

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

CASE NO. 2023100526

DECISION

June 28, 2024

On October 16, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Los Angeles Unified School District. OAH continued the matter for good cause on November 21, 2023. On December 15, 2023, OAH granted Student's request to amend the complaint. OAH continued the matter for good cause on January 18, 2024. Administrative Law Judge Linda Dowd heard this matter by videoconference on April 9, 23, 24, 25, and 30, and May 1, 2, and 7, 2024.

Parent represented Student. Student did not attend the hearing. Attorney Patrick Balucan represented Los Angeles Unified. Barbara Rainen, Los Angeles Unified's due process specialist, attended hearing days one, four, and six on Los Angeles Unified's behalf. Andrew Vazquez, Los Angeles Unified's due process specialist attended hearing days two, three, five, seven, and eight on Los Angeles Unified's behalf.

At the parties' request, OAH continued the matter to May 30, 2024, for written closing arguments. The record was closed, and the matter was submitted on May 30, 2024.

ISSUES

In this Decision, a free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Los Angeles Unified deny Student a FAPE from October 16, 2021, through December 15, 2023, when it failed to identify, locate, or evaluate Student as a child with disabilities?
2. Did Los Angeles Unified deny Student a FAPE from October 16, 2021, through December 15, 2023, by failing to evaluate Student in a timely manner in all suspected areas of need and disability, specifically:
 - a. sensory processing,
 - b. executive functioning,
 - c. reading and written language,

- d. occupational therapy needs,
 - e. mental health, or
 - f. functional behavior?
- 3. Did Los Angeles Unified's failure to identify, locate, or evaluate Student in all areas of suspected disability from October 16, 2021, through December 15, 2023, deny Parent the opportunity to participate in the decision-making process?
- 4. Did Los Angeles Unified deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer goals to meet Student's needs for:
 - a. academics,
 - b. counseling,
 - c. behavior,
 - d. social skills, or
 - e. occupational therapy?
- 5. Did Los Angeles Unified deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for:
 - a. anxiety,
 - b. attention,
 - c. behavior,
 - d. depression,
 - e. executive functioning,

- f. counseling,
 - g. occupational therapy, or
 - h. social skills?
- 6. Did Los Angeles Unified deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide services to meet Student's needs for:
 - a. therapeutic counseling,
 - b. occupational therapy,
 - c. social skills, or
 - d. behavior?
- 7. Did Los Angeles Unified deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer a placement to meet Student's needs?
- 8. Did Los Angeles Unified deny Student a FAPE during the 2022-2023 school year, by failing to offer goals to meet Student's needs for:
 - a. academics,
 - b. counseling,
 - c. behavior,
 - d. social skills, or
 - e. occupational therapy?

9. Did Los Angeles Unified deny Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for:
 - a. anxiety,
 - b. attention,
 - c. behavior,
 - d. depression,
 - e. executive functioning,
 - f. counseling,
 - g. occupational therapy, or
 - h. social skills?
10. Did Los Angeles Unified deny Student a FAPE during the 2022-2023 school year, by failing to offer and provide services to meet Student's needs for:
 - a. therapeutic counseling,
 - b. occupational therapy,
 - c. social skills, or
 - d. behavior?
11. Did Los Angeles Unified deny Student a FAPE during the 2022-2023 school year, by failing to offer a placement to meet Student's needs?

12. Did Los Angeles Unified deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer goals to meet Student's needs for:
 - a. academics,
 - b. counseling,
 - c. behavior,
 - d. social skills, or
 - e. occupational therapy?
13. Did Los Angeles Unified deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for:
 - a. anxiety,
 - b. attention,
 - c. behavior,
 - d. depression,
 - e. executive functioning,
 - f. counseling,
 - g. occupational therapy, or
 - h. social skills?
14. Did Los Angeles Unified deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide services to meet Student's needs for:
 - a. therapeutic counseling,
 - b. occupational therapy,

- c. social skills, or
 - d. behavior?
15. Did Los Angeles Unified deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer a placement to meet Student's needs at the IEP team meetings held on:
- a. September 22, 2023,
 - b. September 28, 2023,
 - c. November 2, 2023, and
 - d. December 6, 2023?

JURISDICTION

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

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

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

Student was 16 years old and in tenth grade at the time of hearing. Student resided within Los Angeles Unified's geographic boundaries at all relevant times.

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ISSUE 1: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM OCTOBER 16, 2021, THROUGH DECEMBER 15, 2023, WHEN IT FAILED TO IDENTIFY, LOCATE, OR EVALUATE STUDENT AS A CHILD WITH DISABILITIES?

Student contends Los Angeles Unified was aware he had a disability, and his history of behavior problems and academic challenges put Los Angeles Unified on notice that Student required a special education assessment. Additionally, Student contends Parent requested an assessment during the 2021-2022 school year and the 2022-2023 school year but Los Angeles Unified failed to conduct any assessments.

Los Angeles Unified contends it did not fail in its child find duties because Parent previously revoked consent for special education services on August 16, 2016. Los Angeles Unified contends that revocation absolved it of any obligation to provide FAPE to Student, and therefore, relieved it of any child find duties. Additionally, Los Angeles Unified contends even if it did have a child find duty to Student it was prevented from assessing Student because Parent revoked consent to the spring 2022 and November 18, 2022, assessment plans.

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 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.)

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and assess all children with disabilities who need special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); Ed. Code, § 56301, subd. (a).) This duty is commonly referred to as “child find.” The purpose of the child find evaluation is to provide access to special education. (*Fitzgerald v. Camdenton R-III School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.)

A school district’s duty to assess a student’s eligibility for special education is triggered by any request for special education or assessment from the student’s parent. (Cal. Code Regs., tit. 5, § 3021(a).) Additionally, a school district still has a child find duty even if the parent has not requested special education testing or services. (*Reid v. Dist. of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 518 (*Reid*).)

A district’s duty to assess a child for a possible disability is broader than its duty to provide special education, and more easily triggered. A school district’s child find obligation toward a specific child is triggered when there is reason to suspect the child may have a disability and may need special education and related services. (Ed. Code, § 56301, subd. (a).) The Education Code describes such a child as “an individual with exceptional needs.” (Ed. Code, § 56026.) The obligation to assess for possible exceptional needs applies even if the child is advancing from grade to grade. (Ed. Code, § 56301, subd (b)(1).)

A disability becomes “suspected,” and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. (*Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016), cert. denied, 137 S. Ct. 1578 (2017) (*Timothy O.*).) A district may be put

on notice through concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or by other less formal indicators, such as the child's behavior. (*Id.* at pp. 1119-1121 [citing *Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

In deciding whether there is reason to suspect that a student has exceptional needs, a school district's appropriate inquiry is whether the student should be referred for an assessment, not whether the student actually qualifies for special education services. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D.Hawaii 2001) 158 F.Supp. 2d 1190, 1195.) School districts cannot rely on informal observations, or the subjective opinion of a staff member, to circumvent the district's responsibility to use the thorough and reliable procedures specified in the IDEA to assess a child in all areas of suspected disability. (*Timothy O., supra*, 822 F.3d at p. 1119.) Thus, the suspicion that a student might have an impairment affecting the student's educational performance is enough to trigger a need for assessment. (See, e.g., *Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1032.)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*) (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).)

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Once a child is identified as potentially needing special education services, the district must conduct an initial evaluation to determine whether the child is eligible for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.) No action may be taken to place a student with exceptional needs in a special education program without first conducting an assessment of the student's educational needs. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) The evaluation of a child previously exited from special education is considered an initial evaluation. (U.S. Dept. of Educ. Office of Special Education Programs, *Non-Regulatory Guidance* [regarding parental revocation of consent for continued special education and related services] (March 2009) ("If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, a [school district] must treat this request as a request for an initial evaluation under [34 Code of Federal Regulations section 300.301] (rather than a reevaluation under § 300.303).").)

An initial evaluation cannot be limited in scope but must assess a child's needs in all areas of suspected disability, to determine whether the child has a disability and gather the relevant functional, developmental, and academic information about the child necessary to develop an appropriate educational program. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320 (f); *Timothy O., supra*, 822 F3d at pp. 1111 and 1119.)

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A district receiving a referral for an assessment of a child has 15 days to provide the parent a written proposed assessment plan and explanation of the IDEA's procedural safeguards, including

- information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing;
- the timelines for completing each process;
- whether the process is optional; and
- the type of representative who may be invited to participate.

(Ed. Code, § 56321, subd. (a).)

The proposed assessment plan must

- be in language easily understood by the general public,
- be in the native language of the parent,
- explain the types of assessments to be conducted, and
- state that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b).)

The district must make reasonable efforts to obtain informed consent from the parent before conducting an initial assessment. (20 U.S.C. § 1414(a)(1)(D)(i); Ed. Code, § 56321, subd.(c)(1); 34 C.F.R. § 300.300(d)(5).) Once the parent consents in writing to the proposed assessment plan, the district has 60 days to complete the assessments and hold an IEP team meeting to discuss the assessment results and determine the student's special education eligibility and educational needs. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).) If the parent

does not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the district may, but is not required to, pursue the initial assessment. (20 U.S.C. § 1414(a)(1)(D)(ii); Ed. Code, § 56321, subd.(c)(2).) The district does not violate its child find obligations if it declines to pursue the initial assessment without the parent's consent. (20 U.S.C. § 1414(a)(1)(D)(iii); Ed. Code, § 56321, subd.(c)(3).)

Student began attending a Los Angeles Unified middle school for sixth grade in the 2019-2020 school year. Student remained at the same middle school for seventh and eighth grades. Prior to sixth grade, Student attended a nonpublic school, a specialized private school for students with disabilities. Los Angeles Unified placed Student at a nonpublic in second grade. Student had a history of trauma because of prolonged sexual assault at a Los Angeles Unified preschool. As a result of the trauma Student had a diagnosis of post-traumatic stress disorder.

Parent revoked consent to Student's special education services on August 16, 2016, so Student could attend a Los Angeles Unified school for sixth grade. Thus, Student was not eligible for special education during the 2021-2022, or 2022-2023 school years, but had an accommodation plan, called a 504 plan, developed pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104.1 et. seq. (2000).)

The Rehabilitation Act of 1973 is a federal anti-discrimination law and is different than the IDEA. Among other things, it protects the rights of children with disabilities in public schools by requiring districts to provide accommodations, and in some cases program modifications and services, to children who have physical or

mental impairments that substantially limit learning. Claims regarding defects in developing or implementing a 504 plan are not within OAH's special education jurisdiction, which is limited to due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Parent revoked consent to Student's special education services not because she believed he no longer needed them, but because the commute to the nonpublic school was an hour and a half each way and she struggled to get Student to school every day. Parent wanted Student to attend a neighborhood school and was told the only way he could attend was if she revoked consent to special education services. Los Angeles Unified assured Parent that Student could be reassessed for special education services in the future.

2021-2022 SCHOOL YEAR

Student began his eighth-grade year in August 2021. Student had some behavior incidents throughout the year. On September 21, 2021, Student made a social media post about bringing a gun to school and making the school pay. On October 20, 2021, Student was joking around with another student and pushed him over a stairwell ledge about six feet high. On January 28, 2022, Student poured chocolate milk on another student and ran away from the school. On February 10, 2022, Student pushed another student into the crosswalk.

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In addition to Student's behavior challenges he missed a substantial amount of school. During the 2021-2022 school year, Student had 61 full day absences out of 148 days he was enrolled. In April 2022, Student suffered a concussion, which explains some, but not all the absences.

None of the incidents on their own would put Los Angeles Unified on notice that Student required a special education assessment. However, by spring 2022, when looking at Student's behavior, in connection with his diagnosed autism, Los Angeles Unified had reason to suspect Student had a disability that required an assessment for special education.

Both Student and Los Angeles Unified agreed that at some point during spring 2022 Los Angeles Unified should have assessed Student for special education because Parent requested an assessment. Student did not provide any evidence or testimony as to when Parent requested the assessment. Although neither Student, nor Los Angeles Unified, produced an assessment plan, both acknowledged there were assessments in progress in spring 2022 that Parent ultimately canceled.

Los Angeles Unified conducted a vision screening on February 3, 2022. It is unclear when the 60-day assessment timeline began because there was no evidence of when Parent signed the assessment plan, but it is reasonable to use February 3, 2022, the first date an assessment was conducted, as the start of the 60-day timeline. Therefore, Los Angeles Unified should have completed the assessments and held an IEP team meeting on or before April 3, 2022.

Los Angeles Unified conducted a hearing screening on February 15, 2022. Sharon Montoya-Chavez, the high school nurse, explained the significance of the hearing screening. Montoya-Chavez was familiar with the screening process for a special education assessment. The only reason Los Angeles Unified would have screened Student for hearing during eighth grade was if it was part of an assessment for special education. Los Angeles Unified did not conduct any other assessments, produce any assessment reports, or hold an IEP team meeting.

On May 3, 2022, Parent emailed Megan Gastelum, the middle school assistant principal. Parent withdrew the IEP assessment request because she wanted Student to immediately transfer to Los Angeles Unified's virtual school.

Parent wanted Student to transfer because he did not meet culmination requirements for the middle school. The middle school used the term culmination to describe the end of the year celebration for eighth grade students. Culmination did not mean promotion to high school. The culmination requirements were to:

- pass all classes,
- have no more than three unsatisfactory marks on the final spring report card,
- have no outstanding tardy detentions,
- have a 96 percent attendance rate excluding any major illness,
- have all library, student store, and textbook fines cleared, and
- abide by school policies for no fighting, vandalizing, truancies, and drugs and alcohol.

Gastelum did not explain to Parent that Student would still be promoted to high school even if he did not meet culmination requirements. Nor did Gastelum explain where the school was in the special education assessment process or what could be done to complete the assessment prior to Student transferring. Ultimately, Student transferred to Los Angeles Unified's virtual school and finished eighth grade there.

During the 2021-2022 school year, Los Angeles Unified had reason to suspect Student had a disability that required an assessment for special education, at least as of the date Parent requested it. Therefore, Los Angeles Unified should have created an assessment plan within 15 days of Parent's request and held an IEP team meeting within 60 days, or by April 3, 2022.

Instead, Los Angeles Unified began, but did not complete, an assessment during the 2021-2022 school year. Los Angeles Unified relied on Parent's revocation of her assessment request on May 3, 2022. This reliance is unpersuasive given that Los Angeles Unified should have completed its assessment a full month earlier than Parent revoked her request.

Los Angeles Unified was on notice that Student displayed symptoms of a disability during spring 2022. Although Los Angeles Unified started a special education assessment it did not complete the assessment in a timely fashion, which it should have done by April 3, 2022. Parent's later revocation of consent for the assessment on May 3, 2022, did not absolve Los Angeles Unified of its child find duties. (*Reid, supra*, 401 F.3d at p. 518.)

2022-2023 SCHOOL YEAR

Student began his ninth-grade year on August 15, 2022, at a Los Angeles Unified high school. On September 23, 2022, during physical education, Student purposely and forcefully threw a ball at another student's face. On October 3, 2022, Student had an emotional outburst in health class and needed assistance to calm down. On March 6, 2023, Student got into a fight with another student. On March 8, 2023, Student got into another fight with a group of students.

Parent and school counselor Brenda Herrera exchanged several emails on October 3, and 6, 2022, regarding Student because of the October 3, 2022, incident. Parent and Herrera spoke and agreed to update Student's 504 plan.

However, on October 6, 2022, Parent also requested an IEP for Student. Herrera did not send Parent an assessment plan or forward the request for an IEP to the special education department. Los Angeles Unified did not create an assessment plan until November 18, 2022. Parent signed the assessment plan on December 7, 2022.

Several of Student's teacher's reported concerns about Student's behavior and classroom performance when Los Angeles Unified updated Student's 504 plan in December 2022. Gavin Ma, Student's math teacher, reported Student spit at and used profanity towards other students. Ma was also concerned about Student's absences and his temper in some social situations. Student's health teacher, Melinda Conde, was concerned about Student's emotional state. Student had outbursts in Conde's class that were not typical of students his age. After the October 3, 2022, incident in Conde's class, Student required a safety plan with regular check-ins with the psychiatric social

worker. Arcelia Reynosa, Student's Spanish teacher, was concerned about his focus in class because he was occasionally agitated. Rebecca Orellana, Student's biology teacher, was concerned that he wrote very slowly. Orellana was also concerned about Student's frustration when he could not get an assignment perfect.

Los Angeles Unified again had reason to suspect Student had a disability that required an assessment for special education as of October 6, 2022, when Parent requested an IEP. Los Angeles Unified should have created an assessment plan within 15 days of Parent's request for an IEP on October 6, 2022, or by October 21, 2022, and held an IEP team meeting within 60 days, excluding breaks of five days or more, or by January 23, 2023. Instead, Los Angeles Unified waited until November 18, 2022, to create an assessment plan for Student, which as explained in further detail below, obligated them to complete the assessment and hold an IEP team meeting by February 27, 2023. However, Los Angeles Unified did not start the assessment until February 27, 2023, the date the IEP team meeting should have occurred, and then, they never completed the assessment. Parent revoked consent to the assessment on March 24, 2023, because of the delay.

Los Angeles Unified failed in its child find duties when it failed to identify, locate, or evaluate Student as a child with disabilities within legal timelines after Parent's IEP request on October 6, 2022. Los Angeles Unified delayed developing an assessment plan by almost a month. Additionally, Los Angeles Unified did not complete the assessment during the 2022-2023 school year. Although Parent revoked consent to the assessment on March 24, 2023, that did not excuse Los Angeles Unified's failure to identify, locate, or evaluate Student before that date.

2023-2024 SCHOOL YEAR

Student began his tenth-grade year on August 14, 2023, enrolled at the same high school, but did not attend during the 2023-2024 school year. In July 2023, Student attempted suicide and was hospitalized from July 31, until August 9, 2023. Student attempted suicide by climbing on the roof of his house and trying to jump off. On August 3, 2023, prior to the start of the school year, Parent emailed Herrera and Hilda Price, the high school special education coordinator, and asked for an emergency IEP. Price responded on August 14, 2023, and told Parent she had an assessment plan ready for Parent to sign. Parent signed the assessment plan on August 23, 2023. Los Angeles Unified completed Student's assessment and held the initial IEP team meeting on September 22, 2023.

Los Angeles Unified met its child find obligation during the 2023-2024 school year when it developed an assessment plan on the first day of the school year. Nevertheless, for the two years in question, Student proved Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, when it failed to identify, locate, or evaluate Student as a child with disabilities after Parent's IEP request in early 2022, and again on October 6, 2022.

Student prevailed on Issue 1.

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ISSUE 2: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM OCTOBER 16, 2021, THROUGH DECEMBER 15, 2023, BY FAILING TO EVALUATE STUDENT IN A TIMELY MANNER IN ALL SUSPECTED AREAS OF NEED AND DISABILITY?

Student contends Los Angeles Unified failed to assess him during the 2021-2022 and 2022-2023 school years. Student further contends when Los Angeles Unified assessed him in September 2023, it failed to fully assess Student's

- sensory processing,
- executive functioning,
- reading and written language,
- occupational therapy needs,
- mental health, and
- functional behavior.

Student also contends Los Angeles Unified failed to fully assess his autism and traumatic brain injury. However, Student did not specifically allege a failure to assess autism or traumatic brain injury as issues. Therefore, this Decision does not address the alleged failure to assess autism or traumatic brain injury.

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Los Angeles Unified contends it attempted to assess Student in spring 2022 and again in fall 2022, but Parent revoked consent. Los Angeles Unified further contends it immediately assessed Student at the beginning of the 2023-2024 school year in

- sensory processing,
- executive functioning,
- reading and written language,
- mental health, and
- functional behavior.

Los Angeles Unified admits it should have conducted an occupational therapy assessment during the 2023-2024 school year to determine if Student had any fine motor deficits

2021-2022 AND 2022-2023 SCHOOL YEARS

As determined in the first issue, Los Angeles Unified failed to timely assess Student during the 2021-2022 and 2022-2023 school years. Los Angeles Unified failed to conduct any assessments except a vision and hearing screening during the 2022-2023 school year. The evidence established Los Angeles Unified should have completed the assessments and held an IEP team meeting by April 3, 2022. Los Angeles Unified's argument that it was prevented from assessing Student because Parent revoked consent to the assessment is not credible. Although Parent revoked consent to the assessment on May 3, 2022, it was not until after the 60-day timeline passed. Parent's revocation of consent did not absolve Los Angeles Unified of its failure to timely assess Student.

Los Angeles Unified's failure to assess Student during the 2022-2023 school year was more egregious. Los Angeles Unified should have produced an assessment plan by October 21, 2022, but did not give Parent an assessment plan until November 18, 2022. Even after Parent signed the November 18, 2022, assessment plan on December 7, 2022, Los Angeles Unified failed to assess Student and hold an IEP team meeting within 60 days, or before February 27, 2023. Instead, Los Angeles Unified began the assessment process on February 27, 2023, the date the IEP team meeting was due.

The only assessment Los Angeles Unified completed on February 27, 2023, was a vision screening. Hilda Price, the high school special education coordinator, attempted to schedule a Saturday session with a Los Angeles Unified school psychologist from the district office on March 4, 2023. However, prior to any Saturday sessions with district school psychologists, a health assessment conducted by a school nurse must be completed. This information was not communicated to Student or Parent until two days prior to the Saturday session, on Thursday, March 2, 2023. Student was absent for a few days, so he could not complete a hearing screening prior to the Saturday testing session. Los Angeles Unified canceled the Saturday testing session.

Adrian Espinosa Pineda, the high school resource specialist teacher, pulled Student out of class once on March 23, 2023, to conduct the Woodcock Johnson Test of Achievement, an academic standardized assessment. Espinosa Pineda could not complete the assessment during the one session, but never held a second session. Los Angeles Unified did not conduct any other assessments.

On March 24, 2023, Parent emailed Price and revoked consent to the assessment because Student did not want to be pulled out of class and Parent was frustrated about how long the process was taking. Price did not explain where Los Angeles Unified was in the assessment process or offer any solutions to accommodate Student despite having concerns about Student's well-being and knowing Student was struggling with attendance. Again, Parent's revocation of consent did not absolve Los Angeles Unified of its failure to timely assess Student.

2023-2024 SCHOOL YEARS

Parent emailed Price on August 3, 2023, to request an IEP for Student. Price responded with an assessment plan on August 14, 2023. Los Angeles Unified proposed to assess Student's

- health and development,
- academic performance,
- social emotional status,
- general ability,
- motor abilities, and
- language function.

Los Angeles Unified promptly assessed Student and held an initial IEP team meeting on September 22, 2023. Jennifer "Betty" White, the high school psychologist, conducted Student's assessment. White interviewed Parent and Student, reviewed Student's records, conducted assessments, and observed Student during testing. Espinosa Pineda conducted an academic assessment.

SENSORY PROCESSING

White assessed Student's sensory processing, or his ability to receive and make sense of information from his environment. On Parent's responses to the Autism Spectrum Rating Scale, Student had very elevated sensory sensitivity. However, teacher rating scales reported Student had average sensory sensitivity. White assessed Student's sensory motor functioning, the ability to combine the input of sensory information with the output of motor activity. Student performed in the average range on the sensory motor assessment but took longer than average to complete the assessment. Parent reported very elevated sensory sensitivity, but Student's teacher did not. White determined Student's sensory motor skills were in the high average range, but his output was excessively slow and impacted his performance. White noted a deficit in sensory motor skills.

Student did not prove Los Angeles Unified failed to assess him in sensory processing once it finally conducted the assessment.

EXECUTIVE FUNCTIONING

White assessed Student's executive functioning using the Cognitive Assessment System 2. Student scored in the average range in planned connections and expressive attention and the high average range on executive functioning with working memory. Student also scored in the average range on executive functioning without working memory.

Student did not prove Los Angeles Unified failed to assess him in executive functioning once it finally conducted the assessment.

READING AND WRITTEN LANGUAGE

White reviewed Student's academic records and determined Student's academic strength was in English language arts, including reading comprehension and written expression. Student exceeded standards in English language arts standardized testing. Espinosa Pineda's academic testing confirmed Student scored high average in reading and average in broad reading on the Woodcock Johnson Test of Achievement, Fourth Edition. Also on the Woodcock Johnson, Student's written language and broad written language scores were average, and his written expression was low average. Student's sentence reading fluency was well below average and his sentence writing fluency was below average. Espinosa Pineda observed Student during testing and attributed some of the low scores to his fine motor challenges.

Student did not prove Los Angeles Unified failed to assess his reading and written language abilities once it finally conducted the assessment.

OCCUPATIONAL THERAPY NEEDS

Los Angeles Unified admitted Student required an occupational therapy assessment during the 2023-2024 school year. White recommended an occupational therapy assessment to address fine motor concerns. Los Angeles Unified failed to conduct an occupational therapy assessment. Student proved Los Angeles Unified failed to conduct an occupational therapy assessment during the 2023-2024 school year.

MENTAL HEALTH AND FUNCTIONAL BEHAVIOR

White used the Behavior Assessment Scale for Children-Second Edition, Autism Spectrum Rating Scales, the Children's Depression Inventory-Second Edition, and the multidimensional Anxiety Scale for Children-Second Edition to assess Student's social emotional functioning and mental health needs. White also observed Student during testing and interviewed Student's ninth grade health teacher. Student was not attending school during White's assessment which limited White's behavior observations. White acknowledged Student's July 2023 suicide attempt and determined Student presented with significant social emotional needs across settings and required mental health supports to access the general education curriculum. White also determined Student would benefit from educationally related intensive counseling services.

Student did not prove Los Angeles Unified failed to assess his mental health or functional behavior needs once it finally conducted the assessment.

Student proved Los Angeles Unified failed to evaluate him in a timely manner in all suspected areas of need and disability from October 16, 2021, through December 15, 2023. Los Angeles Unified failed to timely assess Student during the 2021-2022 and 2022-2023 school years. When Los Angeles Unified did assess Student in the 2023-2024

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school year, White's assessment report assessed Student's sensory processing, executive functioning, reading and written abilities, mental health, and functional behavior, but it recommended an occupational therapy assessment that Los Angeles Unified failed to conduct.

Student prevailed on Issue 2, subsections a through f.

ISSUE 3: DID LOS ANGELES UNIFIED'S FAILURE TO IDENTIFY, LOCATE, OR EVALUATE STUDENT IN ALL AREAS OF SUSPECTED DISABILITY FROM OCTOBER 16, 2021, THROUGH DECEMBER 15, 2023, DENY PARENT THE OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS?

Student contends Los Angeles Unified denied Parent the opportunity to participate in the decision-making process between October 16, 2021, and August 2023, by failing to assess Student and provide Parent with an assessment report or an IEP to review. Student further contends Los Angeles Unified failed to evaluate his autism and traumatic brain injury when it did assess him in September 2023, and it failed to conduct an occupational therapy assessment. Student contends instead of discussing Parent's concerns at the September 22, 2023 IEP team meeting, Los Angeles Unified told Parent to file for due process.

Los Angeles Unified contends Parent fully participated in the four IEP team meetings between Student's initial IEP team meeting on September 22, 2023, and December 15, 2023. Los Angeles Unified did not address parental participation prior to September 22, 2023.

Parents must have the opportunity to participate in IEP team meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to such child. (20 U.S.C. § 1415(b)(1).) In this regard, an educational agency must ensure that one or both of the parents of a child with a disability is present at each IEP team meeting. (34 C.F.R. § 300.322(a); Ed. Code, §§ 56341.5, subd. (a), 56342.5.) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904]. Parental participation in the IEP process is also considered “(a)mong the most important procedural safeguards.” (*Amanda J. ex rel Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

As determined in the first and second issues, Los Angeles Unified failed to identify, locate, and timely evaluate Student for special education services. Los Angeles Unified’s failure to assess Student in the 2021-2022 and 2022-2023 school years, and its incomplete fall 2023 assessment were procedural violations of the IDEA. (*R.B., ex rel. F.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 940 (*R.B.*) (“we have, more often than not, held that an IDEA procedural violation denied the child a FAPE.”).) A procedural violation of the IDEA constitutes a denial of a FAPE only if the violation:

1. impeded the child’s right to a FAPE;
2. significantly impeded the parent’s opportunity to participate in the decision-making process; or
3. caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); *Target Range School, supra*, 960 F.2d at p. 1484.)

Here, Los Angeles Unified's failure to assess Student in the 2021-2022 and 2022-2023 school years significantly impeded Parent's opportunity to participate in the decision-making process. Student was struggling academically and behaviorally during the 2021-2022 and 2022-2023 school years and attempted suicide in July 2023. Without an assessment and IEP, Parent was left to navigate counseling options and academic supports on her own. Had Los Angeles Unified timely completed the assessment during the 2021-2022 or 2022-2023 school years, the IEP team could have supported Student.

After Los Angeles Unified ultimately assessed Student in the 2023-2024 school year, at the September 22, 2023 IEP team meeting, the team had a significant discussion about the initial assessment report, Student's eligibility, and Parent's concerns. White recommended eligibility for special education under emotional disturbance. White did not have a diagnosis of autism for Student, nor did she find Student presented with significantly affected verbal or nonverbal communication skills or social interactions. Student did present with characteristics of autism but because Student was not attending school at the time, White did not have sufficient data to qualify Student under autism. White explained this to Parent during the initial IEP team meeting and Parent had the opportunity to ask questions and be part of the discussion. The IEP team agreed to recess the meeting so Parent could discuss the eligibility determination with Student and their lawyer.

Los Angeles Unified did not specifically assess Student for a traumatic brain injury, or how it impacted his education. However, White did look at the specific learning disability category which includes conditions such as a brain injury.

But, as determined in the second issue, Los Angeles Unified failed to conduct an occupational therapy assessment. The failure to conduct an occupational therapy assessment significantly impeded Parent's opportunity to participate in the decision-making process. White identified fine motor concerns as part of the initial assessment. White did not determine Student met the specific learning disability category, partially because his fine motor challenges impacted his written expression, speed, and tolerance during the assessment process. Without an occupational therapy assessment to determine the extent of Student's fine motor challenges, Parent was left without crucial information to make an informed decision regarding Student's needs.

Student proved Los Angeles Unified's failure to identify, locate, or evaluate Student in all areas of suspected disability from October 16, 2021, through December 15, 2023, denied Parent the opportunity to participate in the decision-making process. Student prevailed on Issue 3.

ISSUES 4, 5, 6, AND 7: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM OCTOBER 16, 2021, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, BY FAILING TO OFFER GOALS, ACCOMMODATIONS, SERVICES, AND PLACEMENT TO MEET STUDENT'S NEEDS?

Student contends Los Angeles Unified should have assessed him during the 2021-2022 school year, found him eligible for special education services, and developed an IEP.

Los Angeles Unified contends it was not obligated to offer Student FAPE during the 2021-2022 school year because Student was not eligible for special education. Los Angeles Unified contends it was prevented from providing Student FAPE because Parent revoked consent to Student's special education services in 2016, and Parent revoked consent to the pending special education assessment on May 3, 2022.

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

An IEP is a written statement for each child with a disability that should include:

- the child's present levels of academic achievement and functional performance,
- a statement of measurable annual goals,
- a description of how the child's progress on the annual goals will be measured,
- a statement of special education and related services,
- any program modifications or supports necessary to allow the child to make progress,

- an explanation of the extent to which the child will not be educated with nondisabled children in general education classes, and
- the frequency, location, and duration of the services. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, § 56345, subd (a).)

Student was not yet eligible for special education services during the 2021-2022 school year.

STUDENT PROVED LOS ANGELES UNIFIED SHOULD HAVE FOUND HIM ELIGIBLE FOR SPECIAL EDUCATION SERVICES

Inherent in the allegation that Los Angeles Unified denied Student FAPE by not developing an IEP is the allegation that Los Angeles Unified would have found Student eligible if it had assessed him during the 2021-2022 school year.

California law defines an individual with exceptional needs as one who, because of a disability, requires instruction and services which cannot be provided with modification of the regular school program to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subds. (a) and (b).) A child may have a qualifying disability, yet not be found eligible for special education if the student does not meet the IDEA eligibility criteria. (See *Hood v. Encinitas Union School Dist.* (9th Cir. 2007) 486 F.3d 1099, 1107-1108, and 1110.)

Eligibility also requires a student to be unable to access the curriculum without instruction and services not available in the regular curriculum (Ed. Code § 56026, subd. (b).) Educational benefit is not limited to academic needs, but also includes social and

emotional needs that can affect academic progress such as school behavior and socialization. (*County of San Diego v. California Special Education hearing office, et al.*, 93 F. 3D 1458, 1467 (9th Cir. 1996.)

Los Angeles Unified should have assessed Student and held an initial IEP team meeting by April 3, 2022. Student proved that based on the information Los Angeles Unified had at that time, he would have been eligible for special education services. Student was previously eligible for special education services until Parent revoked consent on August 16, 2016. However, that revocation was not a result of an IEP team determining Student no longer required special education services. Los Angeles Unified did not assess Student in 2016 to determine if he still qualified for special education services. In April 2022, Los Angeles Unified was aware Student had a diagnosis of post-traumatic stress disorder because of prolonged sexual abuse by a Los Angeles Unified preschool teacher. Los Angeles Unified was also aware Student had a 504 plan for autism that was not effective in getting him to class.

Los Angeles Unified ultimately found Student eligible for special education under emotional disturbance because he had:

- an inability to learn because of his emotional state and significant mental health difficulties,
- an inability to build or maintain satisfactory relationships because of his aggressive behaviors,

- inappropriate types of behaviors under normal circumstances because of his anxiety, somatization, suicidal ideation, and poor emotional regulation,
- a general pervasive mood of unhappiness or depression because of his trouble sleeping, restricted eating, and significant anxiety and negativistic behavior, and
- a tendency to develop physical symptoms or fears associated with personal and school problems because of his anxiety and somatization.

Many of these symptoms and behaviors existed in April 2022. Student had post-traumatic stress disorder. Student was aggressive toward peers, one of the examples White used was Student's February 10, 2022, discipline incident of pushing another student into the crosswalk. Additionally, Student's attendance records show he was struggling to attend class. Los Angeles Unified's knowledge of Student's traumatic history and diagnosis of post-traumatic stress disorder, coupled with Student's behavior and attendance during the 2021-2022 school year, establish that had Los Angeles Unified assessed Student and held an initial IEP team meeting before April 3, 2022, an IEP team would have found Student eligible for special education.

FAPE DENIAL

As determined in the first and second issues, Los Angeles Unified failed to identify Student as a child needing special education services and failed to timely evaluate Student in all areas of suspected need. Los Angeles Unified's failure to assess

Student was a procedural violation. Los Angeles Unified assessed Student in September 2023, and determined he was eligible for special education services. Los Angeles Unified should have assessed Student in spring 2022. Student proved Los Angeles Unified's failure to assess him denied him FAPE by establishing he was eligible for special education; therefore, Los Angeles Unified's failure to assess him deprived him of educational benefit. (*R.B., supra*, 496 F.3d at p. 942.)

During the 2021-2022 school year, Student struggled academically and socially. Although Student did not offer evidence of his grades, he struggled enough that Parent ultimately transferred him to Los Angeles Unified's virtual school because he did not meet eighth-grade culmination requirements. In addition, Student had four significant behavior incidents during the 2021-2022 school year.

Student proved Los Angeles Unified should have assessed him and held an initial IEP team meeting by April 3, 2022. Given Student's history, behavior incidents, attendance record, and failure to meet culmination requirements, Student proved he would have been found eligible for special education services. By establishing Student would have been found eligible for special education services, Student proved Los Angeles Unified should have developed an IEP with goals, accommodations, services, and placement.

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GOALS

Los Angeles Unified did not develop any goals for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have developed goals to meet Student's needs in academics, counseling, behavior, social skills, and occupational therapy.

Student established he struggled with attendance and behavior during the 2021-2022 school year. Therefore, Los Angeles Unified should have developed goals in the areas of counseling, behavior, and social skills. Student did not present any evidence of grades or academic struggles, or occupational therapy needs. Student failed to prove Los Angeles Unified should have developed goals in the areas of academics or occupational therapy.

ACCOMMODATIONS

Los Angeles Unified did not offer any accommodations for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have offered accommodation to meet Student's needs for

- anxiety,
- attention,
- behavior,
- depression,
- executive functioning,

- counseling,
- occupational therapy, and
- social skills.

Student established he struggled with attendance and behavior during the 2021-2022 school year. Therefore, Los Angeles Unified should have offered accommodations to address Student's anxiety, attention, behavior, depression, counseling, and social skills. Student did not present any evidence of executive functioning struggles, or occupational therapy needs. Student failed to prove Los Angeles Unified should have offered accommodations to address executive functioning or occupational therapy.

SERVICES

Los Angeles Unified did not offer any services for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have offered services to meet Student's needs for therapeutic counseling, occupational therapy, social skills, and behavior.

Student established he struggled with attendance and behavior during the 2021-2022 school year. Therefore, Los Angeles Unified should have offered services to meet Student's needs for therapeutic counseling, social skills, and behavior. Student did not present any evidence of occupational therapy needs. Student failed to prove Los Angeles Unified should have offered occupational therapy services.

PLACEMENT

Los Angeles Unified did not offer placement for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have offered a placement to meet his needs. Los Angeles Unified should have developed an IEP for Student which would have included a placement offer. Student proved Los Angeles Unified denied him FAPE by failing to offer placement.

Student proved Los Angeles Unified denied him FAPE during the 2021-2022 school year, by failing to offer goals, accommodations, services, and placement to meet his needs. Student prevailed on Issue 4, subsections b, c, and d, Issue 5, subsections a, b, c, d, f, and h, Issue 6, subsections a, c, and d, and Issue 7. Los Angeles Unified prevailed on Issue 4, subsections a, and e, Issue 5, subsections e and g, and Issue 6, subsection b.

ISSUES 8, 9, 10, AND 11: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, BY FAILING TO OFFER GOALS, ACCOMMODATIONS, SERVICES, AND PLACEMENT TO MEET STUDENT'S NEEDS?

Student contends Los Angeles Unified should have assessed him during the 2022-2023 school year, found him eligible for special education services, and developed an IEP.

Los Angeles Unified contends it was not obligated to offer Student FAPE during the 2022-2023 school year because Student was not eligible for special education. Los Angeles Unified contends it was prevented from providing Student FAPE because Parent had revoked consent to Student's special education services in 2016, and Parent revoked consent to the special education assessment on March 24, 2023.

As determined in the first and second issues, Los Angeles Unified failed to identify Student as a child needing special education services and failed to timely evaluate Student in all areas of suspected need. As determined in Issues 4, 5, 6, and 7, Los Angeles Unified denied Student FAPE during the 2021-2022 school year by failing to assess and find him eligible for special education services and develop an IEP. Because Los Angeles Unified should have assessed Student in spring 2021, and thereafter in the 2022-2023 school year, and Student proved he would have been eligible and entitled to FAPE, Los Angeles Unified's FAPE denial continued through the 2022-2023 school year.

As discussed in Issue 1, Student's behavioral struggles continued and worsened in the 2022-2023 school year, and Student struggled academically. During the first semester of the 2022-2023 school year, Student passed English and biology with a C, Spanish, health, and physical education with a D, and failed algebra. By the second semester, Student failed all his classes except physical education and introduction to ethnic studies. Student missed 93 out of 177 days during the 2022-2023 school year. While part of that was due to an injury, many of the days were unexcused.

In addition to Student's academic and behavior struggles, Student still had the same traumatic background that Los Angeles Unified was aware of, and post-traumatic stress disorder. Similarly, many of the symptoms and behaviors that White used to

propose eligibility under emotional disturbance existed during the 2022-2023 school year. Student struggled academically, he was aggressive toward peers, and he had inappropriate behaviors that required a safety plan.

Student proved Los Angeles Unified should have assessed him and held an initial IEP team meeting by April 3, 2022. As determined in Issues 4, 5, 6, and 7, Student established he would have been found eligible for special education services. Therefore, Los Angeles Unified should have developed an IEP with goals, accommodations, services, and placement to address Student's academic, school avoidance, and behavior issues.

GOALS

Los Angeles Unified did not develop any goals for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have developed goals to meet Student's needs in

- academics,
- counseling,
- behavior,
- social skills, and
- occupational therapy.

Student established he struggled with academics, attendance, and behavior during the 2022-2023 school year. Therefore, Los Angeles Unified should have developed goals in the areas of academics, counseling, behavior, and social skills.

Student did not present any evidence of occupational therapy needs. Student failed to prove Los Angeles Unified should have developed goals to address occupational therapy needs.

ACCOMMODATIONS

Los Angeles Unified did not offer any accommodations for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have offered accommodation to meet Student's needs for

- anxiety,
- attention,
- behavior,
- depression,
- executive functioning,
- counseling,
- occupational therapy, and
- social skills.

Student established he struggled with academics, attendance, and behavior during the 2022-2023 school year. Therefore, Los Angeles Unified should have offered accommodations to address Student's

- anxiety,
- attention,
- behavior,
- depression,

- counseling, and
- social skills.

Student did not present any evidence of executive functioning struggles, or occupational therapy needs. Student failed to prove Los Angeles Unified should have offered accommodations to address executive functioning or occupational therapy.

SERVICES

Los Angeles Unified did not offer any services for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have offered services to meet Student's needs for therapeutic counseling, occupational therapy, social skills, and behavior.

Student established he struggled with academics, attendance, and behavior during the 2022-2023 school year. Therefore, Los Angeles Unified should have offered services to meet Student's needs for therapeutic counseling, social skills, and behavior. Student did not present any evidence of occupational therapy needs. Student failed to prove Los Angeles Unified should have offered occupational therapy services.

PLACEMENT

Los Angeles Unified did not offer placement for Student because it failed to assess Student and hold an initial IEP team meeting. Student alleged Los Angeles Unified should have offered a placement to meet his needs. Los Angeles Unified should have developed an IEP for Student which would have included a placement offer. Student proved Los Angeles Unified denied him FAPE by failing to offer placement.

Student proved Los Angeles Unified denied him FAPE during the 2022-2023 school year, by failing to offer goals, accommodations, services, and placement to meet his needs. Student prevailed on

- Issue 8, subsections a through d,
- Issue 9, subsections a, b, c, d, f, and h,
- Issue 10, subsections a, c, and d, and
- Issue 11.

Los Angeles Unified prevailed on Issue 8, subsection e, Issue 9, subsections e and g, and Issue 10, subsection b.

ISSUE 12: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR THROUGH DECEMBER 15, 2023, BY FAILING TO OFFER GOALS TO MEET STUDENT'S NEEDS FOR ACADEMICS, COUNSELING, BEHAVIOR, SOCIAL SKILLS, OR OCCUPATIONAL THERAPY?

Student contends the math goal in his initial IEP dated September 22, 2023, was inappropriate because it would not be addressed in his math class. Student contends the counseling goal was not personalized to his individual needs. Student further contends Los Angeles Unified did not develop behavior, social skills, or occupational therapy goals despite documented concerns in those areas.

Los Angeles Unified contends it offered appropriate goals in all areas of need in the September 22, 2023 IEP. Los Angeles Unified further contends White's assessment identified reading fluency, writing, math calculation and fluency, and social emotional concerns as areas of deficit and it created goals in those areas.

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (U.S. Dept. of Educ., Office of Special Education and Rehabilitation Services March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].) "But there is no specific form of measurement required by statute or caselaw." (*Capistrano Unified School Dist. v. S.W.*, 21 F.4th 1125, 1134 (9th Cir. 2021), cert. denied, (*Capistrano*), Cf. *R.P. ex rel. C.P. v. Prescott Unified School Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011) (goal measurement can be "based on teachers' subjective observations"). "Thus, goals could be measured ordinally (e.g., no improvement/some improvement/ significant improvement), quantitatively, or in some other way." (*Capistrano, supra*, 21 F.4th at p. 1134.)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals

will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D.Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE: “[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit.” (*Adams, supra*, 195 F.3d at p. 1149.)

The IDEA requires IEP goals to target a student’s needs but does not require an IEP to contain every goal from which a student might benefit. (34 C.F.R. § 300.137; *Capistrano, supra*, 21 F.4th at p. 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (34 C.F.R. § 300, Appendix A – Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

Los Angeles Unified held Student’s initial IEP team meeting on September 22, 2023. The IEP team reconvened three more times prior to December 15, 2023, on September 28, 2023, November 2, 2023, and December 6, 2023. That IEP found Student eligible for special education and related services under emotional disturbance. It offered Student a placement in general education with related services in specialized academic instruction and educationally related intensive counseling services. Parent consented to the IEP on September 28, 2023.

Los Angeles Unified developed five goals for the September 22, 2023, IEP, in reading, writing, math, behavior, and counseling. Student did not present any evidence or testimony that the reading or writing goals were inappropriate. However, the math goal was in geometry and Student was in algebra one. Ma was Student's algebra one teacher during the 2022-2023 school year. Student failed algebra one and was repeating the class during the 2023-2024 school year. Although Ma did not draft the math goal, he reviewed it and opined that it would not be addressed in an algebra one class. Furthermore, Ma explained to the IEP team that Student needed the algebra foundational skills before moving on to geometry. Despite that explanation, the IEP team did not modify the goal. As written, the math goal was not appropriate for Student.

Student's behavior support goal was to use self-management skills to help with his feelings and help him cope and return to classroom participation with minimal staff support. Student's counseling goal was to develop strategies to resolve negative feelings and situations.

Neither of these goals were reviewed during the IEP team meetings held between September 22, 2023, and December 15, 2023. Student did not attend school between the beginning of the 2023-2024 school year and December 15, 2023. The IEP team did not discuss how Student could use self-management skills to return to the classroom when he was not attending school. The IEP team also did not discuss how Student could develop strategies to resolve negative feelings and situations if he was not attending school. Without discussing the goals during the IEP team meeting, it is

impossible to determine if Student had a reasonable chance of attaining them within a year. Neither party presented evidence at hearing on whether Student could have attained the goals within a year.

White recommended an occupational therapy assessment in her report as well as at the September 22, 2023, IEP team meeting. White, along with several of Student's teachers from the 2022-2023 school year noted fine motor concerns with Student's ability to write and how long it took him to accomplish tasks. Despite these concerns, Los Angeles Unified did not develop a fine motor goal for Student.

Student proved Los Angeles unified denied him FAPE from September 22, 2023, through December 15, 2023, by failing to offer a fine motor goal, offering an inappropriate math goal, and failing to offer a behavior or counseling goal that Student had a reasonable chance of attaining within a year. Student prevailed on Issue 12, subsections a through e.

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ISSUE 13: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR THROUGH DECEMBER 15, 2023, BY FAILING TO OFFER AND PROVIDE ACCOMMODATIONS TO MEET STUDENT'S NEEDS FOR ANXIETY, ATTENTION, BEHAVIOR, DEPRESSION, EXECUTIVE FUNCTIONING, COUNSELING, OCCUPATIONAL THERAPY, OR SOCIAL SKILLS?

Student contends Los Angeles Unified failed to offer accommodations to address his anxiety, attention, behavior, depression, executive functioning, counseling, occupational therapy, and social skills.

Los Angeles Unified contends it offered several instructional accommodations to meet Student's identified needs.

An IEP must contain a statement of the related services, supplementary aides and services, program modifications, and supports that will allow the student to advance toward his goals, access and make progress in his curriculum, participate in activities, and to be educated with other disabled and nondisabled children. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56345, subd. (a)(4).)

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The September 22, 2023, IEP and amendments offered the following accommodations:

- preferential seating at the front of the classroom or near a teacher,
- repeated and simplified instructions and directions,
- written directions in addition to verbal directions,
- frequent checks for understanding,
- use of graphic organizers,
- chunking new information, and breaking larger tasks into smaller chunks to promote work completion,
- different opportunities to show mastery,
- the option to work alone for presentations and projects,
- extended time on assignments,
- extended testing in chunks with breaks,
- the use of teacher-approved notes for math tests and quizzes,
- small group testing,
- opportunities to retest or resubmit work for a higher grade,
- use of a calculator, word processor, or computer,
- open note testing for all non-memorization tests,
- a visual list of expected tasks, and
- repeated instructions as necessary whenever possible.

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Student did not provide any evidence or testimony that the accommodations Los Angeles Unified offered did not address his

- anxiety,
- attention,
- behavior,
- depression,
- executive functioning,
- counseling,
- occupational therapy, or
- social skills.

Nor did Student provide any evidence regarding what additional accommodations he required.

Los Angeles Unified prevailed on Issue 13, subsections a through h.

ISSUE 14: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR THROUGH DECEMBER 15, 2023, BY FAILING TO OFFER AND PROVIDE SERVICES TO MEET STUDENT’S NEEDS FOR THERAPEUTIC COUNSELING, OCCUPATIONAL THERAPY, SOCIAL SKILLS, OR BEHAVIOR?

Student contends the therapeutic counseling Los Angeles Unified offered was at an inappropriate place as Student could not access services at the local high school due to safety concerns. Student contends Los Angeles Unified did not offer any occupational

therapy or social skills support. Student further contends although Los Angeles Unified mentioned the behavior intervention plan at the September 22, 2023, IEP team meeting, it did not offer any behavior services.

Los Angeles Unified contends it identified academic needs in math calculation and fluency, reading fluency, and writing, in addition to deficits and in social emotional functioning. Los Angeles Unified contends it offered an appropriate level of resource specialist program support to address Student's academic needs and educationally related intensive counseling services to address Student's social emotional deficits. Los Angeles Unified further contends it developed a behavior intervention plan to address Student's behavior deficits. While Los Angeles Unified admitted it should have conducted an occupational therapy assessment, it did not address Student's allegation regarding occupational therapy services.

An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged exclusively in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* At p. 1149, citing *Fuhrmann v. East Hanover Bd. Of Educ.*, 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

The services Los Angeles Unified offered at the September 22, 2023, IEP team meeting were not objectively reasonable based on the information the IEP team had at the time. School started for the 2023-2024 school year on August 14, 2023. By September 22, 2023, Student had not attended one day of school. White's assessment was based on interviews, two days of assessment with Student, and information gathered regarding Student's 2022-2023 school year. During the 2022-2023 school

year, Student failed nearly all his classes and missed 93 out of 177 days. Student attempted suicide in July 2023 by trying to jump off the roof of his home. Student's assigned high school was four stories high. Parent could not send Student back to his assigned high school without a safety plan.

White's assessment determined Student exhibited challenges with anxiety, emotional regulation, avoidance, and interpersonal relations including social problems. White also recommended educationally related intensive counseling services in a small therapeutic environment and teaching Student cognitive skills to manage negative thinking and conflict resolution skills. White determined Student met the eligibility category for emotional disturbance and that his emotional needs were severe. White recommended an occupational therapy assessment to address Student's documented fine motor concerns.

Despite White's recommendations and concerns, Los Angeles Unified only offered Student resource specialist program support and 240 minutes per month of educationally related intensive counseling services at Student's assigned high school. White recommended 240 minutes per month of counseling because that was the most she thought Los Angeles Unified could offer. There was no discussion at any of the four IEP team meetings between September 22, 2203, and December 15, 2023, about how Student could access the counseling services if it was not safe for him to attend school. However, the entire IEP team agreed Student's assigned high school was not a safe environment for him because of his suicide attempt. While Los Angeles Unified offered some counseling, it did not implement the service. Los Angeles Unified was aware that Student could not attend his assigned high school, but it did not offer the service at a different location or through a virtual or telehealth model.

Los Angeles Unified developed a behavior intervention plan, but it was not reviewed at any of the four IEP team meetings between September 22, 2023, and December 15, 2023. Additionally, the identified behavior was poor attendance, but the behavior intervention plan did not offer any strategies or services to assist in getting Student to school. Los Angeles Unified did not offer any social skills support or occupational therapy.

Student proved Los Angeles Unified denied him FAPE from September 22, 2023, through December 15, 2023, by failing to offer and provide services to meet Student's needs for therapeutic counseling, occupational therapy, social skills, and behavior.

Student prevailed on Issue 14, subsections a through d.

ISSUE 15: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR THROUGH DECEMBER 15, 2023, BY FAILING TO OFFER A PLACEMENT TO MEET STUDENT'S NEEDS AT THE IEP TEAM MEETINGS HELD ON SEPTEMBER 22, 2023, SEPTEMBER 28, 2023, NOVEMBER 2, 2023, AND DECEMBER 6, 2023?

Student contends Los Angeles Unified inappropriately offered a general education placement at his assigned high school at each of the four IEP team meetings between September 22, 2023, and December 15, 2023. Student contends his assigned high school was not a safe environment and he required a residential treatment center placement.

Los Angeles Unified admitted the September 22, 2023 IEP did not offer Student an appropriate placement. Los Angeles Unified admitted the evidence presented at hearing demonstrated Student required a more intensive therapeutic setting than placement in a general education program. However, Los Angeles Unified contends Student did not require a residential treatment center at the September 22, 2023 IEP team meeting.

Parent requested a residential treatment center for Student when she requested an IEP on August 3, 2023. The IEP team did not discuss placement at the September 22, 2023 initial IEP team meeting. Parent was concerned about qualifying Student for special education services under emotional disturbance because she thought there was a stigma attached to emotional disturbance.

At the September 28, 2023 IEP team meeting, White recommended a nonpublic school for Student. Parent was hesitant about that idea because Student was not leaving his room and she was not aware of any nonpublic schools that offered extracurricular activities like music and sports so Student could work on his social skills. Instead of researching nonpublic school options, Los Angeles Unified offered a general education program at Student's assigned high school. However, the IEP team agreed Student's assigned high school was not safe for him because of his suicide attempt. This discrepancy was not addressed, and Los Angeles Unified continued to offer an inappropriate placement.

The IEP team reconvened on November 2, 2023. Parent requested the IEP team meeting to discuss placement options. Parent continued to request a residential treatment center for Student. Los Angeles Unified did not think it had enough

information to offer a residential treatment center. Los Angeles Unified requested Parent sign releases of information so it could speak with Student's outside therapist. The IEP team agreed to reconvene once Los Angeles Unified gathered more information.

The IEP team reconvened on December 6, 2023. Los Angeles Unified did not offer a residential treatment center at that IEP team meeting. There was a significant discussion about what information Student's therapist provided, but ultimately Los Angeles Unified offered a nonpublic school. Parent disagreed but consented to the IEP's implementation. However, Los Angeles Unified did not change the placement offer on the IEP. Student's offered placement was still general education at his assigned high school. Los Angeles Unified offered Student a residential treatment center at the February 22, 2024 IEP team meeting.

Student's situation did not change between September 22, 2023, and February 22, 2024. Student remained suicidal and required a small therapeutic setting that could address his mental health needs and get him to school. Los Angeles Unified should have offered a residential treatment center when the IEP team first discussed placement options at the September 28, 2023 IEP team meeting. Student prevailed on Issues 15 b, c, and d.

Los Angeles Unified did not deny Student a FAPE at the September 22, 2023 IEP team meeting by failing to offer a placement because Parent requested additional time to consider eligibility and the team agreed to reconvene six days later to discuss goals, accommodations, services, and placement. Los Angeles Unified prevailed on Issue 15 a.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, when it failed to identify, locate, or evaluate Student as a child with disability.

Student prevailed on Issue 1.

ISSUE 2 SUBSECTION a:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, by failing to evaluate Student in a timely manner in all suspected areas of need and disability, specifically sensory processing.

Student prevailed on Issue 2 subsection a.

ISSUE 2 SUBSECTION b:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, by failing to evaluate Student in a timely manner in all suspected areas of need and disability, specifically executive functioning.

Student prevailed on Issue 2 subsection b.

ISSUE 2 SUBSECTION C:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, by failing to evaluate Student in a timely manner in all suspected areas of need and disability, specifically reading and written language.

Student prevailed on Issue 2 subsection c.

ISSUE 2 SUBSECTION d:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, by failing to evaluate Student in a timely manner in all suspected areas of need and disability, specifically occupational therapy needs.

Student prevailed on Issue 2 subsection d.

ISSUE 2 SUBSECTION e:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, by failing to evaluate Student in a timely manner in all suspected areas of need and disability, specifically mental health.

Student prevailed on Issue 2 subsection e.

ISSUE 2 SUBSECTION f:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through December 15, 2023, by failing to evaluate Student in a timely manner in all suspected areas of need and disability, specifically functional behavior.

Student prevailed on Issue 2 subsection f.

ISSUE 3:

Los Angeles Unified's failure to identify, locate, or evaluate Student in all areas of suspected disability from October 16, 2021, through December 15, 2023, denied Parent the opportunity to participate in the decision-making process.

Student prevailed on Issue 3.

ISSUE 4 SUBSECTION a:

Los Angeles Unified did not deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer goals to meet Student's needs for academics.

Los Angeles Unified prevailed on Issue 4 subsection a.

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ISSUE 4 SUBSECTION b:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer goals to meet Student's needs for counseling.

Student prevailed on Issue 4 subsection b.

ISSUE 4 SUBSECTION c:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer goals to meet Student's needs for behavior.

Student prevailed on Issue 4 subsection c.

ISSUE 4 SUBSECTION d:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer goals to meet Student's needs for social skills.

Student prevailed on Issue 4 subsection d.

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ISSUE 4 SUBSECTION e:

Los Angeles Unified did not deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer goals to meet Student's needs for occupational therapy.

Los Angeles Unified prevailed on Issue 4 subsection e.

ISSUE 5 SUBSECTION a:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for anxiety.

Student prevailed on Issue 5 subsection a.

ISSUE 5 SUBSECTION b:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for attention.

Student prevailed on Issue 5 subsection b.

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ISSUE 5 SUBSECTION c:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for behavior.

Student prevailed on Issue 5 subsection c.

ISSUE 5 SUBSECTION d:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for depression.

Student prevailed on Issue 5 subsection d.

ISSUE 5 SUBSECTION e:

Los Angeles Unified did not deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for executive functioning.

Los Angeles Unified prevailed on Issue 5 subsection e.

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ISSUE 5 SUBSECTION f:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for counseling.

Student prevailed on Issue 5 subsection f.

ISSUE 5 SUBSECTION g:

Los Angeles Unified did not deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for occupational therapy.

Los Angeles Unified prevailed on Issue 5 subsection g.

ISSUE 5 SUBSECTION h:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide accommodations to meet Student's needs for social skills.

Student prevailed on Issue 5 subsection h.

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ISSUE 6 SUBSECTION a:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide services to meet Student's needs for therapeutic counseling.

Student prevailed on Issue 6 subsection a.

ISSUE 6 SUBSECTION b:

Los Angeles Unified did not deny Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide services to meet Student's needs for occupational therapy.

Los Angeles Unified prevailed on Issue 6 subsection b.

ISSUE 6 SUBSECTION c:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide services to meet Student's needs for social skills.

Student prevailed on Issue 6 subsection c.

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ISSUE 6 SUBSECTION d:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer and provide services to meet Student's needs for behavior.

Student prevailed on Issue 6 subsection d.

ISSUE 7:

Los Angeles Unified denied Student a FAPE from October 16, 2021, through the end of the 2021-2022 school year, by failing to offer a placement to meet Student's needs?

Student prevailed on Issue 7.

ISSUE 8 SUBSECTION a:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer goals to meet Student's needs for academics.

Student prevailed on Issue 8 subsection a.

ISSUE 8 SUBSECTION c:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer goals to meet Student's needs for behavior.

Student prevailed on Issue 8 subsection c.

ISSUE 8 SUBSECTION d:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer goals to meet Student's needs social skills.

Student prevailed on Issue 8 subsection d.

ISSUE 8 SUBSECTION b:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer goals to meet Student's needs for counseling.

Student prevailed on Issue 8 subsection b.

ISSUE 8 SUBSECTION e:

Los Angeles Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to offer goals to meet Student's needs for occupational therapy.

Los Angeles Unified prevailed on Issue 8 subsection e.

ISSUE 9 SUBSECTION a:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for anxiety.

Student prevailed on Issue 9 subsection a.

ISSUE 9 SUBSECTION b:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for attention.

Student prevailed on Issue 9 subsection b.

ISSUE 9 SUBSECTION c:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for behavior.

Student prevailed on Issue 9 subsection c.

ISSUE 9 SUBSECTION d:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for depression.

Student prevailed on Issue 9 subsection d.

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ISSUE 9 SUBSECTION e:

Los Angeles Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for executive functioning.

Los Angeles Unified prevailed on Issue 9 subsection e.

ISSUE 9 SUBSECTION f:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for counseling.

Student prevailed on Issue 9 subsection f.

ISSUE 9 SUBSECTION g:

Los Angeles Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for occupational therapy.

Los Angeles Unified prevailed on Issue 9 subsection g.

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ISSUE 9 SUBSECTION h:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide accommodations to meet Student's needs for social skills.

Student prevailed on Issue 9 subsection h.

ISSUE 10 SUBSECTION a:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide services to meet Student's needs for therapeutic counseling.

Student prevailed on Issue 10 subsection a.

ISSUE 10 SUBSECTION b:

Los Angeles Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to offer and provide services to meet Student's needs for occupational therapy.

Los Angeles Unified prevailed on Issue 10 subsection b.

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ISSUE 10 SUBSECTION c:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide services to meet Student's needs for social skills.

Student prevailed on Issue 10 subsection c.

ISSUE 10 SUBSECTION d:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer and provide services to meet Student's needs for behavior.

Student prevailed on Issue 10 subsection d.

ISSUE 11:

Los Angeles Unified denied Student a FAPE during the 2022-2023 school year, by failing to offer a placement to meet Student's needs?

Student prevailed on Issue 11.

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ISSUE 12 SUBSECTION a:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer goals to meet Student's needs for academics.

Student prevailed on Issue 12 subsection a.

ISSUE 12 SUBSECTION b:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer goals to meet Student's needs for counseling.

Student prevailed on Issue 12 subsection b.

ISSUE 12 SUBSECTION c:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer goals to meet Student's needs for behavior.

Student prevailed on Issue 12 subsection c.

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ISSUE 12 SUBSECTION d:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer goals to meet Student's needs for social skills.

Student prevailed on Issue 12 subsection d.

ISSUE 12 SUBSECTION e:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer goals to meet Student's needs for occupational therapy.

Student prevailed on Issue 12 subsection e.

ISSUE 13 SUBSECTION a:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for anxiety.

Los Angeles Unified prevailed on Issue 13 subsection a.

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ISSUE 13 SUBSECTION b:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for attention.

Los Angeles Unified prevailed on Issue 13 subsection b.

ISSUE 13 SUBSECTION c:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for behavior.

Los Angeles Unified prevailed on Issue 13 subsection c.

ISSUE 13 SUBSECTION d:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for depression.

Los Angeles Unified prevailed on Issue 13 subsection d.

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ISSUE 13 SUBSECTION e:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for executive functioning.

Los Angeles Unified prevailed on Issue 13 subsection e.

ISSUE 13 SUBSECTION f:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for counseling.

Los Angeles Unified prevailed on Issue 13 subsection f.

ISSUE 13 SUBSECTION g:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for occupational therapy.

Los Angeles Unified prevailed on Issue 13 subsection g.

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ISSUE 13 SUBSECTION h:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide accommodations to meet Student's needs for social skills.

Los Angeles Unified prevailed on Issue 13 subsection h.

ISSUE 14 SUBSECTION a:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide services to meet Student's needs for therapeutic counseling.

Student prevailed on Issue 14 subsection a.

ISSUE 14 SUBSECTION b:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide services to meet Student's needs for occupational therapy.

Student prevailed on Issue 14 subsection b.

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ISSUE 14 SUBSECTION c:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide services to meet Student's needs for social skills.

Student prevailed on Issue 14 subsection c.

ISSUE 14 SUBSECTION d:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer and provide services to meet Student's needs for behavior.

Student prevailed on Issue 14 subsection d.

ISSUE 15 SUBSECTION a:

Los Angeles Unified did not deny Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer a placement to meet Student's needs at the IEP team meeting held on September 22, 2023.

Los Angeles Unified prevailed on Issue 15 subsection a.

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ISSUE 15 SUBSECTION b:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer a placement to meet Student's needs at the IEP team meeting held on September 28, 2023.

Student prevailed on Issue 15 subsection b.

ISSUE 15 SUBSECTION c:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer a placement to meet Student's needs at the IEP team meeting held on November 2, 2023.

Student prevailed on Issue 15 subsection c.

ISSUE 15 SUBSECTION d:

Los Angeles Unified denied Student a FAPE during the 2023-2024 school year through December 15, 2023, by failing to offer a placement to meet Student's needs at the IEP team meeting held on December 6, 2023.

Student prevailed on Issue 15 subsection d.

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REMEDIES

Student proved Los Angeles Unified failed to identify, locate, and timely evaluate him in all areas of suspected disability. Student also proved Los Angeles Unified denied Parent the opportunity to participate in the decision-making process. Finally, Student proved Los Angeles Unified denied him FAPE by failing to develop an IEP, and offer appropriate goals, services, and placement.

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

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d at p. 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft “appropriate relief” for a party. (*Puyallup, supra*, 31 F.3d at p. 1496.) An award of compensatory education need not provide “day-for-day compensation.” (*Id.* at p.1497.) 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. Dist. of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524.) The award must be fact specific. (*Ibid.*)

Student prevailed on Issues 1, 2, 3, 7, 11, 12, and 14. Student also prevailed on

- Issue 4, subsections b, c, and d,
- Issue 5, subsections a, b, c, d, f, and h,
- Issue 6, subsections a, c, and d,
- Issue 8, subsections a through d,
- Issue 9, subsections a, b, c, d, f, and h,
- Issue 10, subsections a, c, and d, and
- Issue 15, subsections b, c, and d.

Student is entitled to a remedy for Los Angeles Unified's failure to

- identify, locate, and timely evaluate him in all areas of suspected disability,
- provide Parent the opportunity to participate in the decision-making process,
- develop an IEP, and
- offer appropriate goals, services, and placement.

Issues 1, 2, and 3, involve Los Angeles Unified's failure to identify, locate, timely assess Student and to ensure parental participation. Los Angeles Unified remedied part of its failure by conducting a psychoeducational assessment in September 2023. However, Los Angeles Unified did not conduct an occupational therapy assessment.

Student is currently placed at a residential treatment center; therefore, it is reasonable to order Los Angeles Unified to fund an occupational therapy independent educational evaluation.

Los Angeles Unified contends it offered Student an occupational therapy independent educational evaluation on March 19, 2024, and its attempt to remedy its failure to assess should be considered. Student is entitled to an occupational therapy independent educational evaluation. If Los Angeles Unified has already funded an occupational therapy independent educational evaluation, then Student has received a remedy. However, Los Angeles Unified did not present any evidence that it had contracted with an assessor to provide Student with an occupational therapy independent educational evaluation; therefore, Los Angeles Unified is still ordered to fund one occupational therapy independent educational evaluation by an assessor who meets the qualifications stated in Los Angeles Unified's 2024 guidelines for independent educational evaluations.

Issues 4, 5, 6, 7, 8, 9, 10, and 11 involve Los Angeles Unified's failure to develop an IEP for Student. Los Angeles Unified should have assessed Student and held an initial IEP team meeting on or before April 3, 2022. Los Angeles Unified failed to do so.

That failure denied Student academic, behavioral, and counseling services that he required. Student's discipline logs, grades, and attendance records all show a student who was struggling. Had Los Angeles Unified assessed Student and held his initial IEP team meeting by April 3, 2022, he would have received services for 45 school days during the 2021-2022 school year, 180 school days during the 2022-2023 school year, and 29 school days during the 2023-2024 school year before Los Angeles Unified held

Student's initial IEP team meeting on September 22, 2023. Student would have received a combination of academic, counseling, and behavioral support because of academic needs as evidenced by his failing grades, and his social emotional and social skills needs as evidenced by his poor attendance, and behavior issues.

Therefore, it is equitable to award him 254 hours of compensatory education to be used for academics, counseling, social skills, or wraparound services. Because Student is currently placed in a residential treatment center with an unknown discharge date, the hours shall be provided by a certified nonpublic agency and available for three years from the date of this Decision.

Issues 12, 14, and 15, involve Los Angeles Unified's failure to offer appropriate goals, services, and placement once it finally assessed Student and held an IEP team meeting. Los Angeles Unified should have offered a residential treatment center on September 28, 2023. Los Angeles Unified subsequently offered a residential treatment center, but not until February 22, 2024. Student missed out on five months of a therapeutic placement because of Los Angeles Unified's failure to offer an appropriate placement. Additionally, the IEP Los Angeles Unified gave to the residential treatment center to determine if it could meet Student's needs was the September 22, 2023 IEP with inappropriate goals and services. Student is entitled to a remedy for Los Angeles Unified's failure to offer an appropriate placement for five months. In this case, it is equitable to order Los Angeles Unified to fund Student's placement at Parent's preferred residential treatment center. Student presented evidence that he was accepted at San Diego Center for Children. However, that was over six months ago. If San Diego Center for Children will still accept Student, then Los Angeles Unified is ordered to fund his placement there until the IEP team determines he is ready to

stepdown to a less restrictive placement. If San Diego Center for Children will no longer accept Student, then Parent can find another acceptable certified residential treatment center at which to place Student.

ORDER

1. Within 30 days of the date of this Decision, Los Angeles Unified shall fund an occupational therapy independent educational evaluation for Student from an assessor of Parent's choosing. If Los Angeles Unified has already funded an occupational therapy independent educational evaluation in 2024, Student has already received the remedy and Los Angeles Unified does not have to fund another occupational therapy evaluation. The assessor shall meet the qualifications stated in Los Angeles Unified's 2024 guidelines for independent educational evaluations.
2. Los Angeles Unified shall fund 254 hours of compensatory education from a certified nonpublic agency of Parent's choice to be used for academics, counseling, social skills, or wraparound services.
3. Within 30 days of the date of this Decision, Los Angeles Unified shall give Parent a list of certified nonpublic agencies it has contracts with to provide compensatory services.
4. If Parent selects a certified nonpublic agency Los Angeles Unified does not have a contract with, Los Angeles Unified shall establish direct payment to the certified nonpublic agency Parent selects within 30 days of when Parent notifies Los Angeles Unified of her selection.

5. The compensatory education hours awarded will be available until the end of the 2026-2027 regular school year and any hours that remain at that time will be forfeited.
6. Los Angeles Unified shall fund Student's placement at San Diego Center for Children if San Diego Center for Children will still accept Student.
7. If San Diego Center for Children will not accept Student, Los Angeles Unified shall fund Student's placement at another certified residential treatment center of Parent's choosing.
8. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings