

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:  
MONROVIA UNIFIED SCHOOL DISTRICT, AND  
PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024070979

OAH CASE NUMBER 2024030766

DECISION

December 20, 2024

On March 21, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Monrovia Unified School District, called Monrovia, as respondent. On July 29, 2024, OAH received a due process complaint from Monrovia naming Student. On August 1, 2024, OAH consolidated the cases designating Monrovia's as the primary case, and the determinative case for calculation of the decision timeline. On August 9, 2024, OAH granted a continuance. Administrative Law Judge Rita Defilippis heard this matter via videoconference on October 15, 16, 17, 18, 21, 22, 23, 24, and 29, 2024.

Attorney Bruce Bothwell represented Student. Parents attended all hearing days on Student's behalf. Attorney Vivian Billups Randolph represented Monrovia. Dr. Cara Reyes, program specialist, attended all hearing days on Monrovia's behalf.

At the parties' request, the matter was continued to November 27, 2024, for written closing briefs. The record was closed, and the matter was submitted on November 27, 2024.

## ISSUES

On the first day of hearing, the undersigned reorganized and renumbered Student's issues by school year. No substantive changes were made. Student withdrew Student's Issue three at hearing, as numbered in the October 2, 2024, Order Following Prehearing Conference, which was Issue 12 of Student's due process complaint.

In this decision free appropriate public education is referred to as FAPE. Individuals with Disabilities Education Act is referred to as IDEA. Individualized education program is referred to as IEP. The issues heard and decided are:

## STUDENT'S ISSUES

1. Did Monrovia deny Student a FAPE during the 2022-2023 school year, from Sept. 16, 2022, by:
  - A. failing to make Student eligible for special education under the eligibility category of autism;
  - B. failing to offer Student appropriate behavior services to address his maladaptive behaviors, by not offering Student a one-to-one aide;
  - C. failing to offer Student appropriate social skills training;
  - D. failing to offer Student appropriate goals in:
    - i. behavior; and
    - ii. socialization; and

- E. failing to materially implement Student's IEP accommodations of:
  - i. social-emotional check-ins;
  - ii. cues to assist Student with appropriate and on-task behavior; and
  - iii. use of verbal encouragement and coaching to assist Student with socialization and behavior?
- 2. Did Monrovia deny Student a FAPE during the 2023-2024 school year, up to March 21, 2024, by:
  - A. failing to make Student eligible for special education under the eligibility category of autism;
  - B. failing to offer Student appropriate behavior services to address his maladaptive behaviors, by not offering Student a one-to-one aide;
  - C. failing to offer Student appropriate social skills training;
  - D. failing to offer Student appropriate goals in:
    - i. behavior; and
    - ii. socialization;
  - E. failing to materially implement Student's IEP accommodations of:
    - i. social-emotional check-ins;
    - ii. cues to assist Student with appropriate and on-task behavior;

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- iii. use of verbal encouragement and coaching to assist Student with socialization and behavior;
  - iv. a daily behavior log, from September 26, 2023; and
  - v. breaks when needed to leave the classroom, from September 26, 2023; and
- F. failing to materially implement Student's behavior intervention plan and behavior contract, from September 26, 2023?

## DISTRICT'S ISSUE

Did Monrovia's IEP for Student finalized March 15, 2024, offer Student a FAPE in the least restrictive environment such that it can be implemented over parental objection?

The undersigned ALJ retained the numbering of the issues as set forth above but changed the order of issues for the purpose of analysis.

## JURISDICTION

This hearing was held under the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All subsequent references to the Code of Federal Regulations are to the 2006 edition, unless otherwise noted. The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student bears the burden of proof on Student's issues. Monrovia bears the burden of proof on its issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 13 years old and in eighth grade at the time of hearing. Student resided within the Monrovia Unified School District's geographic boundaries at all relevant times. Student was eligible for special education under other health impairment due to his diagnosis and manifestation of characteristics of attention-deficit hyperactivity disorder, called ADHD.

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ISSUE 1(A) AND ISSUE 2(A): DID MONROVIA DENY STUDENT A FAPE DURING THE 2022-2023 AND 2023-2024 SCHOOL YEARS, FROM SEPTEMBER 16, 2022, TO MARCH 21, 2024, BY FAILING TO MAKE STUDENT ELIGIBLE FOR SPECIAL EDUCATION UNDER THE ELIGIBILITY CATEGORY OF AUTISM?

Student contends Monrovia should have suspected that Student had autism. Student contends a 2024 independent educational evaluation report established that Student had autism and that Monrovia had always had sufficient information from September 16, 2022, to trigger its duty to assess Student for autism and its failure to find Student eligible under the category of autism at that time denied Student a FAPE.

Monrovia contends Student's complaint did not allege a failure by Monrovia to assess a suspected disability and Monrovia did not consent to expand this issue to include such a claim. Monrovia contends that Student is eligible for special education services under the eligibility of other health impairment and the law does not entitle Student to a proper or preferred eligibility category.

Student did not prove that Monrovia denied Student a FAPE by failing to make him eligible under autism from September 16, 2022, to March 21, 2024.

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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.)

To be eligible for special education services, a child must be found to be a child with a disability who needs special education and related services because of the disability. The term “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3)(A)(i) and (ii).)

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 Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

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Nothing in the IDEA requires that a child be classified by the most accurate disability so long as each child who has an IDEA listed disability, and who, by reason of that disability needs special education and related services, be regarded as a child with a disability. (20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. 300.111(d) (2006); Ed. Code, § 56301, subd. (a).) The IDEA does not give a student the legal right to a proper disability classification. (*Weissburg v. Lancaster Sch. Dist.* (9th Cir. 2010) 591 F.3d 1255, 1259.) The IDEA's overarching substantive goal is to ensure that all children with disabilities have available to them a FAPE designed to meet their unique needs. (20 U.S.C. § 1400(d)(1)(A); *Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 244-245 (*Forest Grove*).)

In *Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045 (*Heather S.*), the parties disputed the appropriate eligibility categories for a student whose disability was hard to categorize. The Seventh Circuit Court of Appeals declined to settle the dispute noting that the "IDEA charges the school with developing an appropriate education, not with coming up with a proper label with which to describe [student's] disabilities." (*Heather S., supra*, 125 F.3d at p. 1055.) The federal district courts in California applied the same principle. (See, *Timothy O v. Paso Robles Joint Unified Sch. Dist.*, (C.D. Cal., April 21, 2014) 2014 WL 12675212, at \*12, citing *Heather S.*, rejecting student's argument that a failure to classify student under the autistic-like category denied student a FAPE; See, *M.M. & E.M. v. Lafayette Sch. Dist.*, (N.D. Cal., Feb. 7, 2012, Nos. V094624, 10-04223 SI) 2012 WL 398773, at \*17, *affd.* in part and *revd.* in part (9th Cir. 2014) 767 F.3d 842.) citing *Heather S.*, stating that the question is whether the application of the IEP denied student a FAPE, not the precise label the school district applied.)



It is undisputed that Student was found eligible for special education under the eligibility category of other health impairment due to his medical condition of attention-deficit hyperactivity disorder and remained eligible under that category through the time at issue in this case. As the IDEA does not require Monrovia to determine Student eligible for special education under the eligibility category of autism, the failure to do so does not deny Student a FAPE. Accordingly, Monrovia prevailed on Issues 1(A) and 2(A).

Student asserts in his closing brief that this issue encompassed Student's claim that Monrovia failed to assess Student for autism as a suspected disability. Student's assertion is rejected as that issue was not raised in Student's due process complaint. Student agreed to the wording of this issue as stated in the order following prehearing conference and again on the first day of hearing. Student's complaint contained no facts, information, or explanation regarding this issue, other than the issue itself. Therefore, there was no information upon which Student can rely to suggest that this issue, as pled in his complaint, put Monrovia on notice that Student was alleging that Monrovia failed to assess Student for the suspected disability of autism.

Accordingly, whether Monrovia was required to assess Student for autism and failed, is not reached in this decision.

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ISSUE 1(D): DID MONROVIA DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, FROM SEPTEMBER 16, 2022, BY FAILING TO OFFER APPROPRIATE GOALS IN THE AREAS OF BEHAVIOR AND SOCIALIZATION?

ISSUE 2(D): DID MONROVIA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, UP TO MARCH 21, 2024, BY FAILING TO OFFER APPROPRIATE GOALS IN THE AREAS OF BEHAVIOR AND SOCIALIZATION?

Student contends that his September 16, 2022 and September 26, 2023 IEP behavioral and socialization goals were not appropriate because the direct services offered to Student were insufficient to implement the goals. Additionally, Student asserts he was denied a FAPE by Monrovia's failure to develop numerous IEP goals to address Student's other behavioral and social skill needs. Monrovia contends that Student's goals were appropriate to meet Student's behavior and socialization needs.

The IDEA requires that an IEP is in place for all students who are found eligible for special education services. (20 U.S.C. § 1412(a)(2).) An IEP must contain annual goals that are measurable, meet the student's unique needs, and allow him to make progress in the general education curriculum. (Ed. Code § 56345, subd. (a)(2)(A).) "The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided." (Cal. Code Regs., tit. 5, § 3040, subd. (b).) An IEP is evaluated in light of information available at the time it was developed; it is not judged

in hindsight. An IEP is “a snapshot, not a retrospective.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir.1993) 993 F.2d 1031, 1041.)

Student failed to sustain his burden of proof on Issue 1(D). Monrovia offered appropriate behavioral and socialization IEP goals during the 2022-2023 school year, from September 16, 2022.

Student’s educational history throughout his years attending Monrovia schools since first grade, up to September 16, 2022, established that Student was a friendly, kind, energetic, talkative, intelligent, and academically capable student. Monrovia’s assessments throughout Student’s attendance established Student’s average to superior cognitive ability and academic functioning. However, Monrovia’s numerous behavior assessments and Student’s documented behavior through the years established Student’s significant difficulty with self-regulation, impulsivity, and navigating social relationships with peers and teachers. Student demonstrated a lack of social boundaries, aggressive behavior toward peers and eventual self-injurious behaviors, requiring a one-to-one aide since third grade.

Student’s IEP’s through the years identified Student’s strengths and behavioral and socialization deficits and contained goals to address these deficits. Student was in sixth grade, his first year of middle school, during the 2022-2023 school year. He now had six classes, with six different teachers, and he was enrolled in general education classes, four of which were honors classes.

All goals offered by Monrovia during the 2022-2023 and 2023-2024 school years, and challenged by Student as being inappropriate, could be considered behavioral goals. However, some targeted Student's impulsive and inappropriate social communication behaviors in the classroom. Therefore, Monrovia offered both behavioral and socialization IEP goals in the 2022-2023 and 2023-2024 school years.

Student's September 16, 2022 IEP team reviewed Student's past goals for on-task behavior and task completion which the evidence established Student had met and no longer needed. However, Student continued to struggle with impulsivity due to his lack of self-regulation and impulsive, inappropriate and sometimes disruptive social communications with peers and teachers.

Student's September 16, 2022 IEP contained two IEP goals. The first will be referred to as the "self-regulation goal." It required Student to identify and practice known and novel self-regulation skills in the counseling setting and apply these skills in the classroom in four out of five trials, as measured by counselor progress tracking and teacher or aide observation. Student's counselor and the school psychologist were responsible for the goal. Student had learned self-regulation strategies in his counseling sessions but was not able to yet demonstrate his use of these strategies in the classroom.

The self-regulation behavioral goal was appropriate to meet Student's needs to develop coping skills and to reduce Student's inappropriate behaviors resulting from his lack of self-regulation. Accordingly, Student failed to sustain his burden to prove that Student's self-regulation behavioral IEP goal was not appropriate.

The second IEP goal developed at the September 16, 2022, IEP team meeting will be referred to as the “socialization goal.” It required Student to review sample real-life scenarios and practice strategies for managing impulsivity and making prosocial choices by using a cost-benefit analysis and identifying others’ perspectives and likely reactions to his communications in the counseling environment and apply the strategies in the classroom setting, in four out of five trials, as measured by counselor progress tracking, observation by a behaviorist, and teacher or aide observation.

Student’s school counselor, Monrovia’s behaviorist, Student’s one-to-one aide, and teachers were responsible for the goal. The baseline for this IEP goal established that Student had difficulty managing his impulsive and inappropriate social communications. He engaged in negative peer interactions by making inappropriate disruptive comments and had difficulty predicting or understanding peer reactions to them. This goal was appropriate to address Student’s lack of social communication skills and related impulsivity. Monrovia therefore offered an appropriate socialization goal.

Monrovia prevailed on Student’s Issue 1(D), as it offered Student appropriate behavioral and socialization goals.

Student also failed to sustain his burden of proof on Issue 2(D). Monrovia offered appropriate behavior and socialization IEP goals during the 2023-2024 school year, up to March 21, 2024.

Student continued to have behavioral and socialization needs at the beginning of the 2023-2024 school year. His behavioral and socialization IEP goals pursuant to his September 16, 2022 IEP were in place and appropriate, as just discussed and established, up to the September 26, 2023 IEP team meeting. Student’s September 26, 2023 IEP established that Student continued to demonstrate on-task and appropriate behavior in

class with minimal teacher redirection, when needed. He was also demonstrating learned self-regulation strategies in the classroom. The areas in which Student struggled were social communication, asking for help in his classes, and communicating when he needed his IEP accommodations. Student had incomplete and missing assignments and the IEP team's focus was on Student taking more responsibility.

Student's September 26, 2023 IEP contained two IEP goals. The first will be referred to as the "self-advocacy behavioral goal." It required Student to demonstrate the ability to utilize self-advocacy skills such as identifying learning needs/accommodations and/or strengths/struggles, raising hand, emailing and/or approaching teachers in four out of five trials, as measured by observation and self-reports. The baseline for the IEP goal established that Student was not advocating for himself in the classroom by consistently communicating his needs and needed classroom accommodations. Persons responsible included Student's counselor, teachers, and staff.

Student's self-advocacy goal was appropriate. It addressed his difficulty approaching teachers and advocating for implementation of his known IEP accommodations, when needed, in the classroom.

The second IEP goal will be referred to as the "socialization goal." It required Student to effectively engage in appropriate decision-making via identifying topics appropriate per setting, as well as voluntarily accepting responsibility for one's behavior without making excuses, measured by counselor, Student, and teacher report in four out of five opportunities presented. The baseline for the IEP goal established that Student was able to identify prosocial choices in his counseling sessions but was still unable to generalize this ability in the classroom setting.

Student's socialization goal was appropriate to address Student's behavior in the classroom of shouting out comments to his friends during instruction and making inappropriate comments at inappropriate times and settings.

Monrovia developed appropriate behavior and socialization goals. Monrovia prevailed on Student's Issue 2(D).

For both Issue 1(D) and 2(D), Student's closing brief argues that the behavior and socialization goals were not appropriate because separate goals were not developed for

- independent attending to instruction,
- independent task initiation,
- on-task behavior,
- task completion,
- participation during instruction, and
- social skill goals for direct instruction including social communication, awareness and insight.

However, the IDEA does not require a school district to develop IEP goals in all conceivable areas from which a student might benefit. An annual IEP must contain annual goals that are measurable and are designed to "meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and "meet each of the child's other educational needs that result from the child's disability ...." (20 U.S.C. § 1414(d)(1)(i)(A)(II)(aa), (bb); 34 C.F.R. § 300.320(a)(2)(i)(A), (B)(2007); Ed. Code, § 56345, subds. (a)(2)(A), (B).) This language does not require that each identifiable need, deficit, or area of struggle or challenge be addressed in a separate goal. Many courts have come to the same conclusion. "[A]n IEP is not required to contain every goal from which a student might

benefit." (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1133, cert. denied sub nom. *S.B. v. Capistrano Unified Sch. Dist.* (2022) 143 S.Ct. 98, citing *R.F. v. Cecil Cnty. Pub. Schs.* (4th Cir. 2019) 919 F.3d 237, 251 (citation omitted); *E. R. v. Spring Branch Indep. Sch. Dist.*, (5th Cir. 2018) 909 F.3d 754, 768 (per curiam) (not requiring "excessive goals"); *N.M. v. The School Dist. Of Philadelphia* (3d Cir. 2010) 394 Fed.Appx. 920, 923 [nonpub. opn.]; *L.M. v. Downingtown Area Sch. Dist.* (E.D. Pa., April 15, 2015, No. 12 Cv 5547) 2015 WL 1725091, p. 16; *Benjamin A. v. Unionville-Chadds Ford Sch. Dist.* (E.D. Pa., Aug. 14, 2017, Civ. No. 16-2545) 2017 WL 3482089, pp. 12-13.)

ISSUE 1(C): DID MONROVIA DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, FROM SEPTEMBER 16, 2022, BY FAILING TO OFFER STUDENT APPROPRIATE SOCIAL SKILLS TRAINING?

ISSUE 2(C): DID MONROVIA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, UP TO MARCH 21, 2024, BY FAILING TO OFFER STUDENT APPROPRIATE SOCIAL SKILLS TRAINING?

Student contends that Monrovia was aware of Student's documented social skill deficits from September 16, 2022, through March 21, 2024, and continuously failed to provide appropriate direct social skill instruction to address these deficits. Student contends Monrovia's failure to provide direct group social skills instruction resulted in Student's increasingly concerning social communications and peer rejection.

Monrovia contends that it identified Student's social communication deficits, developed and implemented IEP goals, and provided appropriate counseling and behavioral services to address Student's socialization needs. Monrovia asserts that



Student made gradual progress on his IEP goals given these services. Monrovia claims there was no evidence that Monrovia's provision of group social skills training would have resulted in more progress by Student on his socialization goals.

The IDEA requires that 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 considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley*, *supra*, 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1*, *supra*, 580 U.S. 386 [137 S.Ct. 988, 1000].) California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.)

The IEP document for each disabled child must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (2007).) A child's educational needs are to be broadly construed to include the child's

- academic,
- social,
- health,
- emotional,

- communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. at pp. 56-58.)

Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon, supra*, 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education, supra*, 993 F.2d 1031, 1041.)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

Student's lack of social skills and boundaries, and lack of verbal self-control was documented in first grade, and thought to be related to inattention, impulsivity and hyperactivity, which led to his initial eligibility for special education under other health impairment in May 2018. From first to third grade, Student's social communication deficits continued. Monrovia developed various social skill goals requiring Student to demonstrate appropriate social skills in the classroom and engage in reciprocal conversations with peers. Despite Student's documented lack of social skills, social

boundaries or ability to sustain conversations with peers, the only direct services offered by Monrovia were a one-to-one aide and 60 minutes per month of counseling. Student never met any of his social skill goals from first to third grade.

From third grade to fifth grade, Student had socialization goals substantially similar to his IEP socialization goals for the 2022-2023 and 2023-2024 school years, just discussed. In February 2022 of Student's fifth grade, Student's triennial assessment was conducted. One of Student's assessments was a temporary support needs assessment which was conducted by Monrovia's board-certified behavior analyst, called BCBA, to determine Student's continued need for a one-to-one aide.

The assessment identified the significant extent of Student's social interaction deficits. Student was having inappropriate conversations regarding weapons, one of which resulted in an investigation by the Department of Family and Children's Services. Student was also demonstrating a lack of ability to use social communication to match his social intent. Student was not demonstrating appropriate social boundaries in his communications and physical play with peers or recognizing when his behavior and comments elicited negative peer responses. In short, Student lacked the ability to see others' perspectives and plan his social communications to avoid negative results.

Student's deficits were also evidenced in counseling sessions where he engaged in off-topic conversations, focusing on topics of interest such as weapons. Student's third through fifth grade socialization goals focused on his thinking before speaking and reviewing real-life scenarios to determine what statements would be appropriate and what statements might be perceived in a different way than intended.

However, Monrovia continued to only offer the direct services of a one-to-one aide and counseling. Although the goals were offered to address Student's social skill deficits, he never met any of his socialization goals from third through fifth grade.

STUDENT REQUIRED DIRECT SOCIAL SKILLS TRAINING DURING  
THE 2022-2024 SCHOOL YEARS, FROM SEPTEMBER 16, 2022, TO  
MARCH 21, 2024

On September 16, 2022, Student was in sixth grade. Student still had not met his fifth grade IEP socialization goal. Student's September 16, 2022 IEP team developed a socialization goal substantially similar to his prior fifth grade goal, which again required Student to review sample real-life scenarios and practice strategies for managing impulsivity and making prosocial choices, cost-benefit analysis, cognitive model, perspective-taking, and identifying expected versus non-expected behaviors in the counseling environment and apply these strategies in the classroom setting. Monrovia again offered only one-to-one aide services and 60 minutes per month of counseling to address Student's continuing and significant social skill deficits.

Given Student's longstanding inability to make progress on similar socialization goals over the years when given only one-to-one aide and counseling services, Monrovia's offered services were not reasonably calculated to enable Student to make appropriate progress on his social skill development. Student required direct social skills training in a group setting to provide targeted social skills instruction or practice in an appropriately structured setting with peers to receive a FAPE.

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At the September 26, 2023 IEP team meeting, Student again had not met his socialization goal, as he had not demonstrated appropriate social skills in the classroom. Teachers reported Student had difficulty identifying the appropriate time to make statements. Once again, a socialization goal was developed requiring Student to engage in appropriate social decision-making via identifying topics appropriate per setting. The only direct services offered by Monrovia to address this goal were 90 minutes per month of counseling. Student no longer had one-to-one aide services by this time due to his behavior progress. Student continued to require direct social skills training to receive a FAPE. Accordingly, Monrovia's failure to offer these services at the September 26, 2023 IEP team meeting denied Student a FAPE.

Student's lack of social skills deficits continued through the 2023-2024 school year up to March 13, 2024, his last day in Monrovia. Monrovia never changed Student's IEP services. The seriousness of Monrovia's continued failure to offer appropriate social skills training cannot be overstated. An independent educational evaluation, dated March 8, 2024, was conducted in by Dr. Helena Johnson. Dr. Johnson diagnosed Student with autism spectrum disorder with accompanying pragmatic language impairment, and attention deficit disorder, combined type. Dr. Johnson testified at hearing and her diagnostic report was admitted as evidence. Her assessment was uncontroverted at hearing and established Student's continued and significant social skill deficits and the impact of those deficits in the school setting. Her evaluation included interviews with Student, Parent, Student's general education teachers, and mental health providers, a November 2023 observation of Student at school, and direct assessment of Student in January 2024.

Dr. Johnson's evaluation established Student's

- inappropriate physical and repetitive social overtures toward peers,
- off-topic and potentially offensive statements to peers,
- lack of understanding of peers' social cues,
- difficulty establishing appropriate friendships, and
- inappropriate communications regarding Student's preferred topic of weapons.

Dr. Johnson's independent educational evaluation observation of Student in his classes in November 2023 illustrated a typical day for Student at school. Student's social overtures were often repetitive, potentially offensive on topics of gender and ethnicity, and unsolicited. Student regularly used physical contact in his overtures to peers such as play fighting. Teachers reported having to isolate Student from his peers due to his annoying behavior, a student request to change seats to avoid sitting next to Student, students' relief when Student was absent, and polite classmate tolerance of Student's known "quirky" behaviors. Student's inappropriate social overtures to peers were observed by Dr. Johnson to be met with peers' annoyed stares and disinterested lack of responses.

These social communication deficits continued through February 2024, culminating with Student's inappropriate, offensive, and coercive sexually explicit communication with a female peer he considered a friend, and a statement regarding bombing a teacher's house during a class assignment while working in a small group of peers. These communications resulted in Monrovia conducting threat assessments, the last of which resulted in student's involuntary mental health hospitalization on March 13, 2024, after which he never returned to Monrovia during the 2023-2024 school year.

Although Student has not demonstrated his ability to adjust his behavior and social communications due to his lack of understanding of his peers' responses, he nonetheless experienced their rejection daily. The testimony of Parent and Ms. Alyssia Jacques, Student's science teacher for the 2023-2024 school year whose testimony established her close relationship with Student as his favorite teacher, communicated that, in hindsight, it appears Student has internalized peer reactions and Monrovia's responses consisting of threat assessments, by his belief that he is a "bad" person.

Dr. Johnson's interview of Student corroborated Student's apparent faulty self-perception. Student reported that he was teased from grade school, and he has dealt with that by becoming bigger and scarier so that now no one would bully him because he has a reputation to protect. Student's inappropriate communications in February 2024, unfortunately, appear consistent with Student's apparent faulty self-perception.

The gradual worsening of Student's social communications, his impulsivity, faulty self-perception as a "bad" person, and his restricted interest in weapons combine to put Student at risk of further involvement in the mental health system, or juvenile justice system. This is especially concerning given our societal intolerance of gun violence as the result of school shootings and the availability of social media platforms to confirm whatever belief system a person may have.

However, Student is still a child and witness testimony established Student to be kind and caring to others and animals, protective of others, and non-violent. Student requires intensive, targeted social skill intervention to enable him to develop and experience positive and meaningful relationships with peers.

Dr. Johnson recommended an evidence-based weekly group social skills program, such as the University of California, Los Angeles, called U.C.L.A., PEERS curriculum. According to Dr. Johnson, this program would assist Student's development and generalization of social interaction, reciprocal conversation, social awareness and social insight skills to support Student's ability to make and keep friends and participate effectively with peers in class.

The U.C.L.A. PEERS program teaches skills for appropriately joining in, sustaining, and exiting peer interactions, and developing flexible interests. The program also assists individuals to develop social insight into peer behavior, peer rejection, reputation, and conflict resolution. Dr. Johnson recommended that the social skills training occur outside Student's school day to limit disruption to Student's academic success and behavior services.

The overwhelming evidence presented at hearing established Student's significant social communication deficits throughout the time at issue in this matter. The evidence established that Monrovia's failure to provide direct group social skills instruction resulted in Student's continued and worsening inappropriate social communications at school, and lack of progress on his socialization IEP goals. This resulted in peer rejection, poor reputation in school, and continual redirection and negative consequences for social deficits that Student lacked the social insight to understand or control. Monrovia's failure to offer Student direct social skills training from September 16, 2022, through March 21, 2024, considering his unique needs and circumstances, deprived him of educational benefit and denied him a FAPE.

Student sustained the burden of proof on Issues 1(C) and 2(C).



ISSUE 1(B): DID MONROVIA DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, FROM SEPTEMBER 16, 2022, BY FAILING TO OFFER APPROPRIATE BEHAVIOR SERVICES FOR STUDENT'S MALADAPTIVE BEHAVIORS, BY FAILING TO OFFER A ONE-TO-ONE AIDE?

Student contends he required a full-time one-to-one aide for the 2022-2023 school year, from September 16, 2022, to address his maladaptive behaviors. Student contends his behavior of school avoidance and somatic symptoms in the months before his aide was removed established his continued need for a one-to-one aide. Student asserts that Monrovia did not base its fading of Student's aide on behavior data and instead removed Student's aide based on an arbitrary administrative decision.

Monrovia contends Student was offered a one-to-one aide during the 2022-2023 school year up to March 20, 2023, which had been slowly faded and ultimately removed as appropriate given Student's behavior data, as agreed by Parent's consent to Student's September 16, 2022 IEP. Thereafter, Monrovia contends Student's behavior did not require a one-to-one aide.

Student's Issues 1(B) and 2(B) allege that Student required a one-to-one aide to address Student's maladaptive behaviors. The analysis of this issue requires a definition of the term "maladaptive behaviors". The undersigned determined the definition based on the testimony at hearing of Mr. Javier Ruiz, Monrovia's board-certified behavior analyst, called a BCBA.

Ruiz received his bachelor's degree in psychology from the University of California, Riverside. In 2015, he received his master's degree in applied behavior analysis from the Chicago School of Professional Psychology's satellite campus in Los

Angeles. He obtained his BCBA certification in October 2015. Ruiz worked for the Center for Autism and Related Disorders from 2006 to 2019 as a behavioral technician, case manager, clinical supervisor, and direct clinical manager. From 2019 to March 2023, Ruiz worked as a behavior specialist for Monrovia. From April 2023 to present, he works as a coordinator board certified behavior analyst for Pomona Unified School District.

During his employment with Monrovia, Ruiz conducted functional behavior assessments, supervised behavior intervention implementation services, developed and implemented behavior intervention plans, and provided consultation to teachers, one-to-one aides and staff. In his career, Ruiz has conducted over 30 functional behavior assessments and has authored approximately 100 behavior intervention plans. Ruiz has been involved in Student's behavior intervention services for over three years during which he conducted multiple functional behavior assessments, temporary special needs assessments, and developed multiple behavior intervention plans for Student.

Ruiz's testimony was immediately responsive, clear and concise. He remembered his years working with Student and readily answered all questions regarding Student's behavioral needs, interventions and progress. His testimony evidenced his training, experience and expertise in the field of behavior analysis, and the application of his skills in his assessment of Student, and his development and implementation of Student's behavior interventions for over three years, through March 2023. His testimony was accorded great weight.

Ruiz explained that behavior interventions vary depending on the types of behaviors a student may exhibit. Some behaviors are considered so serious that the focus of interventions is to extinguish the behaviors because no level of such behaviors

is acceptable at school. Examples of these maladaptive behaviors are aggression, threats of aggression, self-injurious behaviors, thoughts of self-harm, or harm to others. Maladaptive behaviors are inappropriate behaviors concerning health and safety that are used as an inappropriate way to relieve stress or difficult situations.

Ruiz contrasted these behaviors with inappropriate behaviors which are not considered “maladaptive” such as impulsive disruptive behaviors, talking out of turn, making inappropriate comments during instruction, and being off-task. The goal of behavior intervention for these behaviors is to reduce the behaviors to the point where a student can access the general education curriculum given behavioral supports and accommodations. There was no contrary evidence. Therefore, Ruiz’s definition of “maladaptive behaviors” are adopted by this Decision.

MONROVIA OFFERED AND PROVIDED STUDENT A ONE-TO-ONE AIDE FROM SEPTEMBER 16, 2022, TO MARCH 20, 2023, AND THEREAFTER, STUDENT DID NOT DEMONSTRATE MALADAPTIVE BEHAVIORS REQUIRING A ONE-TO-ONE AIDE

Cynthia Allen was Student’s one-to-one aide from third grade up to March 13, 2023. A one-to-one aide from a nonpublic agency provided one-to-one aide services from March 13, 2023, to March 20, 2023, due to a human resources issue preventing Allen from continuing as Student’s aide. Allen worked as a behavioral aide for Monrovia for 19 years. Ruiz directly trained and supervised Allen throughout her time as Student’s one-to-one aide. Allen also completed a 40-hour training in 2020 equivalent to that

required for registered behavior technician certification. Ruiz regularly observed Student and Allen in the classroom, including his periodic collection of behavior data to confirm the reliability of Allen's data.

Throughout the 2022-2023 school year, Student's September 16, 2022 IEP behavior intervention plan was in place. The behavior intervention plan was robust and detailed. It identified

- specific antecedent behaviors,
- well-defined targeted problem behaviors,
- the specific actions required of teachers and the one-to-one aide when antecedent and problem behavior occurred, and
- well-defined appropriate replacement behaviors required of Student.

The behavior intervention plan provided a token economy whereby Student was rewarded for on-task behavior and task completion by accumulating points from teachers. Student was highly motivated by these rewards during the 2022-2023 school year. The behavior intervention plan for the 2022-2023 school year was developed at Student's February 1, 2022 IEP team meeting when Student was in fifth grade and demonstrating serious maladaptive self-injurious behavior of hitting himself in the head. Between February 1, 2022, and Student's September 16, 2022 IEP team meeting, Student made significant behavioral progress to the point he no longer required IEP goals for on-task behavior or task completion, and he no longer demonstrated self-injurious behavior.

Ruiz was responsible for analyzing and interpreting Allen's data and recommending necessary changes in Student's behavior intervention services to the IEP team. At Student's September 16, 2022 IEP team meeting, based on specific behavior data documenting Student's significant progress, Ruiz recommended fading Student's one-to-one aide services. The IEP team, including Parents, agreed to a one-to-one aide fade plan whereby Allen would be removed first from three of Student's classes where the behavior data showed he was not demonstrating inappropriate behavior. Thereafter, Allen would be removed from the three remaining classes, as the data indicated appropriate. It was agreed that Allen would be available throughout the day on campus through the fading process in the event her services were required.

Initially, Allen's one-to-one aide services were dropped from three of Student's classes the week following the September 16, 2022 IEP team meeting, leaving one-to-one aide services in Student's remaining three classes. Student's behavior intervention plan, which included the token economy reward system, resulted in Student's significant behavioral progress. By March 2023, Student's behavior data collected by Allen and analyzed by Ruiz indicated Student's readiness to remove the one-to-one aide from his remaining classes, which was done by removing the aide from one class per week over three weeks.

Student did demonstrate some maladaptive behaviors in the days leading up to this final fade of Allen, his long-time one-to-one aide. Specifically, Student engaged in school avoidance, demonstrated by his spending time in the school restroom and nurses' office and his calls home to Parent to pick him up early in the school day due to his complaints of headaches, stomachaches and vomiting. However, these symptoms were not negatively affecting Student's behavior in class and the behavior data

supported the final fading and total removal of the one-to-one aide on March 20, 2023. The fading of Student's one-to-one aide conformed with the plan agreed to in Student's September 16, 2022 IEP.

On March 29, 2023, Student's IEP team convened to formally remove Student's one-to-one aide service from Student's IEP. Parents discussed at the March 29, 2023 IEP team meeting their concerns regarding Student's demonstrated anxiety and the fading of the aide. Parents agreed with the fading and the goal of removing the aide but believed the fade process was too abrupt and should have been more gradual to allow Student to adjust.

The team discussed Student's present levels, including behavior data gathered since the removal of Student's one-to-one aide. Student made academic and behavioral progress. Student's general education teachers expressed no concerns regarding Student's behavior or academics after the aide was removed. At the time of the meeting, Student's grades were A's and B's, and Student's counseling services appropriately addressed Student's school stress related to the removal of Allen.

There was no evidence that Student's somatic behaviors previously reported by Parent continued after the removal of his aide. Even if they had, Ruiz's testimony established a one-to-one aide would not have the training or expertise to address such behaviors, nor was this within the scope of a one-to-one aide's job responsibilities. Although Student no longer had the services of his one-to-one aide, Student continued to successfully facilitate the completion of his weekly behavior charts without the support of his one-to-one aide and Parent provided rewards accordingly in the home. Student's academic and behavioral success and above average grades in all classes

continued to the end of the 2022-2023 school year. Student ended the Spring semester with an A+ in physical education, a B in honors English, a B- in honors math, a B+ in honors social science, a B+ in honors science, and a B in innovation.

The preponderance of the evidence established that Student did not demonstrate “maladaptive behavior” as defined by Ruiz and adopted by this Decision until the month leading up to the removal of his long-term aide, which was appropriately addressed by his counseling services. Before and after the fading of Student’s aide, Student successfully accessed the general education curriculum without “maladaptive behaviors” requiring the services of a one-to-one aide. Student’s social skill deficits continued but Monrovia’s provision of a one-to-one aide through the years never resulted in his social skill progress. Additionally, Ruiz established that social skill intervention is not within the scope of services for which a one-to-one is trained to address.

Accordingly, Monrovia prevailed on Issue 1(B).

Student’s closing brief contention that Monrovia’s removal of Student’s one-to-one aide was not based on behavior data is rejected as inconsistent with the credible testimony of Ruiz, a trained and experienced BCBA, who analyzed Student’s behavior data. Student’s allegation that Monrovia instead removed Student’s aide based on an arbitrary administrative decision is also rejected. Student offered no persuasive evidence to support this claim.

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ISSUE 2(B): DID MONROVIA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, UP TO MARCH 21, 2024, BY FAILING TO OFFER APPROPRIATE BEHAVIOR SERVICES FOR STUDENT'S MALADAPTIVE BEHAVIORS, BY FAILING TO OFFER A ONE-TO-ONE AIDE?

Student contends he required a full-time one-to-one aide for the 2023-2024 school year, up to March 21, 2024, to address his maladaptive behaviors. Student maintains Monrovia's failure to offer Student a one-to-one aide during the 2023-2024 school year up to March 21, 2024, resulted in Student's increased stress and dysregulation, maladaptive behavior, and involuntary mental health hospitalization leading to his inability to attend school after March 13, 2024.

Monrovia contends Student did not require a one-to-one aide to address maladaptive behaviors until after his involuntary hospitalization. Monrovia asserts it promptly offered a one-to-one aide at Student's March 15, 2024 IEP team meeting, temporarily, until the end of the 2023-2024 school year to ease Student's expected difficult transition back to school after his recent involuntary removal. Monrovia maintains that Student's mental health decline and mental health hospitalization were unrelated to Student's lack of a one-to-one aide. Monrovia maintains a one-to-one aide was not necessary to Monrovia's provision of a FAPE to Student.

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STUDENT DID NOT DEMONSTRATE MALADAPTIVE BEHAVIORS  
DURING THE 2023-2024 SCHOOL YEAR UP TO MARCH 21, 2024,  
REQUIRING THE SERVICES OF A ONE-TO-ONE AIDE

Student demonstrated isolated behaviors observed by his math teacher, consistent with his restricted interest in weapons and sometimes overly aggressive physical social interactions with peers in the beginning of the 2023-2024 school year up to October 2023. However, these were one-time occurrences which were immediately extinguished by teacher redirection.

Student continued to demonstrate inappropriate impulsive social communications and off-task behaviors through the 2023-2024 school year but progressed in his use of self-regulation strategies in the classroom and his off-task behaviors were now redirectable by his teachers. The focus of his IEP services was to assist Student to become more independent and responsible for his behavior through the development of self-advocacy skills and reduction of inappropriate social communications.

From October 2023 to January 2024, Student's behaviors consisted of inappropriate social communications, minor impulsivity, and off-task behaviors which were redirectable by teachers. Student did not demonstrate any "maladaptive behaviors" requiring the services of a one-to-one aide.

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In late January 2024, specifically, January 24, 25, and 26, 2024, Student did begin to demonstrate “maladaptive behaviors” by demonstrating school-related anxiety including his phone calls to Parent to be picked up soon after being dropped off at school, reports of not feeling well due to headaches and vomiting, and school avoidance by staying in the student restroom and going to the school nurse’s office.

Student had recently lost his two long-term outside agency counselors with whom he had a good relationship and rapport. Student had been receiving these outside counseling services for over a year. These outside counseling services are unrelated to Monrovia’s special education services, including Student’s school counseling services, and are only noted to the extent that the loss of these outside providers may have contributed to Student’s somatic complaints at this time.

Additionally, Student could no longer be pulled out of physical education to receive a Friday outside counseling session due to needed physical education units. This left Student with reduced emotional support during the school week. Parent believed Student’s loss of his one-to-one aide the prior school year was the cause of Student’s recent inability to cope at school. Parent worried that these behaviors were consistent with those Student demonstrated the prior school year before the removal of his aide.

The IEP team met to discuss Parent’s concerns on February 8, 2024. Other than Parent’s concerns regarding Student’s somatic behaviors, all meeting participants, including Parent, described Student as being generally happy. The February 8, 2024 IEP established that Student was presenting at home and school as

- resilient, bounces back quickly,
- has good sense of humor,
- competitive in playing basketball with his peers,

- respectful on campus,
- caring to peers, clever, and
- creative for his age, with an intriguing imagination and perspective on the world.

Student's behaviors in class were consistent with those during the first semester, with no incidents of "maladaptive behaviors" in class.

The IEP team responded to Parent concerns by spreading Student's 90-minutes of counseling out to accommodate the counselor's more frequent check-ins with Student. The team made no other changes in services. The team discussed safe and calming places that Student could go on campus and identified staff at school with whom Student had a good relationship, whom Student could seek out when needed for support.

In weeks following the February 8, 2024 IEP team meeting, Student did demonstrate "maladaptive behaviors" in class. On February 16, 2024, Student was in his math class working in a small group of his peers on a class assignment to plan a party. Student's group discussed making a bomb as part of their inappropriate party planning, and Student had elaborated on the plan and suggested they bomb the teacher's house. Student's behavior triggered a risk assessment and the development of a safety plan.

On February 23, 2024, students were working on an assignment using their individual Chrome Books. The teacher checked on the students, using her computer and the computer software called "Go Guardian," which allowed her to see all of the open tabs on all the Chrome books in real time. She immediately noticed Student was on a different tab as everyone else searching what ingredients are needed to make a

bomb. Student had found the items on the Amazon website, including throwing knives, machetes, an archery set, and other items, and had placed them in a virtual shopping cart.

Student engaged in another incident of “maladaptive behavior” on March 12, 2024. He sent a series of emails to a female peer who Student considered a friend, during school, using their Monrovia email accounts and Monrovia technology. Student’s emails were inappropriate, sexually explicit, and coercive. Student’s behavior resulted in a risk assessment which identified a risk to self and others necessitating Student’s involuntary mental health hospitalization on March 13, 2024. Student did not return to Monrovia for the remainder of the 2023-2024 school year.

The evidence presented at hearing established that Student’s maladaptive behaviors from February 16 to March 13, 2024, of threatening others, and mental health decline requiring an involuntary mental health hospitalization were sudden, alarming, and out of character for Student. They could not have been predicted, addressed, or prevented by Monrovia’s provision of a one-to-one aide. Student evidenced serious mental health behavior which was beyond the scope of a one-to-one aide’s role and training to address. Student’s assertion that his behavior was caused by his not having a one-to-one aide is not persuasive as he had been without an aide for almost a year before suddenly demonstrating his “maladaptive behaviors.” Up to the February 16, 2024, math class bomb discussion, Student’s English, math and science teachers observed Student’s classroom behavior to be consistent with that described in Student’s February 8, 2024 IEP. Student had not demonstrated somatic symptoms since the impending removal of his one-to-one aide approximately one year prior to his somatic maladaptive school avoidance behavior in the spring of 2023.

Given the particular facts of this case, Student's maladaptive behavior in the spring of 2024 was sudden and inconsistent with his presentation throughout the 2023-2024 school year.

Accordingly, Student failed to prove Student required a one-to-one aide during the 2023-2024 school year up to March 21, 2024, to address his maladaptive behaviors. Monrovia prevailed on Student's Issue 2(B).

ISSUE 1(E): DID MONROVIA DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, FROM SEPTEMBER 16, 2022, BY FAILING TO MATERIALLY IMPLEMENT STUDENT'S IEP ACCOMMODATIONS OF (I) SOCIAL-EMOTIONAL CHECK-INS, (II) CUES TO ASSIST STUDENT WITH APPROPRIATE AND ON-TASK BEHAVIOR, AND (III) USE OF VERBAL ENCOURAGEMENT AND COACHING TO ASSIST STUDENT WITH SOCIALIZATION AND BEHAVIOR?

Student contends that Monrovia failed to materially implement Student's three challenged classroom accommodations during the 2022-2023 school year from September 16, 2022, and the failure to do so deprived Student of educational benefit and denied him a FAPE. Monrovia contends that it implemented Student's classroom accommodations throughout the 2022-2023 school year from September 16, 2022.

A FAPE means special education services that are provided in conformity with a Student's IEP. (20 U.S.C. § 1401(9)(D).) A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required

by the IEP. (*Van Duyn v. Baker School District* (9th Cir. 2007) 502 F.3d 811, 815, 822. (*Van Duyn*)). However, "The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*). The court in *Van Duyn* emphasized that IEP's are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and "not to decide on its own to no longer implement part or all of the IEP." (*Ibid.*)

A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child or caused a deprivation of educational benefits for the child. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

Student failed to sustain the burden of proof on this issue. Student's September 16, 2022 IEP contained the accommodations of teacher nonverbal or silent cues to assist Student with appropriate on-task behavior and use of verbal encouragement and coaching. These two accommodations were to be provided by Student's special education and general education teachers. Student's accommodation of social-emotional check-ins by Student's school counselor on alternating weeks from counseling sessions, as needed, was added as an accommodation in Student's amended IEP on March 29, 2023.

Student failed to offer any evidence that these providers failed to implement Student's accommodations. Student did not call the persons responsible for these accommodations to testify at hearing. Moreover, Allen implemented the challenged

accommodations in her role as one-to-one aide up to March 13, 2023. Allen's testimony established her implementation of Student's behavior intervention plan which required frequent social-emotional check-ins, and nonverbal and verbal encouragement.

Student failed to sustain the burden of proof on Student's Issue 1(E).

ISSUE 2(E): DID MONROVIA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO MATERIALLY IMPLEMENT STUDENT'S IEP ACCOMMODATIONS OF (I) SOCIAL-EMOTIONAL CHECK-INS, (II) CUES TO ASSIST STUDENT WITH APPROPRIATE AND ON-TASK BEHAVIOR, (III) USE OF VERBAL ENCOURAGEMENT AND COACHING TO ASSIST STUDENT WITH SOCIALIZATION AND BEHAVIOR, (IV) A DAILY BEHAVIOR LOG FROM SEPTEMBER 26, 2023, AND (V) BREAKS WHEN NEEDED TO LEAVE THE CLASSROOM, FROM SEPTEMBER 26, 2023?

Student contends that Monrovia denied Student a FAPE by failing to materially implement Student's five challenged accommodations during the 2023-2024 school year, up to March 21, 2024. Monrovia contends that it materially implemented all challenged accommodations as required by Student's IEP's during the 2023-2024 school year, up to March 21, 2024.

Monrovia materially implemented all five of the challenged accommodations as required by Student's IEP's. At the beginning of the 2023-2024 school year up to October 19, 2023, Student's September 16, 2022 IEP was in effect. As previously discussed, that IEP contained Student's accommodations of teacher nonverbal or silent cues to assist Student with appropriate on-task behavior and use of verbal

encouragement and coaching. Those same accommodations were also contained in Student's September 26, 2023 IEP, which was in effect through March 21, 2024. Student's September 26, 2023 IEP added breaks, as needed, as an accommodation. This accommodation did not specify the breaks were to allow Student to leave the classroom, as erroneously contended by Student.

Monrovia implemented Student's accommodations of providing nonverbal or silent cues to assist with appropriate and on-task behavior and using verbal encouragement and coaching during the 2023-2024 school year up to March 21, 2024. Monrovia similarly implemented Student's accommodation of breaks, as needed, from September 26, 2023, to March 13, 2024. Student's general education teachers were responsible for implementation of these accommodations in their classrooms. Student's English, math and science teachers, Ms. Alyssa Valmores, Ms. Amanda Alfieri, and Ms. Alyssia Jacques, respectively, testified at hearing. Their testimony established their understanding of Student's disability-related impulsivity, difficulty engaging in appropriate social communication, and challenges with self-regulation.

Valmores, Alfieri, and Jacques recognized early in the 2023-2024 school year that Student was highly intelligent, constantly intellectually curious, and easily bored when under-stimulated. They also quickly realized that these qualities, when combined with Student's impulsivity, social inappropriateness, need for sensory input, and inability to request help, required them to closely monitor and encourage Student to enable him to access the challenging honors educational curriculum. All three teachers offered verbal and nonverbal cues and encouragement daily to assist Student with appropriate and on-task behavior, reminded Student of his option to take a break, and provided breaks to Student when needed.



All three teachers gave an abundance of examples of such accommodations at hearing. These included their successful redirection of Student using serious looks, use of a thumbs-up/thumbs-down system to nonverbally give reinforcement for appropriate behavior or to check in with Student. Teachers frequently gave Student water breaks, restroom breaks, and opportunities to engage in tasks so that he could get up and move around for a quick break from his classwork. Valmores, Alfieri, and Jacques continuously verbally encouraged Student and commented when he demonstrated on-task and appropriate behavior and social communications. They coached Student by walking him through calculating how his grade would go up if he completed and turned in some missing assignments.

The preponderance of evidence presented at hearing established that Student's accommodations of nonverbal cues, verbal encouragement, and breaks when needed, were implemented by his teachers. Monrovia prevailed on Student's Issue 2(E)(ii), (iii), and (v).

## MONROVIA MATERIALLY IMPLEMENTED STUDENT'S ACCOMMODATION OF SOCIAL-EMOTIONAL CHECK-INS

Monrovia implemented Student's IEP accommodation of social-emotional check-ins on alternating weeks from counseling sessions, when needed, from the beginning of the 2023-2024 school year through March 13, 2024, Student's last day in Monrovia. This IEP accommodation was required by Student's March 29, 2023, and September 26, 2023 IEP's. Student's school counselor, Sean Provencio, was responsible for Student's accommodation of social-emotional check-ins during the 2023-2024

school year. Provencio's testimony at hearing established her provision of 30 minutes of therapy to Student on three Thursdays of each month, for a total of 90 minutes per month. Provencio was only on Student's school campus on Thursdays.

From the beginning of the 2023-2024 school year, up to January 24, 2024, Provencio offered Student check-ins at the time of her services or when she saw Student when he was on a break.

However, the accommodation specifically states the check-ins were to be provided "as needed," and the evidence established that Student did not need them. Student was not demonstrating maladaptive behaviors during that time and his teachers were able to redirect him when he demonstrated inappropriate behavior or social communication in the classroom.

Provencio provided social-emotional support for Student during her tri-weekly therapy sessions. Upon Student's demonstrated maladaptive somatic behaviors and school-related anxiety from January 24, 2024, Provencio participated in Student's safety plans and risk assessments and increased her check-ins by spreading her monthly ninety minutes out to facilitate more frequent support for Student.

The evidence established that Provencio implemented Student's accommodation of social-emotional check-ins on alternating weeks of her counseling sessions, as needed by Student. Monrovia prevailed on Student's Issue 2(E)(i).

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## MONROVIA MATERIALLY IMPLEMENTED STUDENT'S ACCOMMODATION OF A DAILY BEHAVIOR LOG FROM OCTOBER 19, 2023, TO MARCH 21, 2024

Student's accommodation of a daily behavior log was added to Student's September 26, 2023 IEP at Parent's request. The daily behavior log is the paper that Student would present to his teachers to earn points for specific behaviors, as discussed previously. It is also called a behavior contract.

The September 26, 2023 IEP team, including Parent, agreed that the daily behavior log/contract and behavior intervention plan had to be revised due to Student's changed behavior needs. The revised daily behavior log/contract and behavior intervention plan were developed, presented and approved at a continued IEP team meeting on October 19, 2023. The daily behavior log accommodation in Student's September 26, 2023 IEP, refers to the revised daily behavior log developed and approved at the October 19, 2023 IEP team meeting.

Since the revised daily behavior log could not have been implemented until developed and approved, Student failed to prove Monrovia failed to materially implement the daily behavior log accommodation from September 26, 2023, to October 19, 2023.

Monrovia materially implemented Student's accommodation of a daily behavior log as required by Student's September 26, 2023 IEP from October 19, 2023, to March 21, 2024. On October 20, 2023, the day after the daily behavior log was presented and approved by the October 19, 2023 IEP team, Monrovia provided the daily behavior log

to Student's teachers. From October 23, 2023, Monrovia made the daily behavior logs readily available to Student. Teachers regularly gently prompted Student to present the logs to them for completion.

However, Student demonstrated and expressed his disinterest in completing the behavior log despite prompts and encouragement from his teachers and counselor.

Although the daily behavior logs did not ultimately work to motivate Student, as they had the previous school year, the evidence presented at hearing established that Monrovia offered the accommodation of daily behavior logs and made the logs readily available to Student as required by his September 26, 2023 IEP, from October 23, 2023, to the last day of his attendance at Monrovia on March 13, 2024. Monrovia prevailed on Student's Issue 2(E)(iv).

#### ISSUE 2(F): DID MONROVIA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO MATERIALLY IMPLEMENT STUDENT'S BEHAVIOR INTERVENTION PLAN AND BEHAVIOR CONTRACT FROM SEPTEMBER 26, 2023?

Student contends that Student's failure to provide his daily behavior log/contract to his teachers and their resulting lack of completion demonstrated Monrovia's failure to materially implement the daily behavior log/contract. Student further contends that the rest of Student's behavior intervention plan was also not materially implemented by Monrovia. Lastly, Student asserts Monrovia's failure to track and report progress on Student's behavior intervention plan was a material failure to implement his IEP. Student contends all these alleged failures denied Student a FAPE.

Monrovia contends Student's September 26, 2023 IEP behavior intervention plan, developed and approved on October 19, 2023, was materially implemented up to March 21, 2024, as required by Student's September 26, 2023 IEP.

As previously established, Student's behavior plan and daily behavior log/contract had to be revised following the September 26, 2023 IEP team meeting to conform to Student's then current behavior presentation, as agreed by Student's September 26, 2023 IEP team, including Parent. They were revised, presented and approved at Student's October 19, 2023 IEP team meeting. As the behavior intervention plan and daily behavior log/contract was not developed and approved until October 19, 2023, Monrovia could not begin its implementation until that date.

Student thus failed to sustain his burden to prove a failure to implement the behavior plan and behavior contract from September 26, 2023, to October 19, 2023.

Student's behavior intervention plan, dated October 19, 2023, was in effect until March 21, 2024. The behavior intervention plan required a token economy reward system to reward Student for the behaviors the behavior intervention plan targeted. As previously established, the reward system token economy was the daily behavior log/contract just described in Student's Issue 2(E).

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MONROVIA MATERIALLY IMPLEMENTED STUDENT'S  
OCTOBER 19, 2023, BEHAVIOR INTERVENTION PLAN, INCLUDING  
THE COMPONENT OF THE DAILY BEHAVIOR LOG/BEHAVIOR  
CONTRACT, AS REQUIRED BY STUDENT'S OCTOBER 19, 2023 IEP,  
UP TO MARCH 21, 2024

The October 19, 2023, behavior intervention plan was developed to motivate Student to maintain his on-task behavior, which he had been able to maintain with teacher redirection the prior school year. Student still did not require an IEP goal for on-task behavior due to his continued progress. The behavior plan was developed with the purpose of maintaining Student's appropriate on-task behavior and to motivate Student to manage his behavior independently and take responsibility for his task completion. The behavior intervention plan required a point economy which was the daily behavior log/contract.

However, because the goal was for Student to now take responsibility for his task completion and on-task behavior, the October 19, 2023, behavior intervention plan was revised accordingly, and expressly stated:

Daily points will be tracked on a daily log that will be sent home to Parents. Parents can determine what items/activities can be exchanged for points in the home setting. [Student] is the one who is going to ask the teacher to give him the points. This is his responsibility. Teacher can ask him indirectly if he forgot (e.g. Do you have something for me before you go? Are you missing something?).

In addition to the daily behavior log reward system, Student's behavior intervention plan required breaks, frequent teacher prompts and verbal praise for appropriate behavior with fading as appropriate, task modification by breaking tasks down into smaller portions, and sensory supports.

From October 19, 2023, to March 21, 2024, Monrovia implemented the daily behavior plan/contract component of Student's September 26, 2023 IEP, to the extent required by his September 26, 2023 IEP. His teachers continuously provided gentle reminders to Student to provide them with the daily behavior logs/contracts. The logs were readily available to Student every day in his first period class. Some teachers also made copies of the logs and made them available to Student in their classrooms.

However, Student was no longer motivated by the behavior contract as established by his lack of interest in presenting the provided logs to his teachers and his regular assertions of his disinterest to his teachers, despite teacher prompt, encouragement and supports. Monrovia implemented the daily behavior log/contract to the extent required by the October 19, 2023 behavior intervention plan.

Monrovia materially implemented Student's behavior intervention plan, up to Student's last day at Monrovia on March 13, 2024. Valmores, Alfieri, and Jacques provided rewards to Student for appropriate and on-task behavior by frequently giving Student "cub cash" available to all Monrovia Student's as rewards which could be traded in for preferred items or activities. Student preferred to give his cub cash to his peers who responded with acknowledgement and appreciation and was observed by a teacher to provide Student social benefit. These teachers posted daily agendas for the day, visible to all students. Breaks were encouraged, prompted, and provided when needed by Student in all three classes. All three teachers provided sensory supports. Student

was offered a variety of visual, tactile, auditory, and olfactory sensory support items such as a lava lamp, squeeze balls, furry pillows, and earbuds for music. Teachers modified Student's work as needed and provided Student extra time to complete and turn in assignments for credit.

Dr. Johnson's independent evaluation report and testimony at hearing that Student was off task and his behavior intervention plan was not being followed, based on her November 2023 observations of Student, are rejected as inconsistent with the evidence presented at hearing. Dr. Johnson's conclusions that Student lacked a visual timer and visual schedule referred to Student's earlier behavior contract which was no longer in effect at that time.

Furthermore, teacher testimony established that most of the activities Student was noted by Dr. Johnson to engage in that she considered off task, were actually on-task and appropriate behaviors consistent with Student's teacher's approved and assigned tasks. Dr. Johnson concluded based on her observation of Student in math class that Student was observed to be off task for a majority of class time by enjoying a Chrome book activity wherein he was randomly punching in two numbers repeatedly, rather than participating in the task appropriately. She also noted frequent interactions with peers.

However, Ms. Amanda Alfieri, Student's math teacher, credibly testified at hearing, while referencing specific lines in Dr. Johnson's report detailing what Dr. Johnson deemed as off-task behavior, that Student was actually on task engaged in an assigned math fluency warm-up activity. Alfieri acknowledged that Student's



observed behavior may have included inappropriate social comments to peers, but her testimony established that such comments were made while Student was engaging in on-task activities, including group collaboration and discussion.

The testimony of Alfieri, who instructed Student throughout the 2023-2024 school year, was given greater weight on the issue of implementation of the behavior intervention plan and whether Student's observed behavior was off task than Dr. Johnson's testimony regarding her one-time observation of Student in her class. Accordingly, Monrovia prevailed on Student's Issue 2(F).

Student's closing brief assertion that he was denied a FAPE because progress on the behavior intervention plan was not tracked or reported is also rejected. Monrovia is required to track progress on IEP goals and report that progress to Parents. (20 U.S.C. § 1414 (d)(1)(A)(i)(III).) Here, Student no longer required an IEP goal for on-task behavior, and no goal was developed. The behavior intervention plan itself did not require the collection of data or tracking of progress.

#### DISTRICT'S ISSUE: DID MONROVIA'S IEP FOR STUDENT FINALIZED MARCH 15, 2024, OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT APPROPRIATE FOR STUDENT?

Monrovia contends Student's March 15, 2024 IEP complied with all procedural and substantive requirements and offered Student a FAPE. Student contends Monrovia's March 15, 2024 IEP denied Student a FAPE by failing to offer special education eligibility under autism, appropriate social skills training, one-to-one behavioral services to meet Student's maladaptive behavior needs, and appropriate IEP socialization and behavior goals.

There are two parts to the legal analysis of determining whether a school district's IEP offer complied with the IDEA. First, the school district must have complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the IEP must have been designed to meet the child's unique needs and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

California Education Code section 56501 allows a school district to file a complaint when "[t]here is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child," and when "[t]here is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child ...." (Ed. Code, § 56501, subds. (a)(1), (4).) California Code of Regulations, title 5, section 3042, subd. (a), describes a child's educational placement as including "... that unique *combination* of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP ...." (*Italics added.*) These provisions authorize OAH to determine the validity of entire educational programs.

Monrovia filed a due process complaint requesting OAH find its March 15, 2024 IEP offered Student a FAPE such that Monrovia may implement the March 15, 2024 IEP without parental consent. The burden of proof as to this issue rests with Monrovia. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast, supra*, 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).) The law requires that OAH only order implementation of an IEP without parental consent by determining that the entire IEP, including its procedural and substantive elements, comported with legal requirements and offered Student a FAPE.

Monrovia failed to meet its burden to establish that its March 15, 2024 IEP offer met the IDEA's substantive requirement to offer services to meet Student's unique needs. As previously determined in Student's Issues 1(C) and 2(C), Student required and continues to require direct social skills instruction to provide Student a FAPE. No direct social skills services were offered by Monrovia in the March 15, 2024 IEP.

As Monrovia's offer on March 15, 2024, failed to meet Student's unique needs for appropriate social skills services, no further analysis of Monrovia's offer is required. Student prevailed on Monrovia's sole issue at hearing.

## 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.

### STUDENT'S ISSUE 1(A):

Did Monrovia deny Student a FAPE during the 2022-2023 school year, from September 16, 2022, by failing to make Student eligible for special education under the eligibility category of autism?

Monrovia prevailed on Student's Issue 1(A).

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#### STUDENT'S ISSUE 1(B):

Did Monrovia deny Student a FAPE during the 2022-2023 school year, from September 16, 2022, by failing to offer Student appropriate behavior services to address his maladaptive behaviors, by not offering Student a one-to-one aide?

Monrovia prevailed on Student's Issue 1(B).

#### STUDENT'S ISSUE 1(C):

Did Monrovia deny Student a FAPE during the 2022-2023 school year, from September 16, 2024, by failing to offer Student appropriate social skills training?

Student prevailed on Student's Issue 1(C)

#### STUDENT'S ISSUE 1(D):

Did Monrovia deny Student a FAPE during the 2022-2023 school year, from September 16, 2022, by failing to offer Student appropriate goals behavior and socialization?

Monrovia prevailed on Student's Issue 1(D).

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### STUDENT'S ISSUE 1(E):

Did Monrovia deny Student a FAPE during the 2022-2023 school year, from September 16, 2022, by failing to materially implement Student's accommodations of social-emotional check-ins, cues to assist Student with appropriate and on-task behavior, and use of verbal encouragement and coaching to assist Student with socialization and verbalization?

Monrovia prevailed on Student's Issue 1(E).

### STUDENT'S ISSUE 2(A):

Did Monrovia deny Student a FAPE during the 2023-2024 school year, up to March 21, 2024, by failing to make Student eligible for special education under the category of autism?

Monrovia prevailed on Student's Issue 2(A).

### STUDENT'S ISSUE 2(B):

Did Monrovia deny Student a FAPE during the 2023-2024 school year, up to March 21, 2024, by failing to offer Student appropriate behavior services to address his maladaptive behaviors, by not offering Student a one-to-one aide?

Monrovia prevailed on Student's Issue 2(B).

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### STUDENT'S ISSUE 2(C):

Did Monrovia deny Student a FAPE during the 2023-2024 school year, up to March 21, 2024, by failing to offer Student appropriate social skills training?

Student prevailed on Student's Issue 2(C).

### STUDENT'S ISSUE 2(D):

Did Monrovia deny Student a FAPE during the 2023-2024 school year, up to March 21, 2024, by failing to offer Student appropriate goals in behavior and socialization?

Monrovia prevailed on Student's Issue 2(D).

### STUDENT'S ISSUE 2(E):

Did Monrovia deny Student a FAPE during the 2023-2024 school year, up to March 21, 2024, by failing to materially implement Student's IEP accommodations of social-emotional check-ins, cues to assist Student with appropriate and on-task behavior, use of verbal encouragement and coaching to assist Student with socialization and behavior, a daily behavior log from September 26, 2023, and breaks when needed to leave the classroom, from September 26, 2023?

Monrovia prevailed on Student's Issue 2(F).

## STUDENT'S ISSUE 2(F):

Did Monrovia deny Student a FAPE during the 2023-2024 school year, up to March 21, 2024, by failing to materially implement Student's behavior intervention plan and behavior contract, from September 26, 2023?

Monrovia prevailed on Student's Issue 2(F).

## DISTRICT'S ISSUE:

Did Monrovia's IEP for Student, finalized on March 15, 2024, offer Student a FAPE in the least restrictive environment?

Student prevailed on District's sole issue for hearing.

## REMEDIES

### STUDENT'S REMEDIES

Student prevailed on two issues heard and decided at hearing. Student prevailed on Issues 1(C) and 2(C) by proving that Monrovia denied Student a FAPE during the 2022-2024 school years from September 16, 2022, to March 21, 2024, by failing to offer Student appropriate social skills training.

Student's complaint requests as proposed resolutions for these failures:

- prospective appropriate social skills training,
- reimbursement of Parents' costs of privately funded social skills training, and
- compensatory social skills training.

Compensatory social skill services are the appropriate remedy to make up for Monrovia's denial of a FAPE by not providing appropriate social skills services to address Student's significant social skill deficits.

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia*, (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

Under federal and state 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); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an administrative law judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) 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. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374; *Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the school district had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the school district’s proposed placement does not provide a FAPE].)

The IDEA does not require that a private school placement provide all services that a disabled student needs as a condition to full reimbursement. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159; see also, *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048.)

In determining appropriate remedies in this matter, considering the evidence and Student's unique disabilities, Monrovia's failure to provide appropriate social skills instruction throughout the years resulted in serious consequences for Student and placed him at risk of further involvement in the mental health or juvenile justice systems, given his unique disabilities and circumstances.

Student proved the appropriateness of the U.C.L.A. PEERS Program at hearing. This is an appropriate compensatory educational remedy to make up for Monrovia's failure to offer social skills training throughout the time at issue in this case.

No evidence was presented at hearing of any privately funded social skills training. The only evidence presented at hearing regarding reimbursement for Parent's out of pocket expenses was related to Student's unilateral private placement at Fusion Academy, called Fusion. Student withdrew his request for the U.C.L.A. PEERS program in his closing brief, and instead argued that the most appropriate remedy in this matter is reimbursement of Parent's cost of enrollment and tuition at Fusion and related costs of equipment and supplies.

At the time of hearing, Student had been attending Fusion since summer of 2024. Student presented evidence at hearing regarding Fusion's program which consists of one-to-one academic instruction with limited and voluntary activities for peer interaction with adult presence. There was no evidence that Fusion offered or provided direct social skills services to address Student's significant social skill deficits and need for social skills training.

Although Parent's request for reimbursement for Student's placement at Fusion is understandable, it is not supported by the law. The purpose of special education services is to prepare students with disabilities for further education, work, and independent living.

(20 U.S.C. § 1400(d)(1)(A).) The purpose of special education services is not to provide a safe space to prevent harm to students resulting from untreated disabilities. Accordingly, Student's requested remedy of reimbursement of Parent's expenses related to Student's unilateral placement at Fusion is denied.

Student's due process complaint request for prospective social skills training outside of the U.C.L.A. PEERS Program, as a remedy for Monrovia's past failure to provide social skills training from September 16, 2022, to March 21, 2024, is denied. Student offered no persuasive authority for this request.

As Student failed to sustain his burden of proof as to all other issues, Student's remaining requests for relief are denied. The undersigned carefully considered all options presented for the FAPE denial found.

Despite seeking to withdraw the request for the U.C.L.A. PEERS program, the evidence at hearing established it was an appropriate remedy for the FAPE denial found. Accordingly, it is ordered.

## MONROVIA'S REMEDIES

Monrovia failed to sustain the burden of proof on its sole issue for hearing that its March 15, 2024 IEP offered Student a FAPE. Accordingly, its requested remedy of an OAH order allowing it to implement the March 15, 2024 IEP without parental consent is denied.

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## ORDER

1. Monrovia is ordered to reimburse Parents for the cost of one 16-week session of the U.C.L.A. PEERS program, or 16 sessions of an evidence-based equivalent program, or combination thereof, if the U.C.L.A. PEERS program is not available or unwilling to accept Student.
2. The total reimbursement cost for the U.C.L.A. PEERS or equivalent program shall not to exceed \$200 per session, for a total amount of \$3,200. Monrovia shall reimburse Parents within 30-days of Parent's presentation to Monrovia of proof of payment for services received by Student. All proof of payment must be submitted by December 31, 2026, or Student shall forfeit his relief.
3. All of Student's other requests for relief are denied.
4. Monrovia's request for relief is denied.

## RIGHT TO APPEAL THIS DECISION

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

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings