

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT

CASE NO. 2025050715

DECISION

OCTOBER 30, 2025

On May 16, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Los Angeles Unified School District, called Los Angeles. On June 12, 2025, OAH granted the parties' joint request for continuance. Administrative Law Judge Chris Butchko heard this matter by videoconference on August 26 and 27, 2025.

Attorneys N. Jane DuBovy and Katherine Q. Johnson represented Student. Parent attended all hearing days on Student's behalf. Attorney Donald Erwin represented Los Angeles. Due process resolution specialist Yamilet Vargas attended all hearing days on Los Angeles' behalf.

At the parties' request, the matter was continued to September 17, 2025, for written closing briefs. The record was closed, and the matter was submitted on that date.

ISSUES

1. Did Los Angeles deny Student a free appropriate public education, known as FAPE, by impeding parental participation at the April 30, 2025 individualized education program, known as an IEP, team meeting because it failed to:
 - a. have a representative from the proposed placement attend the meeting, thereby predetermining Student's placement;
 - b. make a clear written offer of FAPE with sufficient detail;
 - c. take into consideration Parents' concerns in the development of the IEP, specifically regarding the recommendations of the staff from the Academy for the Advancement of Children with Autism; or
 - d. take into consideration the range of placement options for Student?

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2. Did Los Angeles substantively deny Student a FAPE by failing to:
- a. address Student's needs as presented by the staff from the Academy for the Advancement of Children with Autism, specifically regarding his needs for physical therapy;
 - b. offer appropriate levels of physical therapy; or
 - c. offer an appropriate placement, specifically a highly specialized non-public school where Student can receive one-to-one interventions and instructions and have safe access to school?

Prior to hearing, with the consent of Los Angeles, Student withdrew what were sub-issues 1(b) and (g) and sub-issues 2(b) and (d). Student also withdrew from sub-issue 2(a) allegations related to Los Angeles' failure to address Student's needs for

- behavior support,
- assistive technology,
- language and speech therapy,
- occupational therapy, and
- adapted physical education.

The issues above have been revised and renumbered to reflect Student's changes.

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JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a 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; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof on all issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, called 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 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402.) (*Endrew F.*)

Student was 21 years old and listed as being in 14th grade at the time of hearing. Student resided within the geographic boundaries of Los Angeles at all relevant times. Student was eligible for special education as a student with autism and multiple orthopedic disabilities. Since 2021, Student has attended the Academy for the Advancement of Children with Autism, called the Academy, a non-public school certified by the state of California.

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ISSUE 1a: DID LOS ANGELES DENY STUDENT FAPE BY IMPEDING PARENTAL PARTICIPATION AT THE APRIL 30, 2025 IEP TEAM MEETING BECAUSE IT FAILED TO HAVE A REPRESENTATIVE FROM THE PROPOSED PLACEMENT ATTEND THE MEETING, THEREBY PREDETERMINING STUDENT'S PLACEMENT?

Student contends that Los Angeles' failure to have a representative at the IEP team meeting from the Diane S. Leichman Career Preparatory and Transition Center, called Leichman, prevented Parents from asking questions about the program. Student contends this materially impeded Parents' participation in the decision-making process of Student's educational programming and rendered Los Angeles' placement offer a predetermined one.

Los Angeles counters that Parents would have had no questions for any representative from Leichman because representatives had been present at other IEP team meetings and Parents posed no questions. It further argues that school staff could answer or obtain answers for any questions that Parents might have. Los Angeles concludes Parents had decided to reject anything other than their preferred placement, so the failure to include a representative had no impact on parental participation at the IEP team meeting.

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REQUIRED IEP TEAM MEMBERS

Title 34 Code of Federal Regulations section 300.321 defines the required IEP team members as:

1. The parents of the child;
2. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
4. A representative of the public agency who -
 - i. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - ii. Is knowledgeable about the general education curriculum; and
 - iii. Is knowledgeable about the availability of resources of the public agency;
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

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6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
7. Whenever appropriate, the child with a disability.

(34 C.F.R. § 300.321(a); Ed. Code, § 56341, subdivision (b).)

Further, the IDEA requires

“[t]o the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section [consideration of the postsecondary goals for the child and the transition services needed], the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.” (34 C.F.R. § 300.321(b)(3); Ed. Code, § 56341, subdivision (d)(3).)

Participants in an IEP team meeting may fulfill more than one role; it is not required that each role be filled by a different person. (34 C.F.R. § 300.321(a)(5) and (d); Ed. Code, § 56341, subdivisions (b)(5) and (e).) The failure to include required team members is a procedural violation of the IDEA. Procedural violations do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy impeded the child’s right to a FAPE; significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.) (*Target Range*.)

"A loss of an educational opportunity occurs, for example, when there is a 'strong likelihood' that, but for the procedural error, an alternative placement 'would have been better considered.'" (*Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1124 (9th Cir. 2016) (*Timothy O.*) (citing *Amanda J. v. Clark Cty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 892).) Further, "to succeed on a claim that a child was denied a free appropriate public education because of a procedural error, the individual need not definitively show that his educational placement would have been different without the error." (*Id.*)

PARENTAL PARTICIPATION AND PREDETERMINATION

The Supreme Court places great emphasis on the importance of the guarantee of parental participation:

"[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard."

(*Rowley, supra*, 458 U.S. 176, 205-206.)

In the classic formulation, parents have meaningfully participated in the development of an IEP when they are informed of their child's problems, attend the IEP meeting, express their disagreement regarding the IEP team's conclusions, and request revisions in the IEP. (*N.L. v. Knox County Sch.* (6th Cir. 2003) 315 F.3d 688, 693 [holding an organizational meeting without parent before IEP team meeting did not deny parental participation at the IEP team meeting].) These are necessary but not sufficient

qualities. "Participation must be more than a mere form; it must be meaningful." (*Target Range, supra*, 960 F.2d at 1485.) Finding meaningful participation requires a qualitative determination and not the application of a mechanical test. Meaningful participation is not established by a district offering some information and parents merely attending and voicing any disagreement.

The failure to provide necessary information at an IEP team meeting deprives parents of the ability to meaningfully participate in the meeting and renders them unable to have an informed discussion with the district members of the team. (*Timothy O, supra*, 822 F.3d at 1125-1126; *Hood River Cnty. Sch. Dist. v. Student* (D.Or. 2021) 2021 WL 2711986, at *14 (At the IEP team meeting, the school must provide "sufficient baseline information for Parents meaningfully to participate.")) "'An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved or *fully informed*.'" *Amanda J.*, 267 F.3d at 892 (emphasis added)." *Los Angeles Unified Sch. Dist. v. A.O.*, 92 F.4th 1159, 1172 (9th Cir. 2024).) A district has not ensured meaningful parental participation if there are procedural violations that deny parents access to information necessary to understanding the proposed educational program.

Predetermination of a student's placement is a procedural violation that can deprive a student of a FAPE. (*K.D. ex rel. C.L. v. Dep't of Educ., Hawaii*, (9th Cir.2011) 665 F.3d 1110, 1123.) Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Cupertino Union Sch. Dist. v. K.A. (N.D. Cal. 2014)*; 75 F. Supp. 3d 1088, 1099 *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.)

STUDENT'S HEALTH AND SCHOOL HISTORY

Student's developmental challenges extend beyond autism. Student also has Lennox-Gastaut Syndrome, a form of epilepsy that is frequently accompanied by developmental delays and intellectual impairment, Down syndrome, and other health conditions. Student has extremely limited physical mobility and coordination and is afflicted by seizures, which can be triggered by swallowing. In January 2025, Student underwent surgery to place a gastric tube for nutrition in an effort to reduce his seizures. Student is non-verbal and his only means of communication is an eye-gaze system that allows him to choose from pre-loaded choices. Parents hold conservatorship of Student.

Student has not attended public school for the last five years. Each of those years, Los Angeles proposed a placement at Leichman, along with supportive services. Each year, Parents declined the IEP and filed for due process. Prior to this year, every such due process case has been settled, with Los Angeles agreeing to directly fund Student's placement at the Academy, along with supportive services. For the 2024-2025 school year, including the extended school year, Los Angeles agreed to fund 73.5 hours of direct and consultative physical therapy services. At the Academy, Student received 90 minutes per week of physical therapy services.

Prior to Student's 2025 annual IEP team meeting, the Academy sent Parents a letter dated April 30, 2025, conditionally accepting Student for the 2025-2026 school year. The letter included the requirement that any due process settlement placing Student at the Academy include a provision requiring Los Angeles to pay for any service scheduled for any day on which Student did not attend school and did not give the Academy 24 hours advance notice of his absence. This caused a problem, as Los Angeles could not agree to pay for services that were not rendered.

APRIL 30, 2025 IEP TEAM MEETING

Los Angeles held Student's annual IEP team meeting on April 30, 2025. As the meeting concerned Student's last year in public education before he aged out of eligibility for services at 22, the major focus of the meeting was on Student's postsecondary goals. Parents attended, along with an administrator from the Academy. Appearing on behalf of Los Angeles were:

- an administrator,
- a special education teacher,
- a school nurse,
- a speech pathologist,
- a physical therapist, and
- an occupational therapist.

Parent and Los Angeles agreed to excuse the presence of a general education teacher. The special education teacher assumed the role of a Los Angeles representative knowledgeable about the district's resources for educating students with special needs. Los Angeles did not seek Parents' consent to invite or invite a representative from Leichman to attend the meeting. The special education teacher was not knowledgeable about Leichman, but would have been able to obtain answers to any of Parents' questions about it outside of the meeting.

The IEP included several goals, including goals in campus access, physical education, and academics. Los Angeles again offered Leichman as Student's placement. Leichman's focus is on career preparation and transition to independent living, and it

offers a variety of work programs. Parents' understanding of the program was that it does not include academics. Parents did not want to give up on teaching Student reading and mathematics.

The academic goals included #9, in functional reading, and #10, in functional math. No academic services were listed on the FAPE Summary Grid. The Summary of Services pages list Student's goals, the service minutes, the service delivery model, and the personnel responsible for the goal. These academic goals were not addressed in the Summary of Services section and no responsible party for those goals was reported to Parents.

Parents were also unsure how Leichman would provide Student's services and meet his needs, particularly his health needs following his January 2025 abdominal surgery and his increasingly severe seizure activity. Parents believed that Leichman could not provide one-to-one nursing service and had only a shared nurse for the entire campus.

No one from Leichman or anyone knowledgeable about the program attended the IEP team meeting. Part four of the April 30, 2025 IEP team meeting report states "LAUSD team offer of FAPE is Leichman Career and Training Center [sic], where he will continue to have Functional academics, Life Skills Training, Community-base instruction, social skills training, and all the services he needs" There are two passing references to "nursing," but the IEP team meeting report contains no details about any nursing services Student would receive. The IEP contains no other information about the proposed placement at Leichman and no substantive discussion occurred at the IEP

team meeting. The final page of the IEP states, incorrectly, that a representative of an agency charged with providing transition services “was invited to the IEP team meeting with the prior consent of the parent.”

Los Angeles members of the IEP team believed Parents would not accept placement at Leichman regardless of any presentation made at the IEP team meeting.

LOS ANGELES COMMITTED A PROCEDURAL VIOLATION BY NOT INVITING A LEICHMAN REPRESENTATIVE TO THE APRIL 30, 2025 IEP TEAM MEETING

There was no Leichman representative at the April 30, 2025 IEP team meeting. Los Angeles argues there is no requirement under title 34 Code of Federal Regulations section 300.321(a) or Education Code section 56341(b) that a representative of the proposed placement attend the IEP team meeting. The seven listed categories do not include such a representative. Los Angeles argues that the attendance of the special education teacher met the requirement under 34 Code of Federal Regulations section 300.321(a)(4)(iii) for someone “knowledgeable about the availability of resources of the public agency,” specifically, someone knowledgeable about the program at Leichman. Los Angeles contends that the special education teacher could answer any questions Parents had about Leichman, or, if she could not, could obtain the information from personnel at Leichman. Further, it argues that Parents did not ask any questions about Leichman at the meeting and previously had the opportunity to ask questions about Leichman at earlier IEP team meetings.

The special education teacher did not meet the requirements of a “person knowledgeable” about the resources of the proposed program at Leichman. She testified at hearing that she had toured the campus with students who were about to attend the school and had some knowledge about it being a life skills and community-based instruction center. She initially stated that she would have been able to answer any questions Parents had about Leichman, but, upon being asked some questions about the placement at hearing, retreated to the position that she could get answers to any questions that Parents had by contacting Leichman. The ability to get information outside of the IEP team meeting does not cure defects in the IEP team meeting. No one attended the meeting who was knowledgeable about the resources at Leichman. Los Angeles did not have all required members of the IEP team at the meeting, a procedural violation of the IDEA.

Because the IEP team meeting centered on Student’s last year of eligibility, a central focus of the meeting was Student’s post-secondary planning and transition from school attendance. Los Angeles planned to place Student at Leichman, an adult transition center. As a result, Los Angeles was required under 34 Code of Federal Regulations section 300.321(b)(3) to seek consent from Parents to invite a Leichman representative as it would be the agency providing his transition services.

“It is also undisputed that the SSC failed to invite a [Department of Vocational Rehabilitation] representative to the IEP meeting (and, likewise, failed to seek the consent of [Student’s] parents) as required by § 300.321(b)(3). It cannot seriously be disputed that it was not ‘appropriate’ to invite a [Department of Vocational Rehabilitation] representative where a goal of the July 19, 2010 IEP was to ‘mainstream’

[Student], and begin transitioning him to a post-educational setting.”

(*Carrie I. ex rel. Greg I. v. Dep't of Educ.* (D. Haw. 2012) Hawaii, 869 F. Supp. 2d 1225, 1245.)

Los Angeles neither sought such permission from Parents nor invited a Leichman representative to the meeting, a further procedural violation of the IDEA.

LOS ANGELES' PROCEDURAL VIOLATION RESULTED IN A DENIAL OF FAPE

Not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033, n.3; *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) Procedural violations must impede the child's right to a FAPE, significantly impede parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or cause a deprivation of educational benefits. Los Angeles contends there was no loss of educational opportunity or parental participation because Parents presented no questions about Leichman at the meeting and a Leichman representative attended earlier IEP team meetings. These arguments are unpersuasive.

Even if Parents did not ask the special education teacher about Leichman, they wanted information that was not available at the meeting. Parents wanted to know how Leichman would work towards Student's IEP goals and how his services would be provided. Particularly, Parents wanted to know how Leichman would address Student's health-related needs. Student had significant seizure activity, which required administration of medication. In addition, Student was recovering from surgery to implant a feeding tube, which required care. Parents' understanding was that there was one shared nurse at Leichman. To participate and meaningfully consider the placement

at Leichman, Parents needed someone able to explain how Student's needs would be addressed. No one able to answer these questions attended the meeting. For these reasons, Parents were significantly impeded in their ability to participate in the decision-making process regarding the education of their child.

The special education teacher testified that she did not invite anyone from Leichman to the IEP team meeting because one had attended an IEP amendment team meeting in October 2024, and she recalled that Parents had no questions for the representative at that meeting and believed Parents had decided to reject any placement at Leichman. Confronted with evidence that no Leichman representative attended the October 2024 meeting, the special education teacher clarified that a Leichman representative had attended an earlier IEP team meeting, but she could not definitively say when. Even if Parents had no questions at any earlier appearance of a Leichman representative, that fact does not excuse the failure to have a required participant at the April 30, 2025 IEP team meeting. Moreover, Student's increasing seizure activity since the last full IEP team meeting and the impact of his January 2025 abdominal surgery raised new issues for the IEP team. Los Angeles' failure to invite a Leichman representative because of its assumption that Parents had no new issues to raise at the IEP team meeting significantly impeded Parents' participation.

Without information about Leichman, Parents were unable to consider the program there because they did not know whether Student's program would include academics, how his services would be delivered, and how his substantial health-related needs would be met. Student had goals in academics as part of his IEP, but no one was

tasked with helping him achieve those goals and no academic services were provided in the IEP. Parents were unable to meaningfully consider how the IEP's academic goals would be implemented and monitored. Student suffered a loss of educational opportunity because Parents were highly likely to better consider the offer of placement at Leichman but for Los Angeles' procedural violations. (*Amanda J.*, *supra*, 267 F.3d at 892.) Parents do not need to show that they would otherwise have accepted placement at Leichman but for the procedural violations in order to prevail. (*Timothy O.*, *supra*, 822 F.3d at 1124.) It is sufficient to show that the procedural violations significantly impeded their ability to participate at the IEP team meeting and rendered them unable to reasonably evaluate the placement.

Predetermination is a procedural violation of the IDEA. Although Parents have introduced predetermination into this issue by asserting that the failure to include all required members of the IEP team rendered the offer predetermined, there is no need to consider that question. Having found a procedural violation and denial of parental participation and loss of educational opportunity to Student due to the failure to have all required persons at the IEP, no further showing of an additional procedural violation is required.

Student prevailed on Issue 1(a).

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ISSUE 1b: DID LOS ANGELES DENY STUDENT A FAPE BY IMPEDING PARENTAL PARTICIPATION AT THE APRIL 30, 2025 IEP TEAM MEETING BECAUSE IT FAILED TO MAKE A CLEAR WRITTEN OFFER OF FAPE WITH SUFFICIENT DETAIL?

Parents argue that Los Angeles failed to make a clear offer of FAPE in the April 30, 2025 IEP, because its offer of physical therapy services was not understandable.

Los Angeles counters that the offer of physical therapy services was laid out in detail in the FAPE Summary Grid in the IEP team meeting report.

An IEP must contain a statement of the related services, supplementary aids and services, and program modifications and supports that will allow the student to advance toward his goals, access and make progress in his curriculum, and 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).)

In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, *cert. denied*, 513 U.S. 965 (*Union*), the Ninth Circuit held that a district is required by the IDEA to make a clear written IEP offer that parents can understand.

"The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any." (*Union, supra*, 15 F.3d at p. 1526, quoting 20 U.S.C. § 1415(b)(1)(E).)

Union requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108.)

In the FAPE Summary Grid, Student’s physical therapy services for the regular school year were described as being delivered on a “yearly” interval with a frequency of 10, for a total of 300 minutes. No location was given for the services, unlike elsewhere in the grid, for example, where it is stated Student’s language and speech services would be “school-based.”

Similar information appears in the IEP FAPE Part two - Summary of Services pages. For the regular school year, the IEP reported Student was to get 300 minutes of service delivered in a frequency of 10 during the interval of a year. Student would receive the service by “Direct Service (Collaborative),” from providers listed as “Licensed/Credentialed Provider,” “Special Education Teacher,” and “other Provider(s).”

The physical therapy service was intended to address Student’s three goals in physical access. Student’s first goal was to increase from his current ability to sit upright in a supported position for six to eight minutes to ambulate 200 feet in a gait trainer. Likewise, his second goal is to walk 150 feet on even or uneven terrain. His third goal is to sit upright in an appropriate adapted classroom chair for 20 minutes. No other information about Student’s physical therapy services was present in the IEP.

Although Los Angeles argues that Student’s services were laid out in detail, the IEP failed to coherently describe the physical therapy services. In addition to helping parents understand and evaluate the offer of FAPE, requiring a clear offer helps parents monitor compliance with the IEP. A parent has the right to participate not just in the

formation of the IEP report, but also in the enforcement of it. (*M.C. v. Antelope Valley* (9th Cir. 2017) 858 F.3d 1189, 1198.) Los Angeles' unclear offer of FAPE at the April 30, 2025 IEP team meeting frustrated both purposes.

There is no information about the frequency of the sessions, the time between sessions, or the length of time for any session. As reported, Los Angeles might be in compliance with the IEP if it gave Student 30 minutes of physical therapy on his first 10 days of school and none thereafter, if it gave him 290 minutes of physical therapy on his first day of school and then a minute of physical therapy on each of his last nine days of school, or even if it gave him 10 30-minute sessions of physical therapy on his last day of school.

Los Angeles gave itself license to do any of those options, as well as to deliver 30 minutes a month for 10 months. Parent did not have sufficient information to decide whether Student's needs could be met by that program. Los Angeles does not argue that it committed itself to deliver the service in 10 30-minute increments. Instead, it preserved maximum flexibility for itself at the expense of Parent's ability to consider the offer, participate in the decision-making process, and monitor faithful implementation of the IEP's services.

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In a similar circumstance in a case filed against Los Angeles, the Ninth Circuit noted:

The broad frequency ranges—one to 10 sessions of speech therapy per week totaling thirty minutes and one to five sessions of audiology services per month totaling twenty minutes—provided maximum flexibility for district providers, but they also rendered the proposed program unclear.

Because the school district's proposed broad frequency ranges for speech therapy and audiology services violated the IDEA, we consider next whether the violation was harmless. It was not because the violation "seriously impair[ed] the parents' opportunity to participate in the IEP formulation process." *Timothy O.*, 822 F.3d at 1124.

(*Los Angeles Unified Sch. Dist. v. A.O. by & through Owens* (9th Cir. 2024) 92 F.4th 1159, 1170-1171; *aff'd* by *Los Angeles Unified Sch. Dist. v. A.O. by & through Owens* (9th Cir. 2024) 92 F.4th 1159.) The same conclusion applies here.

Los Angeles proposed to dramatically reduce Student's physical therapy services at a time when his ability to access the campus and participate in his education were greatly impacted by changes in his health. Parents were entitled to know how Student's physical therapy services were to be delivered to determine whether those services could meet Student's needs. Los Angeles' failure to make a clear offer of physical therapy services significantly impeded parental participation in the IEP process and thereby denied Student a FAPE. Student prevailed on Issue 1(b).

ISSUE 1c: DID LOS ANGELES DENY STUDENT A FAPE BY IMPEDING PARENTAL PARTICIPATION AT THE APRIL 30, 2025 IEP TEAM MEETING BECAUSE IT FAILED TO TAKE INTO CONSIDERATION PARENTS' CONCERNS IN THE DEVELOPMENT OF THE IEP, SPECIFICALLY REGARDING THE RECOMMENDATIONS OF THE STAFF FROM THE ACADEMY FOR THE ADVANCEMENT OF CHILDREN WITH AUTISM?

Parents contend that Los Angeles failed to take into consideration their concerns at the April 30, 2025 IEP team meeting because the IEP did not offer sufficient physical therapy service minutes and because Los Angeles' physical therapist did not explain her recommendations in detail.

Los Angeles notes that the goals and objectives in the IEP were taken almost verbatim from those prepared by the staff and service providers at the Academy. The only deviation from the Academy's recommendations was Los Angeles' reduction of the physical therapy service from its previous level.

Failure to consider parental concerns is a denial of parental participation and a procedural FAPE violation. Parents did not complain about any issues they raised which they were not allowed to discuss or which the IEP team refused to discuss. Parents solely object that the April 30, 2025 IEP team did not accept the recommendation of the Academy's physical therapist on the appropriate amount of physical therapy services. The Academy's physical therapist recommended Student should receive 90 minutes per week of physical therapy services; the IEP team offered 300 minutes per year of physical therapy. Los Angeles did not adopt the Academy's recommendation, but Los Angeles was only required to hear and consider the opinions of the Academy staff to ensure

parental participation. It is not required to defer to them. An IEP does not need to conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education ... designed according to the parents' desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) Likewise, any failure of the Los Angeles' physical therapist to explain her recommendations for physical therapy service minutes did not constitute a failure to consider Parents' concerns. Los Angeles heard the recommendations of the Academy's physical therapist, allowed Parents to advocate for them, but did not defer to them. They were not required to do so.

Los Angeles did not impede parental participation by failing to take into consideration Parents' concerns at the April 30, 2025 IEP team meeting. Los Angeles prevailed on issue 1(c).

ISSUE 1d: DID LOS ANGELES DENY STUDENT A FAPE BY IMPEDING PARENTAL PARTICIPATION AT THE APRIL 30, 2025 IEP TEAM MEETING BECAUSE IT FAILED TO TAKE INTO CONSIDERATION THE RANGE OF PLACEMENT OPTIONS FOR STUDENT?

Parents contend that the IEP team did not consider any placement options other than Leichman. Parents argue Leichman did not offer access to typically developing peers and was a mainly non-academic program that teaches job skills. Parents wanted to have the IEP team consider a program with a significant academic component, but the IEP team only considered the job training program at Leichman.

Los Angeles counters that Student could not be appropriately placed anywhere other than Leichman. Student was very impacted by disability, had multiple medical diagnoses, and required a specialized program to support him at school. Los Angeles argues that Parents were not denied participation in the IEP process because Leichman was an appropriate placement for Student.

School districts must have available a continuum of program options to meet an eligible student's needs for special education and related services. (34 C.F.R. § 300.115; Ed. Code, § 56360.) A district must make a continuum of placement options available, but does not need to discuss every possible placement at every IEP team meeting. (See *L.S. v. Newark Unified Sch. Dist.* (N.D.Cal., May 22, 2006, No. C 05-03241 JSW) 2006 WL 1390661, pp. 5-6 [nonpub. opn]; *Katherine G. v. Kentfield Sch. Dist.* (N.D.Cal. 2003) 261 F.Supp.2d 1159, 1189-1190.) Only placement options that are likely to be relevant to a student's needs must be discussed.

The continuum of program options includes, but is not limited to:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- non-public, non-sectarian schools;
- state special schools;

- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication instruction in the home or instructions in hospitals or institutions.

The continuum of program options ranges from the least restrictive to the most restrictive, from general education settings to institutional settings. (Ed. Code, § 56361.) It is the duty of the IEP team to place students in the least restrictive environment in which they can be educated. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) The failure to consider a continuum of possible placements for a student is a procedural violation of the IDEA.

The Academy is a non-public, non-sectarian school. While attending the Academy, Student received supportive services for his disabilities and instruction in academics.

Leichman is listed as a “special education” school in Los Angeles’ directory of schools. Although some Los Angeles witnesses testified that Student would continue to work on academics on the alternative curriculum at Leichman, there were no academic services offered in the proposed IEP and no discussion of how Student’s progress on his academic goals would be monitored. There was no designation in the IEP of any responsible party for Student’s academic progress. Parents believed that there was no academic component at Leichman.

The Academy and Leichman occupy different places in the continuum of placements. The Academy is a non-public, non-sectarian school. Leichman can be considered a public school that offers special education classes, which would be a less

restrictive placement than the Academy, or a state-run special school, which would be more restrictive. Applying either label places Leichman in a different category from the Academy. Parents believed the Academy was the appropriate placement for Student because it met his needs for supportive services, offered individual instruction, and was a place he could safely navigate, and Leichman was deficient in those areas. Both Leichman and the Academy placements should have been considered as part of the continuum of placements for Student. The IEP team only considered Leichman. The IEP team failed to consider a continuum of possible placements for Student.

Los Angeles' argument that Student could not have been placed anywhere other than Leichman because it was the only possible placement at which Student's needs could be met is factually inaccurate. Student had been attending the Academy since 2021, and Los Angeles has not argued that Student's program there lacked any component of FAPE. Los Angeles contended that "all of the students at the academy have a one-to-one aide and not many students have the level of services as Student." At most, this argues that the Academy is more restrictive than Leichman, as Student would lack interaction with peers who are not assisted by an aide. It does not establish that Leichman is the only possible placement for Student and that no other placements need to be considered. Los Angeles does not argue that the IEP team considered placing Student at the Academy. The IEP team failed to consider a continuum of possible placements for Student.

Procedural violations that significantly impede parental participation in the educational decision-making process deny the student's right to FAPE. (*Target Range, supra*, 960 F.2d at pp. 1483-1484.) The failure to consider other possible placements cut off consideration of the appropriateness of less or more restrictive placements for Student. No evidence or argument has been presented that Student's needs were being

met at the Academy, so there was no reason why it should not have been discussed as a possible placement. Parents were entitled to a discussion considering all relevant placements, comparing their academic components, and evaluating the quality of peer interactions.

Because the IEP team did not consider any alternative placements in the continuum, it significantly impeded parental participation and denied Student FAPE.

SUBSTANTIVE ISSUES

Having found a procedural violation resulting in the denial of Student's right to a FAPE, the necessary inquiry ends.

"[W]here the procedural inadequacies of an IEP may have resulted in the loss of an educational opportunity, or deprived a child's parents of the opportunity to participate meaningfully in forming an IEP, [a] court should not proceed to step two of the *Rowley* analysis, i.e., whether the IEP was reasonably calculated to enable the child to receive educational benefits."

(*Target Range, supra*, 960 F.2d at p. 1485.) Nevertheless, this Decision will consider the remaining claims of substantive violations of the IDEA.

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ISSUE 2a: DID LOS ANGELES SUBSTANTIVELY DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S NEEDS AS PRESENTED BY THE STAFF FROM THE ACADEMY, SPECIFICALLY REGARDING HIS NEEDS FOR PHYSICAL THERAPY?

ISSUE 2b: DID LOS ANGELES SUBSTANTIVELY DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE LEVELS OF PHYSICAL THERAPY?

Issues 2a and 2b present the same substantive issue of whether the IEP offered Student an appropriate level of physical therapy services. Student cites no law applying different standards to the two phrasings of the issue. Therefore, these sub-issues will be considered together.

Student argues that Los Angeles' offer of physical therapy services was inadequate and not based upon Student's individualized needs. Student asserts that he was given a standardized amount of physical therapy services, as provided to "similar" students at Leichman.

Los Angeles counters that Parent agreed to waive having a physical therapy assessment before the April 30, 2025 three-year review IEP. The physical therapist who recommended the level of service had assessed Student in April 2022 and recently fitted him with adaptive equipment. Los Angeles contends the amount of physical therapy offered in the IEP was based upon its findings of Student's educational needs, where the higher level recommended by the Academy's physical therapist was based upon medical needs. Los Angeles argues it was not responsible for meeting Student's medical needs, only those connected with his education.

The purpose of IEPs is to meet students' needs due to disability so they may benefit from their education. An IEP must contain a statement of the related services that will allow the student to advance toward his goals, access and make progress in his curriculum, participate in activities, and 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).) For a school district's offer of special education services to constitute a FAPE under the IDEA, it must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with meaningful educational benefit in the least restrictive environment. (*Gregory K., supra*, 811 F.2d at p. 1314.) A child's educational needs are to be broadly construed to include the child's

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and
- vocational needs.

(*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer v. Weast* (2005) 546 U.S. 49.)

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The Supreme Court has held that the IEP must be carefully tailored to the student it proposes to serve:

An IEP must aim to enable the child to make progress; the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. And the degree of progress contemplated by the IEP must be appropriate in light of the child's circumstances, which should come as no surprise. This reflects the focus on the particular child that is at the core of the IDEA, and the directive that States offer instruction "*specially designed*" to meet a child's "*unique needs*" through an "[i]ndividualized education program." [20 U.S.C.] §§ 1401(29), (14) (emphasis added).

(*Endrew F.*, *supra*, 580 US at 992, emphases as in original.)

When Student began at the Academy in 2021, he was able to walk for 400 feet without support, catch and throw a ball, and sit on the floor and get up to a standing position. Student regressed substantially in his physical abilities as a result of his seizures, which were triggered by difficulty swallowing food. The seizures affected his memory and physical abilities, causing him to lose learned abilities and motor control. He was hospitalized repeatedly during that time, which led to further regression, and cycled through medications which further depressed his abilities. At the start of the 2024-2025 school year, Student was chair-bound and dependent upon a wheelchair to move about the classroom and campus.

In January 2025, Student had a gastric tube implanted for feeding. The surgery involved cutting through the muscles in his abdomen, and required him to restrict his activity for three months, which severely impacted his gross motor skills. The Academy's physical therapist believed that Student could regain the level of ability he had in 2021 if

he continued his physical therapy and the surgery and medications were successful in reducing his seizures. Based upon the work the Academy's physical therapist did with Student in summer 2025, she believed that level of progress was possible.

Student received 90 minutes per week of direct physical therapy service at the Academy and 30 minutes per month of collaborative services for school staff, according to the settlement agreement entered into evidence by the parties. The IEP goals the Academy's physical therapist worked on with Student were designed to increase his ability to access the school's campus and participate in his education. Student's first two goals were to increase his abilities to walk in a gait trainer and to walk unaided. The ability to navigate without a wheelchair would enable Student to access more educational and social opportunities in the classroom and on the school grounds. Student's third goal to sit upright in an appropriate adapted classroom chair for 20 minutes would increase the amount of time he would be able to access manipulable objects and other schoolwork on his desk and tabletop activities at shared worktables. Those goals were again part of Student's April 30, 2025 IEP. Student's physical therapy at the Academy had educational purposes and was not medically oriented.

The April 30, 2025 IEP's report on progress on Student's goals noted regression in his physical accessibility goals due to "surgery and decreased health." The IEP offered Student a total of 300 minutes of physical therapy for the year, delivered in 10 sessions. The offer for the year was 67.5 hours less than what Student had been receiving at the Academy and consisted entirely of support for Leichman's staff, without any direct service to Student. Los Angeles' physical therapist recommended the reduction in physical therapy because she believed that Student's need for physical therapy was due to medical and not for school access. Los Angeles' physical therapist clarified at hearing that the service would be collaborative, that is, provided to staff who worked with

Student. She believed the elimination of direct service was appropriate because Student had failed to progress despite receiving physical therapy. Her recommendation for 300 total minutes of physical therapy service was made in light of what other students with similar disabilities received. Setting the amount of Student's physical therapy services by reference to what other similarly-situated students were being given means that it was not "specially designed" to meet this student's "individualized" needs, in violation of the Supreme Court's mandate in *Endrew F.* (580 US at p. 992.)

Los Angeles' physical therapist did not explain the difference between physical therapy necessary because of medical needs and physical therapy necessary for educational needs. The Academy's physical therapist explained that educational physical therapy assists a student to access the curriculum, the peer group, and the physical resources of the school. She described medical physical therapy as dealing with a patient's quality of life, assisting in pain management and wound care, and recovery from conditions such as cardiac events or strokes. Student required physical therapy services for his educational needs.

Even if the offer had been individualized to Student, it was inadequate. The Academy's physical therapist opined that the offered physical therapy service would not enable any service provider to meet the goals of the April 30, 2025 IEP. In the IEP, Student's physical access goals were to increase from a baseline of being able to sit upright in a supported position for six to eight minutes to walking 200 feet in a gait trainer and 150 feet unaided, and to sit upright in an adapted classroom chair for 20 minutes. No person was tasked with helping him reach those goals, and he was given no direct support to help him reach them. Consultation for 300 minutes a year would not begin to meaningfully assist Student to achieve those goals. Because no direct services would be provided, the onus would be on Student to achieve them on his own.

The offered consultative physical therapy service was grossly inadequate. The offer of services did not comport with the IEP because it was not reasonably calculated to enable Student to achieve his goals. (*Gregory K., supra*, 811 F.2d at p. 1314.)

Los Angeles failed to meet Student's need for physical therapy services, thereby depriving him of his right to a FAPE. Student prevailed on Issues 2(a) and 2(b).

ISSUE 2c: DID LOS ANGELES SUBSTANTIVELY DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE PLACEMENT, SPECIFICALLY A HIGHLY SPECIALIZED NON-PUBLIC SCHOOL WHERE STUDENT CAN RECEIVE ONE-TO-ONE INTERVENTIONS AND INSTRUCTIONS AND HAVE SAFE ACCESS TO SCHOOL?

Student asserts he requires placement at a non-public school because the proposed placement at Leichman would not allow him to receive continued academic instruction, there is inadequate medical support at Leichman, and there is no plan to transition him to Leichman.

Los Angeles argues that all of Student's goals and services can be addressed and implemented at Leichman.

Student's argument is that the IEP's offer of placement is inappropriate, not that the IEP's services fail to constitute FAPE. Student's brief defines the IEP's placement as being Leichman. Student asserts that Leichman focuses on providing vocational training, community experiences, and life skills. Student presented no testimony or documentary evidence proving that Leichman does not offer academics. During the hearing, Parent's testimony that Leichman does not offer academics was contradicted by the testimony of

Los Angeles' special education teacher, who testified that Leichman's students continue to work on the alternative curriculum. Neither testimony was persuasive, as both testified as to their belief about the program and neither demonstrated a reliable basis of knowledge about Leichman. Leichman may or may not provide or be able to provide academic instruction. Both special day classes and state special schools may offer academics. Student failed to demonstrate that Leichman had no academic component or that placement at a non-public school was necessary for him to receive appropriate academic support.

Similarly, Student failed to present reliable testimony about the nursing or medical support available at Leichman. Parents believe there is only a shared nurse currently on staff at the school, but, even if that is the current staffing, there is nothing about the placement at Leichman that would prevent an IEP team from directing a dedicated nurse be retained and assigned to Student if it were shown to be necessary. That fact that no nursing service is part of the offer of FAPE may be a defect in the offer, but it does not render placement at Leichman unworkable or require that Student be placed at a non-public school.

Student's last assertion is that there is no plan to transition him to Leichman. The failure to plan for a student's transition between educational placements may be a violation of the IDEA, but the failure to include a transition plan does not affect the appropriateness of the placement.

As noted by Student in his closing brief, "a student's placement must be capable of providing all the special education and related services outlined in a student's IEP." Student has not cited any service outlined in his IEP that could not be delivered at Leichman and has demonstrated no reason why his education required him to be placed

at a non-public school. (*Marcus I. ex rel. Karen I. v. Dep't of Educ.* (9th Cir. 2014) 583 F. App'x 753, 755.) Student had the burden of proof to show that his IEP could not be delivered at Leichman and has not done so.

Los Angeles did not substantively deny Student FAPE by failing to offer him placement at a non-public school.

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 1a:

Los Angeles denied Student a FAPE by impeding parental participation at the April 30, 2025 IEP team meeting because it failed to have a representative from the proposed placement attend the meeting, thereby predetermining Student's placement.

Student prevailed on Issue 1a.

ISSUE 1b:

Los Angeles denied Student a FAPE by impeding parental participation at the April 30, 2025 IEP team meeting because it failed to make a clear written offer of FAPE with sufficient detail.

Student prevailed on issue 1b.

ISSUE 1c:

Los Angeles did not deny Student a FAPE by impeding parental participation at the April 30, 2025 IEP team meeting because it failed to take into consideration Parents' concerns in the development of the IEP, specifically regarding the recommendations of the staff from the Academy for the Advancement of Children with Autism.

Los Angeles prevailed on Issue 1c.

ISSUE 1d:

Los Angeles denied Student a FAPE by impeding parental participation at the April 30, 2025 IEP team meeting because it failed to take into consideration the range of placement options for Student.

Student prevailed on Issue 1d.

ISSUE 2a:

Los Angeles substantively denied Student a FAPE by failing to address Student's needs as presented by the staff from the Academy for the Advancement of Children with Autism, specifically regarding his needs for physical therapy.

Student prevailed on Issue 2a.

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ISSUE 2b:

Los Angeles substantively denied Student a FAPE by failing to offer appropriate levels of physical therapy.

Student prevailed on Issue 2b.

ISSUE 2c:

Los Angeles did not substantively deny Student a FAPE by failing to offer an appropriate placement, specifically a highly specialized non-public school where student can receive one-to-one interventions and instructions and have safe access to school.

Los Angeles prevailed on Issue 2c.

REMEDIES

Under federal and state law, courts have broad equitable powers to remedy the failure of a local educational agency to provide FAPE to a disabled child. (20 U.S.C. § 1415(i); see *School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11.) When a local educational agency fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief

that is appropriate in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, at pp 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) The award must be fact-specific and reasonably calculated to provide the educational benefits that likely would have accrued from special education services the local educational agency should have supplied in the first place. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*)

There are two material differences between the parties over what constitutes FAPE for Student. The April 30, 2025 IEP followed the recommendations of the Academy and the wishes of Parents in all but two areas: it greatly reduced the amount of physical therapy services offered to Student and recommended placement at Leichman, instead of the Academy. Parent signed agreement to all parts of the IEP, with the exception that "the educational setting is stated in the final settlement agreement Academy for the Advancement of Children with Autism." The services offered in the IEP, other than physical therapy services, were agreed to be appropriate and necessary for Student's education.

Student contends, and this Decision agrees, that he needed a much higher level of physical therapy services than was offered in the April 30, 2025 IEP. In his closing briefing, Student requests the same 90 minutes per week and 60 minutes per month that the parties agreed to in the previous settlement offer. That amount was endorsed by the Academy's physical therapist, who opined that it would be sufficient to get Student back to the level of physical access that he had in 2021. On the evidence presented, Student required 90 minutes per week of direct and 30 minutes per month of physical therapy services to meet his IEP goals.

The other issue separating the parties is placement. This Decision has not found that the Academy is the only appropriate placement for Student. Los Angeles contends that all of Student's IEP services could be provided at Leichman, but the IEP team failed to make an offer of placement there that is clear, complete, and demonstrably able to deal with Student's significant health needs. As part of requested relief, Student seeks an order directing that he be placed at the Academy with all services previously received there and a provision added that Los Angeles "reimburse" the Academy for tuition and all services on days which Student does not attend and fails to notify the Academy of the absence 24 hours in advance. Los Angeles is correct that OAH's jurisdiction does not extend to imposing cancellation penalties or determining whether certain public payments would be considered gifts. OAH can neither set the terms of a reasonable cancellation fee nor require public agencies to pay for anything other than educational services necessary for a child's education. In any event, prospective placement is not an appropriate remedy.

The issues here concern a failure to make an appropriate offer of FAPE at an IEP. Prospective placement is not at issue, and Student cites no precedent authorizing prospective placement as a compensatory remedy. Accordingly, this Decision cannot

place Student at the Academy or order that Los Angeles offer Student an Academy placement on a future IEP. Remedy is limited to an award of compensatory service hours.

Student seeks compensatory services for the time period from the August 14, 2025 start of the school year to the date of this Decision. For each day of missed school, Student seeks

- six hours of specialized academic instruction;
- six hours of behavior services;
- 18 minutes of physical therapy;
- Roughly 40 minutes of adapted physical education;
- 18 minutes of language and speech therapy; and
- 15 minutes of occupational therapy.

Student also seeks to have Los Angeles ordered to conduct five hours of training on conducting IEP team meetings and provision of educational supports and services. No particular necessity for such training has been shown.

There is no obligation to provide day-for-day or hour-for-hour compensation for missed educational services. (*Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497.) However, there is no bar to doing so when appropriate. Student is extremely medically fragile and greatly subject to regression of his skills and abilities. He has been out of school and without services for over two months. Parents complied with the procedures for obtaining reimbursement for a non-public school placement but were unable to afford to pay and seek reimbursement. Student's unique

needs, limited timeframe for further education, and significant regression and loss of learned skills require a substantial award of services to restore him to the position he would have been had Los Angeles offered FAPE at the April 30, 2025 IEP team meeting.

Student's request for services more than duplicates the entirety of his educational day at the Academy. Student does not seek an award of nursing or consultation services or parent training, which would not be appropriate as compensatory services. Student does seek 13 hours and 25 minutes of services for each missed day of school. Student requests 15 minutes of physical therapy per day instead of 300 minutes per year, but otherwise closely tracks the offer of services in the April 30, 2025 IEP.

The requested relief reports that Student's day is six hours long. The six hours of behavior service would be delivered to help Student with his attention to and participation in his academic instruction and therapies and would be delivered with the other compensatory services. To compute Student's academic day, 18 minutes for physical therapy, 40 minutes for physical education, 18 minutes for language and speech, and 15 minutes for occupational therapy must be deducted from the 6 hours, leaving four hours and 29 minutes for academic instruction each day. The instructional calendar for Los Angeles entered into evidence in this case reports that there were 53 school days between August 14, 2025, and October 31, 2025.

No expert testimony was presented by either side as to what Student's level of ability would be had he received a FAPE between August 14, 2025, and the date of Decision. The projections of the Academy's physical therapist that he could regain his 2021 level of functioning are likely optimistic, and are almost certainly not where he would have been in November 2025. However, the surgery to implant a feeding tube appears to have succeeded in reducing Student's seizure activity and his resulting loss of

skills and abilities. The most that can confidently be said is that providing Student with the IEP services he missed from August 14, 2025, to October 31, 2025, will at least put him in the position he would have been in had he received those services.

Student has not argued or provided any evidence that he needs a greater level of services, and Los Angeles has not shown or argued that a lower level would suffice. Accordingly, given Student's individualized circumstances, a one-to-one level of compensation is appropriate here to provide Student with the educational benefit he would have received from his special education services had they been provided.

ORDER

1. Los Angeles shall provide Student with 237 hours and 37 minutes of compensatory academic services, calculated as 269 minutes of service for each of the 53 days of school missed. The services are to be provided by a qualified non-public agency of Parents' choice. Within 30 days of Parents informing Los Angeles of the selected agency, Los Angeles shall contract with that agency to provide the services. Parents shall have until June 4, 2027, to use these compensatory services.
2. Los Angeles shall provide Student with 318 hours of compensatory behavior aid services, calculated as six hours of service for each of the 53 days of school missed. The services are to be provided by a qualified non-public agency of Parents' choice. Within 30 days of Parents informing Los Angeles of the selected agency, Los Angeles shall contract with that agency to provide the services. The behavior

services shall be provided to support the other compensatory services awarded, and shall not be used in any other context. Parents shall have until June 4, 2027, to use these compensatory services.

3. Los Angeles shall provide Student with 15 hours and 54 minutes of compensatory physical therapy services, calculated as 18 minutes of service for each of the 53 days of school missed. The services are to be provided by a qualified non-public agency of Parents' choice. Within 30 days of Parents informing Los Angeles of the selected agency, Los Angeles shall contract with that agency to provide the services. Parents shall have until June 4, 2027, to use these compensatory services.
4. Los Angeles shall provide Student with 35 hours and 20 minutes of compensatory adapted physical education services, calculated as 18 minutes of service for each of the 53 days of school missed. The services are to be provided by a qualified non-public agency of Parents' choice. Within 30 days of Parents informing Los Angeles of the selected agency, Los Angeles shall contract with that agency to provide the services. Parents shall have until June 4, 2027, to use these compensatory services.
5. Los Angeles shall provide Student with 15 hours and 54 minutes of compensatory language and speech therapy services, calculated as 18 minutes of service for each of the 53 days of school missed. The services are to be provided by a qualified non-public agency of Parents' choice. Within 30 days of Parents informing Los Angeles of

- the selected agency, Los Angeles shall contract with that agency to provide the services. Parents shall have until June 4, 2027, to use these compensatory services.
6. Los Angeles shall provide Student with 13 hours and 15 minutes of compensatory occupational therapy services, calculated as 15 minutes of service for each of the 53 days of school missed. The services are to be provided by a qualified non-public agency of Parents' choice. Within 30 days of Parents informing Los Angeles of the selected agency, Los Angeles shall contract with that agency to provide the services. Parents shall have until June 4, 2027, to use these compensatory services.
7. All other claims for relief by Student 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.

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings