two-syllable words. Student was writing longer sentences, for both simple and compound sentences. She demonstrated improved writing in assignments, assessments, and daily writing. Student volunteered often throughout the day to participate in class discussion and give answers, in addition to participating during small groups. Student knew when she needed help, and raised her hand to request help instead of waiting for time to pass or someone to come ask her if she needed help.

Student offered no evidence of additional areas of need that the October 12, 2022 IEP failed to address. The remedies Student requested in her written closing argument include ordering Los Angeles Unified "to develop and write goals with appropriate baselines specific to Student's areas of need in an adequate amount to address areas of need sufficiently." Student did not offer any description or explanation of what she requested. Student provided no testimony or documents describing what she allegedly needed and was not offered. The remedies Student requested in her written closing argument additionally include ordering Los Angeles Unified to "offer

goals sufficient to address areas of need.” Student did not offer any description or explanation of what she was requesting. Student provided no testimony or documents describing what she allegedly needed and was not offered.

Student also offered no evidence of more appropriate goals in the areas of reading, writing, math, or vocational education that were necessary for her to receive a FAPE.

Additionally, Student alleged and argues the October 12, 2022 IEP’s goals “could not be achieved virtually on their face, and therefore were not genuine. Student’s lack of progress is attributable to the virtual learning platform.” The goals of the October 12, 2022 IEP were developed more than a year after campuses reopened and Student had attended on-campus, in-person instruction for more than a full schoolyear. Student’s challenges to the October 2022 IEP’s goals in this regard are therefore meritless.

Consequently, Student failed to prove the October 12, 2022, IEP’s goals were not reasonably calculated to confer educational benefit appropriate in light of Student’s circumstances. Student therefore failed to prove by a preponderance of the evidence that Los Angeles Unified denied her a FAPE by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to offer appropriate goals in reading, writing, mathematics, and vocational education at the October 12, 2022 IEP team meeting.

## ISSUE 2(a) AND 2(b): SUFFICIENT PROGRAMS AND SUPPORTS FOR MATH AND LITERACY

Student contends Los Angeles Unified denied her a FAPE from October 12, 2022, to November 18, 2022, by failing in the October 12, 2022 IEP to offer what Student calls “sufficient programs and supports” to enable her to receive educational benefit in mathematics and literacy. Student alleged in her complaint and repeated in her written closing argument that the October 12, 2022 IEP team “was aware that Student needed much more than merely 60 minutes in Math weekly” and “was aware that Student needed much more than merely 180 minutes in Literacy weekly.” Student did not otherwise explain or describe what “programs” or “supports” she required but Los Angeles Unified did not offer.

Los Angeles Unified contends the October 12, 2022 IEP offered Student an educational program that was reasonably calculated to enable Student to make progress in math and literacy that was appropriate in light of her circumstances.

Student failed to call any witness who disputed the appropriateness of the October 12, 2022 IEP to serve Student’s needs in math or literacy. Nor did any witness testify Student required any additional or alternative placement, related services, accommodations, modifications, or any other type or category of programs or supports for math or literacy than what was offered in the October 12, 2022 IEP.

The October 12, 2022, IEP offered Student placement in a general education class at a general education site because the supports, services, accommodations, and/or modifications in Student’s IEP were available in a general education classroom at a general education site. The IEP also offered Student a total of 240 minutes weekly



outside of the general education classroom to receive specialized academic instruction from a special education teacher. The IEP team determined the benefits to Student of being outside the general education classroom for some time each week to receive specialized academic instruction to meet her needs, documented in the IEP, outweighed the potentially harmful effect of Student missing general education instruction taught by highly qualified staff.

The IEP specified Student would work on her math, reading, writing, and vocational education goals in the general education classroom, with some instructional accommodations. The IEP also offered the instructional modification of reading and homework modified to Student's level, since her independent abilities were below grade level.

The 240 minutes per week of special education instruction was allocated to specific subjects. The IEP offered Student 60 minutes weekly outside of general education to receive direct instruction from the resource specialist teacher to work on her math and vocational education goals. The IEP offered Student 180 minutes weekly outside of general education to receive direct instruction from the resource specialist teacher to work on her reading, writing, and vocational education goals.

Parent signed consent to the October 12, 2022 IEP without any exceptions and returned the signed IEP to Los Angeles Unified on October 25, 2022. The IEP document notes section does not indicate Parent disagreed with any goal, placement, related service, accommodation, or modification Los Angeles Unified proposed at the IEP team meeting. None of the IEP team members who testified recalled Parent disagreeing with or requesting any different or additional goals, placement, related services, accommodations, or modifications. During the IEP team meeting, Parent

questioned why Feuerman recommended increasing the amount of pull-out special education to address Student's reading and writing, but not math. Feuerman explained the reasons for her proposal, and Parent was satisfied. Parent did not assert in her testimony that she disagreed with or requested any different or additional goals, placement, related services, accommodations, or modifications during the October 12, 2022 IEP team meeting.

During the hearing, special education teacher Feuerman testified regarding her special education services to Student as both a teacher and case manager, her participation in the October 12, 2022 IEP team meeting, and the development of Student's October 12, 2022 IEP. Feuerman was highly qualified to opine on the types and levels of special education interventions that would be reasonably calculated to enable Student to receive appropriate educational benefit.

Feuerman explained she recommended, the IEP team agreed to, and Los Angeles Unified offered Student 60 minutes of pull-out special education each week for math. Student had achieved her 2021 IEP math goal in the prior year with that level of pull-out support. Feuerman considered what was a reasonable amount of time to remove Student from the general education classroom to minimize the impact special education would have on her access to the rest of the regular classroom curriculum. Feuerman believed the offer of 60 minutes each week of special education instruction in math was appropriate to support Student.

Feuerman testified Student did not achieve her 2021 IEP goals in reading and writing. Feuerman believed Student required more special education time each week so Feuerman could review concepts with her that she seemed to need. Student sometimes learned something and then a few weeks later Feuerman cycled back to the concept and

Student did not retain the material. Therefore, Feuerman recommended increasing the amount of special education for English language arts so Student could meet her new goals and make progress. Feuerman recommended, the IEP team agreed to, and Los Angeles Unified offered 180 minutes of pull-out special education each week for reading and writing.

Student failed to present any testimony or documents to contradict Feuerman's opinion that the pull-out special education Los Angeles Unified offered Student in the October 12, 2022 IEP was appropriate and sufficient. Further, Student failed to present any evidence Student required additional or different programs and supports to receive a FAPE, either in math or literacy. Therefore, the uncontroverted evidence established the 60 minutes of special education weekly in math, and the 180 minutes of special education weekly in literacy, offered in October 2022, were reasonably calculated to enable Student to receive educational benefit appropriate in light of her circumstances.

Consequently, Student failed to prove by a preponderance of the evidence that Los Angeles Unified denied her a FAPE from October 2022 through November 18, 2022, by failing in the October 12, 2022 IEP to offer her sufficient programs and supports to enable her to receive educational benefit in math or literacy.

### ISSUE 3(b): EXTENDED SCHOOL YEAR SUMMER 2023

Student contends Los Angeles Unified denied her a FAPE by failing to offer her extended school year services following the 2022-2023 school year. Student alleged in her complaint the October 12, 2022, IEP team was "aware that Student was likely to have suffered a regression in all areas of need, and that Extended School Year (ESY) was necessary to help Student to provide a FAPE to the child under 34 C.F.R. § 300.106(a)(1)."

Los Angeles Unified contends it offered Student extended school year in the October 12, 2022 IEP for the period following the 2022-2023 school year.

Student's October 12, 2022 IEP offered Student extended school year. The extended school year offer is indicated in the written IEP's extended school year section and further documented in the "Additional Discussion" section of the IEP. When the Administrative Law Judge drew these facts to Student's attorney's attention on the last day of hearing, Student's attorney conceded Los Angeles Unified had offered Student extended school year for summer 2023, with the same resource supports and services as offered during the regular school year. However, Student did not withdraw Issue 3(b) during the due process hearing itself or thereafter.

Student failed to prove Los Angeles Unified denied her a FAPE by failing to offer services over the extended school year following the 2022-2023 school year. Los Angeles Unified offered Student extended school year services in the October 12, 2022 IEP. This fact was obvious and known at the time Student filed her request for due process hearing on November 18, 2022. Student's claim that Los Angeles Unified denied her a FAPE by failing to offer services over the extended school year following the 2022-2023 school year is therefore frivolous.

#### ISSUE 5(b): ADDRESSING STUDENT'S RISK OF REGRESSION

Student contends Los Angeles Unified denied her a FAPE in the October 12, 2022 IEP by failing to address her risk of regression. Student argues that due to her educational history, Los Angeles Unified "could have made and educate [sic] presumption that [Student] was at risk of regression." Student also argues "District

had ample notice and suspicion that Student was at risk of regression” and did not “address it.” Student did not otherwise explain or describe what she required but was not offered to address any risk of regression.

Los Angeles Unified contends regression is addressed through extended school year services. Los Angeles Unified asserts it included in the October 12, 2022 IEP an offer of extended school year services following the 2022-2023 school year, specifically to address Student’s risk of regression.

Student’s current third-grade teacher Soria-Rojas testified that from the start of the school year in August 2022 through the due process hearing in January 2023, she had not seen any regression of Student’s skills in reading, writing, or math. Feuerman, however, testified that when she considered the DIBELS literacy testing data from the end of the 2021-2022 school year and the beginning of the 2022-2023 school year, Student showed significant regression. Also, Feuerman explained that in working with Student over time, Feuerman noticed it was hard for Student to retain some learned topics.

As of October 12, 2022, Feuerman had evidence of Student’s regression not just during instructional breaks, but in general. Therefore, she recommended more pull-out specialized academic instruction for English language arts, so Student could meet the new reading and writing goals and make progress in the general education curriculum. Feuerman recommended increasing the special education for reading and writing from 120 minutes weekly to 180 minutes weekly. Additionally, Feuerman recommended Student receive services during the extended school year following the 2022-2023 school year.

Los Angeles Unified offered Student increased specialized academic instruction during the 2022-2023 regular school year, as well as extended school year services, to address Student's regression and future risk of regression. Student failed to present any evidence that disputed the appropriateness of the increased specialized academic instruction and extended school year services to address Student's regression and future risk of regression.

Consequently, Student failed to prove by a preponderance of the evidence that Los Angeles Unified denied her a FAPE by failing to address Student's risk of regression at the October 12, 2022 IEP team meeting.

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1:

Los Angeles Unified did not deny Student a FAPE from October 2021 to October 2022 by failing to offer sufficient programs and supports to enable Student to receive educational benefit in mathematics or literacy, including English language arts and English language development.

Los Angeles Unified prevailed on Issues 1(a) and 1(b).

## ISSUE 2:

Los Angeles Unified did not deny Student a FAPE from October 2022 to the date of filing by failing to offer sufficient programs and supports to enable Student to receive educational benefit in mathematics or literacy, including English language arts and English language development.

Los Angeles Unified prevailed on Issues 2(a) and 2(b).

## ISSUE 3:

Los Angeles Unified did not deny Student a FAPE by failing in the October 22, 2021 IEP to offer services over the extended school year following the 2021-2022 school year, or by failing in the October 12, 2022 IEP to offer services over the extended school year following the 2022-2023 school year.

Los Angeles Unified prevailed on Issues 3(a) and 3(b).

## ISSUE 4:

Los Angeles Unified did not deny Student a FAPE by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to offer appropriate goals in reading, writing, mathematics, and vocational education at the October 12, 2022 IEP team meeting.

Los Angeles Unified prevailed on Issue 4.

## ISSUE 5:

Los Angeles Unified did not deny Student a FAPE by failing to address Student's risk of regression at the October 22, 2021 IEP team meeting, or at the October 12, 2022 IEP team meeting.

Los Angeles Unified prevailed on Issues 5(a) and 5(b).

## ORDER

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.

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings