BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

COMPTON UNIFIED SCHOOL DISTRICT.

REMAND CASE NO. 2022120157

DECISION ON PARTIAL REMAND

June 2, 2023

On December 12, 2022, Student filed with the Office of Administrative Hearings, called OAH, a Notice of Order of Remand. OAH continued the matter for good cause on December 12, 2022, and January 11, 2023. Administrative Law Judge, called ALJ, Clifford H. Woosley held the videoconference hearing on remand, on March 21, 22, 23, and 28, 2023.

Attorneys Jenny Chau and Alexander Rodriguez represented Student. Student's Mother, called Parent, attended on Student's behalf for the initial two and a half days. Student attended the first day of hearing.

Attorneys Daniel L. Gonzalez and Alexandra Bernstein represented Compton Unified School District, called Compton Unified. Dr. Mayra Helguera, Executive Director of the Office of Special Education and Special Education Local Plan Area, attended on Compton Unified's behalf.

At the parties' request, the matter was continued to May 1, 2023, at which time the parties' final briefs were filed, the record closed, and the matter submitted for decision.

A free appropriate public education is called a FAPE and an individualized education program is called an IEP.

THE APPELLATE ORDER

The remand order was issued by the Honorable Dolly M. Gee, United States District Judge, Central District of California, on May 5, 2022, as part of Judge Gee's Order regarding Student's Appeal, referred to as the Appellate Order. (U.S.D.C. Case No. ED CV 21-219-DMG (JEMx.) The Appellate Order addressed an OAH Decision, OAH Case No. 2019101110, by ALJ Woosley, issued on November 10, 2020, entitled Parent on behalf of Student vs. Compton Unified School District, referred to as the Underlying OAH Decision.

This synopsis of the Appellate Order is not intended to be comprehensive and shall not be read as altering, disagreeing, or changing the Appellate Order's findings and legal conclusions. Instead, the Appellate Order is reviewed to provide procedural, factual, and legal context for this decision on partial remand.

Parent on behalf of Student alleged in the Underlying OAH Decision that Compton Unified denied Student a FAPE, because Compton Unified

- did not comply with its child find obligations,
- failed to timely assess and hold an IEP team meeting,
- did not offer special education and related services, and
- improperly disenrolled Student in February 2018.

The Underlying OAH Decision found in favor of Compton Unified on all issues. In the Appellate Order, Judge Gee affirmed the Underlying OAH Decision, except as to the disenrollment.

In the underlying administrative hearing, Student asserted that Compton Unified's February 2018 disenrollment was improper because Compton Unified continued to owe Student a duty under IDEA. This included Compton Unified's completion of Student's initial special education assessment, and timely convening of Student's initial IEP team meeting before the end of the 2017-2018 school year. Parent asserted she was a resident of Compton. Compton Unified asserted that Parent's claims of residency within the school district were false, that Parent did not comply with residency requirements, that Compton Unified was no longer obligated to educate Student and, therefore, Compton Unified properly disenrolled Student. The Underlying OAH Decision found that Parent falsely represented that she was a resident of Compton and failed to meet Compton Unified's residency requirements. The Appellate Order affirmed this portion of the Underlying OAH Decision's ruling regarding the disenrollment.

Student also claimed that Compton Unified's disenrollment of Student was improper because of an Inter-District Permit, dated July 28, 2017, hereafter referred to as the Permit. For the 2016-2017 school year, Student was a student within Los Angeles

Unified School District, called LAUSD. Parent started working for Compton Unified in January 2017. In July 2017, Parent applied to LAUSD for a permit to have Student attend Compton Unified, based upon Parent's employment within Compton Unified's boundaries. LAUSD granted the Permit on July 28, 2017, which Compton Unified accepted. Student enrolled in Compton Unified and started to attend eighth grade at Bunche Elementary for the 2017-2018 school year. Student claimed that the Permit remained viable and satisfied Compton Unified's residency requirements, throughout the school year. Therefore, Student argued, Compton Unified's February 2018 disenrollment of Student was improper.

The Underlying OAH Decision found, in part, that Parent repeatedly repudiated the Permit by falsely claiming to be a Compton resident. The Permit stated that falsification may result in revocation. Parent claimed to be a Compton resident orally, in writing, and under oath. The Underlying OAH Decision found that Student could no longer rely on the Permit to meet residency requirements.

The Appellate Order disagreed and found that the Permit continued to satisfy Compton Unified's residency requirements and that Compton Unified's February 2018 disenrollment of Student was improper. The Appellate Order considered Education Code, section 48204(b), which allowed the school district where a student attends, and student's parent resides, to permit the student to enroll and attend another receiving school district, if student's parent is physically employed within the boundaries of the receiving school district for a minimum of 10 hours during the school week.

Judge Gee found that, if the facts involving the Permit remained unchanged, the Permit remained valid. Section 48204(b) did not provide automatic termination of a valid permit due to "falsification of information" and Compton Unified never

affirmatively voided the permit. The Appellate Order found that, based upon the evidentiary record on appeal, that the Permit remained valid as a matter of law and that Student complied with Compton Unified's residency requirements. Compton Unified therefore failed to fulfill its obligations to Student under the IDEA by summarily disenrolling Student. Judge Gee reversed the Underlying OAH Decision as to its finding that Compton Unified no longer owed a duty to Student under IDEA when Compton Unified disenrolled Student in February 2018.

THE PARTIAL REMAND ORDER

Because the Underlying OAH Decision found that Compton Unified owed no duty to Student under IDEA as of the date it disenrolled Student, ALJ Woosley did not reach the question of whether and to what degree the disenrollment denied Student a FAPE. Therefore, the Appellate Order remanded the matter back to ALJ Woosley to assess the extent of the deprivation caused by the disenrollment and to fashion a remedy, if any.

The Appellate Order also permitted Compton Unified to explore two defenses on remand, which were not litigated in the Underlying OAH Decision. First, Compton Unified was permitted to probe whether Parent was a resident of LAUSD at the time the Permit was issued. Second, Compton Unified could explore if Parent continued to be "physically employed" within Compton Unified boundaries, pursuant to Section 48204(b)(8), at the time of the February 23, 2018, disenrollment to June 30, 2018.

ISSUES ON REMAND

The first two issues on remand are Compton Unified's two defenses to the validity of the Permit, allowed by the Appellate Order:

Remand Issue 1:

> Did Parent reside outside the boundaries of LAUSD when Parent obtained the July 28, 2017, Inter-District Permit from LAUSD, which enabled Student to attend school at Compton Unified for the 2017-2018 school year, thereby rendering the permit void from its inception?

Remand Issue 2:

> Did Parent cease to be "physically employed" at Compton Unified, per Education Code, section 48204(b)(8), before June 30, 2018, thereby invalidating the Inter-District Permit?

The third issue on remand addresses the FAPE consequences, if any, of Compton Unified's disenrollment:

Remand Issue 3:

> Did Compton Unified's improper unilateral disenrollment of Student on February 23, 2018, deny Student a FAPE and, if so, what is the appropriate remedy to which Student is entitled from Compton Unified, if any?

The parties offered legal argument, testimony, and documentary evidence in support of additional legal theories which were not considered on the appeal, or which questioned the appropriateness of the Appellate Order's analysis and conclusions. ALJ

Woosley did not consider the offered legal argument or evidence. This Administrative Decision on Partial Remand is limited to the three areas the district court delineated in its remand order.

OAH 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, and has the burden of proof by a preponderance of the

evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, Student had the burden of proof in the underlying administrative matter. (*Schaffer v. Weast*, *supra*, 546 U.S. at p. 62.) Although Issues on Remand One and Two are defenses which were not litigated in the Underlying OAH Decision, they are defenses to Student's underlying assertion that the Permit was valid and satisfied Compton Unified's residency requirements. The Appellate Order did not shift the burden of proof. Student bears the burden of overcoming the defenses and demonstrating, by a preponderance of the evidence, that the Permit was valid when Compton Unified disenrolled Student.

The factual statements in this Decision after Partial Remand constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, §)

This matter concerns Student's 2017-2018 school year, when Student was 14 years old and in eighth grade. At the time of the November 2020 Underlying OAH Decision, Student was 16 years old and in 11th grade. At the time of this hearing on remand, Student was 19 years old, had graduated high school, and was attending California State University, Channel Islands. Since Student graduated high school with a regular diploma, Student was no longer eligible for special education placement and services. (Ed. Code, § 56026.1, subd. (1); 34 C.F.R. § 300.102(a)(3)(i).)

REMAND ISSUE 1: DID PARENT RESIDE OUTSIDE THE BOUNDARIES OF LAUSD WHEN PARENT OBTAINED THE JULY 28, 2017, INTER-DISTRICT PERMIT FROM LAUSD, WHICH ENABLED STUDENT TO ATTEND SCHOOL AT COMPTON UNIFIED SCHOOL DISTRICT FOR THE 2017-2018 SCHOOL YEAR, THEREBY RENDERING THE PERMIT VOID FROM ITS INCEPTION?

Student contended that the Permit was valid because Parent was a resident within the boundaries of LAUSD when the Permit was issued in July 2017. Compton Unified contended that Parent's residence was not in LAUSD at the time the Permit was issued.

The Permit was based upon Parent's employment in the Compton Unified boundaries, when issued by LAUSD and accepted by Compton Unified in July 2017. (Ed. Code, § 48204, subd. (b)(1).) The Appellate Order determined that the transferor district needed to give permission for its pupil to attend the transferee district. (Ed. Code, § 48204, subd. (b)(7); *also see,* subd. (b)(3) [the transferor district may prohibit the transfer under certain circumstances].) The Appellate Order therefore found that Parent's residency must have been within LAUSD's boundaries when the Permit was issued, because LAUSD's consent was necessary for the Permit's issuance. Judge Gee concluded that if Parent was not an LAUSD resident when the Permit was issued, Parent would have made a material misrepresentation that fraudulently induced LAUSD to issue the Permit. This would have rendered the Permit void from its inception, meaning the Permit could not have satisfied Compton Unified's residency requirements. (Appellate Order, p. 14.)

Education Code section 48204 states that a school district must accept from a parent reasonable documentary evidence that the pupil meets the residency requirements for school attendance in the school district, as set forth in Sections 48200 and 48204. Section 48204's list of such documentation includes, but is not limited to, utility service receipts, voter registration, and declaration of residency by the parent.

Here, Student proved by a preponderance of the evidence that Parent resided within the boundaries of LAUSD when the Permit was issued. In July 2017, Parent owned two houses. In 2009, a great aunt gave Parent a house located on Kalmia Street, Los Angeles, California, referred to as the Los Angeles House, as verified by certified copies of a 2009 Quitclaim Deed and a 2018 Transfer on Death Deed, recorded with Los Angeles County Recorder. Parent also owned a house, located in Calimesa, California, referred to as the Calimesa House, which Parent acquired in December 2009, as verified by certified copies of a Grant Deed and a Deed of Trust, from the County of Riverside Recorder. At the time of hearing, Parent considered the Calimesa House to be her residence, beginning in August 2018, after Parent's mother died.

Parent testified at the hearing that she moved into the Los Angeles House in July 2014 and lived at the Los Angeles House in the summer 2017. Parent also laid the foundation for documentary evidence which convincingly demonstrated Parent resided at the Los Angeles House, where she lived with Student, Student's older brother, and Student's younger sister, in the summer of 2017.

On July 13, 2017, Parent completed LAUSD's application for Inter-District Permit, declaring that Student attended school within LAUSD for the previous three years and that Student lived with Parent, at the Los Angeles House. At the time of the application, Student was matched to LAUSD's student database. Parent verified her employment

with a letter from Compton Unified's Human Resources department and a copy of her paycheck, which listed the Los Angeles House as Parent's address. LAUSD responded to Compton Unified's subpoena of all documents related to the Permit, but nothing was offered to demonstrate that LAUSD questioned Parent's LAUSD residency.

Parent was registered to vote in Los Angeles County, as verified by the County Recorder, from 2014 to 2018. Parent's California driver's license, which was reissued in September 2016, listed the Los Angeles House as Parent's address in the summer of 2017. Banking and credit card statements demonstrated that Parent banked and shopped in the vicinity of the Los Angeles House in July 2017. After Parent changed her address to the Calimesa House in August 2018, Parent changed her driver's license and voter registration to the Calimesa House address.

Student's older brother, referred to as Brother, testified at the hearing. Brother was 22 years old, graduated high school in 2019, and was attending California State University, Los Angeles. He verified his LAUSD grade transcript and his LAUSD attendance report, which confirmed his testimony that he attended LAUSD's Middle College High School from 2015-2016 school year through the 2017-2018 school year, his eleventh grade. Brother also took courses at Los Angeles Southwest Community College, where Middle College High School was located. The LAUSD documentation confirmed that, for the 2017 summer term, Brother personally attended and took the Southwest Community College's six-to-eight week English 101 summer course, ending on August 28, 2017. During this time, Brother lived with Parent, Student, and a younger sister at the Los Angeles House, throughout the summer of 2017.

Brother knew Parent owned the Calimesa House, but did not recall going to the house in the summer of 2017. From 2013 through 2016, Parent rented the Calimesa

House to tenants, the last of whom she had evicted. The Calimesa House was in very bad physical condition. In the Summer of 2017, Parent was still having substantive work done on the Calimesa House, which was not habitable. Whenever she traveled to the Calimesa House during this period of repair, Parent did not stay in the Calimesa House.

Compton Unified referred to the testimony of Parent's Uncle, given in the underlying administrative hearing. Compton Unified asserted that the Uncle's testimony established that Parent did not live at the Los Angeles House in the summer of 2017. However, Uncle appeared disoriented and easily confused throughout his testimony. The Uncle lived in the back garage at the Los Angeles House in 2017. He stated that he did not know where Parent was when Parent was not at the Los Angeles House. The Underlying OAH Decision did not rely on or refer to the Uncle's testimony because the Uncle's testimony was confusing, contradictory, unconvincing, and not reliable.

Government Code section 244, subdivision (b), states that there can only be one residence. And subdivision (f) dictates that "The residence can be changed only by the union of act and intent." Here, Student provided documentary evidence supporting Student's contention that Parent resided at the Los Angeles House in July 2017, when the Permit was issued, consistent with Parent's and Brother's testimony.

Parent's ownership and care of the Calimesa House did not demonstrate that Parent's residence, as contemplated by the Education Code, was the Calimesa House. In the summer 2017, the Los Angeles House was the geographical center of Parent's affairs, including banking, shopping, voter registration, and her children's schooling. LAUSD did not question Parent's residency. Compton Unified did not offer reliable testimonial or documentary evidence that Parent's residence was other than the Los

Angeles House in the summer of 2017. Parent did not act and intend to change residence from the Los Angeles House to the Calimesa House until August 2018.

The elements of fraudulent inducement are:

1. a false representation of a material fact,
2. made with knowledge of its falsity,
3. with the intent to induce the victim to act on it; and
4. the victim must act on the representation (5) to his damage. (*South Tahoe Gas Co. v. Hoffman Land Improvement Co.* (1972) 25 Cal.App.3d 750, 765; See Cal.Jur.2d, Contracts, § 98 *et seq*.)

Here, Student proved by a preponderance of the evidence that Parent did not make a false representation of a material fact to LAUSD. Parent's residency was the Los Angeles House in July 2017 and LAUSD's issuance of the Permit was not fraudulently induced. Therefore, the Permit was valid when issued. Student prevailed on Remand Issue 1.

REMAND ISSUE 2: DID PARENT CEASE TO BE "PHYSICALLY EMPLOYED" AT COMPTON UNIFIED SCHOOL DISTRICT, PER EDUCATION CODE, SECTION 48204(B)(8), BEFORE JUNE 30, 2018, THEREBY INVALIDATING THE INTER-DISTRICT PERMIT?

Student contends that Parent was "physically employed" within Compton Unified from the July issuance of the Permit through the end of her employment on June 30, 2018. Compton Unified asserted that Parent was not "physically employed" at all times within the district from the time of Student's disenrollment in February 2018 through Parent's official date of termination on June 30, 2018, thereby invalidating the Permit.

Section 48304, subsection (b)(8), states that

> "the school district shall allow the pupil to attend school through grade 12 ... if at least one parent or the legal guardian of the pupil continues to be physically employed by an employer situated within the attendance boundaries of the school district, subject to paragraphs (2) to (7), inclusive."

The Appellate Order found that if Parent was not "physically employed" within Compton Unified in February 2018, pursuant to Section 48204(b)(8), Compton could lawfully disenroll Student. If Parent was no longer physically employed with Compton Unified at some point after February 23, but before June 30, 2018, then the scope of Compton Unified's liability may be more limited. (Appellate Order, p. 14.)

Here, Student successfully demonstrated that Parent continued to be "physically employed by an employer situated within the attendance boundaries" of Compton Unified, through June 30, 2018. (Ed. Code, § 48204(b)(8).) Parent's testimony, confirmed by substantial documentary evidence, established that Parent was a full-time employee of Compton Unified, from January 23, 2017, through Parent's final date of employment with Compton Unified on June 30, 2018.

Parent worked for Compton Unified as a special education administrator. Her duties included supporting various Compton Unified school sites, nonpublic schools, and Compton Unified programs, for special education. Her hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. Her office was at Compton District's special education department on Alondra Boulevard, Compton, California. If she was not fulfilling her duties in the field, Parent was at her Compton Unified office.

Parent obtained various requests for leaves of absence from work, which were approved by Compton Unified. Beginning on March 15, 2018, Parent took a consecutive series of medically necessary leaves of absence, some for a week, others for three to five weeks. The parties stipulated to the times and lengths of the leaves of absence, during which Parent did not physically work within the boundaries of Compton Unified, due to the approved leaves of absence. Parent physically returned to work, within Compton Unified's boundaries, on May 2 and part of May 3, 2018. Otherwise, Parent was on leaves of absence, and did not go into her Compton Unified offices, until her final date of employment on June 30, 2018.

Compton Unified contended that Parent was not "physically employed" within Compton Unified's boundaries when she was at home, on leave. Compton Unified claimed that the purpose of an inter-district permit based on the location of a parent's employment was to enable a parent to transport their child to school and be physically closer to their child during the school day. (Ed. Code, § 48204(b)(1).) Compton asserted the public policy purpose of the permit was not being fulfilled when a parent was not physically working within the school district's boundaries. Compton Unified argued that section 48204(b)(8) must be interpreted in a manner consistent with this public policy purpose and, therefore, Parent was not "physically working" for an employer within the Compton Unified's boundaries when Parent was not going to work, regardless of the reason. Compton Unified's argument was unpersuasive and contrary to the purposeful plain language of section 48304(b).

Compton Unified deemed Student to have met the residency requirements for school attendance in Compton Unified by accepting the Permit in July 2017. Parent was "physically employed" within the boundaries of Compton Unified for a minimum of 10 hours during the school week. (Ed. Code, § 48304(b)(1).) Parent remained a full-time employee until June 30, 2018.

Under California's Moore-Brown-Roberti Family Rights Act, "during a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in services …." (Gov. Code, § 12945.2, subd. (f); Cal. Code Regs., tit. 2, § 11092.) Parent therefore remained an employee of Compton Unified throughout her leaves of absence. The Appellate Order agreed that Parent's employment status did not cease during her protected family and medical leave. (Appellate Order, p. 14.)

Section 48304, subdivision (b)(8), assures that a pupil, once deemed to comply with the transferee school district's residency requirements pursuant to subdivision (b)(1), does not have to reapply in the next school year, as long as one parent continued to be physically employed by an employer situated within the transferee school district's boundaries. In other words, a pupil retains the right to continue to attend school in the transferee school district, even if parent changes employment, as long as parent is physically employed by an employer situated within the boundaries of the transferee school district.

In *Orange County Dept. of Educ. v. California Dept. of Educ.* (9th Cir. 2011) 668 F.3d 1052, the Ninth Circuit examined an array of California statutes and case law in determining the school district responsible for funding a residential treatment center. In ruling, the Ninth Circuit found that confusing or conflicting statutory language must be

interpreted and applied in a manner consistent with the likely overarching legislative intent, noting a statute should not be construed in a manner that would defeat the statute's evident purpose. (*Id.*, at 1059; quoting the California Supreme Court, *In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1224.)

Here, a careful, contextual reading of subdivision (b)(8) indicates a legislative purpose to avoid disrupting the education of a pupil who attends school under the residency provided by subdivision (b)(1). To construe "physically employed" otherwise would be detrimental to pupils and families alike. If the statute is interpreted as Compton Unified urged, a pupil who met residency requirements under § 48304(b)(1) would have to change schools whenever a parent took a leave of absence, even though the parent retained employment status. When the parent rightfully returned to work after the leave of absence, the pupil's education would again be delayed and disrupted with another employment-based, inter-district permit application process. This would undermine the fundamental purpose of subdivision (b)(8).

Though Parent was not physically at work within Compton Unified boundaries during her leaves of absence, Parent remained an employee whose position required her physical presence at a location within Compton Unified's district boundaries. This view is consistent with the Family Rights Act (employee retains same employment status during leaves) and Education Code, section 48304(b)(8) (not disrupt a student's education for a child who already satisfied residency requirements under subdivision (b)(1)).

Student proved, by a preponderance of the evidence, that Parent was physically employed within Compton Unified's boundaries, in accord with Section 48304, subdivision (b)(8), from February 2018 through June 30, 2018, and that the Permit remained valid. Student prevailed on Remand Issue 2.

REMAND ISSUE 3: DID COMPTON UNIFIED'S IMPROPER UNILATERAL DISENROLLMENT OF STUDENT ON FEBRUARY 23, 2018, DENY STUDENT A FAPE AND, IF SO, WHAT IS THE APPROPRIATE REMEDY TO WHICH STUDENT IS ENTITLED FROM COMPTON UNIFIED?

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.)

Student claimed that Compton Unified's unilateral disenrollment of Student on February 23, 2018, resulted in a denial of FAPE, because Compton Unified would have found Student eligible for special education at Student's initial IEP team meeting, which should have taken place by March 12, 2018. Student further asserted that Compton Unified denied Student a FAPE until September 2018. Compton Unified contended Student's IEP team would not necessarily have found Student eligible for special education but, if so, Compton Unified's FAPE obligation to Student ceased on June 30, 2018, or earlier.

COMPTON UNIFIED'S ASSESSMENTS

To determine a student's eligibility for special education, school districts assess the student to collect data for an IEP team to consider in determining eligibility. (20 U.S.C. § 1414(a); Ed. Code, § 56320.) When a school district assesses a child, the IDEA requires the school district to assess for all suspected disabilities. (*Park v. Anaheim, supra, 464* F.3d at pp. 1031-1033.) Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs must be conducted, by qualified persons in accordance with testing requirements set forth in Education Code section 56320 subdivisions (a) through (i). (Ed. Code, §§ 56320 & 56322.)

A district assessment must be conducted in a way that:

1. uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;
2. does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and
3. uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist*. (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

The assessor must produce a written report of each assessment, which must state whether the student may need special education and related services, and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).) After assessments and other evaluation measures have produced the evaluation data needed to determine eligibility, a group of qualified professionals and the parents, generally constituting an IEP team, uses the data to determine the student's eligibility. (Ed. Code, § 56330; 34 C.F.R. § 300.306(c)(1).)

On January 9, 2018, Parent requested that Compton Unified assess Student for special education. Compton Unified issued an assessment plan for Student later the same day. Compton Unified proposed to assess Student in the areas of

- academic achievement,
- health,
- intellectual development,
- language and speech,
- motor development,
- adaptive behavior,
- behavior, and
- social emotional, which included an educationally related intensive counseling services assessment, called ERICS.

Parent signed the assessment plan, adding an occupational therapy assessment, and returned it on January 11, 2018, which started the 60-day period for Compton Unified to complete assessments and convene an initial IEP team meeting. (Ed. Code, § 56344, subd. (a).) The 60th day would have been March 12, 2018.

Compton Unified finished the psychoeducational assessment report on February 26, 2018, and the ERICS assessment report on February 27, 2018. Compton Unified's psychoeducational assessment found that Student met the criteria for three special education eligibilities, as a student with emotional disturbance, other health impairments, and specific learning disability. Compton Unified also completed the functional behavior assessment, which recommended behavior supports and a behavior intervention plan for Student's IEP. Compton's own assessments recommended that Student be found eligible for special education and receive an IEP, with the ERICS recommending placement in a residential treatment center.

Compton Unified did not complete all of Student's assessments and never convened an initial IEP team meeting because Compton Unified disenrolled Student on February 23, 2018. However, the Appellate Order ruled that the Permit, if the facts on appeal remained unchanged, was valid. Student complied with Compton Unified's residency requirements. And, as determined in Remand Issue 1 and Remand Issue 2, the Permit was valid when issued and remained valid through June 30, 2018. Therefore, Compton Unified's February 2018 disenrollment of Student was improper. Compton Unified continued to have IDEA obligations to Student. (Appellate Order, p. 13.)

YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT ASSESSMENTS AND IEP TEAM MEETINGS

When Parent changed her residence to the Calimesa House in August 2018, Parent enrolled Student in the ninth grade at Yucaipa High School, within the Yucaipa-Calimesa Joint Unified School District. At Parent's request, Yucaipa-Calimesa conducted an initial special education assessment of Student. Yucaipa-Calimesa's assessments

found that Student met the criteria for special education eligibility, under specific learning disability, other health impairment, and emotional disturbance, which were the same eligibilities as Compton Unified's assessments.

Yucaipa-Calimesa convened Student's initial IEP team meeting on September 4, 2018. The IEP team found Student eligible for special education and designated her primary eligibility as other health impairment and her secondary disability as specific learning disability. The Yucaipa-Calimesa IEP team determined that Student was also eligible under emotional disturbance. Student was entitled to educationally related mental health services and extended school year. Student's initial IEP placed Student in a general education classroom 97 percent of the school day, developed seven goals, and provided related services and counseling.

COMPTON UNIFIED DENIED STUDENT A FAPE

Student demonstrated that Compton Unified's February 2018 disenrollment of Student resulted in a denial of FAPE because Compton Unified did not complete Student's assessments and hold Student's initial IEP meeting. If not for the disenrollment, Compton Unified would have convened Student's initial IEP team meeting and would have found Student eligible for special education.

Compton Unified's assessments and Yucaipa-Calimesa's assessments, conducted six months later, determined that Student met the criteria for the same three eligibilities. Yucaipa-Calimesa's September 2018 initial IEP team meeting followed the assessments' recommendations and found Student eligible for special education. The preponderance of the evidence demonstrated that if Compton Unified had convened Student's initial IEP by March 12, 2018, Student's IEP team would similarly have found Student eligible.

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al*. (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) Similarly, the failure to timely convene an IEP team meeting is a procedural error which may constitute a denial of FAPE. A procedural violation results in liability for denial of a FAPE only if the violation:

- impeded the child's right to a FAPE;
- significantly impeded the parent's opportunity to participate in the decision-making process; or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.).

A due process hearing decision cannot be based solely upon a non substantive procedural error. (Ed. Code § 56505(j).)

Compton Unified's failure to convene a March 2018 initial IEP meeting deprived Student of educational benefits to which she was entitled, and impeded Student's right to a FAPE. Parent could not participate in the decision-making process because Compton Unified did not convene an IEP meeting. Since Student would have been found eligible at an initial IEP team meeting in March 2018, Compton Unified's failure to convene and hold Student's initial IEP was a substantive procedural error, which amounted to a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

COMPTON UNIFIED'S DENIAL OF FAPE DEPRIVED STUDENT OF SPECIAL EDUCATION FOR SIX MONTHS

Student claimed that Compton Unified denied Student a FAPE for six months. Compton Unified asserted that any denial of FAPE was limited to the end of the 2017-18 school year or June 30, 2028, the date Parent left the employ of Compton Unified.

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].) When a special education pupil transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's IEP, until the old IEP is adopted, or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

However, Student transferred to Yucaipa-Calimesa during the summer. The IDEA and state law do not expressly provide that students, who transfer between academic years, are entitled to a comparable placement at the new school district. (*Ibid.*) However, in 2006, the United States Department of Education considered the responsibilities of a transferee school district to a child with special needs in its comments to the 2006 revised version of the IDEA regulations, 34 Code of Federal Regulations, section 300.323.(e). The Department of Education noted that, in the case

of transfers between school years, the IDEA provided that the new school district was required to have an IEP in place for each eligible child at the beginning of the school year. (34 C.F.R. § 300.323(a).)

Here, Compton Unified's initial IEP team meeting would have found Student eligible as of March 12, 2018, and the IEP team would have developed an educational program to meet Student's unique needs. Then the new school district, Yucaipa-Calimesa, could have adopted the IEP developed for Student by Compton Unified. (Questions and Answers on Individualized Education Programs, Evaluations, and Revaluations (OSERS 09/01/11) 111 LRP 63322.) Or, Yucaipa-Calimesa could have developed an IEP reasonably calculated to provide a Student a FAPE. (See, *Clovis Unified School Dist. v. Student* (2009) OAH Case No. 2008110569; see also, *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041.) Either way, Yucaipa-Calimesa would have had a special education program in place for Student when she started at Yucaipa High School in August 2018.

Since Student was without eligibility and an IEP, Yucaipa-Calimesa needed to fully assess Student, convene Student's initial IEP team meeting on September 4, 2018, find Student eligible for special education, and develop an IEP to meet her unique needs. Compton Unified should have found Student eligible for special education and provided an IEP on March 12, 2018. Instead, Student was not found eligible until 25 weeks later, on September 4, 2018. In other words, Student was deprived the benefit of a FAPE for six months.

Compton Unified argued that even if found eligible in March 2018, its IDEA duties to Student ceased at the end of the school year. Compton also contended that it was not the local educational entity responsible for Student's special education services during Student's five hospitalizations from March 16 through May 30, 2018, because the hospitals were located in other school districts, citing Education Code, section 56167. Compton Unified's assertions, though, assume Student was entitled to special education. Regardless of when Compton Unified's duty to directly provide special education to Student would have ceased, Compton Unified's failure to make Student eligible on March 12, 2018, caused a six-month delay in Student's receipt of special education placement and services.

Student proved by a preponderance of the evidence that Compton Unified's unilateral disenrollment of Student, and consequential failure to complete Student's assessments and convene an IEP team meeting, was a substantive procedural denial of a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).) And, as a result of Compton Unified's failure, Student's right to an IEP, with appropriate placement and services, was delayed for six months. Student prevailed on Remand Issue 3.

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.

REMAND ISSUE 1:

Parent resided within the boundaries of LAUSD when Parent obtained the July 28, 2017, Inter-District Permit from LAUSD and, therefore, the Permit was valid from its inception.

Student prevailed on Remand Issue 1.

REMAND ISSUE 2:

Parent was physically employed within Compton Unified's boundaries, per Education Code, section 48204(b)(8), from before February 2018 through June 30, 2018, and the Inter-District Permit remained valid.

Student prevailed on Remand Issue 2.

REMAND ISSUE 3:

Compton Unified's improper unilateral disenrollment of Student on February 23, 2018, caused a denial of FAPE, because Compton Unified failed to convene Student's initial IEP team meeting by March 12, 2018, delaying Student's right to an IEP, with appropriate placement and services, for six months.

Student prevailed on Remand Issue 3.

REMEDIES

Student prevailed on all three issues on remand. Student seeks compensatory services and supports because of Compton Unified's denial of FAPE, which caused a six-month delay in Student's initial IEP, from March 12, 2018, to September 4, 2018.

APPLICABLE LAW

Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11.)

When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra,* 471 U.S. at p. 369-371.) Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Id.* at p. 374.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.)

STUDENT'S EDUCATION AFTER COMPTON UNIFIED

Following Student's February 2018 disenrollment and before Student's initial September 4, 2018, IEP team meeting, Student had a number of psychiatric hospitalizations. While attending Yucaipa High School, before completion of Student's assessments, Student had a behavioral incident at school that required a psychiatric hold at Loma Linda Behavioral Medical Center. Upon her return, Yucaipa-Calimesa

assigned a temporary one-on-one aide to monitor Student's safety and the safety of other students and personnel on campus. Student's attendance at Yucaipa High School was inconsistent, with multiple absences, tardies, and behavior incidents.

Yucaipa-Calimesa convened an amendment IEP team meeting on September 12, 2018. The IEP team, including Parent, agreed to change Student's placement to an out-of-state, non-public residential school. Student was placed at Provo Canyon School, in Springville, Utah. The Yucaipa-Calimesa IEP team again met in March 2019, to consider a change of placement. Provo Canyon asked that Student leave, because of increasingly serious behaviors. Student's IEP team placed Student at Red Rock Residential school, in St. George, Utah, in April 2019. Subsequently Red Rock closed, and Yucaipa-Calimesa could not find another residential treatment center that would accept Student. Student was placed at Bright Futures Academy, a nonpublic school in Riverside, California, around September 2019. Bright Futures asked that Student exit its program because of Student's severe behaviors, later in the 2019-2020 school year. Yucaipa-Calimesa placed Student in a home instruction program in spring 2020, provided online instruction in summer 2020, and started a special education home instruction program for the 2020-2021 school year, Student's 11th grade.

Most of the evidence regarding Student's schooling since October 2020 came from Student's expert, Dr. Ann Simun. Dr. Simun testified at the hearing in the Underlying OAH Decision and this Hearing on Partial Remand. Dr. Simun was a neuropsychologist and, since 2005, was a principal with Neuropsychologist Partners, Inc., which provided neuropsychological and psychoeducational evaluations, and since 2018, President of Strive Testing, which provided lower cost evaluations involving teenagers and young adults. Dr. Simun has a 1986 undergraduate degree from Pitzer

College in psychology, a 1989 master's degree specializing in school psychology from California State University-Los Angeles, and a 1998 doctorate degree in clinical psychology from Pepperdine University. Dr. Simun received postdoctoral training, in the Harbor UCLA Certificate Program in Clinical Neuropsychology, between 2004 and 2006. Dr. Simun was a California licensed psychologist and licensed educational psychologist and participated and taught professional development.

Before testifying in the underlying hearing, Dr. Simun reviewed available documentation regarding Student, including her

- medical records,
- educational records,
- grade reports,
- assessments, and
- IEP documents.

Dr. Simun tested Student in October 2020. Dr. Simun also tested Student in July 2022. Dr. Simun similarly reviewed Student's records when she prepared an updated academic evaluation, dated December 1, 2022.

Dr. Simun knew of Student's independent study and home instruction program, in the summer and fall of 2020. Student may have received some special education support during independent study, but Dr. Simun did not know when or how much. When testifying in October 2020, Dr. Simun did not believe these programs provided the special education support that Student required. Also, when testifying at the hearing on remand, Dr. Simun did not believe that Student had been in a special education placement and program for Student's 11th and 12th grades. Student presented no evidence of special education support for Student since 2020.

At the time of Dr. Simun's updated academic evaluation, Student was attending her freshman year of college at California State University, Channel Islands, and was living in the dorms. Student was getting mostly passing grades, with the exception of Chemistry Lab, which Student related to continued struggles with complex math processes and memorization.

Student's college provided her with accommodations through the Disability Accommodations Support Services office. Student was entitled to alternative testing, consisting of extra time on exams and quizzes, and separate specialized testing setting, if requested. Student could record lectures and was provided notetaking services. Faculty would review Student's draft papers prior to an assignment's submission date.

DR. SIMUN'S EVALUATION AND REMEDY OPINION

Dr. Simun's December 2022 academic update evaluated the academic effects of Student's delayed special education support and summarized Student's mental health. Dr. Simun also made remedy recommendations for Compton Unified's failure to find Student eligible in March 2018.

STUDENT'S ALLEGED ACADEMIC CONSEQUENCES

Dr. Simun developed a model to use in analyzing the academic effects of the six-month delay in Student's initial IEP, from March to September 2018. She used four data points, consisting of standardized testing of Student, by Compton Unified in February 2018, Yucaipa-Calimesa in September 2018, Dr. Simun in October 2020, and Dr. Simun in July 2022. Dr. Simun then plotted Student's testing results on graphs, connecting the data points, to visually demonstrate Student's performance over time.

Dr. Simun tested Student in October 2020, using standardized instruments to measure Student's academic performance and needs. She updated Student's testing in July 2022, using the same or similar standardized instruments, to garner the most recent measure of Student academic performance. Compton Unified and Yucaipa-Calimesa used similar standardized tests. Though not all testing used the exact same instruments, Dr. Simun noted that the tests were all standardized measures, and the test results were therefore reliably comparable over time.

Student had low to average cognition, with some processing deficits. Absent her disabilities and other deficits, Student would have generally performed academically like her typical, average peers, in language skills, reading, writing, and math. Special education interventions and supports assisted a special education child in closing this performance gap with typical peers. Therefore, Dr. Simun expected Student, supported by an appropriate special education program, to have shown consistent progress over the years, closing the academic gap and approaching the average level of her peers.

Dr. Simun compared the gap between Student and her typical peers by using the median score, 100, as the benchmark for same-age peers. Pupils who scored consistent with their same age-peers generated a standard score of 100. Therefore, the gap between Student and the "norm," or average pupil of Student's age, was calculated by subtracting Student's score from the "norm" or expected score.

Dr. Simun began by computing the gap between Student and the academic norm using Student's standardized reading index scores. In February 2018, the gap between Student's results and norm was 17 points. However, when tested in September 2018, the reading index gap increased to 27 points. Then, with special education supports

and services between September 2018 and October 2020, the gap narrowed to 14 points. Here was Dr. Simun's chart, showing Student's reading index scores:

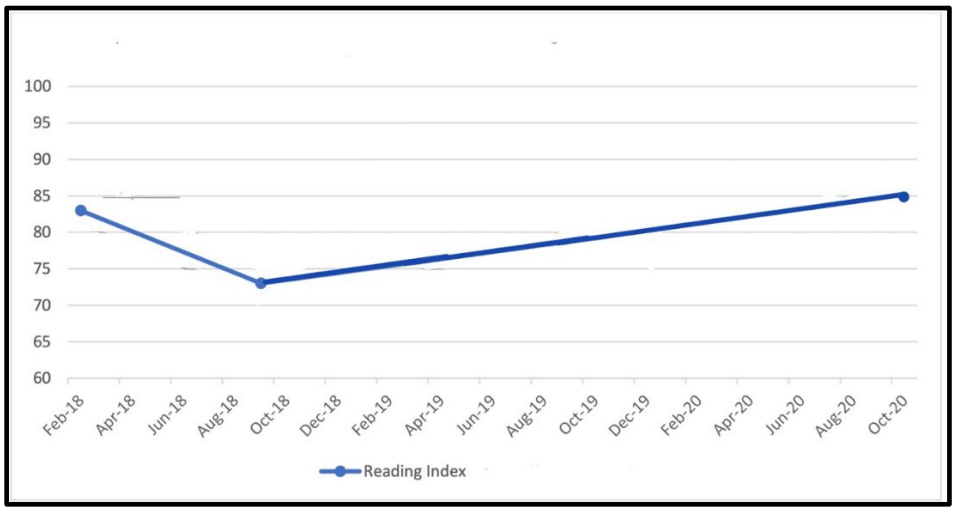

Figure 1 Chart Showing Student's Reading Index Scores

Dr. Simun charted word reading subtest and passage comprehension subtest scores, which formed the reading composite. These had the same general pattern, with the gap increasing between February and September 2018, and then the gap decreasing with special education support by October 2020.

Student showed a similar pattern with writing, when comparing Student's scores with the norm. Student's scores were close to average in February 2018, but declined to low average by September 2018. Once services were in place, Student's written language index improved to only a five-point gap by October 2020.

Dr. Simun noted that Student's math index was relatively flat, primarily because of variability between the two subtests that form the index score, applied math and math calculation. Student showed appropriate and positive progress in applied math, which was much less dependent upon school-based learning. Testing consistently demonstrated this

was not a special education area of need. However, Student's math calculation skills followed the pattern of decline between March and September 2018, and then improving to October 2020 with special education intervention.

Dr. Simun's examination of Student's formal measures of academic progress over time caused Dr. Simun to form the professional opinion that, had Student been provided with appropriate education and mental health interventions between March 12 and September 4, 2018, Student would have maintained her general level of existing academic skills. More likely, Student's skills would have improved. Dr. Simun found that the overall pattern suggested Student would have benefited from special education interventions, beginning March 12, 2018. Dr. Simun reasoned that the six-month delay meant Student began her special education program in September 2018 with lower academic skills, and greater academic gaps, than if Student started in March 2018.

Dr. Simun developed a method of analyzing how these decreased academic skills, caused by the six-month delay, affected Student's academic progress once Student started her special education program. Each measurable academic skill, except applied math, exhibited a decrease from February to September 2018, expanding the academic gap. Dr. Simun assumed that the academic scores would slightly decrease from the February 26 testing to the March 12, 2018, IEP team meeting, when Student should have been found eligible and begin her special education program. For example, Student's February 2018 reading index scores showed an academic gap of 17 points, which may have increased a point or two by March 12, 2018. Dr. Simun then used this reading

index score and academic gap, as it would have been measured on the day of Student's March 12, 2018, initial IEP, as the baseline for Student's academic progress when Student received a special education program on September 4, 2018.

Student started her special education program in September 2018 with about a 27-point academic gap in reading index scores. However, if Compton Unified found Student eligible on March 12, 2018, the reading index academic gap would have been perhaps 18 or 19 points and Student's special education program would have at least maintained Student's academic skill level into the next school year. Therefore, for this model, Dr. Simun graphed Student's reading index from September 2018 to the October 2020 assessments and then to the July 2022 academic update. One line of the graph used the Student's real reading index scores, starting with the 27 point academic gap in September 2018. Another line, mirroring the slope of the actual index scores, starts in September 2018 with a reading index academic gap of about 18 or 19 points.

Here is the graph, which Dr. Simun believed demonstrated how the six-month delay affected Student's academic progress, as measured by the reading index scores, from September 2018 to July 2022. The solid line was based on Student's real scores;

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the dashed line was adjusted, to begin with the academic skills Dr. Simun believed Student would have exhibited if not for the six-month delay in receiving special education services:

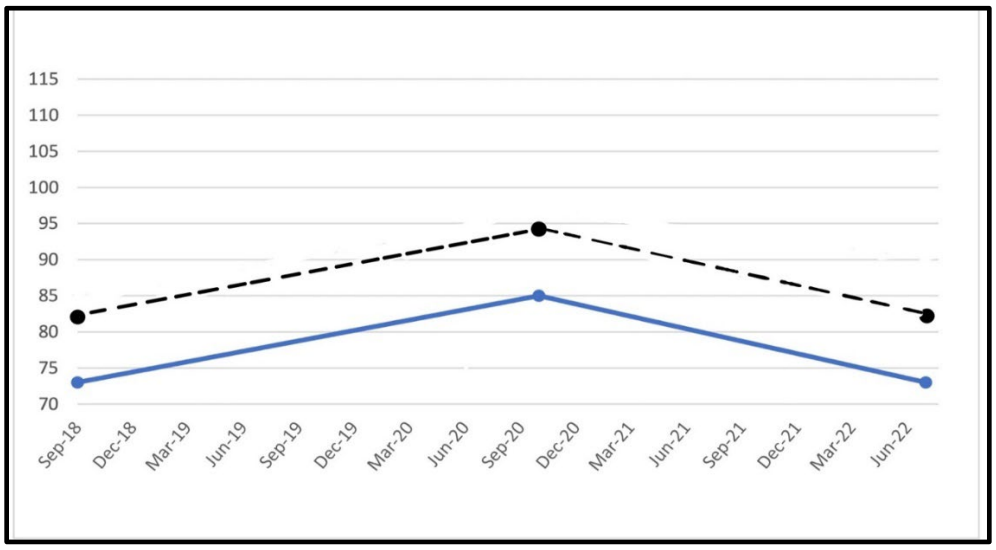

Figure 2 Chart With Dashed Lines

Dr. Simun similarly charted Student's written language index scores, reading passage comprehension scores, and math calculation standard scores. Dr. Simun's charts included a third line for an additional academic path, showing more significant academic progress, which started with a higher baseline, based on Student having a more aggressive special education program from March to September 2018. However, the two lines in this chart, one using a baseline of real scores and the other using a baseline of Student's expected scores on March 12, 2018, illustrated Dr. Simun's reasoning.

All the charts displayed the same pattern. Student's scores increased, reducing the academic gap, from September 2018 through October 2020. Then Student's scores decreased, enlarging the academic gap, from October 2020 to July 2022.

Dr. Simun tabulated Student's academic test scores over time, using the four points of data. Twenty index and subtest scores were reported for

- reading,
- reading comprehension and fluency,
- math,
- math calculation,
- writing and
- written language.

All of Student's scores increased from September 2018 to October 2020. 13 of the 20 scores worsened from October 2020 to July 2022. Six of Student's scores – reading, reading comprehension, written language index, passage comprehension, math, math calculation, and spelling – were lower than Compton Unified's February 2018 test scores. This decline was clearly illustrated in Dr. Simun's charts.

STUDENT'S MENTAL HEALTH

Dr. Simun reviewed available mental health records and assessments. Student had a long history of mental health treatment, including numerous emergency admissions, residential treatment and outpatient psychiatric and psychological care. Student's primary presenting problems had been pseudoseizures, emotional

dysregulation, and suicidal ideation and attempts. Her diagnoses included

- major depressive disorder, recurrent and severe, with psychotic features,
- post-traumatic stress disorder, unspecified, and
- anxiety disorder, unspecified.

For the December 2022 update, Dr. Simun interviewed Student and administered the Million Adolescent Clinical Inventory. Student showed high average negativity, but her score was not excessive enough to invalidate the results. Student's profile was most consistent with post-traumatic stress disorder and a history of trauma with significant anxiety and depression symptoms. However, Student no longer showed significant elevations on borderline personality or acting out tendencies. Her suicidal risk factors were much lower and in the normal range. Student had been stable for more than two years, participating in outpatient psychiatric services and outpatient mental health counseling.

Generally, Dr. Simun found that Student's mental health had significantly improved since October 2020, in nearly all areas.

DR. SIMUN'S REMEDY RECOMMENDATIONS

Dr. Simun concluded that Student continued to have needs from the lack of appropriate educational services for her disability between March 12 through September 4, 2018, as indicated by Dr. Simun's analytical model. Dr. Simun opined that Student would have made greater academic gains if Compton Unified had placed Student in a residential treatment center, as suggested by Compton Unified's assessments, because Student would have remained in the residential placement into

the following year. If Compton Unified placed Student in a more restrictive special education environment, Student's IEP would have included extended school year services for the summer of 2018. Dr. Simun concluded that, with either placement, Student would have been provided with approximately five months of specialized educational services, but Student was denied any services because of Compton Unified's disenrollment.

Using her analytical model, Dr. Simun found that by July 2022 Student should have minimally had a reading index score of 82 but, instead, Student had a 73. Student should have had a letter word identification score of 85, but had a 73. Student's passage comprehension scores should have been an 82, but Student had a 75. Student should have had a math calculation score of 91, but instead had a 78.

Dr Simun listed Student's present needs as

- self-advocacy,
- disability awareness,
- reading,
- math skills,
- study and
- executive functioning skills.

To address these needs, Student should have formal study skills intervention approximately once a week to increase her reading comprehension and improve her study skills. Student should have formal reading instruction to focus on word reading, phonics, and reading comprehension. Reading intervention should be delivered one hour per day while in school and two hours per day during summer and winter recess. Student should have a consultant help her with getting an appropriate disability services

support plan at her university. Student should have formal math support tutoring. These would have been addressed by transition plan services if Student were in special education the last two years of high school.

Dr Simun's recommended interventions of 40 to 80 hours of basic reading, 40 to 80 hours of math, 40 to 80 hours of reading comprehension, and 15 to 30 hours of for executive functioning. Dr. Simun asserted that these recommended remedies would address Student's deficits caused by the five-month delay in receiving special education services.

DISCUSSION REGARDING APPROPRIATE REMEDY

Dr. Simun provided an analytical model that was based upon deceptively simple lines, drawn from one data point to another. Student's academic gains and losses were not steady, smooth trajectories but more episodic. For example, Student had five mental health hospitalizations from March through end of May 2018. Dr. Simun acknowledged that additional standardized assessments would have been beneficial; nonetheless, she worked with what she had, which was the four data points. But the academic update needed to look beyond the numbers and examine the reasons for Student's academic performance. Dr. Simun's conclusions were not substantively persuasive for purposes of formulating an equitable remedy.

Notably, Dr. Simun did not examine Student's plummeting scores from October 2020 to July 2022, in the academic update. The charts and score tabulations clearly demonstrated this almost two-year regression. Dr. Simun utilized the numbers provided by her model and concluded that Student would have regressed to a higher score if not for a six-month delay in receipt of special education services, more than four years

earlier. However, if Student's performance continued to increase from October 2020 to June 2022, as it had from September 2018 to October 2020, Student would have been within the average range for almost all academic measures by the time she graduated from high school. And as Dr. Simun noted, Student's overarching academic goal was academic performance consistent with Student's average abilities. Dr. Simun's December 2022 update did not address why this did not happen.

At the time of the October 2020 testing, Student was in an in-home independent study program, which Dr. Simun believed was not providing appropriate special education support. Dr. Simun testified it was not the right program for Student. In her testimony at the remand hearing, Dr. Simun was unaware of any special education program in which Student participated after the October 2020 testing. Student did not submit documentary or testimonial evidence that Student continued in a special education program. Dr. Simun acknowledged that the almost two-year regression was probably the result of Student not being in a special education program.

In fashioning the appropriate equitable remedy (*Burlington, supra,* 471 U.S. at p. 369-371), the conduct of both parties must be reviewed and considered (*Puyallup School Dist., supra,* 31 F.3d at p. 1496). Here, Student was in a special education program for the first two years of high school and was making academic progress. Dr. Simun credited this progress to Student's special education program. If Student continued with a special education program, Student would likely have been within the average range for almost all academic measures, when tested in July 2022. But Parent chose to stop special education programing and Student's gains in academic skills dissipated within 21 months. And Student was no longer eligible for special education, having graduated from high school with a regular diploma.

Equitable remedies should address a student's needs at the time of the remedy. However, there must be some nexus between a school district's failure to provide a FAPE and a student's needs. Here, the equities weigh in favor of Compton Unified. Student's July 2022 scores and present academic skill needs are the consequence of Student's rejection of available special education services and supports for the last two years of high school. Otherwise, Student's academic skills would likely be at or near the average range.

Still, Compton Unified's denial of a FAPE requires an appropriate remedy. Student's math testing was variable, but her math calculation skills consistently scored in the low, borderline range. Student's math calculation skills improved the first two years of high school, but decreased to below where they were in February 2018. Dr. Simun noted that Student's math calculation skills were primarily dependent upon school-based learning. Further math support would likely strengthen these skills.

Student's college provided Student with educational services and accommodations due to her learning disabilities. Student had passing grades in all subjects, but chemistry lab because Student continued to struggle with complex math processes and memorization. Therefore, support in math would benefit Student's academic performance in college course work, which Student might struggle to pass because of poor math skills.

If Compton Unified had placed Student in a residential treatment center in March 2018, as recommended by its own assessments, Student would have received intensive intervention for her borderline math calculation skills. However, Student's special education was delayed for 25 weeks. A reasonable amount of intensive special education math intervention would have been about two hours a week. Therefore,

Compton Unified will provide Student with 50 hours of tutoring from a high school level, credentialed math teacher, who will support Student in her math, science, or social science college course work.

The 50 hours must be used by Student no later than August 31, 2025. Unused hours shall be forfeited.

ORDER

1. Compton Unified shall provide Student with 50 hours of tutoring from a high school level, credentialed math teacher, who will support Student in her math, science, or social science college course work.
2. The 50 hours must be used by Student no later than August 31, 2025. Unused hours shall be forfeited.

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.

Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings