

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

CASE NO. 2024020026

DECISION

August 8, 2024

On February 1, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Accelerated Charter Elementary School and Los Angeles Unified School District. On February 1, 2024, "The Accelerated Schools" served and filed a notice of representation by Atkinson, Andelson, Loya, Rudd & Romo, and specifically by attorney Karen Gilyard. On February 2, 2024, the same attorney served and filed a corrected notice of representation in the name of "Accelerated Charter Elementary School." On February 28, 2024, Student and Los Angeles Unified filed a joint request for mediation on May 29, 2024, and continuance of the due process hearing to July 23, 2024. On February 29, 2024, Student notified OAH he had "signed and finalized a Settlement Agreement ... with the Accelerated Charter Elementary School ONLY" and requested to dismiss Accelerated

Charter Elementary School, with prejudice. On February 29, 2024, OAH dismissed Accelerated Charter Elementary School. On March 5, 2024, OAH granted Student's and Los Angeles Unified's request for mediation and continuance.

On July 9, 2024, Los Angeles Unified filed a motion to be dismissed from the case on the basis that during the 2022-2023 and 2023-2024 school years, Student attended Accelerated Charter Elementary School, sometimes called ACES, which Los Angeles Unified described as an "independent charter school." Los Angeles Unified asserted Student's complaint failed to allege Los Angeles Unified was involved in making educational decisions about Student or provided special education or related services to Student, and Los Angeles Unified therefore was not a proper party to the proceeding and should be dismissed. On July 11, 2024, Student opposed Los Angeles Unified's motion to dismiss arguing Los Angeles Unified was a proper party because it chartered Accelerated Charter Elementary School and Accelerated Charter Elementary School was a "public school belonging to the Los Angeles Unified School District," and because Los Angeles Unified failed to assert in its February 20, 2024 response to Student's complaint that it was not the local educational agency responsible for providing Student a free appropriate public education, called FAPE. Student argued Los Angeles Unified had therefore waived this "defense" and it was untimely to assert it three days before the prehearing conference.

The July 12, 2024 Order Following Prehearing Conference ordered the parties to file by July 19, 2024, further briefs addressing the issue of whether Los Angeles Unified was an appropriate party to this matter. OAH ordered the first issue to be addressed at the July 23, 2024 hearing would be whether Los Angeles Unified had responsibility for providing a FAPE to Student during the timeframe in Student's complaint. The July 12,

2024 Order specified Student had the burden of proof that Los Angeles Unified had an obligation to provide Student a FAPE during the timeframe in Student's complaint and is an appropriate party to this matter. The parties timely filed supplemental briefs.

Administrative Law Judge Kara Hatfield heard this matter by videoconference on July 23, 2024. Attorneys Diana Maltz, Heather Zakson, and Layla Forghani represented Student. Parent attended the hearing on Student's behalf. Attorney Patrick Balucan represented Los Angeles Unified. Patrick Johnson, Research and Resolution Specialist of the Due Process Department, attended the hearing on Los Angeles Unified's behalf.

At the start of the hearing, the ALJ bifurcated the hearing to hold an initial hearing regarding whether Los Angeles Unified was an appropriate party to this matter, which would be decided by examining whether Accelerated Charter Elementary School or Los Angeles Unified was the local educational agency responsible for providing special education and related services to Student. If Los Angeles Unified was not the responsible local educational agency, the ALJ would determine whether there was any other legal theory under which Student could seek recovery from Los Angeles Unified for any alleged denial of a FAPE during the timeframe in Student's complaint.

Student called one witness, Parent, and Los Angeles Unified called one witness, La Shun Washington-Ajayi, Coordinator of Charter Operated Programs, Division of Special Education.

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At the parties' request, the matter was continued to August 20, 2024, for further testimony on the substantive issues of Student's complaint. The parties requested and were granted until July 26, 2024, to submit written arguments regarding the preliminary issue of Los Angeles Unified's status as a proper party. The parties timely filed their arguments on July 26, 2024.

## ISSUE

Did Los Angeles Unified have responsibility for providing a FAPE to Student during the timeframe in Student's complaint?

## JURISDICTION

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

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

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

Student was 12 years old and entering seventh grade at the time of hearing. Student resided within the geographic boundaries of Los Angeles Unified at all relevant times. But Student enrolled in and attended Accelerated Charter Elementary School since kindergarten, including for the 2021-2022, 2022-2023, and 2023-2024 school years, as relevant to the facts and issues alleged in Student's complaint. In the individualized education programs, called IEPs, for Student developed in October 2021 and October 2022, Student was eligible for special education and related services under the category

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called other health impairment, related to his medical diagnosis of attention deficit hyperactivity disorder. Student alleged he also was diagnosed with "Disorder of Written Expression (dysgraphia)" and that as a result of his disabilities he struggled with

- attention,
- executive functioning,
- reading,
- writing, and
- behavior.

At an IEP team meeting on June 8, 2023, the IEP team concluded Student was not eligible for special education and related services.

In February 2024, Student filed a complaint against both Accelerated Charter Elementary School and Los Angeles Unified, contending without distinction that both Accelerated Charter Elementary School and Los Angeles Unified denied Student a FAPE regarding the October 2022 IEP and then the determination in June 2023 that Student was no longer eligible for special education and related services, among other claims Student withdrew on July 12, 2024.

**ISSUE: DID LOS ANGELES UNIFIED HAVE RESPONSIBILITY FOR PROVIDING A FAPE TO STUDENT DURING THE TIMEFRAME IN STUDENT'S COMPLAINT?**

Student contends Accelerated Charter Elementary School is chartered through Los Angeles Unified, "belongs to the District," and Los Angeles Unified is the local educational agency responsible for providing Student special education and related services during the timeframe in Student's complaint. Student further contends if Accelerated Charter Elementary School is a local educational agency responsible for

providing Student special education and related services during the timeframe in Student's complaint, Los Angeles Unified also was responsible for providing Student a FAPE during the timeframe in Student's complaint because Los Angeles Unified's name appeared on the IEP documents in the field for stating the local educational agency and had its name and logo on various special education documents such as the notice of procedural rights and safeguards Parents repeatedly received. Student additionally argues that if Accelerated Charter Elementary School is the local educational agency responsible for providing Student special education and related services during the timeframe in Student's complaint, Los Angeles Unified also was responsible for providing Student a FAPE during the timeframe in Student's complaint because when Los Angeles Unified sent Student a response to Student's complaint on February 20, 2024, Los Angeles Unified did not at that time state it was not the responsible local educational agency. Student argues Los Angeles Unified's conduct in having Accelerated Charter Elementary School use Los Angeles Unified's forms and letterhead, and not immediately denying responsibility for Student's FAPE, makes Los Angeles Unified responsible for Student's FAPE regardless of Accelerated Charter Elementary School's legal status as a local educational agency.

Los Angeles Unified contends the facts that it chartered Accelerated Charter Elementary School and that Accelerated Charter Elementary School was a member of the single-district special education local plan area Los Angeles Unified operated, called Los Angeles Unified School District SELPA, did not make Los Angeles Unified responsible for providing Student a FAPE during the timeframe of Student's complaint. Los Angeles Unified contends Accelerated Charter Elementary School is a directly funded charter school, making it a local educational agency under California law, and therefore solely responsible for complying with all provisions of the IDEA and implementing

regulations. Los Angeles Unified contends only Accelerated Charter Elementary School was responsible for providing Student a FAPE during the timeframe in Student's complaint, and that Los Angeles Unified is not a proper party to this case.

Los Angeles Unified argues Accelerated Charter Elementary School's use of forms and notices created by and bearing the logo of Los Angeles Unified, as a single-district SELPA of which Accelerated Charter Elementary School was a member, did not convert Los Angeles Unified into the local educational agency responsible for providing Student a FAPE. Further, Los Angeles Unified asserts its failure to deny responsibility in its February 20, 2024 response to Student's complaint does not bar it from arguing it is not the responsible local educational agency. Los Angeles Unified contends the passage of time before asserting its legal position that Accelerated Charter Elementary School was a local educational agency, and under charter school law, the only local educational agency responsible for providing Student a FAPE, does not bar Los Angeles Unified from asserting that position before the due process hearing started and does not convert Los Angeles Unified into the responsible local educational agency.

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.)

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 [102 S.Ct. 3034]; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56502, subd. (a).) A "public agency" is defined as

"a school district, county office of education, special education local plan area, a nonprofit public charter school that is not otherwise included as a local educational agency, or any other public agency under the auspices

of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

A special education local plan area, called a SELPA, is tasked with administering the allocation of funds and local plans submitted under Education Code section 56205. (See Ed. Code, §§ 56195, 56195.1; Cal. Code Regs., tit. 2, § 60010.) Although a SELPA may fit the definition of “public agency” set forth in the IDEA if it is providing special education or related services, to be a proper party for a due process hearing, the SELPA must also be involved in making decisions regarding the student at issue.

The IDEA requires states to develop programs for ensuring that the mandates of the IDEA are met and that children eligible for special education receive a FAPE. (20 U.S.C. § 1412(a).) California law places the primary responsibility for providing special education to eligible children on the local educational agency, usually the school district in which the parents of the child reside. (See, e.g., Ed. Code, §§ 48200, 56300, 56340 [describing local educational agency responsibilities], and 56344, subd. (c).) The law also contemplates that when a parent disputes the educational services provided to the special needs child, the proper party to the due process hearing request is the local educational agency. (See, e.g., Ed. Code, § 56502, subd. (d)(2)(B) [local educational agency’s response to due process complaint].)

The IDEA defines a local educational agency as

“a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political

subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools and secondary schools.” (20 U.S.C. § 1401(19)(A); 34 C.F.R. § 303.23(a) (2011).)

Under California law, a local educational agency means a school district as defined in Education Code section 41302.5 or a charter school that is deemed a local educational agency under Education Code section 47641. (Ed. Code, § 47640.) Education Code section 47641 states a charter school is deemed a local educational agency if it provides written assurances in its petition that it will participate as a local educational agency in a special education plan approved by the State Board of Education. (Ed. Code, § 47641.) The evidence in this case did not include Accelerated Charter Elementary School’s petition, or, if the proper document, The Accelerated Schools’ petition. What Accelerated Charter Elementary School’s or The Accelerated Schools’ “assurances” were is not known.

Charter schools in California are created under Part 26.8 of the Education Code, beginning at section 47600, by the Charter Schools Act of 1992. As of July 1, 2019, no charter school in California may operate as or be operated by a for-profit corporation, a for-profit educational management organization, or a for-profit charter management organization. (Ed. Code, § 47604, subd. (b).) A charter school may elect to operate as or be operated by a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law of the Corporations Code. (Ed. Code, § 47604, subd. (a).)

## THE ACCELERATED SCHOOLS' STATUS AND RELATIONSHIP WITH LOS ANGELES UNIFIED

The ALJ takes official notice of the website <https://www.accelerated.org/>, listing three schools operated by The Accelerated Schools. Accelerated Charter Elementary School serves students in transitional kindergarten through sixth grade, The Accelerated School serves students in transitional kindergarten through eighth grade, and Wallis Annenberg High School serves students in ninth through 12th grades.

The ALJ also takes official notice of the website of the California Secretary of State <https://bizfileonline.sos.ca.gov/search/business>, which reflects The Accelerated Schools, initially formed in 1999, is a nonprofit public benefit corporation. The Second Amended and Restated Articles of Incorporation of The Accelerated Schools, filed with the Secretary of State on August 1, 2017, states, "The specific purpose for which this corporation is organized is to manage, operate, guide, direct and promote educational institutions, including, without limitation, Accelerated Charter Elementary School, The Accelerated School, and Wallis Annenberg High School ...." The Secretary of State reported The Accelerated Schools was delinquent in filing a Statement of Information for a series of years thereafter.

On September 29, 2021, The Accelerated Schools filed with the Secretary of State a form titled Corporation – Statement of Information, which listed its officers identifying Grace Lee-Cheng as the Chief Executive Officer and Lenita Lugo as the Secretary. Lugo, and her status as an officer of the nonprofit corporation The Accelerated School, is material to the facts established at the due process hearing and discussed below.

On May 22, 2023, The Accelerated Schools filed with the Secretary of State a form titled Statement of Information CA Nonprofit Corporation, listing its officers and again identifying Lee-Cheng as the CEO and Lugo as the Secretary, but changing its Chief Financial Officer and Agent for Service of Process.

Circumstantial evidence produced at the due process hearing indicated Los Angeles Unified granted a charter school petition, whether the petition was submitted individually by Accelerated Charter Elementary School or by The Accelerated Schools. Therefore, by definition, Los Angeles Unified is “the local educational agency that granted the charter.”

But this fact alone does not make Los Angeles Unified the local educational agency for special education for students of the charter school. Other facts suggest The Accelerated Schools and/or Accelerated Charter Elementary School was itself a local educational agency or was, at least for the types of claims Student presented, solely responsible for special education and related services to students of the charter school.

Los Angeles Unified offers schools it charters three options for how money allocated to the public charter school for special education and related services will be handled, which correlates to the level of responsibility the charter school will exercise for special education and related services for the charter school’s students. These options are called Option 1, Option 2, and Option 3, and get documented in a memorandum of understanding between Los Angeles Unified and the charter school. The Accelerated Schools elected from among these three options the one under which, during the timeframe of Student’s complaint, it retained the vast majority of federal and state special education funding it received from the State of California via the Los Angeles

Unified School District SELPA under State law, and also retained control over and responsibility for the vast majority of special education programs and services it offered to its students.

What Los Angeles Unified calls Option 1 requires the charter school to surrender to Los Angeles Unified all special education funding the charter school receives in exchange for Los Angeles Unified providing all the special education programs and services for the charter school's students. Students of an Option 1 charter school who are suspected of requiring or require special education and related services are assessed by employees of Los Angeles Unified, receive on-campus special education from employees of Los Angeles Unified, and receive on-campus related services from employees of Los Angeles Unified or nonpublic agencies with whom Los Angeles Unified directly contracts. Los Angeles Unified makes and funds all placement offers, including placements at the charter school, on other Los Angeles Unified public school campuses, at nonpublic schools with whom Los Angeles Unified directly contracts, and at residential treatment centers with whom Los Angeles Unified directly contracts. Los Angeles Unified employee providers who deliver related services to the charter school's students document the services they provide in the Los Angeles Unified computer database called Welligent, in a process called "service tracking."

What Los Angeles Unified calls Option 2 requires the charter school to surrender to Los Angeles Unified approximately 35 percent of the special education funding the charter school receives in exchange for Los Angeles Unified providing administrative support and covering the costs of some types of placements. An Option 2 charter school is responsible for special education programming at the charter school campus such as resource support program services, special day classes on the charter school

campus, and related services. An Option 2 charter school is responsible to hire and pay its own special education staff as employees of the charter school, not Los Angeles Unified. An Option 2 charter school is responsible for making special education placement offers. Option 2 charter schools can, when necessary for a student to receive appropriate educational benefit, place a student back at a Los Angeles Unified public school campus for free, such as at a campus with a type of special day class the student requires. Also, when the Option 2 charter school staff determines a student requires a more restrictive setting, Los Angeles Unified is the “fiscal agent” that pays for any placement of an Option 2 charter school’s student at a nonpublic school or residential treatment center.

What Los Angeles Unified calls Option 3 requires the charter school to surrender to Los Angeles Unified 20 percent of the special education funding the charter school receives in exchange for Los Angeles Unified providing administrative support and covering the costs only of residential treatment center placements. An Option 3 charter school is responsible for all special education programming of resource support programs, special day classes, all related services, and service tracking, all of which are provided and performed by special education staff who are employees of the charter school, not Los Angeles Unified. An Option 3 charter school can request specific special education related services from Los Angeles Unified, and contingent on Los Angeles Unified’s available resources, Los Angeles Unified may provide the requested related services on a “fee-for-service” basis. An Option 3 charter school is responsible for making special education placement offers, and must pay Los Angeles Unified to place a special education student at a Los Angeles Unified public school campus if necessary to offer an Option 3 charter school’s student an appropriate placement.

Also, an Option 3 charter school is the fiscal agent for nonpublic school placements, paying for the placement from its own funds. But if an Option 3 charter school determines one of its students requires placement at a residential treatment center, Los Angeles Unified is the fiscal agent. Regarding residential treatment center placements only, an Option 3 charter school informs Los Angeles Unified's Charter Operated Programs Department that the charter school has made the placement decision for a student to attend school at a residential treatment center. Then a coordinator, like Washington-Ajayi, notifies Los Angeles Unified's residential treatment center department, and a Los Angeles Unified employee works to identify suitable and available residential treatment center options. Los Angeles Unified informs the parents of the Option 3 charter school's student of the available facilities. When the parents have decided on the facility to which the child will go, Los Angeles Unified provides the Option 3 charter school the information and the charter school holds another IEP team meeting and names the specific facility in the IEP.

An entity called only "Accelerated," which was described as "a charter school whose petition is before the Board of the Los Angeles Unified School District for approval and which operates within the jurisdiction of" Los Angeles Unified, entered into a "Memorandum of Understanding By and Between The Los Angeles Unified School District and Accelerated [Option 3 Charter School] LAUSD LOC. CODE 2015 Regarding the Provision and Funding of Special Education Services." The agreement was executed (by Jonathan Williams, whose title was "CEO" "for the Charter School," and by an associate superintendent for Los Angeles Unified. The agreement was for the period July 1, 2019, through June 30, 2024, covering the timeframe of Student's complaint. The agreement specified any notices under the agreement due to "Accelerated" were to be



sent to “CEO, The Accelerated Schools” at an address that matches the address on <https://www.accelerated.org/> as Accelerated’s office address, which is distinct from the three different addresses of the three charter schools Accelerated operates.

## CHARTER SCHOOLS AND SPECIAL EDUCATION LOCAL PLAN AREAS

Student argues a charter school that is a local educational agency may not join a SELPA that is a single-district SELPA under Education Code section 56195.1, subdivision (a), but may only join a multi-district SELPA under subdivision (b), or a County SELPA under subdivision (c), or form its own or join a SELPA that includes only other charter schools under subdivision (f). Student argues if a charter school that is a local educational agency joined a single-district SELPA formed under Education Code section 56195.1, subdivision (a), the SELPA either would no longer be a single-district SELPA because it includes multiple local educational agencies or, as Student prefers, the charter school loses its status as a local educational agency and becomes, under Education Code section 47641, subdivision (b), a school of the local educational agency that chartered it, with the chartering local educational agency responsible for all special education services of the charter school’s students.

Education Code section 56195.1 was added in 1997, regarding the formation of special education local plan areas for school districts to administer the allocation of special education funds. Education Code section 56195.1 states a “district shall elect to

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do one of the following”: (a) be its own SELPA, (b) “in conjunction with one or more districts” make a SELPA, or (c) join with the county office of education and be in a County SELPA. In 1999, subdivision (f) was added to

“[a]uthorize charter schools to be local educational agencies for the receipt and operation of special education programs. Charter schools are to be treated like school districts that may join an existing [SELPA] or form a new SELPA that must be approved by the State Board of Education ....” (California Bill Analysis, A.B. 1115 Assem., June 15, 1999; Stats.1999, c. 78 (A.B.1115), § 44.2, eff. July 7, 1999.)

To this end, Education Code section 47641, subdivision (a) states a charter school that is a local educational agency – as opposed to being merely a school of the local educational agency that chartered it (see Ed. Code, § 47641, subd. (b)) – “shall be permitted to participate in an approved [SELPA] that is consistent with [Education Code section 56195.1] subdivisions (a), (b), or (c) ....” Alternatively, a “charter school that is deemed a local educational agency for purposes of special education” may submit to the State Board of Education, either individually or with other charter schools, written policies and procedures for approval by the board that establish compliance with the IDEA and implementing regulations. (Ed. Code, § 56195.1, subd. (f).)

Student’s argument ignores the plain language of Education Code section 56195.1, subdivision (f) stating a charter school that is deemed a local educational agency “shall participate in an approved local plan pursuant to subdivision (a), (b), or (c),” all of which specify what “the governing board of a district” shall elect to do. The statute explicitly authorizes a charter school that is a local educational agency to join a SELPA created by a single district under subdivision (a). Especially when a charter

school that is a local educational agency joins the single-district SELPA of the district that granted the charter, doing so does not convert the SELPA into a multi-district SELPA under subdivision (b). Nor does it convert the charter school from the local educational agency responsible for providing special education and related services to the charter school's students into just another school of the chartering district with the district carrying all responsibility for providing special education and related services to the charter school's students.

Here, Accelerated Charter Elementary School, operated by the nonprofit, public benefit corporation The Accelerated Schools, directly receives the funding for its regular education programs. Multiple pages of the California Department of Education website of which the ALJ took official notice reflect and explicitly indicate Accelerated Charter Elementary School is "directly funded" and is a "local educational agency." There is reason to believe that, like all local educational agencies, Accelerated Charter Elementary School/The Accelerated Schools receives its special education funding through the SELPA it joined, the Los Angeles Unified School District SELPA. But while Student relies on explanations and spreadsheets from the California Department of Education website of which OAH took official notice by separate Order dated August 8, 2024, Student failed to call witnesses from the California Department of Education to explain them or validate Student's interpretation of them. Student also failed to call witnesses from Accelerated Charter Elementary School or The Accelerated Schools to explain its status or contradict the appearance of information on the California Department of Education website.

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Student contends the information on the Department of Education website indicating Accelerated Charter Elementary School is directly funded does not mean what it sounds like. But Student's explanation is not logical and was not supported by testimony from competent witnesses. The Department of Education's website states charter schools may elect either to receive funding directly, or locally.

"A charter school may elect to receive its funding directly in lieu of having it disbursed to the local educational agency (LEA) that granted its charter (i.e., chartering authority). Local Control Funding Formula (LCFF) apportionment funds for a directly funded charter school flow directly to the county treasurer and then to the charter school. An election to receive funding directly shall apply to all funding that the charter school is to receive."

But Student argues "all" does not mean all, because special education funding is distributed differently, through SELPAs rather than through the county treasurer to either a charter school "directly" or the local educational agency that chartered the charter school, "locally." Student asserts this changes a charter school that joined its chartering authority district's SELPA from being a local educational agency into being a school of that chartering authority district. This argument again relies on Student's already-rejected insistence that a charter school that is deemed a local educational agency for purposes of special education cannot be part of a single-district SELPA with the local educational agency that chartered it or else the charter school loses its status as a local educational agency and becomes only another public school of the local educational agency that chartered it. And Student failed to present competent evidence

to explain away Accelerated Charter Elementary School/The Accelerated School's apparent status as a local educational agency with full responsibility for the special education needs of its students.

## STUDENT DID NOT PROVE LOS ANGELES UNIFIED WAS THE LOCAL EDUCATIONAL AGENCY RESPONSIBLE FOR PROVIDING STUDENT A FAPE

The memorandum of understanding between The Accelerated Schools and Los Angeles Unified reflects The Accelerated Schools selected Los Angeles Unified School District SELPA's Option 3 and contracted with Los Angeles Unified to be in its SELPA. The Accelerated Schools agreed to use Los Angeles Unified forms and databases, as follows:

The Charter School will use District forms to develop, maintain, and review assessments and Individual Education Programs ("IEPs") in the format required by the District and will enter accurate assessment and IEP data into the District's designated data system (Welligent) in accordance with [Los Angeles Unified] policies and procedures. The Charter will maintain copies of assessments and IEP materials for District review. The Charter School will submit to the District all required reports, including but not limited to CASEMIS, SESAC, CST data at student level and Welligent IEPs, in a timely manner as necessary to comply with state law, federal law and Modified Consent Decree requirements.

The name Los Angeles Unified School District, and sometimes Los Angeles Unified's logo, appeared on IEP team meeting notices, IEP documents including specifically in the field for "local educational agency," and a document titled "A Parent's Guide to Special Education Services (Including Procedural Rights and Safeguards" Parent repeatedly received during the many years Student attended Accelerated Charter Elementary School and received special education and related services. Student asserts Los Angeles Unified therefore was the responsible local educational agency. Student additionally asserts that because the logs for related services Student received were maintained in the Los Angeles Unified computer database, Welligent, Los Angeles Unified was the responsible local educational agency.

The evidence does not support this conclusion. Accelerated Charter Elementary School retained control of 80 percent of the federal and state funding it received for special education services. For the 20 percent it surrendered to the Los Angeles Unified School District SELPA, Accelerated Charter Elementary School received ready-to-use forms, explanatory documents, computer databases, and administrative assistance with maintaining data required under federal and state law and regulations, as well as the protection that the costliest placement for its students, residential treatment, would not be at Accelerated Charter Elementary School's expense. Los Angeles Unified's name and logo on form documents Parent received did not subvert Accelerated Charter Elementary School's status as a local educational agency.

Student also argues Los Angeles Unified was responsible for Student's special education and related services because Parent thought the people who attended the October 11, 2022 and June 2023 IEP team meetings were Los Angeles Unified employees. While Parent described the school principal and vice principal, special

education coordinator, and other support staff as employees of the charter, she thought they also were Los Angeles Unified employees. Student failed to establish the people who attended the IEP team meetings at issue in Student's complaint were employees of Los Angeles Unified.

The IEP team meeting notes for October 11, 2022, document a discussion initiated by Student's grandmother, who attended the meeting with Parent:

[Grandmother] asked for clarification on [Student's] side agreement for compensatory services. She shared that she began a conversation with Ms. Lugo. Administrator for the IEP shared that any side agreement content would need to be addressed by the school district and that mother should contact the District's director of special education regarding any side agreement services. Administrator for the IEP clarified that the IEP team will be developing the IEP for the school year.

Parent testified Ms. Lugo was Lenita Lugo. Parent described Lugo as "in charge of the special education services at ACES." As noted above, The Accelerated Schools repeatedly reported to the California Secretary of State that Lenita Lugo was an officer of the corporation, specifically the Secretary, during the timeframe of Student's complaint. Parent testified she was present when Grandmother talked to Lugo about compensatory services that were going to be provided for Student.

Parent inconsistently testified about the conversation, stating it happened during the October 11, 2022 IEP team meeting, then stating it happened at or after this meeting. The participant sign in sheet and typed list of IEP team members indicate

Lugo was not present at the October 11, 2022 IEP team meeting. And the IEP team meeting notes refer to a conversation that had already happened before the IEP team meeting started, not during it or after it.

Parent clarified the notes of the meeting regarding compensatory services by testifying that the IEP Administrator, Deborah Albin, "said that was a conversation we had to have with Ms. Lugo." Although the IEP team meeting notes refer to "school district" and "District's director of special education," the IEP team meeting notes did not support Student's argument that Los Angeles Unified was ultimately responsible for Student's special education and related services. The evidence supports a conclusion that the corporate Secretary of The Accelerated Schools was "in charge of the special education services at ACES" and was in negotiations with Parent about compensatory education for Student. Los Angeles Unified was not who Parent was dealing with regarding Student's special education and related services.

In sum, Student failed to establish by a preponderance of the evidence that Los Angeles Unified had an obligation to provide Student a FAPE during the timeframe in Student's complaint and is an appropriate party to this matter. Student did not establish Los Angeles Unified was the local educational agency for special education purposes while Student attended a directly funded charter school that had contracted with Los Angeles Unified to retain responsibility for all special education and related services for its students except the funding of residential treatment center placements. Student did not meet his burden of proof to demonstrate Los Angeles Unified had responsibility for providing a FAPE to Student during the timeframe in Student's complaint.



## OAH DOES NOT HAVE JURISDICTION OVER LOS ANGELES UNIFIED IN THIS CASE

Further, OAH jurisdiction extends only to public agencies involved in any decisions regarding a pupil. All allegations against Los Angeles Unified are lumped in with assertions of acts and omissions by Accelerated Charter Elementary School, without any differentiation. Student failed to allege any specific facts in his complaint that Los Angeles Unified had any independent decision-making power or was involved in any decisions regarding Student's educational program. The attendance lists of the two disputed IEP team meetings appear only to include employees of Accelerated Charter Elementary School. The person Parent described as being "in charge of the special education services at ACES" was a corporate officer of The Accelerated Schools. Accelerated Charter Elementary School had separate counsel in this due process case, and Accelerated Charter Elementary School entered into a separate settlement agreement with Student, and then, at Student's request, was dismissed from the case.

Student failed to prove by a preponderance of evidence Los Angeles Unified was involved in any decisions regarding Student. Theoretically, if Student required placement in a residential treatment center, Los Angeles Unified might possibly have had actual involvement due to the search and funding functions Los Angeles Unified or the Los Angeles Unified School District SELPA provides for residential treatment center placements for students of The Accelerated Schools. But for the types of claims stated

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in Student's complaint, the evidence established Los Angeles Unified was not involved in any decisions regarding Student. Student argues that because the October 11, 2022 IEP stated, "The IEP team agreed that the parent is eligible for Parent Counseling and Training, and will be provided with the informational packet that outlines the workshops help by [Los Angeles Unified's] local districts," Los Angeles Unified therefore provided parent counseling and training services, a related service under the IDEA. Student's argument is not persuasive and the evidence did not establish Los Angeles Unified was involved in any decisions regarding Student.

Student failed to establish any other theory of liability for Los Angeles Unified. Student argues in a federal court case, under Federal Rules of Civil Procedure Rule 8, and in a California State court case, under Code of Civil Procedure sections 430.80 and 431.30, a defendant is required to state with its answer, or in a demurrer, any defense or objection, and any defense or objection not stated is waived. Student attempts to apply these rules to the response to a due process complaint required by the IDEA and Education Code. Specifically, Student argues that because Los Angeles Unified did not state in its February 20, 2024 response to Student's request for due process hearing that it was not the responsible local educational agency, it waived that position and is estopped from asserting it in the July 9, 2024 motion to be dismissed as a party, or as a defense to Student's claims. Student argues by "parallels" but provides no authority for applying these federal and state court rules of civil procedure in this administrative action. Student argues Los Angeles Unified's failure to state in its response that it was not the local educational agency responsible for providing a FAPE to Student during the timeframe in Student's complaint means that position or defense "is waived regardless of its truth."

But Student cannot create liability for Los Angeles Unified where none exists by complaining Los Angeles Unified did not deny it was responsible sooner. As stated above, Student failed to establish by a preponderance of the evidence that Los Angeles Unified had an obligation to provide Student a FAPE during the timeframe in Student's complaint and is an appropriate party to this matter. Student bore the burden of proof in this case and failed to meet it.

## 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:

Los Angeles Unified did not have responsibility for providing a FAPE to Student during the timeframe in Student's complaint.

Los Angeles Unified prevailed on the only issue in this bifurcated hearing.

## ORDER

1. Los Angeles Unified School District is dismissed as a party in this case.
2. With neither respondent remaining in this case, the case is dismissed.
3. All further due process hearing dates are vacated.

## RIGHT TO APPEAL THIS DECISION

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

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings