

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

CASE NO. 2024010524

DECISION

MARCH 11, 2025

On January 16, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Los Angeles Unified School District, called Los Angeles Unified. For good cause, OAH continued the hearing to September 17, 2024. Administrative Law Judge Laurie Gorsline heard this matter by videoconference on September 17, 18, 20, 24, and 25, November 5, 6, 7, 12, 13, 14, 19, 20, and 21, and December 17, 18, 19, 20, and 23, 2024.

Parent represented Student. Student did not attend the hearing. Attorney Brian Davenport represented Los Angeles Unified. Administrators Patrick Johnson, Andrew Vazquez, Genetha Hicks-Cleveland, and Yamilet Vargas each attended one or more hearing days on Los Angeles Unified's behalf.

At the parties' request, the matter was continued to January 27, 2025, for written closing briefs. For good cause, on January 24, 2025, OAH granted a further continuance to February 14, 2025, for the parties to file their written closing briefs. OAH closed the record and submitted the matter on February 14, 2025.

## ISSUES

On August 19, 2024, OAH held a prehearing conference and issued an order dated August 20, 2024, determining the issues to be decided at hearing. Based upon a discussion at hearing with the parties on September 18 and November 6, 2024, and the Administrative Law Judge's further review of the complaint, OAH issued orders dated September 19 and November 12, 2024, further clarifying and correcting the issues for the due process hearing to more accurately reflect the claims stated in the complaint. Based on a discussion with the parties on December 17, 2024, Issue 9 was corrected on the record to fix a typographical error in the November 12, 2024 written Order. On December 24, 2024, OAH issued an Amended Order Clarifying Issue 9 to document the correction made on the record to Issue 9.

A free appropriate education is called a FAPE. An individualized education program is called an IEP. The Issues for hearing were:

1. Did Los Angeles Unified deny Student a FAPE by failing from January 16, 2022, through the filing of Student's complaint to conduct a three-year-review psychoeducational assessment?
2. Did Los Angeles Unified deny Student a FAPE by failing from January 16, 2022, through the filing of Student's complaint to assess Student's educationally related mental health?

3. Did Los Angeles Unified deny Student a FAPE from March 16, 2022, through February 27, 2023, by failing in the March 16, 2022 IEP to:
  - A. Offer Student sufficient behavior aide support and supervision?
  - B. Offer Student an adequate individual transition plan?
4. Did Los Angeles Unified deny Student a FAPE by materially failing to implement the transition services of Student's March 16, 2022 IEP?
5. Did Los Angeles Unified deny Student a FAPE from February 27, 2023, through the filing of Student's complaint by failing in the February 27, 2023 IEP to:
  - A. Offer Student sufficient behavior aide support and supervision?
  - B. Offer Student an adequate individual transition plan?
6. Did Los Angeles Unified deny Student a FAPE by materially failing to implement the transition services of Student's February 27, 2023 IEP?
7. Did Los Angeles Unified deny Student a FAPE by failing to assess Student for recreational therapy as requested by Parent at the February 27, 2023 IEP team meeting?
8. Did Los Angeles Unified deny Student a FAPE by failing to provide Parent a prior written notice regarding its denial of Parent's February 27, 2023 request for compensatory educational services?

9. Did Los Angeles Unified deny Student a FAPE by predetermining to exit Student from special education prior to the October 30, 2023 IEP, without parental consent?
10. Did Los Angeles Unified deny Student a FAPE from October 30, 2023, through the filing of Student's complaint by failing in the October 30, 2023 IEP to:
  - A. Offer Student sufficient behavior aide support and supervision?
  - B. Offer Student an adequate individual transition plan?

## 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.) All future citations to the Code of Federal Regulations 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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) As the filing party, 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).)

Student was 17 years old and in 12th grade at Los Angeles Unified's Science Academy STEM Magnet School, called the Science Academy, at the time the complaint was filed in January 2024. STEM stands for science, technology, engineering, and math. Student turned 18 years old during his 12th-grade year. The day after Student turned 18, he assigned his educational decision-making authority to Parent regarding his entitlement to a FAPE, including the right to pursue special education due process proceedings.

Student attended the Science Academy since sixth grade. Student received his high school diploma from the Science Academy on June 11, 2024, graduating with a Los Angeles Unified official grade point average of 4.260, and a University of California weighted grade point average of 4.333, because of the Advanced Placement courses he

took and passed while in high school. In fall 2024, Student began attending college at a University of California campus outside Los Angeles County and living on his own in the college dormitory.

Advanced Placement courses are advanced courses that students take while completing their high school curriculum. Students who take Advanced Placement courses have the option to sit for the course's Advanced Placement exam. These exams are scored on a scale of one to five, with five being the highest score. Students can earn college credit for the course if they score a three or higher on the exam, depending on the specific college or university requirements.

At the time of the hearing, the Science Academy was ranked 12th in a national ranking of high schools according to U.S. News and World Report, a media company that regularly publishes school rankings. Based on test scores, it was ranked third within California and first within Los Angeles Unified. A student had to be gifted in science based on assessment to be eligible for entry into the Science Academy. Science Academy students had a pass rate of 96 percent on all Advanced Placement exams, and on standardized tests, students in grades six, seven, eight, and 11 scored nearly 100 percent.

Student's resume, which he prepared with Parent's assistance during the fall of his senior year, listed some of his accomplishments during high school. He had already passed five Advanced Placement exams, with a score of four in two subjects, and a score of five in the other three. Since August 2022, he helped form the Science Academy's first academic decathlon team, created study material for the team, and competed, tying for second place at regionals, and earning a gold medal in science, a silver medal in essay, and a silver medal for overall score at a scrimmage event. He was the founder

and president of a campus music club since September 2023, which he created with the intent of playing, composing, and appreciating jazz music, and to “teach music theory and certain jazz standards to newcomers.”

Student’s work experience was listed on his resume. He was a tutor/math assistant for Adesuwa Academy since 2020, helping students with homework and creating math lesson plans and preparing lesson plans. Student also touted he was an actor in a video advertisement for a nonprofit organization in June 2023, for which he received compliments on being very easy to work with. Student worked as an after-school tutor for Los Angeles Unified since October 2023, assisting students to complete their homework and study for tests. This involved teaching sixth through 12th-grade material and Advanced Placement subjects such as World History, United States History, and Calculus. Student also performed volunteer work at church activities and events and participated in youth groups since 2021.

Other activities Student listed on his resume were, “Study Group Fridays,” described as “created a study group where peers meet and study over a meal” since September 2022, and “Koreatown Tuesdays,” described as “exploring the gastronomy and culture of Koreatown with classmates” since December 2022. At home, Student assisted with cooking and cleaning, and for an extended period over three years, he assisted with an ill family member. Student listed his skills on his resume as “[c]ommunications; Google Workspace literacy; critical thinking, creativity, and problem-solving skills; piano, violin, chiptune, jazz, digital audio workspaces, and music composition; regional-level gaming; personable.”

Student resided with Parent within Los Angeles Unified's geographic boundaries through his 12th-grade graduation from the Science Academy. Student was eligible for special education and related services since 2011, and at all relevant times was eligible under the category of autism.

## STUDENT FAILED TO FILE A CLOSING BRIEF

Student did not timely file a closing brief. As such, the ALJ did not have the benefit of Student's written summation of facts and closing argument.

It is not the ALJ's responsibility to construct or develop a party's argument. (See *Independent Towers of Washington v. Washington* (9th Cir. 2003) 350 F.3d 925, 929 [the court cannot construct arguments for a party, and will only examine issues specifically and distinctly argued in a party's brief]; *Loewen v. Berryhill* (9th Cir. 2017) 707 Fed. Appx. 907, 908 (nonpub. opn.) (*Loewen*), citing *Carmickle v. Commissioner* (9th Cir. 2008) 533 F.3d 1155, 1161, fn. 2 (*Carmickle*) [the court is not required to address arguments made without specificity]; *In Re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare* (C.D.Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 (*In Re: Out of Network*) ["The Court 'is not a pig searching for truffles in a forest,' and will 'not perform the work of representing parties.'"]; *U.S. v. Winkelman* (M.D.Pa. 2008) 548 F. Supp. 2d 142, 150 ["[Judges] are not pigs searching for truffles and are unwilling to search through the massive record that has been developed in this case to find evidence of these alleged violations."]; *Agarwal v. Oregon Mutual Insurance Company* (D.Nev. January 18, 2013, No. 2:11-cv-01384-LDG) 2013 WL 211093,

at \*3, quoting *Greenly v. Sara Lee Corporation* (E.D.Cal. April 30, 2008, No. CIV. S-06-1775 WBS EFB) 2008 WL 1925230, at fn. 26 [“[I]t is not the responsibility of the judiciary ‘to sift through scattered papers in order to manufacture arguments for parties.’”].)

Nonetheless, in the interests of fundamental fairness, the ALJ has attempted to sort through the massive record to flesh out Student’s arguments.

## ISSUE 1: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE BY FAILING FROM JANUARY 16, 2022, THROUGH THE FILING OF STUDENT’S COMPLAINT TO CONDUCT A THREE-YEAR-REVIEW PSYCHOEDUCATIONAL ASSESSMENT?

Student’s complaint alleges Los Angeles Unified denied Student a FAPE by failing to conduct a three-year psychoeducational reevaluation for the October 30, 2023 IEP within the statute of limitations. At hearing, Parent conceded Los Angeles Unified gave her an assessment plan for the proposed psychoeducational reevaluation prior to the October 30, 2023 IEP team meeting, but she refused to consent to the reassessment. Parent asserted she rejected the proposed reassessment because Los Angeles Unified never properly explained to her either orally or by the assessment plan why it needed to conduct a comprehensive evaluation of Student for his three-year reevaluation beyond his executive functioning needs, including which tests it intended to administer and why it wanted to administer each of them. Parent testified she also refused to consent to the proposed assessments because she was not part of the decision as to which assessments needed to be done and because Los Angeles Unified sought to assess Student in the areas he had strengths. Parent believed Los Angeles Unified wanted to exit Student from special education and it should have confined the proposed

evaluation to the just areas in which Student had challenges. At the end of the hearing, Parent asserted that the three-year assessment was late and should have been held at the end of the 2022-2023 school year, but also at one point stated she was "scrapping" Issue 1.

Los Angeles Unified contends Student's allegations have no merit. It contends it never conducted a psychoeducational reevaluation for Student's October 30, 2023 IEP because Parent refused to cooperate and withheld her consent for that evaluation. Los Angeles Unified asserts Parent's argument at hearing that she did not sign the assessment plan because it did not look like the form she got when Student was in elementary school was illogical, as were all of Parent's other assertions. Los Angeles Unified asserts that the assessment plan properly listed the assessments it proposed to conduct, and Parent had the opportunity to consent to the assessment plan with exceptions and specify her concerns, but she blanketly refused to agree to any assessment.

Los Angeles Unified asserts Parent refused to consent to the psychoeducational evaluation as a tactical maneuver, because she was concerned the assessment would demonstrate Student no longer required special education and related services. Los Angeles Unified contends Student's teachers found he was performing at or above grade level and Parent refused to consent to evaluation because it would have demonstrated Student did not require special education. It also argues Parent admitted she never requested a psychoeducational evaluation, negating any claim that she was denied the opportunity to participate in the decision-making process because no evaluation was completed. Los Angeles Unified argues it had sufficient data to prepare a substantially appropriate IEP absent the evaluation. Los Angeles Unified claims the absence of a psychoeducational evaluation did not deny Student educational benefit

because Los Angeles Unified continued to provide Student special education and related services through his graduation, whereas the likely results of any assessment would have demonstrated Student no longer required special education. Los Angeles Unified argues that any procedural error in not conducting the evaluation did not deprive Student of a FAPE, and Parent should not be rewarded for her actions to stymie it from carrying out its obligations.

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

"Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.)

"Related services" are transportation and other developmental, corrective, and

supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called “designated instruction and services”].)

An IEP is a written document for each child with a disability that includes a statement of the child’s present levels of academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345 subd. (a)(1).) An IEP must contain

- a statement of the special education and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and
- a statement of the program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual goals and to be involved in and make progress in the regular education curriculum and participate in nonacademic activities, and to be educated and participate with other individuals with exceptional needs and nondisabled pupils. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).)

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In developing the IEP, the IEP team shall consider

- the strengths of the child,
- the concerns of the parents for enhancing the education of their child,
- the results of the initial evaluation or most recent evaluation of the child, and
- the academic, functional, and developmental needs of the child.

(20 U.S.C. § 1414(d)(3)(A).)

For each area in which a special education student has an identified need, the IEP team must develop annual goals that are based upon the child's present levels of academic achievement and functional performance. (Ed. Code, § 56345, subd. (a)(2); *Letter to Butler* (United States Department of Education Office of Special Education and Rehabilitative Services (OSERS), March 25, 1988).)

The IEP team is required to review a child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP as appropriate to address:

- the lack of progress toward the annual goals,
- the results of any reevaluation,
- information provided to or by the parents,
- the child's anticipated needs, or
- other matters. (20 U.S.C. § 1414(d)(4)(A).)

To determine the contents of an IEP, a student eligible for special education under the IDEA must be assessed in all areas related to the student's suspected disability. (20 U.S.C. § 1414 (a)(1), (2) & (3); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320.) School district evaluations of students eligible for special education under the IDEA help IEP teams identify the special education and related services the student requires. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.303, 300.324(a)(1); Ed. Code, § 56341.1.)

A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119-1120.) Such notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 1120 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

An assessment must be sufficiently comprehensive to identify all the student's special education and related service needs, whether or not commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6).) A student's unique educational needs are to be broadly construed to include

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and

- vocational needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. at pp. 56-58.)

The “educational benefit” to be provided to a student requiring special education is not limited to addressing the student’s academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

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

School district evaluations of students with disabilities under the IDEA serve two purposes:

- identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and
- helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.)

The first purpose refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter purpose refers to the follow-up or repeat evaluations that occur throughout the course of the student’s educational career. (See 71 Fed. Reg. 46640 (Aug. 14, 2006).)

The IDEA provides for reevaluations, referred to as reassessments in California, to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted more often than once every three years if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reassessment, or if the student's parents or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School Dist.* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (nonpub. opn.) [no duty to reassess before the three-year reevaluation was due even where school district concluded the student's behaviors had worsened and were not being addressed sufficiently by the behavior plan].)

Reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(i); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his or her parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, § 56321, subds. (a) & (b).) The notice consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion state law. (*Ibid.*) The proposed assessment plan is required to contain certain information, including but not limited to, an explanation of the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b).) The assessment may

begin immediately upon receipt of the parent's consent but must generally be completed within 60 days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a), 56321, subd. (c)(4).)

If a parent does not consent to a reassessment plan, the school district may, but is not required to, request a due process hearing to obtain permission to conduct the reassessment without parental consent by establishing that the assessment is necessary and that the school district is lawfully entitled to reassess the student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3), 56506 subd. (e).)

A school district's failure to assess a child may constitute a procedural violation of the IDEA. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 249; see also *Park v. Anaheim Union High School Dist., et.al.* (9th Cir. 2006) 464 F.3d 1025, 1032 [A failure to properly assess is a procedural violation of the IDEA].)

A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation:

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

## STUDENT'S TRANSITION TO THE SCIENCE ACADEMY AND THE JUNE 2017 IEP

Los Angeles Unified held an IEP team meeting at the end of the 2016-2017 school year to review the results of its spring 2017 three-year reevaluation of Student. Some of the assessment results were documented in an IEP dated May 25 and June 1, 2017. The evidentiary record did not make clear the full range and scope of evaluations completed in spring 2017. The 2017 assessment reports were not part of the evidence proffered at hearing. The IEP dated May 25 and June 1, 2017, is referred to as the June 2017 IEP.

The present levels of performance in the June 2017 IEP noted that Student's teacher reported Student could be argumentative and defiant especially when he did not understand the reasoning behind an adult's statements and conduct. His social skills with peers improved, but he still had difficulties. He tended to dominate groups and argued his point of view if others disagreed. The counselor noted Student had poor perspective-taking skills during counseling sessions. Student could be argumentative when he did not get his way and had difficulty understanding how his behavior negatively impacted others. School staff also reported Student still struggled with independently organizing his materials, requiring additional prompting and support to organize his desk and make sure he gathered all the materials needed for a task or lesson.

In the June 2017 IEP, Los Angeles Unified offered Student a program that included goals in behavior support to address perspective-taking, social functioning to address sustained participation in cooperative play and learning activities, and two vocational goals to address organizational issues, including using a checklist. It also

offered counseling for 30 minutes a week. Los Angeles Unified offered a behavior aide for 1,800 minutes a week and recreation therapy for 300 minutes a year. It also offered resource specialist support through collaborative teaching and planning for 20 minutes a week plus 200 minutes a year to address the behavior support and vocational goals. It offered accommodations including extended time for assignments, chunking of assignments, help with organizing and self-monitoring checklist, and priming for transitions. The offer included placement in the general education classroom 98 percent of the day with two percent outside the general education environment, and a behavior support plan to address difficulties with peer interaction.

The first page of the June 2017 IEP stated that the next annual review was to be conducted by June 1, 2018, and the next three-year review by June 1, 2020. The IEP stated that in preparation for the next three-year review, formal assessments were not needed to re-establish eligibility. Parent signed the IEP on June 6, 2017, agreeing to all components of the IEP.

## THE SUBSEQUENT IEPs AND THE 2020 REEVALUATION

The record failed to establish whether IEP annual reviews were conducted in 2018 and 2019 or whether a three-year review was conducted in 2020. No IEPs were proffered as evidence by either party for that period. Although several Los Angeles Unified witnesses testified that numerous IEP team meetings were held during the time Student attended the Science Academy, the testimony was vague regarding the dates such meetings were held, apart from the IEP team meetings specifically described by this Decision.

The record also failed to establish Los Angeles Unified did not send Parent an assessment plan for Student's 2020 three-year reevaluation, and if sent, whether Parent consented to such reevaluation or not. There was no comprehensive testimony from either party or documentary evidence addressing this point.

### THE MARCH 16, 2022 AMENDMENT IEP

Los Angeles Unified developed Student's annual IEP on September 9, 2021. That IEP was amended at an IEP team meeting held on March 16, 2022, and is referred to as the March 16, 2022 amendment IEP. The September 9, 2021 annual IEP was not proffered as evidence at hearing. According to Student's March 16, 2022 amendment IEP, Student's next annual review was required to be completed on September 9, 2022, and listed the date of the last three-year review as September 16, 2020. The March 16, 2022 amendment IEP stated Student's next three-year evaluation was required to be completed by September 16, 2023. There was no evidence explaining why Student's annual and three-year review IEPs were no longer being conducted in the spring as in 2017.

During the March 16, 2022 amendment IEP team meeting more fully addressed in Issue 3A, the IEP team reviewed Student's present levels of performance and proposed goal labeled as a vocational goal to address organizational planning and executive functioning. Parent asked the IEP team to consider using some of the behavior aide service hours for after-school attention deficit hyperactivity disorder coaching during the 2022-2023 school year. Attention deficit hyperactivity disorder is called ADHD. The IEP team discussed that to consider additional services, an assessment plan would need to be generated. The Los Angeles Unified IEP team members stated they would investigate Parent's request for after-school ADHD coaching. Student's special

education teacher had never heard of an ADHD coach and had to investigate it. Parent admitted at hearing that she did not understand from the discussion that Los Angeles Unified was going to send her an assessment plan, but rather it was going to do some research into her request for the kind of services she had requested. Los Angeles Unified was not proposing to assess Student.

### THE OCTOBER 14, 2022 IEP TEAM MEETING

An annual IEP team meeting was held on October 14, 2022. Parent, Student, vice-principal Joshua Rosenthal, school psychologist Donna Garrett, special education teacher Barry Blisten, Student's general education teacher Michael Brooker, and recreational therapist Pagnapich Rouen attended the IEP team meeting. Brooker did not testify at hearing, and neither party proffered the October 14, 2022 annual IEP as evidence.

Barry Blisten was a resource specialist, otherwise known as a special education teacher, who provided resource specialist services to Student during his sophomore and junior years at the Science Academy once or twice a week for 30 minutes. Blisten had a master's degree in special education, and a credential as an exceptional needs specialist in mild-to-moderate disabilities. He held certifications in both education and autism and was employed by Los Angeles Unified for 15 years. Blisten collaborated with Student's teachers and worked with his behavior aide in implementing Student's IEPs.

At the October 14, 2022 IEP team meeting, Blisten reviewed Student's present levels of performance in writing. Student had strong writing skills, and received an A grade in his English course in the last semester. Blisten opined Student's disability was not impacting his ability to access the writing curriculum. General education teacher

Brooker also explained that Student was a strong writer who exceeded expectations since ninth grade, but Student was not doing the work he took home. When Parent asked Student why he was not doing the homework, Student claimed he was not feeling well because of recent dental work and that regarding earlier assignments in September 2022, he described himself as “just being negligent.”

During the discussion about Student’s present levels of performance in behavior support, special education teacher Blisten expressed the opinion Student did not have any behavioral support needs because he was demonstrating appropriate behavior at school. At many points during the IEP team meeting, Parent expressed disagreement with Blisten’s views, explaining Student was not doing his homework in a timely fashion, which was causing him to wake up late and causing stress for the family. Parent asserted Student had issues with executive functioning and responsible decision-making regarding the work he was required to complete at home.

Blisten strongly asserted that whatever conduct was going on at home was not impacting Student’s ability to access the academic curriculum. Blisten said he would like to academically test Student and conduct a functional behavior assessment to see if any of the behaviors Parent described were occurring in the classroom. Blisten explained that he thought Los Angeles Unified should offer Parent a battery of tests so that it could collect more data, because he did not see an adverse impact on Student’s ability to access the general education curriculum. He suggested that Los Angeles Unified send out an assessment plan so he could do an academic assessment and a functional behavior assessment to see if the behavior manifested itself at school, asserting that the data Blisten had did not a show a need for academic or behavior services.

## THE FEBRUARY 27, 2023 IEP TEAM MEETING

Los Angeles Unified developed Student's annual IEP on February 27, 2023, which appeared to be a reconvening of the annual IEP team meeting that began on October 14, 2022. The February 27, 2023 IEP stated Student's next annual review was due on October 14, 2023, and listed the date of the last three-year review as September 16, 2020. The IEP stated Student's next three-year evaluation was required to be completed by September 16, 2023.

During the February 27, 2023 IEP team meeting, more fully described in Issue 5A, the IEP team reviewed Student's present levels of performance, among other things. Parent asked if Los Angeles Unified planned to cancel his IEP. Rosenthal told Parent the IEP team had no specific intention to do this. As discussed in Issue 7, recreational therapist Roeun proposed a recreational therapy assessment because Student met his social-emotional recreational therapy goal and Roeun did not see that Student was demonstrating any needs in the area covered by recreational therapy. Special education teacher Blisten's supervisor stated Student needed a functional behavior assessment and recommended Student have an extensive evaluation. In response, Parent disagreed to any comprehensive assessment.

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## THE PROPOSED 2023 ASSESSMENT PLAN

Student's three-year reevaluation was due on September 16, 2023. On August 18, 2023, Los Angeles Unified sent an assessment plan to Parent proposing to conduct a reevaluation of Student in the following areas by the following people, which components included a comprehensive psychoeducational evaluation:

- Social-emotional status and academic performance, including a functional behavior assessment, by a special education teacher;
- Health and development, including vision and hearing, by a nurse or physician;
- Social-emotional status, motor abilities, language function, adaptive behavior, and general ability by a psychologist; and
- Social-emotional status by a recreation therapist.

The stated purpose of the assessment was listed on the first page of the assessment plan, which was to conduct a special education reevaluation. The assessment plan contained a list of the types of standardized tests that might be used during the assessment, including the assessment instruments, and an assessment area description. The assessment plan also included a place for Parent to either consent to the assessment plan, consent to the assessment plan with exceptions, or refuse to consent to the assessment plan. There was a place on the page for Parent to write comments, such as identifying the areas Parent did not want assessed and specifying additional areas of educational concern Parent wanted addressed.

## PARENT REFUSED TO CONSENT TO THE 2023 PROPOSED ASSESSMENT PLAN

On September 6, 2023, Parent signed and returned the proposed assessment plan to Los Angeles Unified, refusing to give permission for the proposed assessments. Specifically, Parent circled the choice "NO, I do not consent to the Assessment Plan," without any further explanation. Parent did not write anything in the spaces designated for Parent's comments. Prior to filing this action on January 16, 2024, alleging Los Angeles Unified failed to conduct a psychoeducational reassessment for the October 30, 2023 IEP, Parent never revoked her refusal to consent to the proposed psychoeducational reassessment.

At hearing, Parent unpersuasively claimed she never received a copy of the assessment plan that had the boxes checked as to the purpose of the assessment and which assessments were going to be conducted. Among Student's exhibits was a complete copy of the 2023 assessment plan with the boxes checked and it bore the same date and time stamp as the assessment plan Parent signed. The signature page of the form Parent returned to Los Angeles Unified did not contain the checked boxes, but this appeared to be due to a printing or scanning error. In other words, Student did not establish Parent did not have a complete copy of the assessment plan with the boxes checked. Even if Parent's copy of the assessment plan did not have the boxes checked, it nonetheless indicated that one of the purposes of the assessment was to conduct a special education reevaluation and all the assessment areas Los Angeles Unified proposed were listed on the very page Parent signed.

Parent's testimony on this point was unconvincing. There was no contemporaneous evidence that Parent ever objected to the assessment plan because it was missing the boxes. Moreover, Parent did not demonstrate she was an accurate historian concerning the assessment plan, in that she admitted she could not recall signing the assessment plan with her signature. Parent also demonstrated she was biased because of personal animus she had against Los Angeles Unified based on her prior employment. Parent worked for Los Angeles Unified as a general education teacher until 2013. At hearing, Parent claimed Los Angeles Unified treated her unfairly and harassed her during her prior employment, which continued to impact her in 2024.

During her testimony, Parent accused Los Angeles Unified of retaliation, claimed she was being blackballed, and called it "a mob." She claimed people were knocking at her door to gain access to her house and were following her, intimating at various times during the hearing it was people from Los Angeles Unified, but admitted she did not know who these people were. Parent also claimed Los Angeles Unified "has been on my tail" and "they follow me everywhere." Parent asserted that if this case did not work out, "I still have more juice for them." There was no credible evidence at hearing that anyone related to this case, or anyone else from or on behalf of Los Angeles Unified, was stalking Parent.

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## LOS ANGELES UNIFIED HAD NO DUTY TO CONDUCT THE FALL 2023 THREE-YEAR PSYCHOEDUCATIONAL EVALUATION BECAUSE PARENT REFUSED TO CONSENT

Student failed to prove Los Angeles Unified was required to conduct a psychoeducational reevaluation for Student's three-year review IEP team meeting held on October 30, 2023.

Student's three-year reevaluation was not due until September 16, 2023. On August 18, 2023, Los Angeles Unified sent Parent an assessment plan seeking Parent's consent for a psychoeducational reevaluation in preparation for the October 30, 2023 IEP team meeting. On September 6, 2023, Parent signed the assessment plan, refusing to consent to any assessment. Without Parent's consent, Los Angeles Unified had no duty to conduct a psychoeducational reevaluation for Student's October 30, 2023 IEP. Based on this evidence alone, Student's claim in Issue 1 fails.

Through her testimony, Parent unsuccessfully attempted to justify her refusal to consent to the psychoeducational assessment by challenging the validity of the assessment plan. However, that was not the claim made in Issue 1 and was otherwise unpersuasive given that the assessment plan itself afforded Parent the opportunity to participate, negating Parent's arguments.

Even looking at the broader two-year statutory period, Student failed to meet his burden of proof on Issue 1. Parent never requested that Los Angeles Unified conduct a three-year psychoeducational reevaluation prior to September 16, 2023, the date Student's three-year reevaluation was due. Nor did Student prove that any teacher requested or that Los Angeles Unified determined that Student's three-year

psychoeducational reevaluation should be conducted early. At the March 16, 2022 amendment IEP team meeting, Los Angeles Unified did not determine that a psychoeducational reevaluation was needed. No specific assessment was proposed and Parent admitted she did not understand Los Angeles to be proposing one. At the October 14, 2022 IEP team meeting, the only specific assessments Blisten proposed was an academic assessment and a functional behavior assessment. At the February 27, 2023 IEP team meeting, the only specific assessments proposed were a recreational therapy assessment and a functional behavior assessment.

If even Blisten had requested a psychoeducational reevaluation or Los Angeles Unified had determined Student's educational or related services needs warranted a psychoeducational reevaluation, Student's claim still fails because when Parent was presented with an assessment plan in August 2023 for the three-year psychoeducational reevaluation, Parent refused to consent. Consistent with that refusal, the weight of evidence also proved Parent would not consent to a three-year psychoeducational reevaluation at any earlier time.

Throughout Parent's testimony, Parent repeatedly asserted Student did not need to be assessed and that further assessments were unnecessary. Regarding the October 14, 2022 IEP team meeting, Parent testified "there was no need for any new assessments." Parent also testified that over the years, including when Student was at the Science Academy, some assessments were done here and there, and this case was not about Student needing to be assessed because he had already been assessed, declaring "all assessments had already been done." Parent also stated that a "full blown" psychoeducational evaluation had already been done and another psychoeducational evaluation was not needed until the very end of the 2023-2024 school year, when Student was about ready to graduate from high school and transition to college.

Parent believed the only time a comprehensive psychoeducational evaluation was necessary was when a student was exiting special education. To justify her position, Parent further claimed a comprehensive assessment of Student would have been "impossible" because the assessment process would have prevented Student from doing his schoolwork. Consistent with Parent's view, at the February 27, 2023 IEP team meeting, Parent refused to agree to any comprehensive evaluation of Student, which she reiterated on September 6, 2023, when she refused to sign the assessment plan for Student's fall 2023 three-year review.

Further demonstrating Parent would not consent to a three-year psychoeducational reevaluation at any time prior to fall 2023 was Parent's testimony regarding Los Angeles Unified's supposed motivation for assessing Student. Parent believed the only reason Los Angeles Unified wanted to assess Student before the end of his senior year was to develop the data to justify removing him from special education. Even before the March 16, 2022 amendment IEP team meeting, Parent believed Los Angeles Unified wanted to exit Student from special education. Parent testified that at the October 14, 2022 IEP team meeting, statements made by Los Angeles Unified IEP team members demonstrated to her it was trying to exit Student from special education. Parent also claimed that the entire February 27, 2023 IEP team meeting was about trying to "kick him off the IEP," and the IEP documented that she informed the IEP team she would not agree to any comprehensive assessment.

Parent believed that even if Los Angeles Unified had given her an assessment plan prior to August 2023, Los Angeles Unified would not have conducted the assessments with the intention of giving Student services, but rather, to find a way to take away Student's IEP. Parent testified in relation to assessing Student, "I did not

trust them.” At hearing, Parent further made clear she had no intention of agreeing to have Student reevaluated, when she testified, “Don’t tell me he needs a full-blown psychoeducational evaluation when you are trying to kick him out ....”

Parent’s written refusal to consent to a psychoeducational evaluation negated any obligation for Los Angeles Unified to conduct a psychoeducational evaluation in preparation for Student’s October 30, 2023 IEP.

Student failed to prove by a preponderance of the evidence that Los Angeles Unified denied him a FAPE by failing to conduct a three-year-review psychoeducational assessment between January 16, 2022, and the filing of the complaint on January 16, 2024.

## ISSUE 2: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE BY FAILING FROM JANUARY 16, 2022, THROUGH THE FILING OF STUDENT’S COMPLAINT TO ASSESS STUDENT’S EDUCATIONALLY RELATED MENTAL HEALTH?

Student contended at hearing that Los Angeles Unified denied him a FAPE because it never conducted an educationally related mental health services evaluation. Parent testified at hearing that when Student transitioned to middle school, there were indicators in the assessments leading up to the June 2017 IEP, and in the June 2017 IEP, that Student needed to be evaluated for educationally related mental health services. Parent asserted Student

- displayed executive functioning challenges,
- was at risk for depression,

- was hyperactive,
- displayed aggression, and
- had possible withdrawal.

Parent claimed the assessments done in 2017 indicated Student had a propensity to have somatization and anxiety. Parent asserted that although she never asked that Student be assessed in the area of educationally related mental health, the IEP team members should have known this by the concerns she raised during the March 16 and October 14, 2022 IEP team meetings. Parent maintained Student required the more intensive service called educationally related mental health services, rather than the counseling Los Angeles Unified provided, called designated instruction and services counseling.

Los Angeles Unified contends it was not required to conduct an educationally related mental health assessment because Parent never requested this type of assessment and Student never demonstrated any behaviors or need warranting evaluation in this area. Los Angeles Unified argues that based on Parent's testimony, Student's needs related only to his purported executive functioning delays, such as challenges with time management skills illustrated by not timely turning in homework, staying up late to play video games, and not wanting to get out of bed in the morning – none of which were indicators of a mental health condition requiring intensive counseling, but rather, behaviors of a typical teenage boy. Los Angeles Unified contends all the witnesses testified Student was

- well-adjusted,
- socialized,
- had friends,

- advocated for himself, and
- that he never exhibited maladaptive behavior issues except for some time-management challenges.

Los Angeles Unified argues Student failed to present any persuasive evidence Student required an assessment for educationally related mental health services or the need for such services, and that Parent's assertions about Student's anxiety were unsubstantiated. It argues Student failed to demonstrate how his supposed educationally related mental health issues impeded his performance at school.

Educationally related mental health services is a type of related service. Related services are those that are as "required to assist a child with a disability to benefit from special education." (34 C.F.R. § 300.34(a), (c)(2) & (10).) Each student's need for related services is determined on an individualized basis, just as their need for special education is determined.

Related services differ from "special education" because they are not specially designed instruction, curriculum, or an educational program designed for an individual student, but are essentially additional services meant to assist a student in benefiting from special education. (34 C.F.R. § 300.34(a); see, e.g. *M.C. v. Knox County Board of Education* (E.D.Tenn. June 7, 2018, 3:17-CV-337) 2018 WL 2746014, \*6-9 [preparing materials was just a means to the end of providing a specified service and were not a "supportive service" that must be documented in the IEP].)

A student who needs only related services, and not special education, is not eligible under the IDEA as a child with a disability. However, some states define a

related service as being a specific supportive service that consists of specially designed instruction, and it would qualify as special education in those states. (See 34 C.F.R. § 300.39(a)(2)(i).)

An educationally related mental health services evaluation is an evaluation of a student's need for the specific service of educationally related mental health services. Educationally related mental health services are different than pupil counseling provided by a school psychologist, often referred to as "designated instruction and services counseling," also called "DIS counseling." Educationally related mental health services are more intensive counseling services provided by a licensed therapist or licensed psychologist, as opposed to a school psychologist. Educationally related mental health services are a "step up" from pupil counseling also called "counseling and guidance" by Los Angeles Unified, intended for situations when a student's social-emotional needs cannot be met by pupil counseling. Educationally related mental health services are warranted where a student is socially emotionally impaired to such a degree it significantly impacts the student's educational performance.

For purposes of this Decision, educationally related mental health services and educationally related intensive counseling services mean the same thing. Los Angeles Unified does not use the phrase educationally related mental health services, and instead uses the phrase educationally related intensive counseling services.

## STUDENT'S SOCIAL-EMOTIONAL FUNCTIONING AS OF MARCH 2022

At the time of the March 16, 2022 amendment IEP team meeting, Student had been receiving counseling services pursuant to his IEP from credentialed school psychologist Donna Garrett since 2019. Garrett held a master's degree in school

psychology. Garrett was employed by Los Angeles Unified as a school psychologist since 2018. Garrett provided counseling services to Student through his senior year of high school.

In Student's March 16, 2022 amendment IEP present levels of performance, Garrett noted that Student continued to make progress in the counseling setting. He made progress in his self-regulation and ability to identify challenging situations and, with assistance, assess situations to understand the appropriate way to respond. Student had greatly opened up during the counseling sessions and was comfortable sharing challenging situations with Garrett without being prompted, making the effort to communicate his feeling and desires. Student's teachers reported Student had shown some progress in his classroom behavior regarding timeliness, chatting, and participation in class. Student sometimes was distracted and off task, requiring prompting to return to task. Student continued to need support in understanding his role in challenging situations, sometimes demonstrating difficulties in interpreting his surroundings and the intentions of others. Student could become confused and frustrated when navigating through these situations. His direct manner sometimes isolated him from expressing and negotiating his position and wants. His self-management and social awareness skills were negatively impacting his ability to successfully participate in and access the general education curriculum. Garrett recommended Student continue pupil counseling to address Student's self-regulation goal and access support services for social interaction and behavior. The March 16, 2022 amendment IEP offered Student counseling and guidance services 60 minutes a month to work on a social-emotional goal addressing Student's issues with self-regulation, following directions, limiting technology, and motivation.

At hearing, Garrett explained that when she first began working with Student, he blamed others when things did not go the way he wanted, rationalized his behavior, and explained away any suggestions Garrett made. However, by 2022 Student began to understand his role and take responsibility for his conduct, was receptive to suggested strategies and interventions, and understood their value.

## STUDENT'S SOCIAL-EMOTIONAL FUNCTIONING AS OF OCTOBER 2022

By the time of the October 14, 2022 annual IEP team meeting, Student met his annual IEP social-emotional goal. Student accurately discussed challenging situations and came up with solutions with minimal adult support in four out of five trials per week. Garrett reported to the IEP team that when she started working with Student, "it was always everybody else's fault," but he made great progress over the last two years although he still required some social-emotional support. Parent reported Student was still having issues at home regarding time management, with examples being planning and regulating how much time Student spent playing video games and chatting. Parent reported Student had to stay up late to finish school assignments, which resulted in Student waking up late and missing his ride to school. This caused him to be late sometimes, which negatively impacted his family. Parent reported Student argued with her when she told him he should wake up earlier, claiming he did not need that much time to get ready. Parent described Student's behavior as a "kind of stubbornness," and she did not see him considering the perspective of others or taking responsibility for the issues he had, but blamed other people.

Student's English teacher explained that Student's work habits in class were very good. When the work was done in class, Student stayed focused with some redirection, similar to other students. However, when Student took the work home, it sometimes was not turned in on time. As discussed in Issue 1, when asked why he did not do the work, Student attributed his failure to timely do the work he took home to not feeling well due to some recent dental work, and being negligent. Both Student's recreational therapist and special education teacher reported Student engaged in age-appropriate behavior. As discussed in Issue 7, the recreational therapist shared that Student was engaged in age-appropriate cooperative learning and demonstrated appropriate social-interaction skills. As further addressed in Issues 3A and 5A, Student's special education teacher described Student as kind, respectful, courteous, and compassionate, and able to work cooperatively. The teacher saw no behavioral support needs.

During the meeting, Parent disagreed, reiterating that Student was not doing his homework, and opining Student was not engaged in responsible decision-making, which was part of his executive functioning challenges Parent described as a social-emotional issue. Parent insisted Student still needed a counselor because of his behavioral problems relating to his executive functioning issues.

## STUDENT'S SOCIAL-EMOTIONAL FUNCTIONING AS OF FEBRUARY 2023

At the February 27, 2023 IEP team meeting, Garrett reported Student continued to make progress in the counseling setting. He demonstrated progress in his self-regulation and ability to identify challenging situations and understand the appropriate way to respond. He improved in his ability to open up during counseling and was comfortable

sharing without being prompted. Student was polite, friendly, and respectful. Student's teachers reported Student made progress in his classroom behavior with being attentive, following directions, and working independently. Garrett wrote that previously, Student's teachers reported he could sometimes get distracted and be off task, requiring prompting, but this was no longer to a degree that impacted his in-class learning.

Parent continued to report Student had difficulty with time management, staying on task, and concentrating, which impacted the entire family and caused stress. Parent also reported Student struggled with organization and spent long hours working on his academics or avoiding doing his homework. Student reported he sometimes felt difficulty developing and implementing strategies when managing stress and anxiety from difficult situations and he wanted to continue his pupil counseling.

In the present levels of performance of the February 27, 2023 IEP, Garrett reported Student's challenges with social-emotional functioning, and time and task management, specifically self-management and social awareness skills, might impact his involvement and progress in the general education curriculum. Garrett recommended Student transition to counseling only once a month instead of twice a month, with a new target goal to spend more time addressing his academic needs and accommodations in the classroom.

During discussion at the February 27, 2023 IEP team meeting, school staff reported Student still struggled with turning in work on time. Parent stated Student needed support to help him with turning assignments in on time. Student's history teacher commented it was hard for Student to copy the agenda even when directed. The teacher explained that his behavior aide met with him to check what he was writing

in his agenda book, but most 11th-grade students did not write down the agenda word-for-word. Parent stated Student had issues with following directions. A member of the IEP team opined that not following directions was not necessarily defiance because Student was well-behaved and earned "E's," meaning excellent, for collaboration. His English teacher reported Student was not defiant. Garrett opined Student's lack of cooperation could be because he sometimes felt overwhelmed and tired. As discussed in Issue 1, a member of the IEP team suggested Student be evaluated, to which Parent voiced her disagreement. Parent reported Student wanted to continue meeting with the school psychologist twice a month, rather than once a month as Garrett recommended. Garrett explained it was not always feasible to meet twice a month because according to Student and his teacher, Student would miss important instructional time.

Garrett suggested once-a-month counseling sessions but stated she would do it twice a month with the understanding that counseling might be "as needed," should Student request to stay in class. The February 27, 2023 IEP offered Student counseling and guidance services 60 minutes a month to work on a social-emotional goal addressing his issues with implementing strategies for motivation, with moderate adult support.

## STUDENT'S SOCIAL-EMOTIONAL FUNCTIONING AS OF OCTOBER 2023

In the October 30, 2023 IEP, Student's social-emotional functioning was documented in his present levels of performance. Student demonstrated enormous growth, dedication, participation, and he made great progress in the counseling setting. He showed progress in his self-regulation and ability to understand the appropriate way to respond when confronted with challenging situations. He was comfortable sharing challenging situations without being prompted. He was polite, friendly, and respectful.

He continued to make the effort to communicate his feelings and desires. His teachers also reported Student showed progress in his classroom behavior with being attentive, following directions, and working independently.

Parent continued to report Student had difficulty with time management, staying on task, and concentrating, which continued to impact the family and caused stress. Parent reported Student struggled with organization and spent long hours working on his academics or avoiding doing his homework. Student reported he wanted to continue counseling to be able to talk through effectively managing his time and planning his tasks. Student felt he had difficulty developing and implementing strategies when he was managing stress and anxiety for difficult situations.

The IEP noted that Student's autism and challenges with social-emotional functioning, and time and task management, specifically self-management and social awareness skills, may impact his involvement and progress in the general education curriculum. Garrett again recommended Student transition to once-a-month counseling. The October 30, 2023 IEP offered 30 minutes a month of pupil counseling to work on a social-emotional goal addressing his issues with implementing strategies for motivation with minimal adult support.

At hearing, Garrett explained she recommended to reduce Student's counseling for a variety of reasons. Garrett thought the counseling services could be ended, but Student wanted to continue with the services. It was Student's senior year and pulling him out of class for counseling sessions was difficult because he was involved in a very rigorous program. Student had been given tools and strategies and he needed to implement them outside of counseling. Student had made great progress since he

began working with Garrett in eighth grade, Garrett wanted to acknowledge that progress, and she felt Student was in a place where once-a-month sessions were sufficient.

Garrett also explained Student's progress over the years from a social-emotional aspect. She observed that as an eighth grader, Student was rude and disrespectful. To demonstrate to her he did not want to participate in the counseling, he stood during his early sessions with Garrett. During her years working with Student, Garrett addressed any struggles Student had in class, including not turning in homework, time management, organization, and taking responsibility for his conduct. Garrett explained that one of Parent's recurring concerns was Student's struggles at home and the completion of homework tasks. Garrett explained that she helped Student with these challenging situations by providing him with tools and strategies he could implement in his everyday activities. For example, Garrett reviewed with Student his missing assignments or assignments he was behind in completing, the reasons he believed he did not complete them, and agreed on strategies and ways to deal with them. Garrett opined these assignments usually involved nonpreferred tasks, or subjects in which Student was not interested or saw no benefit.

Garrett described Student's social-emotional growth as "enormous." Garrett was proud and filled with joy to see Student develop into a very bright, compassionate, and thoughtful young man who came to counseling to work and was fully engaged. As contrasted with other students who used counseling sessions to get out of class, Garrett opined Student understood the value of the counseling and brought up topics that were insightful, demonstrating he appreciated the service and got great value from it. In Garrett's view, Student developed into a "beautiful person."

At hearing, Parent corroborated Garrett's testimony regarding Student's social-emotional progress, agreeing Student made progress, and stating she wanted to give credit to Garrett and thank her.

## LOS ANGELES UNIFIED WAS NOT REQUIRED TO ASSESS STUDENT FOR EDUCATIONALLY RELATED MENTAL HEALTH SERVICES

Student failed to prove Los Angeles Unified was required to conduct an educationally related mental health services evaluation between January 16, 2022, and January 16, 2024, to determine Student's need for educationally related mental health services.

Parent never requested an educationally related mental health services assessment of Student during the period at issue, and the evidence failed to prove any of his teachers ever requested that Student be evaluated for educationally related mental health services. Student also failed to prove that Los Angeles Unified determined that an educationally related mental health evaluation was warranted. At the March 16, 2022 amendment IEP team meeting, the IEP team never discussed generating an assessment plan regarding educationally related mental health services. There was a discussion that involved Parent's request to use some of Student's behavior aide hours for after-school ADHD coaching. The specific assessments proposed at the October 14, 2022 IEP team meeting were an academic assessment and a functional behavior assessment. At the February 27, 2023 IEP team meeting, the specific assessments proposed were a recreational therapy assessment and a functional behavior assessment.

In August 2023, when Los Angeles Unified proposed a psychoeducational reevaluation that included social-emotional functioning, it had not determined that an

educationally related mental health services assessment was required. At hearing, Garrett explained she never requested and did not believe Student required an assessment for educationally related mental health services. Had Parent consented to the social-emotional assessment of Student in August 2023, Garrett would have explored the need for additional investigation of Student's mental health if, based on the results of the social-emotional assessment, it was warranted to do so. However, as discussed in Issue 1, Parent refused to consent to the assessment plan on September 6, 2023, negating any obligation Los Angeles Unified had to assess Student.

There was no persuasive evidence Student's mental health was an area of known or suspected disability warranting an evaluation for educationally related mental health services. While Student had some challenges in executive functioning as discussed in Issues 3A, 5A, and 10A, that did not require Los Angeles Unified to evaluate Student for educationally related mental health services. Student failed to prove that Student's behavior and the concerns raised by Parent or Student were indicators of a mental health condition requiring an evaluation for educationally related mental health services.

According to Garrett, there was no indication during her interactions with Student that he should have been assessed for educationally related mental health services. Based on her work with Student, including his needs and the things he described and expressed, along with his school performance and behavior, Student's needs were met through the less intensive type of counseling called pupil counseling, also called counseling and guidance. Garrett explained that executive functioning challenges might give rise to the need for an educationally related mental health services assessment, but only in situations where the executive functioning concerns caused a student to be impaired to such a degree that there were significant impacts in educational and academic performance. Student performed well in school, and Garrett did not believe

Student's issue with being late to school was to such degree that they warranted an educationally related mental health services assessment. Garrett opined any issues Student had with anxiety also did not rise to the level that called for an educationally related mental health services evaluation. Garrett's opinions were credible based on her qualifications, attendance at the IEPs at issue, and her experience providing counseling to Student over many years. Student failed to prove that the executive functioning challenges he had were significantly impacting his academic performance.

Parent's reliance on the assessments leading up to and reported in the June 2017 IEP were unconvincing. The 2017 assessments and June 2017 IEP took place approximately five years before the beginning of the period in question in Issue 2. The fact Student may have had certain challenges in 2017 with aggression and may have been at risk for depression, possible withdrawal, and had a propensity for somatization and anxiety did not establish he was entitled to an educationally related mental health services assessment in 2022, 2023, or 2024. (Cf. *Adams, supra*, 195 F.3d at p. 1149 [analyzing a failure to assess claim is not based on hindsight].) Significantly, Student had the opportunity to testify at hearing and offer evidence regarding his challenges implicating the need for an educationally related mental health assessment during the period in question. However, Student, now an adult in college living on his own, never testified.

Student failed to prove Los Angeles Unified denied Student a FAPE by failing from January 16, 2022, through the filing of Student's complaint to assess Student's educationally related mental health.

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ISSUE 3A: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM MARCH 16, 2022, THROUGH FEBRUARY 27, 2023, BY FAILING IN THE MARCH 16, 2022 IEP TO OFFER STUDENT SUFFICIENT BEHAVIOR AIDE SUPPORT AND SUPERVISION?

Student's complaint alleges Los Angeles Unified denied Student a FAPE in the March 16, 2022 amendment IEP by failing to offer behavioral intervention implementation services and behavioral intervention development services from a nonpublic agency. The complaint alleges Student required prompting because he engaged in off-task behaviors, such as talking with peers, and was distracted. In addition, Student demonstrated difficulty with continuous notetaking, planning, time-management, and self-regulation skills, which adversely affected his ability to complete his assignments. Student asserts that his off-task behavior resulted in loss of instruction. Student alleges he had difficulties remaining focused and attending to task during instruction and classroom activities. Student alleges his behaviors were a major obstacle to his learning and ability to maintain social relations, and that Los Angeles Unified should have offered Student a behavior aide from a nonpublic agency.

Los Angeles Unified contended at hearing that Student's behavior issues were centered on time management, attention, organization, and completing his assignments on time, and that the March 16, 2022 amendment IEP offered Student goals, services, and supports directly addressing his behavior needs. Los Angeles Unified asserts it offered Student an educational program that allowed him to access the curriculum and make academic progress.

In its closing brief, Los Angeles Unified argues Student presented no evidence that the behavioral aide and supervision was insufficient or otherwise inadequate, except to argue that the behavior aide was not properly trained and was “incompetent.” It asserts that the March 16, 2022 amendment IEP offered 1,800 minutes per week of behavior aide support to help Student stay on task, manage his time, and remind him about his upcoming assignments. Los Angeles Unified argues Student presented no evidence that the 1,800 minutes per week was insufficient. It asserts although Parent asked the IEP team to consider using some of the behavior aide hours for ADHD coaching, Parent never raised concerns with the quality or sufficiency of the services offered in the IEP, to which she agreed. Los Angeles Unified argues that Parent’s preference for private after-school ADHD coaching is not a basis for finding the behavior aide support inadequate. It asserts Student made progress in both vocational education and executive functioning, two of the areas the behavior aide was addressing. Los Angeles Unified contends the evidence demonstrated that the behavior aide services offered in the March 16, 2022 amendment IEP, were appropriate and reasonably calculated to enable Student to make progress and receive educational benefit. It asserts that Student sought to maximize services and he presented no evidence that ADHD services were better able to support Student than the behavior aide services it offered.

The IDEA requires IEP teams to consider the use of positive behavioral interventions and supports, and other strategies to address behaviors that impede a student’s learning or that of others. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).) A district’s failure to develop positive behavior interventions

can amount to a denial of FAPE. (See e.g., *Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028, 1029; *C.F. ex rel. R.F. v. New York City Dept. of Education* (2d Cir. 2014) 746 F.3d 68, 81.)

Pursuant to Education Code section 56520, behavioral interventions shall be designed or planned only by personnel who have a:

- Pupil Personnel Services Credential that authorizes school counseling or school psychology; or
- credential authorizing the holder to deliver special education instruction; or
- license as a Marriage and Family Therapist certified by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
- license as a Clinical Social Worker by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or
- license as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or
- license in psychology regulated by the Board of Psychology, within the Department of Consumer Affairs; or
- master's degree issued by a regionally accredited post-secondary institution in
  - education,
  - psychology,
  - counseling,

- behavior analysis,
- behavior science,
- human development,
- social work,
- rehabilitation, or in a
- related field. (Cal. Code Regs., tit. 5, § 3051.23, subd. (a).)

To provide behavioral intervention, including implementation of behavior intervention plans, but not including development or modification of behavior intervention plans, a school district shall deliver those services using personnel who possess the qualifications under California Code of Regulations, title 5, section 3051.23, subdivision (a), or

- are under the supervision of personnel qualified under subdivision (a); and
- possess a high school diploma or its equivalent; and
- receive the specific level of supervision required in the pupil's IEP. (Cal. Code Regs., tit. 5, § 3051.23, subd. (b).)

## THE MARCH 16, 2022 AMENDMENT IEP

Los Angeles Unified convened an IEP team meeting on March 16, 2022, to amend Student's September 9, 2021 IEP. The March 16, 2022 amendment IEP notes indicated this was the "second [a]mendment IEP meeting." Parent did not believe the IEP captured what was discussed "at the last meeting" and that Los Angeles Unified made changes to the original IEP which should not have been made. The record failed to establish exactly when the first "amendment IEP meeting" occurred. The March 16, 2022 amendment IEP noted that adjustments were made to the IEP, including revisions to the

goals, including a vocational education goal to address planning and executive functioning skills. The record did not establish what specific changes were made to the September 9, 2021 IEP, except that a vocational goal was developed.

The March 2022 IEP documented Student had five prior goals: two in social-emotional functioning, one in math, one in behavior intervention, and one in vocational education. The March 16, 2022 amendment IEP documented Student had met three of his five annual goals, and all but two of 10 incremental short-term objectives. He did not meet one of his social-functioning goals but met both earlier objectives for that goal. He also did not meet his vocational education goal or the second incremental objective because he needed more time to achieve that goal, but he did meet the first incremental objective for that goal.

Student did not establish he had a full year to work on both goals he did not meet.

## STUDENT'S MARCH 2022 IEP PRESENT LEVELS OF PERFORMANCE

Student continued to make progress in the counseling setting as discussed in Issue 2. Regarding cooperative learning and play, Student easily navigated the campus and participated in a variety of cooperative skills games with the recreational therapist and peers, came when called to group, and stayed in a designated area. He followed directions and maintained good attention to his activities when it was a preferred task. Although Student displayed many social functioning skills, he continued to have difficulty consistently using and demonstrating perspective-taking skills in structured

and unstructured settings. When he was motivated, he could accept the perspectives of his peers. Student's autism impacted his ability to participate in school-based cooperative learning and cooperative-plan activities with peers and staff.

In vocational education, Student strengths included arriving to class on time and prepared. He contributed to class discussion, asked clarifying questions, and worked with his peers. However, he had difficulty consistently keeping up with note taking, planning, time-management, organization, and self-regulation skills that would allow him to complete his assignments on time. His autism impaired his ability to manage his time, properly organize his tasks, and produce his assignments in a timely manner, which impacted his progress and involvement in the general education curriculum. Parent believed this caused Student to continually attempt to get caught up with assignments, which was overwhelming and stressful.

Student made progress in behavior. He worked independently and in small groups with his peers cooperatively and, for the most part, completed his assigned work. At times, Student turned in assignments that were not as thorough as expected, and on occasion, he failed to take suggestions for correcting his work when he was given back his assignments for correction. His teacher reported Student worked out math problems he understood, but often seemed to give up or was not willing to try a different approach to solve a problem even when given suggestions. Student's autism impacted his participation in the general education environment due to his off-task behavior in the classroom, which impacted his progress and involvement in the general education curriculum.

In academics, Student had strong reading and math skills, and his autism did not impair his ability to access the general education curriculum in these areas. In writing, Student could produce written works that exhibited an awareness of the intended audience and purpose. He produced grade-level core literature writing, and responses that contained detailed examples and references. He worked independently and cooperatively in groups and asked clarifying questions. He continued to need to work on developing topics with concrete details, including relevant facts to buttress his points, as opposed to giving a skeletal picture. His autism impacted his progress and involvement in the general education English language arts writing curriculum.

## THE MARCH 2022 OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

As mentioned in Issue 1, at the March 16, 2022 amendment IEP team meeting, Parent asked the IEP team to consider using some of Student's behavior aide hours for ADHD coaching to help Student with executive functioning after school for the 2022-2023 school year. Los Angeles Unified agreed to investigate the request.

In the March 2022 IEP, Los Angeles Unified offered a general education setting and the general education curriculum. It also offered Student the following services and supports:

- 1,800 minutes weekly of behavior aide support, called behavior intervention implementation or BII support by a Los Angeles Unified provider to address Student's goals in the areas of social-emotional functioning, behavior, and writing;

- 60 minutes monthly of counseling and guidance with the school psychologist to address Student's goal in social-emotional functioning;
- 30 minutes weekly of resource specialist program to address goals in behavioral support, vocational education, behavior, and writing;
- 30 minutes monthly of recreation therapy to address Student's goal in social functioning; and
- Accommodations in the form of:
  - Access to a word processing device, with spelling and grammar check;
  - Extra time on tests;
  - Extended time on assignments;
  - Assignments chunked;
  - Take pictures of notes on board, if needed;
  - Access to class notes from behavior aide, peer, or teacher, for accuracy;
  - Help with organizing skills, including organizing materials and self-monitoring checklists;
  - Frequent checks for understanding;
  - Prompts to attend to task by teachers;
  - Reduction in assignments to achieve mastery;
  - Use of visual cues to support learning; and
  - Preferential seating.

Los Angeles Unified's offer of special education also proposed an "early-stage intervention" in the form of a behavior intervention plan, identifying the behavior impeding Student's and others' learning as off-task behavior, described as Student talking to his peers during instruction approximately twice hourly. To address this behavior, Los Angeles Unified proposed a variety of interventions, including a behavior goal, and a host of environmental changes, structure and supports to remove Student's need to use this behavior, along with reinforcement procedures to use for establishing, maintaining, and generalizing the replacement behaviors, to be implemented by Student's teachers and support staff.

As discussed in Issue 4, Parent did not consent to the March 16, 2022 amendment IEP. On March 23, 2022, Parent withdrew her request to reduce the behavior aide's hours and stated she would discuss adding social work services at the next IEP team meeting.

## LOS ANGELES UNIFIED'S 2017 POLICY BULLETIN REGARDING BEHAVIOR SUPPORT

Los Angeles Unified defined Behavior Intervention Implementation, called BII, and Behavior Intervention Development, called BID, in a Policy Bulletin dated March 6, 2017.

Behavior Intervention Implementation was:

... a Tier III, data-driven behavior related service that supports an individual student who exhibited significant problem behaviors in his/her educational environment which required an intensive and individualized plan and a change in the delivery of interventions and supports. This service may be delivered in conjunction with BID services. BII is a direct service that

supports the implementation of the behavior support plan or behavior treatment plan. Under the supervision of school site staff and/or a BID provider, the BII provider also collects data pertaining to the target behaviors, replacement behaviors and behavior goals. Based on California Code of Regulations, title 5, section 3051.23, BII is provided by qualified District staff or a District contracted nonpublic agency.

The 2017 Policy Bulletin defined Behavior Intervention Development Services, or BID, as:

... a Tier II, data-driven behavior related service, delivered by certificated staff members who are trained in positive behavior interventions and supports and applied behavior analysis. BID includes ongoing design, implementation, and evaluation of the instruction and behavior programs and environmental accommodations and/or modifications. It is the BID's provider's responsibility to train the educational team, which may include the educational team, on the implementation and collection of data. Based on California Code of Regulations, title 5, section 3051.23, BID is provided by qualified District staff or a District contracted nonpublic agency. This service can be delivered as a stand-alone service or in conjunction with BII services.

The record did not establish that the 2017 Policy Bulletin was current and in effect at the time of the March 16, 2022 amendment IEP offer, or at the time the February 27 and October 30, 2023 IEPs were developed.

## THE BEHAVIOR AIDE SERVICES AND PARENT'S TESTIMONY

Student had the same male aide between sixth and 10th grade. At some point later, probably during 11th grade, Student had a female aide for a period, and then later another male aide. According to Parent, there were times during high school that Student's aide was absent, or Los Angeles Unified did not provide an aide. The record did not establish the specific dates and times each of the aides worked with Student or the dates when an aide was not provided or absent. The record also did not establish which IEP Los Angeles Unified was required to implement prior to and after the March 16, 2022 amendment IEP. The aides are also referred to as BIIs or behavior aides.

Parent testified Student was not offered enough aide support. Parent claimed Student needed support with executive functioning and Student did not get the kind of support he needed. Parent claimed the aides hired to support Student were not properly trained to work with children with Student's disability and needs, did not have specialized training in executive functioning or provide specialized support, and were incompetent. Parent testified Student needed an aide who was college educated to support someone as brilliant as Student, but instead Los Angeles Unified provided Student with a regular teacher's assistant, which Parent referred to as an untrained full-time aide. Parent also inconsistently testified that Student's long time male aide "seemed to know what he was doing."

Parent testified she had to spend numerous hours helping Student with his homework, and that Los Angeles Unified should have offered Student an educational specialist after school to help him with his work. Parent asserted she had to contact the teachers and make sure Student was doing his work, and she would not have had to do this if Los Angeles Unified had provided a trained behavior aide. Parent testified Los

Angeles Unified should have offered Student a specialist from a nonpublic agency because Student's aides did not know how to address his problems. Parent testified that a nonpublic agency aide could have provided Student with the skills he needed to address his executive functioning needs.

STUDENT DID NOT PROVE HE WAS DENIED A FAPE BECAUSE  
LOS ANGELES UNIFIED FAILED TO OFFER SUFFICIENT BEHAVIOR AIDE  
AND SUPERVISION SERVICES

Student failed to meet his burden of proof in establishing that Los Angeles Unified denied him a FAPE by failing to offer behavior aide and supervision services from a nonpublic agency in the March 16, 2022 amendment IEP.

Student failed to prove by a preponderance of the evidence that the behavior aides did not satisfy the requirements of California Code of Regulations, title 5, section 3051.23, subdivision (b). Parent's statements that the aides were not properly trained or educated lacked appropriate evidentiary foundation, and as such, these assertions were not persuasive. Parent's statements at hearing appeared to be unsupported assumptions. In fact, at one point Parent admitted she was unaware how much experience Student's female aide had, and Parent's testimony otherwise demonstrated Parent had no idea how much training or education any of the behavior aides had. Vice-principal Rosenthal rebutted Parent's unsupported conclusion that behavior aides were merely teacher's assistants, explaining that the Science Academy did not have teacher's assistants. The other evidence at hearing also failed to establish that the behavior aides lacked proper training or education for the position they held. Parent

did not call any of the aides as witnesses, and there was no testimony from any of the other witnesses establishing that the behavior aides did not hold a high school diploma or its equivalent or were not under the supervision of qualified personnel.

Student's claim that he required behavior intervention implementation services from a nonpublic agency to receive a FAPE lacked foundation. There was no persuasive evidence establishing what a nonpublic agency could have provided that Student was not already offered, much less that Student required services from a nonpublic agency for a FAPE. Parent's testimony about what a nonpublic agency could have provided consisted of unsupported conclusions without appropriate evidentiary support and there was no other evidence from any other witness regarding this issue.

Parent's testimony regarding Issue 3A, and other issues, demonstrated her fundamental misunderstanding of a school district's responsibility in the development of an IEP. Parent testified Los Angeles Unified did not "maximize" Student's potential. However, Parent used the wrong standard in evaluating the IEP offers.

Instead, school districts are required to offer a "basic floor of opportunity," consisting of programs that are "reasonably calculated to enable the child to receive educational benefits." (*Rowley, supra*, 458 U.S. at pp. 177, 207.) The IDEA does not require every special education service "necessary to maximize each handicapped child's potential." (*Id.* at p. 199; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947, citing *Rowley, supra*, 458 U.S. at p. 197 fn. 21 [The United States Supreme Court has concluded that "states must provide a 'basic floor of opportunity' to disabled students, not a 'potential-maximizing education.'"]].)

No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at p. 202.) For a child fully integrated in the regular classroom, an IEP typically should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” (*Id.* at pp. 203-204, fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. (*Walczak v. Florida Union Free School Dist.* (2d Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist, No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Independent School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp. 442, 449-450; *M.P. v. Poway Unified School Dist.* (S.D.Cal., July 12, 2010, No. 09 CV 1627 JLS(NLS)) 2010 WL 2735759, at \*11-12.)

Here, Los Angeles Unified offered Student a full-time aide for the entire school day to assist Student with his goals and to implement the March 16, 2022 amendment IEP accommodations and behavior intervention plan. Student failed to establish that the district-provided behavior aide services offered in the March 2022 IEP were not reasonably calculated to provide Student with appropriate educational benefit required by *Rowley* and *Endrew F.*

Corroborative of this point is that in the 2022 spring semester of Student’s 10th-grade year, he received A grades in all his classes except for a B in Advanced Placement Chemistry, which he brought up from a C grade in fall 2021. Among the six classes in which Student received A’s were Advanced Placement Calculus, Advanced Placement World History, and English. Moreover, for the fall 2022 semester, in 11th grade, Student earned five A’s and two B’s. He earned A’s in three Advanced Placement courses for English, Calculus, and Physics, and A’s in Filmmaking and Decathlon. He earned B’s in Advanced Placement United States History and Advanced Placement Science.

While Student had some issues with executive functioning, the weight of evidence did not establish the behavior aide support offered was insufficient for Student to access the curriculum and allow him to make progress required by *Rowley* and *Andrew F.* Student was offered a full-time aide in the March 2022 amendment IEP, and he provided no authority for the proposition that because a parent spends time helping a student do their homework, a school district must provide aide services after school hours to assist the student in completing homework.

Likewise, Student failed to offer any argument or establish why Student required behavior intervention development services from a nonpublic agency to receive a FAPE. It is not the ALJ's responsibility to construct or develop a party's argument. (See *Loewen, supra*, 707 Fed. Appx. at p. 908, citing *Carmickle, supra*, 533 F.3d at p. 1161, fn. 2 [the court is not required to address arguments made without specificity]; *In Re: Out of Network, supra*, 2022 WL 17080378, fn. 2 [the court will not perform the work of representing parties].)

Finally, Student's complaint did not make an implementation claim regarding the behavior aide services. As such, Parent's assertion at hearing regarding Los Angeles Unified's supposed failure to provide Student with all his IEP aide services is not addressed by this Decision.

Student did not prove Los Angeles Unified denied him a FAPE in the March 16, 2022 amendment IEP by failing to offer behavioral intervention implementation services and behavioral intervention development services from a nonpublic agency. Los Angeles Unified did not deny Student a FAPE by failing to offer Student sufficient behavior aide support and supervision in the March 16, 2022 amendment IEP.

ISSUE 3B: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM MARCH 16, 2022, THROUGH FEBRUARY 27, 2023, BY FAILING IN THE MARCH 16, 2022 IEP TO OFFER STUDENT AN ADEQUATE INDIVIDUAL TRANSITION PLAN?

Student's complaint alleges the March 16, 2022 amendment IEP failed to offer Student an adequate transition plan. Student alleges that the March 16, 2022 amendment IEP transition plan did not have transition goals. Student alleges Los Angeles Unified should have developed measurable transition goals based on Student's plans to attend higher education and pursue a career. Student also alleges Los Angeles Unified failed to offer transition services to help Student work toward his post-secondary plans, including services to address independent living skills to help Student integrate into life after completing school.

Los Angeles Unified contended at hearing that the transition plan in the March 16, 2022 amendment IEP was uniquely tailored to Student's needs. Student's post-graduation plans were to attend a four-year college and pursue a degree in engineering. Los Angeles Unified contends it offered Student an appropriate transition plan to enable him to reach these goals and prepare him for a college program in engineering.

In its closing brief, Los Angeles Unified argues that Parent's testimony in support of Student's claims demonstrated Parent failed to understand the function and purpose of an individual transition plan. Among other things, it argues Parent attacked the

transition plan because it did not address Student's executive functioning needs and for not placing him at an outside agency with African-American mentors. It contends the documentary evidence Parent relied on undermined her testimony. It argues that the purpose of the transition plan was to identify Student's goals for his future after high school, and required the IEP to include transition services, including courses of study needed to assist Student in reaching those goals.

Los Angeles Unified contends Student's plan was to attend a four-year college for a possible career path in engineering, information technology, business administration, and finance. It argues that Student's high school course curriculum was designed to meet his post-secondary goals, in that he was on track to attend college and taking the necessary courses to pursue a degree in engineering. It argues that the transition plan in the March 16, 2022 amendment IEP satisfied the purpose of the document. Los Angeles Unified asserts Student did not have any independent-living-skills needs, and therefore it was not necessary to address independent living skills in the transition plan. It argues that being slow to rise in the morning is not a deficit for which an independent living skill transition service is required.

The IEP in effect when a student reaches 16 years of age must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. (Ed. Code, §§ 56043, subd. (g)(1); 56345, subd. (a)(8).) The IEP must also offer transition services, including courses of study, needed to assist the student in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).)

Transition services are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including post-secondary education, vocational education, and integrated employment, including

- supported employment,
- continuing and adult education,
- adult services,
- independent living, or
- community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include

- instruction,
- related services,
- community experiences,
- development of employment and other post-school adult living objectives, and, if appropriate,
- acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services may be special education if provided as specially designed instruction, or may be related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.)

Simply put, the IDEA requires IEPs for older students to include a plan for a coordinated set of services designed to move special education students successfully from high school to post-high school settings. Transition plans help students gain skills they will need when they graduate from high school or age out of special education

when they turn 22 years old. Transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students to enter the workforce or continue their education or training. Such services also prepare students to eventually live as autonomously as possible, given the extent of their disabilities.

Transition goals vary from other annual goals. Transition goals reflect the desires and plans of the student. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a)(2).) In contrast, other annual goals state measurable standards by which the school district's program for the student will be measured by the end of the next 12 months. (20 U.S.C. § 1414(d)(1)(A)(i)(II).) Transition goals also address a student's career or post-secondary education after graduation. Obviously, progress on post-secondary goals cannot be measured while a student is still in high school.

The adequacy of a transition plan and services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30.) A flawed or missing transition plan is generally regarded as a procedural error. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276.)

When a transition plan fails to comply with the procedural requirements, but the individual transition plan or the IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Education* (D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, \*10 (*Virginia S.*)) Therefore, a transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE.

## THE MARCH 16, 2022 INDIVIDUAL TRANSITION PLAN

The March 16, 2022 amendment IEP contained an individual transition plan. It was based on a commercially produced assessment administered to Student and a discussion with Student. The transition plan documented that the assessment showed Student had a high interest in multiple career clusters, specifically information technology, business and administration, and finance and training. Student stated he was interested in attending a four-year university and wanted to learn more about careers in engineering.

Based on the assessment and discussion with Student, the transition plan Los Angeles Unified developed had two goals along with activities to support each goal. In education/training, Student had a post-secondary goal that upon completion of high school he would enroll in and attend either two- or four-year college, supported by development of a personal career/education plan. The people responsible for assisting Student with the development of a personal career/education plan were the special education teacher and other school staff. In employment, Student had a post-secondary goal that upon completion of high school he would be competitively employed. The activity to support this goal was identifying the skills needed in various occupations of interest, implemented by the special education teacher and other school staff. There were no goals or activities developed for independent living.

The transition plan also contained a course of study, which documented that Student was working toward a high school diploma. It noted Student was enrolled in a course of study that would prepare him to graduate with a diploma and attend a community college, four-year college, or vocational program. The courses Student would take included both the classes required for graduation and the electives selected

by Student. The course of study was provided to Parent, and Los Angeles Unified staff reviewed it with Parent and Student in relation to the courses Student had completed, courses in which Student was currently enrolled, and the courses he still needed to graduate. The plan documented school staff spoke with Student about the importance of math and science classes as they related to his stated field of interest, engineering. The transition plan also documented that Student had received mentoring, college awareness preparation, and career awareness, and completed transition activities in the areas of education/training and employment.

Zulma Leiva worked as a Los Angeles Unified transition teacher at the time of Student's March 16, 2022 amendment IEP team meeting. Leiva held a bachelor's degree in English and a master's degree in educational leadership, along with a special education credential. Leiva was employed as a special education support provider for Los Angeles Unified since 2024, a transition teacher between 2014 and 2024, and a special education teacher before that.

At hearing, Leiva explained that for students working toward a diploma, transition teachers worked with students in grades nine through 12, which included doing surveys and career inventories, meeting with students, and other activities, to explore and plan for each student's post-secondary options. Leiva did not perform the transition assessment conducted for the development of Student's March 16, 2022 amendment IEP, but she conducted his transition assessments in his junior and senior years, which are discussed in Issues 5B and 10B, below. Another transition teacher from Leiva's unit performed the transition assessment for the March 16, 2022 amendment IEP transition plan. That transition teacher was not called to testify at hearing. Any transition teacher in Leiva's unit could perform the transition assessment and provide the transition

services. Leiva estimated she met with Student two or three times a year during his sophomore and junior years and interfaced with him more often during his senior year.

Credentialed school counselor Lina Hodali was employed by Los Angeles Unified for approximately 19 years. At the time of the hearing, she had worked at the Science Academy as a school counselor since at least the 2021-2022 school year but had been a school counselor since 2006. Hodali held a master's degree in educational psychology and school counseling.

Hodali's duties included preparing individual graduation plans twice a year for every student. This involved sitting down with students with a printout of their individualized graduation plan and getting them familiar with it such that by the time they were seniors, they were well-versed with the document. The individualized graduation plan showed all the completed classes by category and identified what needed to be completed to graduate, and the student's grade point average. Hodali's discussions with each student included college planning. Hodali looked at each student's individualized graduation plan before she gave it to them to make sure they were on track and made notes. Parents had access to the same information through a Los Angeles Unified's parent portal.

In their junior year, with each student, Hodali really focused on college, asking students what they wanted to major in and what careers they wanted to pursue. Most students did not know, but if they indicated a particular interest, Hodali reviewed with them the courses that would most benefit them, and what colleges they might want to investigate. Hodali's discussions with students included college and career planning, with the goal being graduation and ensuring that all students were "A-G ready." The term "A through G requirement" referred to the required courses necessary to apply to

certain colleges, including the University of California system and the requirement was satisfied if the student achieved a grade of C or higher in a qualifying course. Hodali also assisted students with college applications and letters of recommendation. Hodali was very focused on students who were lagging behind, reaching out to the teachers and working directly with students. Hodali explained if a student got a D on a progress report, she immediately connected with the student to determine what could be done to bring up the grade.

Hodali was Student's school counselor and college counselor for his sophomore, junior, and senior years. She attended one of Student IEP team meetings, which she recalled may have been in the fall 2021 semester and was her first experience with Parent. The IEP team meeting was memorable to Hodali because it lasted five hours and was very tedious. The IEP team also had to reconvene on a second day for another two or three hours, because it was not completed in one five-hour session. The IEP team meeting took much longer than any other IEP team meeting she had ever attended because Parent wanted to review every word written on the page. Hodali recalled that even for classes where all students were allowed extra time to complete assignments, Parent wanted Student to have more extra time. Hodali recalled Parent regularly called and emailed her, always about the same things – Student having a hard time waking up, staying on task, and getting to school on time. Hodali did not recall Student had these issues so much in his sophomore year, but she became more involved with students in their junior and senior years. Hodali explained Student had an IEP with services and accommodations, "and that is why we focused more on him than with typical kids."

Hodali's duties included monitoring Student's academic status during his high school career. She often went to Student's class and reminded him of whatever deadlines he had, and she monitored his grades. Hodali did not recall the details, but Student had an ongoing issue with turning in his assignments. She met with Student formally twice a year to discuss his graduation plan, but she met with him informally during each school year as well. She talked with Student more often than other students to remind him of his duties. She spoke to the classrooms as a whole, and also visited Student at his desk, in her office, or in the hallway. Hodali did not recall the dates, but she met with Student numerous times throughout his tenure at the Science Academy, and more often during his senior year. She did not recall there being much need to meet with him during his sophomore year. Student told Hodali he was definitely planning to go to college, but he was not set on a career or college major, although he expressed interest in engineering. Hodali described Student as extremely intelligent and a delight. She recalled that he passed every Advanced Placement exam he took.

## PARENT'S TESTIMONY REGARDING THE MARCH 16, 2022 AMENDMENT IEP TRANSITION PLAN

Parent's testimony on this issue was convoluted and rambling, and as such, confusing. At one point, Parent testified the March 16, 2022 amendment IEP contained no transition plan. She also asserted the transition plan was inadequate because it was based on an assessment given to all children and was not based on Student's unique needs. Parent objected that a vocational skills assessment was not done despite Student's challenges. Parent stated the transition plan was faulty because it did not identify and address Student's executive functioning challenges, include "life skills,"

and did not “link” Student to agencies and the community, like Boeing or other big companies, African-American organizations or clubs, or scholarships. Parent argued that had Los Angeles Unified done this, Student would not have been playing computer games every day but instead would have found inspiration. Parent asserted that Los Angeles Unified did not invite any outside agency to attend Student’s IEP team meetings and that was required for the transition plan to be appropriate.

Parent argued it was Parent and Student who created a resume for Student in November 2023, and that activity should have been part of Student’s transition plan, along with Student getting a job that would really “put him to work” so he could learn what he did not like. Parent also asserted Student never had a mentor, and Parent was Student’s “everything,” but admitted she did not know if his counselor did anything to support Student. Parent asserted that having a mentor would have been very helpful. Parent claimed Student never got any college or career awareness preparation, but also inconsistently asserted that because Student’s counselor talked about career and college awareness with all students, it was not a special education service.

Parent objected to the transition plan at hearing because it did not explain on the document what mentoring had been done, what transition activities had already been completed or identify any specific employment for Student to obtain. Parent argued that the transition plan was nothing more than a check-off list.

Parent also asserted that the transition plan should have been a separate document from the IEP that explained how Los Angeles Unified intended to support Student. Parent objected that the people responsible for implementing the activities were mainly general education personnel because Student was only getting resource support 30 minutes a week.

In addressing Issue 3A, Parent asserted Student was brilliant and that he received a score of 5 on his Advanced Placement English exam, the highest score possible. Parent called the IEP an empty shell and claimed she had to get ready to pull Student out, be at peace, and bear the brunt of working with him. Parent testified she spent too much time helping Student with his homework, and Student needed a lot of services because of the intensity of his challenges related to autism.

At some point, Parent also shared she was never worried about Student not going to a four-year college.

### STUDENT DID NOT PROVE HE WAS DENIED A FAPE BECAUSE LOS ANGELES UNIFIED OFFERED AN INADEQUATE TRANSITION PLAN

Student failed to prove by a preponderance of the evidence that the transition plan offered as part of the March 16, 2022 amendment IEP was inadequate such that it denied Student a FAPE.

Student's assertion that the March 16, 2022 amendment IEP did not contain a transition plan is false. Nor was Los Angeles Unified required to put the transition plan in a separate document, apart from the IEP. Parent's testimony at hearing demonstrated she did not understand what a transition plan was, nor its purpose and function, which was to help Student plan for post-secondary living. The March 16, 2022 amendment IEP transition plan documented the transition assessments conducted and the results, Student's interests and preferences, and his course of study. It included post-secondary goals related to education/training and employment, and transition activities to help Student achieve those post-secondary goals, and identified the people responsible for

helping Student complete those activities. The transition goals properly reflected the desires and plans of Student, which was to attend college and possibly pursue a career in engineering. It also properly included activities to support those goals such as preparing an education plan and identifying the skills needed in various occupations of interest, some of which he did with Hodali and Leiva.

Los Angeles Unified was not required to address Student's executive functioning needs in the March 16, 2022 amendment IEP transition plan. Student failed to establish that given the results of the assessment administered to Student, and Student's post-secondary plans to attend college, the transition plan was deficient such that it denied Student a FAPE. Student provided no evidence or authority that the transition goals or services were deficient because Student may have been administered an assessment given to all students, or that a vocational skills assessment was required for the development of a transition plan.

Parent's testimony regarding the transition plan was unpersuasive not only because she misunderstood the scope of transition assessments and the purpose of transition plans, but also because Parent's objections to the transition plan appeared to be based on the improper premise that Los Angeles Unified was required to "maximize" Student's potential. That is not the law. (*Rowley, supra*, 458 U.S. at p. 199.) Moreover, many of Parent's objections to the transition plan appeared to be more related to the allegation Los Angeles Unified failed to implement the transition services, which is addressed in Issue 4.

To the extent Parent claimed the transition plan should have included "more," Student provided no authority requiring Los Angeles Unified to link Student to outside agencies or employers, much less identify specific employment for Student to obtain.

As Hodali and Leiva's testimony made clear, a student's interests and desires were often fluid and undefined. Nor was there any requirement that a transition plan detail the prior mentoring and transition activities students already received. Furthermore, Student's alleged propensity for playing videos games at home was not something the transition plan was required to address, nor was the transition plan required to eliminate Parent's participation and involvement in Student's post-secondary planning.

Parent's other objections were equally unconvincing. There was no evidence establishing why a resume would have been an appropriate goal or activity for Student in his sophomore year of high school given his primary goal of attending a four-year college. Although Parent unpersuasively claimed not to be aware of the mentoring Student got, that did not render the transition plan deficient. Nor did Student provide authority or evidence establishing that the career and college awareness activities were inadequate because they were provided to all students. Similarly, Student cited to nothing in the law that renders a transition plan defective because some of the people implementing it are general education personnel.

Student failed to prove he required a transition program that covered independent living skills to receive a FAPE. There was no persuasive evidence Student had functional skill deficits that required transition services in this area. Parent's assertion Student did not comb his hair was grossly insufficient to prove the transition plan was lacking because it did not address independent living skills. Moreover, Student's issues with executive functioning were addressed in other places in his IEP and were not the type of challenges required to be addressed by his transition plan.

In any event, even if the March 16, 2022 amendment IEP transition plan was flawed, Student failed to prove the transition plan or IEP lacked a basic framework

sufficient to ensure Student received transitional services. Student did not establish that the transition plan was inadequate such that it impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student or caused Student to be deprived of educational benefits. Corroboration of this is that Student successfully applied to and was accepted at a four-year college for the 2024-2025 school year. Thus, he ultimately achieved his post-secondary transition education goal of attending a four-year college, putting him on track to achieve his post-secondary employment goal of being competitively employed in the field of engineering or in some other area of interest.

Los Angeles Unified did not deny Student a FAPE by failing to offer in the March 16, 2022 amendment IEP an adequate individual transition plan.

#### ISSUE 4: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE BY MATERIALLY FAILING TO IMPLEMENT THE TRANSITION SERVICES OF STUDENT'S MARCH 16, 2022 IEP?

Student contended at hearing Los Angeles Unified never properly implemented the March 16, 2022 amendment IEP's transition services. Student claimed Los Angeles Unified never connected Student with anyone in the community until around September 2023, and the tutoring job it provided him after school beginning in fall 2023 was ineffective and unconnected to his interest in engineering. Student claimed he had no mentor, and he was offered nothing in terms of an individual transition plan. Student contended if there was no individual transition planning, there was no implementation of the plan. At one point in the hearing, Parent argued that Los Angeles Unified did not

need Parent's consent to the IEP to trigger its obligation to implement the individual transition plan. Parent later reversed her position, stating that Parent's consent was required for implementation of the individual transition plan.

At hearing, Los Angeles Unified contended that it implemented the transition plan offered as part of the March 16, 2022 amendment IEP. In its closing brief, Los Angeles Unified contends that at hearing Parent could not articulate any aspect of the individual transition plan that was not implemented except for the mentoring services. Los Angeles Unified argues it implemented mentoring services through school counselor Hodali when she met with Student to discuss his graduation plans and course curriculum. Los Angeles Unified argues although it needed a parent's consent to implement any part of an IEP, including the individual transition plan, the implementation of a plan without consent is at most a procedural violation, which does not itself constitute a denial of FAPE. Los Angeles Unified argues that Parent's signature on the March 16, 2022 amendment IEP allowed it to implement the IEP. It asserts Parent's testimony at hearing that she did not consent to the IEP is belied by her signature on the form, and that Los Angeles Unified's implementation of the individual transition plan was not a procedural defect.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 815 (*Van Duyn*)). No statutory requirement of perfect adherence to the IEP exists, nor is there any reason rooted in the statutory text to view minor

implementation failures as denials of a FAPE. (*Id.* at p. 821.) “A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” (*Id.* at p. 826.)

Implementation failures are substantive violations, not procedural errors. (*Id.* at p. 819.) In a failure-to-implement claim, the materiality standard does not require that the child suffer demonstrable educational harm to prevail. (*Van Duyn, supra*, 502 F.3d at p. 822.)

A school district may only implement those portions of an IEP to which the parent consents. (Ed. Code, § 56346.)

Student failed to prove Parent consented to the March 16, 2022 amendment IEP, which included an individual transition plan for Student. As discussed in Issues 1 and 3A, an IEP team meeting was convened and an IEP was developed on March 16, 2022, to amend Student’s September 9, 2021 IEP. Again, it was unclear from the record all the revisions or additions made in the development of the IEP. The March 16, 2022 amendment IEP had various bubbles on the consent page, which if filled in, indicated whether Parent agreed to all components of the IEP, some components of the IEP, or none of the components of the IEP.

There was no evidence establishing that Parent consented to any part of the September 9, 2021 annual IEP. There was also no evidence Parent consented in writing to the March 16, 2022 amendment IEP, or to any part of it, or to any amendment which may have occurred before March 16, 2022.

On March 23, 2022, Parent wrote a note on the consent page of the March 16, 2022 amendment IEP. The note stated Parent did not believe that the behavior aide's services hours needed to be reduced, and Parent would bring up another service to explore at the next IEP team meeting in May or June 2022. Parent signed the IEP beneath the note and dated it March 23, 2022. However, the only bubble on that page that was filled in above Parent's signature was the bubble attesting that Parent had participated in the IEP team meeting. None of the bubbles on the consent page were filled in, indicating whether Parent agreed to all components of the IEP, some components of the IEP, or none of the components of the IEP. Parent left all three bubbles blank.

During her testimony, Parent initially testified inconsistently as to whether she consented to any portion of the IEP, and to which portions of the IEP she agreed. At one point Parent indicated she could not recall if she agreed to the IEP in writing, but then stated that her signature on the consent page was merely attesting to the fact that she was at the IEP team meeting. Parent testified she did not agree with the services offered or the goals in the IEP. Later, Parent reiterated that the March 16, 2022 amendment IEP did not offer sufficient support to help Student with his executive functioning issues, which is why she did not consent to the IEP. In another part of her testimony, Parent was evasive when asked whether she agreed to implementation of the individual transition plan. Her testimony was confusing and not specific.

At hearing, vice-principal Rosenthal explained there was an ongoing problem with Parent regarding the consent pages because Parent routinely failed to indicate whether she was agreeing or not to implementation of any part of Student's IEPs which caused confusion and resulted in a convoluted IEP process. Los Angeles Unified may have implemented IEPs that Parent had not provided consent. Even after being shown

Parent's signature page for the March 16, 2022 amendment IEP, Rosenthal admitted he was unaware whether Parent ever agreed in writing to its implementation. There was no persuasive evidence that established Parent consented to implementation of any part of the March 16, 2022 amendment IEP.

Los Angeles Unified's argument that merely having Parent's signature on the consent page was sufficient for consent for implementation of the March 16, 2022 amendment IEP is not supported by any legal authority in its closing argument. Nor does Los Angeles Unified explain the basis for its conclusory assertion. It is not the ALJ's responsibility to construct or develop a party's argument. (See *Loewen, supra*, 707 Fed. Appx. at p. 908, citing *Carmickle, supra*, 533 F.3d at p. 1161, fn. 2 [the court is not required to address arguments made without specificity]; *In Re: Out of Network, supra*, 2022 WL 17080378, fn. 2 [the court will "not perform the work of representing parties."].)

For any IEP implementation claim brought by a student, the student must prove that the parent consented to the implementation of the component of the IEP at issue. Here, Student failed to establish this foundational prerequisite to his implementation claim based on all the evidence, including Parent's express admission that she never signed consent to implement the March 16, 2022 amendment IEP. Los Angeles Unified did not deny Student a FAPE by materially failing to implement the transition services of Student's March 16, 2022 amendment IEP.

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ISSUE 5A: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM FEBRUARY 27, 2023, THROUGH THE FILING OF STUDENT'S COMPLAINT BY FAILING IN THE FEBRUARY 27, 2023 IEP TO OFFER STUDENT SUFFICIENT BEHAVIOR AIDE SUPPORT AND SUPERVISION?

Student's complaint alleges Los Angeles Unified denied Student a FAPE in the February 27, 2023 IEP by failing to offer behavioral intervention implementation services and behavioral intervention development services from a nonpublic agency. Student's complaint alleges that at the time of the February 27, 2023 IEP team meeting, Student continued to struggle with maintaining adequate attention to complete his classroom tasks and independent work/homework and properly organize his tasks. Student claims Parent reported concerns regarding Los Angeles Unified's attempt to remove Student's behavior aide, and that without the aide, Student was unable to track his missing assignments and that adversely affected his academics. Student alleges that his behavior intervention plan indicated a lack of academic progress as Student did not complete his assignments in a timely manner and Student's behaviors occurred three times daily for a duration of 15 minutes, resulting in a lack of work production. Student alleges his behaviors were a major obstacle to his learning and ability to maintain social relations, and that Los Angeles Unified should have offered Student a behavior aide from a nonpublic agency.

Los Angeles Unified contended at hearing that as part of the February 27, 2023 IEP, it offered Student goals, services, and supports directly addressing his behavior needs. Los Angeles Unified contends it offered Student an educational program that allowed him to access the curriculum and make academic progress. In its closing brief, Los Angeles Unified argues Student's assertions regarding Issue 5A were unclear. It

contends that the February 27, 2023 IEP team decided to reduce the amount of behavior aide services from 1,800 minutes to 500 minutes per week because Student no longer wanted the behavior aide with him in every class. The IEP team instead recommended to arrange for the behavior aide to meet with Student between classes and at lunch. Los Angeles Unified contends Parent never objected to reducing the behavior aide minutes, only to the fact that Los Angeles Unified did not offer a learning specialist or ADHD coach.

Los Angeles Unified contends Student did not prove reducing the behavior aide service minutes deprived Student of a FAPE. Los Angeles Unified argues that Student's special education teacher Blisten testified Student was making progress on his executive functioning goals, and although Student occasionally turned in work late, it was not an impediment to Student accessing the curriculum. Los Angeles Unified contends Student failed to present anything other than bare assertions regarding the quality of the services offered, specifically about the behavior aide's lack of training or education to implement Student's goals. It argues Student failed to present any evidence that his aide was unqualified to provide the services and support offered in the February 27, 2023 IEP.

## THE FEBRUARY 27, 2023 IEP

The February 27, 2023 IEP documented that Student had five prior IEP goals: two in social-emotional functioning, one in writing, one in behavior intervention, and one in vocational education. Student met four of his five goals, and all but one of his 10 incremental goal objectives. He did not meet his vocational education goal or the second incremental objective for that goal. Student made progress but his progress was inconsistent. There were still some days Student was not writing out an organizational

plan in his agenda book, or planner. Student did not establish he had a full year to work on the goal he did not meet or that Parent consented to the implementation of this goal.

## STUDENT'S FEBRUARY 27, 2023 PRESENT LEVELS OF PERFORMANCE

Student had strong writing skills, receiving an A in his Advanced Placement English class in fall 2022. His IEP noted Student had no academic needs in the area of writing.

In the area of behavioral support, Student worked independently and in groups of his peers cooperatively. He cultivated and maintained relationships with those who shared similar interests. He was noted to be kind, respectful, courteous, and compassionate, exhibiting age-appropriate behaviors within and outside of the classroom setting. According to his special education teacher, Student had no behavioral support needs. Throughout the school year, Student had not shown any observable, problematic behavioral displays. The IEP noted that a functional behavior assessment was recommended and offered to examine Student's behavioral concerns brought up by Parent but was not approved by Parent. The IEP noted Student had difficulty focusing on completing some of his classroom tasks and his independent work/homework. Student's autism was impacting his participation in the general education environment, which impacted his progress and involvement in the general education curriculum.

In the area of vocational education, Student was noted to be an attentive listener in the classroom. He followed teacher-directed lessons. His teacher reported Student

arrived at class prepared and on time. Student demonstrated growth in his ability to use his agenda book to record his assigned coursework and their due dates. Student still had difficulty with properly organizing his tasks and producing his classwork and homework assignments in a timely manner. Student's autism impaired his ability to manage his time, properly organize his tasks, and produce his assignments in a timely manner, which impacted his progress and involvement in the general education curriculum.

In social-emotional functioning, Student continued to make progress as discussed in Issue 2. In social functioning as it related to recreation therapy concerns, Student's autism was not impacting his ability to engage or participate during school-based learning and cooperative play activities needed to access the general education program. This is addressed more thoroughly in Issue 7.

### THE FEBRUARY 27, 2023 IEP TEAM DISCUSSION

At the February 27, 2023 IEP team meeting, the IEP team discussed Student's progress. At that time, Student was earning A's in most of his classes, but C's in Advanced Placement English and Advanced Placement Calculus. Student's English teacher reported Student was doing well in English, demonstrating he had great chances of passing the Advanced Placement English exam. His teacher reported Student was performing above grade level, but he had an issue with time and some late or missing assignments lowered his grade. The teacher reported Student did his classwork, but at a slower pace, and that Student needed to organize his backpack because it took Student a long time to find things. His history teacher reported Student

demonstrated understanding of the content but struggled with finishing work in class, although he completed most of the classwork. Both his English and history teachers reported Student's writing skills were high.

Parent reported that Student not having a behavior aide in the last semester caused her to have to monitor his work assignments. Parent voiced that Student's lack of speed impacted his academic performance, and that Student's disability causes him to be distracted. Parent stated Student needed skills in self-regulation and coaching. Parent requested Student receive extra time to turn in work, on top of the extra time all students received to do their work. Student's English teacher mentioned that he excused late work and gave a grade based on the quality of the work submitted last semester. Parent voiced that Student needed support at school to make sure Student was on track to submit his assignments and she wanted a system in place. Parent suggested that Student's teachers do frequent checks when he had big projects. Parent stated Student needed vocational services and asked for therapy or coaching beyond school. Parent asserted Student needed a lot of support with organization and self-regulation.

A member of the IEP team reported Student had a behavior aide that semester, but Student refused to have the aide in class with him, because he felt "diminished" having the aide in class with him. The IEP team discussed Student writing in his agenda book as described in Issue 2. The aide was meeting with Student outside the classroom to check his agenda. A Los Angeles Unified member of the IEP team pointed out that it was important to foster Student's independence and autonomy.

As discussed in Issues 1, 2, and 7, Los Angeles Unified members of the IEP team suggested recreational therapy assessment, and a functional behavior assessment be conducted. Parent disagreed that a comprehensive evaluation needed to be done.

## FEBRUARY 27, 2023 OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

In the February 27, 2023 IEP, Los Angeles Unified offered a general education setting and the general education curriculum. It also offered Student the following services and supports:

- 500 weekly minutes of behavior aide support, called behavior intervention implementation or BII support by a Los Angeles Unified provider to address Student's vocational education goal requiring him to work on managing his time, properly organize his tasks, and produce his classwork and homework assignments in a timely manner;
- 60 minutes monthly of counseling and guidance to address Student's goal in social-emotional functioning;
- 30 minutes weekly of resource specialist program to address Student's vocational education goal;
- 15 minutes a month of recreation therapy to address Student's goal in social functioning; and
- Accommodations in the form of:
  - Extended time on assignments;
  - Prompting to take pictures of the board;

- Help with organizing skills, including organizing materials, self-monitoring checklists, and writing in a day-planner called an agenda book;
- Prompting to put assignments in the agenda book;
- Daily agenda checks; and
- Check-ins on longer assignments for progress on completion.

Los Angeles Unified's offer of special education also proposed a "moderate intervention" in the form of a behavior intervention plan, identifying the behavior impeding learning as not completing assignments, which was described as Student not completing classwork/homework, resulting in the lack of work production of about 15 minutes, three times per day. To address this behavior, Los Angeles Unified proposed a variety of interventions, including a behavior goal focusing on completion of his classroom tasks and independent work/homework, to be measured by teacher observation, and a host of environmental changes, structure and supports to remove Student's need to use this behavior, along with reinforcement procedures to use for establishing, maintaining, and generalizing the replacement behaviors, to be implemented by his teachers and support staff.

#### PARENT'S TESTIMONY REGARDING THE BEHAVIOR AIDE SERVICES

At hearing, Parent offered the same testimony in support of Issue 5A as she did for Issue 3A, including that the behavior aides were incompetent and untrained. The evidence established that the female aide Student had likely started working with Student sometime prior to the February 27, 2023 IEP team meeting. Parent claimed the female aide "did not have a clue." Parent met with her a couple of times. Parent

asserted the female aide tagged along, annoying Student, and that Student could not work with her. Parent asserted her English was poor, she had no tact, and was crude and abrasive. Parent testified she did not think the female aide had much education, and she was unaware of how much experience she had. Parent stated the aide's understanding of Student's challenges was very vague. She accused the aide of invading Student's space all the time, and constantly talking to him at lunch which Parent asserted annoyed Student. Parent asserted that a trained aide should have an associate's degree in child psychology.

Parent also claimed that the reduction in behavior aide minutes from 1,800 to 500 minutes per week denied Student a FAPE. At one point, Parent asserted that people had to "hover over" Student and tell him what to do, because he did not have the necessary self-regulation skills. At hearing, Parent anticipated Los Angeles Unified would argue Student did not want the aide following him around. Parent admitted that was a fair and understandable argument, agreeing that a 16-year-old wanted autonomy and did not want to be followed around. To counter that argument, Parent asserted Los Angeles Unified should have provided a trained aide to work with Student in a way that did not impede Student's autonomy, but Los Angeles Unified could not figure out what to do with Student. Parent asserted Student should have had a specialized aide, which at one point she called an executive functioning aide. Parent testified that the behavior aides Los Angeles Unified employed could not meet Student's needs and Los Angeles Unified should have offered an aide from a nonpublic agency.

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STUDENT DID NOT PROVE HE WAS DENIED A FAPE BECAUSE  
LOS ANGELES UNIFIED FAILED TO OFFER SUFFICIENT BEHAVIOR AIDE  
AND SUPERVISION SERVICES

Student did not meet his burden of proof in establishing that Los Angeles Unified denied him a FAPE by failing to offer sufficient behavior aide and supervision services in the February 27, 2023 IEP.

For the same reasons discussed in Issue 3A, Student failed to prove by a preponderance of the evidence that the behavior aides did not satisfy the requirements of California Code of Regulations, title 5, section 3051.23, subdivision (b). The evidence failed to establish that the behavior aides lacked proper training or education for the position they held. The evidence also failed to prove any of the aides were incompetent. Parent offered a lot of assertions about the competence of the female aide and her negative behavior, but these claims were not substantiated and were therefore, unpersuasive.

Parent only met the female aide twice. There was no persuasive evidence establishing Parent's opinions were valid. There was no evidence establishing how long Parent met with the aide or what they spoke about. The fact that English may not have been the aide's native language did not establish she was incompetent, uneducated or untrained. There was no persuasive evidence that Student or any member of school staff ever made any comments about the aide's competence or voiced negative opinions about her behavior. Parent failed to demonstrate she was on campus enough to be in the position to observe the aide's interactions with Student and it was not

established what, if anything, Student told her about the aide. Significantly, Student could have testified at hearing but did not. Parent's personal attacks on the female aide and conclusory statements about the aides' competence were unconvincing.

For the same reasons stated in Issue 3A, Student did not prove behavior aide services or behavior supervision services from a nonpublic agency were required for Student to receive a FAPE. Student also failed to prove that he required a behavior aide more than 500 minutes a week to assist with his goals and implementation of the offered accommodations and behavior intervention plan. Student failed to establish that the behavior aide services offered in the February 27, 2023 IEP were not reasonably calculated to provide Student with the educational benefit required by *Rowley* and *Andrew F.*

At the time of the February 27, 2023 IEP team meeting, Student had some executive functioning issues regarding his organization and timely completion of his assignments, but he was otherwise doing very well in school. Understandably, Student did not want an aide following him around and objected to the aide attending class with him. Parent's testimony that Student needed an aide to "hover" over him and tell him what to do, and at the same time, not impede Student's autonomy, was nonsensical and inconsistent. Taking into consideration Student's perspective, the February 27, 2023 IEP offered him numerous supports to address his needs in the area of executive functioning, including a vocational education goal to address his executive functioning issues, along with the social-emotional counseling goal and counseling services to support him in this area as further addressed in Issue 2. He was also offered resource specialist services to support his vocational education goal, in addition to a behavior intervention plan and

numerous accommodations. Student failed to provide any persuasive evidence establishing that the behavior aide services offered were insufficient to enable Student to make appropriate progress.

Corroborative of this point is that in the 2023 spring semester of Student's 11th-grade year, he received A's in all his classes except for a B in Advanced Placement Physics. Student received A's in Advanced Placement Calculus, Advanced Placement U.S. History, Advanced Placement English, Advanced Placement Science, and Filmmaking. While Student had some executive functioning challenges, the weight of evidence failed to prove the behavior aide support offered was inadequate for Student to access the curriculum and make appropriate progress as required by *Rowley* and *Endrew F.* Again, Student provided no authority for the proposition that because Parent spent time helping Student with his homework and had trouble getting Student to focus on completing his homework instead of playing video games and chatting with his friends, Los Angeles Unified was required to provide after-school behavior aide services.

Student did not prove Los Angeles Unified denied him a FAPE in the February 27, 2023 IEP by failing to offer behavioral intervention implementation services and behavioral intervention development services from a nonpublic agency. Los Angeles Unified did not deny Student a FAPE by failing to offer Student sufficient behavior aide support and supervision in the February 27, 2023 IEP.

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ISSUE 5B: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM FEBRUARY 27, 2023, THROUGH THE FILING OF STUDENT'S COMPLAINT BY FAILING IN THE FEBRUARY 27, 2023 IEP TO OFFER STUDENT AN ADEQUATE INDIVIDUAL TRANSITION PLAN?

Student's complaint is confusing as to the scope of the challenge being made as to the February 27, 2023 IEP individual transition plan. However, based on the totality of the pleading, Student appears to be challenging the February 27, 2023 IEP transition plan for the same reasons he challenged the March 16, 2022 amendment IEP transition plan. As discussed in Issue 3B, Student alleged the February 27, 2023 IEP transition plan did not have transition goals to ensure Student's transition to adulthood. Student alleged Los Angeles Unified should have developed measurable goals based on Student's plans to attend higher education and pursue a career. Student also alleged Los Angeles Unified failed to offer transition services to help Student work toward his post-secondary plans, including services to address independent living skills to help Student integrate into life after completing school.

Los Angeles Unified contends that the February 27, 2023 IEP transition plan was uniquely tailored to Student's needs. Student's post-graduation plans were to attend a four-year college and pursue a degree in engineering. Los Angeles Unified contends it offered an appropriate transition plan to enable him to reach these goals and prepare him for a college program in engineering.

In its closing brief, Los Angeles Unified argues that contrary to Parent's assertions, Student received mentoring for his post-graduation plans. It also asserts it was not required to place Student with an outside agency mentoring African-American students.

It contends Parent's assertions are yet another example of seeking an improper "maximization" of services. It argues school districts are not required to make placements in the community, but rather, in an appropriate case, facilitate the movement of a disabled student to integrated employment, including supported employment. Los Angeles Unified argues that, contrary to Parent's claims, the transition plan was not the place to address deficits that impeded Student's access to the educational curriculum, but rather a place for assisting Student to make a plan for his future after leaving high school. Los Angeles Unified argues there was no evidence Student needed a transition plan addressing independent living skills because he had no needs in that area. It contends that independent living skills are activities of daily living such as eating, bathing, dressing, mobility, navigating the community, and using money, typically pertaining to student with severe needs, not students planning to attend college away from home.

### THE FEBRUARY 27, 2023 INDIVIDUAL TRANSITION PLAN

The February 27, 2023 IEP contained an individual transition plan. It was based on a commercially produced assessment in which Student answered questions about himself and chose which areas he wanted to work on. Based on the results of the assessment, Student's scores were strong in the areas called "Music Smart," "Logic Smart," and "Self Smart." Student wanted to improve in the area called "People Smart," stating he wanted to make more friends, and use "Small Talk" skills to accomplish this. "Music Smart" referred to people who like to play or hear music. "Logic Smart" referred to people who are good at math or science. "Self Smart" involved answering questions demonstrating how well a person understood themselves. "Small Talk" referred to people who are good at engaging in small talk, in conversation between two people.

“People Smart” referred to people who are good at starting conversations and comfortable talking in front of people or with strangers. The assessment results indicated Student was interested in the occupations of music arranger, computer programmer, engineer, and lawyer.

Based on the assessment and discussion with Student, the transition plan Los Angeles Unified developed two post-secondary transition goals along with activities to support each goal. In education/training, Student had a post-secondary goal that upon completion of high school, he would enroll in and attend either a two- or four-year college, supported by development of a personal career/education plan. The people responsible for assisting Student with the development of a personal career/education plan was Parent, the special education teacher, counselor, and others. In the area of employment, Student had a post-secondary goal that upon completion of high school, he would be competitively employed. The activity to support this goal was identifying the skills needed in various occupations of interest, implemented by Parent, the special education teacher, counselor, and others. There were no goals or activities developed for independent living.

The transition plan also contained a course of study, which documented that Student was working toward a high school diploma. It noted Student was enrolled in a course of study that would prepare him to graduate with a diploma and attend a community college, four-year college, or vocational program. The courses Student would take included both the classes required for graduation and the electives selected by Student. The course of study was provided to Parent, and Los Angeles Unified reviewed it with Parent and Student in relation to the courses Student had completed, the courses in which Student was currently enrolled, and the courses he still needed to

graduate. The transition plan also documented Student had received mentoring, college awareness preparation, and career awareness, and completed transition activities in the areas of education/training and employment.

## PARENT'S TESTIMONY REGARDING THE FEBRUARY 27, 2023 IEP TRANSITION PLAN

As with Issue 3B, Parent's testimony on this issue was confusing. Parent seemed to make many of the same objections to the February 27, 2023 transition plan as she did regarding the March 16, 2022 amendment IEP transition plan. In addition, Parent objected to the mentoring mentioned in the transition plan because it did not identify who mentored Student, claiming Los Angeles Unified did not have permission for Student to interact with outside agencies and Parent was unaware Student was receiving mentoring from a service provider. Parent also inconsistently testified Student did not have a good mentor, and he should have had a mentor from an outside agency. Parent complained she spent "hours on end" helping Student.

Parent testified that she communicated to the IEP team her concerns that Student would not be college- and career-ready in terms of managing himself by waking up on time and turning in his homework, and no one listened to her. She claimed she looked at the school website and it was a "zoo," and asked questions of the school personnel and "they don't answer." Parent testified that age-appropriate assessments were never done, and that an independent living skills assessment would have "shown a lot." Parent said she found community organizations for Student to participate in, like the

church, and it would have been “great” if Leiva would have done this. Parent asserted the February 27, 2023 IEP transition plan did not develop meaningful post-secondary goals or transition activities for Student, and Student was now struggling.

## STUDENT DID NOT PROVE HE WAS DENIED A FAPE BECAUSE LOS ANGELES UNIFIED OFFERED AN INADEQUATE TRANSITION PLAN

Student failed to prove by a preponderance of the evidence that the transition plan offered as part of the February 27, 2023 IEP was inadequate such that it denied Student a FAPE.

The February 27, 2023 IEP transition plan documented the transition assessment conducted and the results, Student’s interests and preferences, and his course of study. At hearing, transition teacher Leiva explained she focused on Logic Smart, an area Student scored high in, because one of the careers in that area was engineering and Student was interested in an engineering career. The transition plan included post-secondary goals related to education/training and employment, transition activities to help Student achieve those post-secondary goals, and identified the people responsible for helping Student complete those activities. The transition goals properly reflected the desires and plans of Student, which was to attend college and possibly pursue a career in engineering. It also properly included activities to support those goals such as preparing an education plan and identifying the skills needed in various occupations of interest, some of which he did with Hodali and Leiva as discussed in Issue 3B. Leiva explained at hearing that the transition activities included reviewing the

assessment results with Student, talking to Student about the requirements for pursuing a career in engineering, including grade point average requirements for college and reviewing Student's transcripts.

Again, Parent raised many of the same objections to the February 27, 2023 IEP transition plan as she did to the March 16, 2022 amendment IEP transition plan. Those objections to the February 27, 2023 IEP transition plan are unconvincing for the same reasons they were unpersuasive as to the March 16, 2022 amendment IEP transition plan as discussed in Issue 3B. Student provided no evidence or authority that the transition goals or services were deficient based on a lack of an age-appropriate transition assessment or that an independent living skills assessment was required for development of Student's transition plan. There was no evidence that the transition assessment used to develop the February 27, 2023 IEP transition plan was inappropriate. There was no persuasive evidence Student had activities of daily living challenges warranting assessment, much less that the transition plan was deficient because it did not address independent living.

Student presented no convincing or specific evidence establishing why either the post-secondary goals or transition activities were inadequate given the results of the assessment administered to Student, and Student's post-secondary plans to attend college. Again, Parent misunderstood the purpose and scope of a transition plan, and she mistakenly believed Los Angeles Unified was required to "maximize" Student's potential. Parent pointed to nothing in the law that required Los Angeles Unified to identify the people mentoring Student beyond what was written in the transition plan. Moreover, if Parent was confused about this, she could have asked at the February 27, 2023 IEP team meeting she attended. Parent's assertions about the Science Academy's

website being a “zoo” and Parent’s accusations that school personnel were not answering the phones were vague and unpersuasive on this issue. Likewise, Parent’s assertions Student was now struggling at school were also vague and unconvincing to support Student’s position on this issue.

Even if the February 27, 2023 IEP transition plan was flawed, Student failed to prove the transition plan or February 27, 2023 IEP lacked a basic framework sufficient to ensure Student received transition services. Student did not establish that the transition plan was inadequate such that it impeded Student’s right to a FAPE, significantly impeded Parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student or caused Student to be deprived of educational benefits. Corroboration of this is that Student successfully applied to, was accepted at, and ultimately achieved his post-secondary transition education goal of attending a four-year college, putting him on track to achieve his post-secondary employment goal of being competitively employed in the field of engineering or in some other area of interest.

Los Angeles Unified did not deny Student a FAPE by failing to offer in the February 27, 2023 IEP an adequate individual transition plan.

#### ISSUE 6: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE BY MATERIALLY FAILING TO IMPLEMENT THE TRANSITION SERVICES OF STUDENT’S FEBRUARY 27, 2023 IEP?

Student contends that his February 27, 2023 IEP individual transition plan was never implemented. At hearing, Parent claimed Student had no mentor and there were no goals, no plans or offer, and no implementation.

Los Angeles Unified contended at hearing that it implemented the transition plan offered as part of the February 27, 2023 IEP. In its closing brief, Los Angeles Unified contends that Parent checked both that she agreed to all components of the IEP and agreed to the IEP with exceptions when she signed the form, and Parent never expressed any concerns about the individual transition plan. It asserts that vice-principal Rosenthal interpreted Parent's signature on the form as Parent's consent to implementation of the IEP. Los Angeles Unified contends there is no basis for Parent's accusation that mentoring services were not provided. In its closing brief, Los Angeles Unified asserts that school counselor Hodali provided Student with counseling on the course curriculum and post-secondary goals. It also argues that transition teacher Leiva administered inventory assessments and developed goals and an academic curriculum for Student's college preparation.

Student failed to prove Parent consented to the February 23, 2023 IEP, which included an individual transition plan. On May 5, 2023, Parent wrote a note on the consent page of the February 27, 2023 IEP regarding Student's need for additional services to address his executive functioning issues as discussed in Issue 5A. Parent marked the bubble indicating that she agreed to all components of the IEP and then crossed it out, and instead marked the bubble that Parent agreed to all components of the IEP with exceptions. However, Parent did not sign that part of the IEP regarding her agreement to components of the proposed IEP. She left that signature block blank. Parent did sign in the box certifying that she received a copy of the Parent Input Survey regarding the IEP process and that she understood her completion of the form was voluntary and could be done at any time after the IEP team meeting.

Parent initially testified she could not recall if she agreed to implementation of the February 27, 2023 IEP. Later, Parent asserted that by her signature she was only certifying she got the Parent Input Survey. Parent made clear she understood that there were two signature blocks and that her signature for the Parent Input Survey did not mean that she was consenting to the IEP. Parent testified she did not agree to the February 27, 2023 IEP and that she never signed consent to it. At hearing, vice-principal Rosenthal admitted the box that Parent signed did not demonstrate Parent's consent to the IEP and he could not recall if Parent ever otherwise consented to implementation of the IEP.

Student was required to prove Parent consented to the implementation of the February 27, 2023 IEP individual transition plan to succeed on Student's claim in Issue 6, that Los Angeles Unified failed to implement that individual transition plan. Student failed to establish this foundational prerequisite to his implementation claim. Parent admitted she never signed consent to the February 27, 2023 IEP or any part of it, and there was no persuasive evidence establishing she did.

Los Angeles Unified did not deny Student a FAPE by materially failing to implement the transition services of Student's February 27, 2023 IEP.

#### ISSUE 7: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE BY FAILING TO ASSESS STUDENT FOR RECREATIONAL THERAPY AS REQUESTED BY PARENT AT THE FEBRUARY 27, 2023 IEP TEAM MEETING?

Student's complaint alleges that Los Angeles Unified failed to conduct a recreational therapy assessment pursuant to Parent's request at the February 27, 2023 IEP team meeting.

Los Angeles Unified contends Parent never asked for a recreational therapy assessment. Los Angeles Unified asserts it offered to conduct a recreational therapy evaluation, but Parent refused to consent to such assessment after recreational therapist Roeun requested that assessment to determine Student's need for recreational therapy. It argues Student met all his goals in social functioning at the time of the February 27, 2023 IEP team meeting, that the February 27, 2023 IEP continued to include recreational therapy in its programming recommendations and offer, and that Student made progress in social functioning, so there was no deprivation of FAPE based on the lack of assessment. Los Angeles Unified argues Student's claim has no merit.

Student failed to prove Parent requested a recreational therapy assessment at the February 27, 2023 IEP team meeting. Student's allegation that Parent requested a recreational therapy assessment at the February 27, 2023 IEP team meeting was belied by the weight of evidence to the contrary. The evidence established that it was recreational therapist Roeun who requested the recreational therapy assessment, not Parent, and that Parent refused to consent to a recreational therapy assessment when later provided with an assessment plan that included a recreational therapy assessment.

Recreation therapy worked on underlying skills needed for cooperative play and cooperative learning, such as social initiation, taking turns, social perspective taking, being a good sport in a group, and being able to use unstructured opportunities in a way that was beneficial to the student, such as figuring out what to do during unstructured time. Recreational therapy focused on social interaction as opposed to social conversation.

Roeun was a certified recreational therapist since 2019, holding a bachelor's degree in recreational therapy. Roeun was employed by Los Angeles Unified as a recreational therapist for five years. Student was on Roeun's caseload since the middle of the 2021-2022 school year, when Student was in 10th grade. Roeun began providing recreational therapy services to Student pursuant to his IEP.

The March 16, 2022 amendment IEP reported Student was easily navigating throughout numerous areas of campus, including the cafeteria/seating area, classrooms, and computer lab. He participated in a variety of cooperative skills games with the recreational therapist and peers. He followed directions, and he maintained good attention to activities when it was a preferred task. He continued to display many social functioning skills. He had difficulty consistently using and demonstrating perspective-taking skills, but, when motivated, he could accept the perspectives of his peers. Roeun continued to provide recreational therapy services after the March 16, 2022 IEP team meeting.

At the October 14, 2022 IEP team meeting, Roeun reported to the IEP team Student met his social functioning goal and Student's teachers reported that they had no concerns in the area covered by recreational therapy. Student was getting along with his peers, was picking up on social cues, and had the social skills to engage in age-appropriate cooperative learning. Roeun reported she had conducted observations of Student. Student demonstrated appropriate social interaction skills, including locating his peers during unstructured time, engaging in conversation, taking turns, and using appropriate eye contact and personal space.

The February 27, 2023 IEP documented recreational therapist Roeun's report of Student's present levels of performance in social functioning. Roeun noted Student had made great strides in social functioning and that he met his recreation therapy goal, which required Student to use his social tools to increase expected outcomes during social interactions with peers. During cooperative learning activities, Roeun observed and reported Student demonstrated reciprocal interaction and social perspective-taking skills. He demonstrated appropriate eye contact and body language during social interactions with peers. During physical education, Student demonstrated his social perspective-taking skills consistently and participated effectively in groups. According to Roeun, Student's 11th-grade teachers did not report any social concerns, and Student presented with age-appropriate social skills, got along with everyone, participated effectively and was "part of the group" during cooperative learning lessons.

Roeun reported in Student's present levels of performance that Student did not demonstrate a current need in social functioning. Roeun recommended that a recreation therapy assessment be conducted to determine areas of concern related to school-based recreation therapy. Roeun also stated Student's disability did not impact his ability to engage and participate during school-based cooperative learning and cooperative play activities needed to access the general education curriculum.

At hearing, Rouen explained that as of the February 27, 2023 IEP team meeting, Student made a lot of progress during the time she worked with Student. Student did not require intervention during social interaction, and Roeun observed no peer conflicts. Roeun was adamant Parent never requested a recreational therapy assessment at the February 27, 2023 IEP team meeting, and that it was Roeun herself who recommended that such an assessment be conducted. Roeun explained she proposed assessing

Student to determine his needs so she could make the appropriate recommendations because Student was not demonstrating any issues in the area covered by recreational therapy based on her observations and interviews with his teachers. Roeun did not believe Student required recreational therapy to access the curriculum and recommended to formally assess whether Student needed recreational therapy services. Roeun's testimony was far more credible than Parent's testimony on this issue because, unlike Parent, Roeun was thoughtful in responding to questions, clear in her responses, and her testimony was consistent with the documentary evidence.

At hearing, Parent claimed she requested a recreational therapy assessment at the February 27, 2023 IEP team meeting. Parent's testimony was not credible because it was inconsistent, evasive, and equivocal. For example, when Parent was initially asked if she requested a recreational therapy assessment at the February 27, 2023 IEP team meeting, Parent was uncertain. Parent unpersuasively claimed she requested a couple of assessments, and a recreational therapy assessment "may" have been one of them. She was also uncertain if a recreational therapy assessment was ever done, but she thought it had been conducted eventually, and stated she would have to look at her notes. In fact, a recreational therapy assessment was never completed because Parent refused to consent to the assessment plan Los Angeles Unified gave her. Later, Parent again claimed she asked for a recreational therapy assessment, but seemed uncertain when she asked for this assessment, uttering it could have been at the October 14, 2022 IEP team meeting.

Parent's testimony that she asked for a recreational therapy assessment at the February 27, 2023 IEP was also unconvincing because it was contrary to the weight of other evidence that demonstrated Parent did not want Student assessed, as detailed in

Issue 1. Parent not only informed the team on February 27, 2023 that she did not agree to have Student evaluated, but on September 6, 2023, she refused to sign consent to the assessment plan for Student's three-year reevaluation which included an evaluation by a recreational therapist of Student's social behavior. At the subsequent October 30, 2023 IEP team meeting, Roeun asked Parent if she wanted to proceed with the recreational therapy assessment at that time. Roeun explained what the recreational therapy assessment entailed, and Parent responded Student did not need a recreational therapy assessment.

The preponderance of evidence established that Parent never asked for a recreational therapy assessment at the February 27, 2023 IEP team meeting. As such, Student did not prove Los Angeles Unified denied Student a FAPE by failing to assess Student for recreational therapy pursuant to Parent's request at the February 27, 2023 IEP team meeting.

#### ISSUE 8: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE BY FAILING TO PROVIDE PARENT A PRIOR WRITTEN NOTICE REGARDING ITS DENIAL OF PARENT'S FEBRUARY 27, 2023 REQUEST FOR COMPENSATORY EDUCATIONAL SERVICES?

Student's complaint alleges that Los Angeles Unified never provided Parent with a prior written notice to address the reason it denied Parent's request made at the February 27, 2023 IEP team meeting for compensatory services. Student contended at hearing that Parent asked for compensatory services at the February 27, 2023 IEP team meeting because Student did not receive all his IEP behavior aide service hours. Student

contends Los Angeles Unified told Parent that compensatory education was only for loss of instruction during the COVID-19 pandemic, and Student did not qualify because he was doing well.

At hearing, Los Angeles Unified contended although Parent claimed Los Angeles Unified never provided prior written notice regarding its denial of her February 27, 2023 request for compensatory education services, this issue was discussed and decided at the February 27, 2023 IEP team meeting. Los Angeles Unified asserts Parent had notice of the ultimate decision not to offer compensatory services and agreed, and even if there was a procedural error in not sending a written letter, the error did not rise to a denial of FAPE. In its closing brief, Los Angeles Unified argues that Parent offered no testimony on this issue, and otherwise failed to demonstrate how Student was denied a FAPE because Los Angeles Unified did not send Parent a letter regarding its determination that compensatory services were not warranted. It contends Parent had adequate notice that these services were denied and the reasons why because she attended the February 27, 2023 IEP team meeting where it was discussed and determined that compensatory services were not needed.

Prior written notice is required to be given by the public agency to parents of a child with exceptional needs upon initial referral for assessment, and a reasonable time before the public agency initiates or changes, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or provision of FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503; Ed. Code, § 56500.4, subd. (a).)

The notice is required to include a description of the action refused, and an explanation why the agency refuses the action. It must also contain a description of each assessment procedure, assessment, record, or report used as a basis for the

proposed refusal. The notice must also include a description of any other options that the IEP team considered and the reasons why those options were rejected, and other factors relevant to the proposal or refusal of the agency. (20 U.S.C. § 1415(c)(1); Ed. Code, § 56500.4, subd. (b).) It must also include a statement that the parents of the child with a disability have procedural safeguards protection, the means by which procedural safeguards can be obtained, and sources for parents to contact to obtain assistance. (*Ibid.*, 34 C.F.R. § 300.503(b)(4) & (5).) Prior written notice must be provided in the native language of the parent unless it is clearly not feasible to do so. (20 U.S.C. § 1415(b)(4); 34 C.F.R. § 300.503(c).)

An IEP document can serve as prior written notice as long as the IEP contains the required content of appropriate notice. (71 Fed.Reg. 46691 (2006).)

## THE FEBRUARY 2023 DISCUSSIONS ABOUT COMPENSATORY EDUCATION

The February 27, 2023 IEP had a section entitled "Pandemic Learning Loss Consideration of Compensatory and/or Recoupment Services," with a checklist of separate considerations for each. The IEP team was required to fill in boxes and bubbles pertaining to whether compensatory education was required due to the COVID-19 pandemic, and whether COVID-19 related school closures impacted a student's learning such that recoupment services were recommended.

As reflected in the February 27, 2023 IEP notes, during the February 27, 2023 IEP team meeting, Parent complained that tracking Student's missing assignments was taking a toll on her because no one was checking his work last year because Student did

not have a behavior aide. Parent requested compensatory services at the February 27, 2023 IEP team meeting because she believed Student did not receive all the behavior aide services his IEP required.

At the February 27, 2023 IEP team meeting, Parent requested Student receive some other kind of adult support outside of school hours in the form of resource support or coaching to assist Student with his executive functioning needs. Parent believed this type of support might compensate Student for some of the behavior aide hours not provided. When Parent brought up the subject of compensatory education during the IEP team meeting, Los Angeles Unified staff told Parent the issue would be discussed later during the meeting. When the IEP team eventually discussed compensatory hours for the missing behavior services, Los Angeles Unified staff told Parent no compensatory minutes were necessary. Los Angeles Unified told her that compensatory education was only for loss of instruction relating to the COVID-19 pandemic and Student did not qualify for compensatory education because he was doing well. The IEP documented that the need for compensatory education was discussed, and the IEP team concluded Student did not need recoupment or compensatory services.

On the "Pandemic Learning Loss Consideration of Compensatory and/or Recoupment Services" section, under compensatory education, the box was checked that the IEP team reviewed and discussed whether compensatory education was required due to the COVID-19 pandemic, and determined Student received all special education and related aids and services required by his IEP and compensatory education was not required. Under recoupment services, the box was checked that the IEP team reviewed and discussed Student's progress/achievement and considered factors that may have impacted Student's learning during the school facility closures because of the COVID-19

pandemic, and the IEP team determined that Student had made expected progress toward his IEP goals and/or Student's progress was in alignment with expectations of progress/goal achievement. It also stated that no recoupment services were recommended.

Vice-principal Rosenthal had a hard time recalling the discussion at the February 27, 2023 IEP team meeting regarding compensatory education. He explained that after the COVID-19 pandemic, a new section was added to the IEP forms to determine if students required additional services because of COVID-19. He recalled that each time he facilitated an IEP team meeting after the COVID-19 pandemic, there was a conversation about the need for compensatory education. He testified that, for Student, it was always decided he did not need any compensatory education for missed services during the pandemic or recoupment services. Rosenthal recalled Parent being informed at the February 27, 2023 IEP team meeting that the IEP team decided compensatory services were not necessary for Student.

The same day as the February 27, 2023 IEP team meeting, vice-principal Rosenthal sent Parent a copy of the IEP to sign and return. Parent responded by email the same day. Parent stated that she looked at the IEP and still had concerns, including that the IEP stated Student received all of his IEP services and compensatory education was not required. Parent wrote that Student did not receive all his services and that was the reason he had so much difficulty the last semester.

On February 28, 2023, Rosenthal responded by email. Rosenthal explained that the statement in the February 27, 2023 IEP regarding Student's receipt of all his IEP services and that he did not require compensatory services, referred to the compensatory services which could have been owed as related to COVID-19. Rosenthal explained that this

statement did not affect the 500 behavior-aide minutes discussed during the IEP team meeting, the offer in the February 27, 2023 IEP regarding the behavior aide support services.

## LOS ANGELES UNIFIED COMMITTED A PROCEDURAL VIOLATION WHEN IT FAILED TO SEND PARENT A PRIOR WRITTEN NOTICE

Los Angeles Unified never sent Parent a prior written notice regarding Parent's February 27, 2023 request for compensatory education. At hearing, Rosenthal admitted he did not know what a prior written notice was and did not recall sending anything to Parent about the compensatory education determination other than February 27 and 28, 2023 emails.

Los Angeles Unified conceded it never sent a prior written notice to Parent regarding the request for compensatory education. It instead argues Parent knew about the decision because she was present when it was discussed and decided at the February 27, 2023 IEP team meeting. However, Los Angeles Unified fails to explain how the discussion held during the IEP team meeting satisfied each of the prior written notice requirements. In fact, the weight of evidence established that the February 27, 2023 IEP and Rosenthal's subsequent email, even when read together, fell far short of the required contents of the appropriate notice required when it refused to offer the compensatory education Parent's requested.

Although the February 27, 2023 IEP and Rosenthal's February 28, 2023 email stated that Los Angeles Unified was not offering any compensatory services to Student because they were unnecessary, Los Angeles Unified did not explain why Student was not entitled to compensatory services for reason Parent was requesting it. The weight of evidence

established Rosenthal told Parent compensatory services were not required based on missed services because of the COVID-19 pandemic, essentially ignoring Parent's request for compensatory education based on the alleged failure to provide Student with a behavior aide required by his operative IEP unrelated to the pandemic.

There is nothing in either the February 27, 2023 IEP or Rosenthal's February 28, 2023 email explaining the factual basis for Los Angeles Unified denying Parent's request for compensatory education based on the alleged failure to implement Student's aide service. There was no description of each assessment procedure, assessment, record, or report used as a basis for the refusal to offer compensatory education for any time Student allegedly did not have a behavior aide required by his operative IEP. Los Angeles Unified also failed to include a description of any other options that the IEP team considered and the reasons why those options were rejected, and other factors relevant to the refusal. (Ed. Code, § 56500.4, subd. (b).)

Los Angeles Unified committed a procedural violation by failing to send Parent a compliant prior written notice regarding its denial of Parent's request for compensatory services for any time Student allegedly did not have a behavior aide required by his operative IEP. However, Student presented no persuasive evidence or comprehensive argument that the failure to send prior written notice impeded Student's right to a FAPE, caused Student to be deprived of educational benefits, or significantly impeded Parent's opportunity to participate in the IEP decision-making process. Therefore, the procedural violation did not deny Student a FAPE.

Los Angeles Unified did not deny Student a FAPE by failing to provide Parent with prior written notice regarding its denial of Parent's February 27, 2023 request for compensatory education.

ISSUE 9: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE BY  
PREDETERMINING TO EXIT STUDENT FROM SPECIAL EDUCATION  
PRIOR TO THE OCTOBER 30, 2023 IEP, WITHOUT PARENTAL CONSENT?

At hearing, Student contended that Los Angeles Unified predetermined to exit Student from special education since at least 2021 and prior to the October 30, 2023 IEP team meeting. Student asserts that at various times since at least 2021, members of Student's IEP team indicated they wanted to exit Student from special education, claiming that Student did not need an IEP because he was meeting his goals and doing well in school. Student asserts that at the October 14, 2022 IEP team meeting, Los Angeles Unified proposed exiting Student from special education.

Los Angeles Unified contends it never exited Student from special education, and that Student had an IEP in place through his graduation from high school in June 2024. Los Angeles Unified argues that although special education teacher Blisten suggested Student no longer needed special education services, it never removed Student from special education and Student's claim has no merit.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485; see *N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036.) "Participation must be more than a mere form; it must be *meaningful*." (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted; emphasis in original] (*Deal*); see also, *Winkelman v. Parma City School Dist.* (9th Cir. 2007) 550 U.S. 516, 524 [127 S.Ct. 1994]; *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) The IEP team shall consider the concerns of the parent for enhancing the student's

education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)A & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).)

A school district that predetermines the child's program and does not consider parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal, supra*, 392 F.3d at p. 858; *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, superseded on other grounds by statute.) For IEP team meetings, predetermination occurs when an educational agency has decided on its offer prior to the meeting and is unwilling to consider other alternatives. (*Deal, supra*, 392 F.3d at pp. 857-858; *H.B. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344-345 [nonpub. opn.].) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn.10.)

Although school district personnel may bring a draft of the IEP to the meeting, the parents are entitled to bring to an IEP team meeting their questions, concerns, and recommendations as part of a full discussion of a child's needs and the services to be provided to meet those needs before the IEP is finalized. (*Assistance to States for the Education of Children Disabilities*, 64 Fed. Reg. 12478-12479.) School officials may permissibly form opinions prior to IEP meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D.Ohio, January 17, 2013, No. 1:11-CV-398) 2013 WL 209478, \*7.)

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A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. Substantive harm occurs when parents are denied meaningful participation in a student's IEP development. (*Deal, supra*, 392 F.3d at p. 859.)

Student failed to establish by a preponderance of the evidence that Los Angeles Unified predetermined to exit Student from special education prior to the October 30, 2023 IEP. Student did not prove that any of the IEPs developed between January 16, 2022, and prior to October 30, 2023, proposed in writing to exit Student from special education. The only IEPs in evidence during that period were the March 16, 2022 amendment IEP and the February 27, 2023 IEP. As discussed in Issues 3A, 3B, 5A, and 5B, both of those IEPs offered Student a program of special education and related services under the IDEA. The same is true about the October 30, 2023 IEP – it also offered Student an IEP, including annual goals, placement, services, and accommodations, and did not propose to exit Student from special education. The October 30, 2023 IEP is more thoroughly discussed in Issues 10A and 10B.

There was no persuasive evidence that any other IEP held during the period at issue proposed to exit Student from special education. At hearing, Parent pointed to the October 14, 2022 IEP when asked if there was any IEP in which Los Angeles Unified proposed to exit Student from special education. However, the October 14, 2022 IEP was never proffered as evidence.

Parent relied on an audio recording she made of part of the October 14, 2022 IEP team meeting to prove that Los Angeles Unified predetermined Student's exit from special education. However, neither this audio recording nor the transcript of the recording established that Los Angeles Unified proposed to exit Student from special

education at the October 14, 2022 IEP team meeting. Although at hearing Parent emphasized the discussion during that IEP team meeting supported her claim, Parent only recorded the beginning of the IEP team meeting. The recording ends after the parties discussed Student's progress on goals and present levels of performance and agreed to come back after a five-minute break to continue the discussion. Specifically, the recording did not establish what proposal Los Angeles Unified made or its failure to offer a program at the October 14, 2022 IEP team meeting, even assuming it was required to do so. Again, the record indicated that the IEP team meeting was not concluded on October 14, 2022, but was reconvened on February 27, 2023.

In fact, the weight of evidence established that Los Angeles Unified never proposed to exit Student from special education at the October 14, 2022 IEP team meeting. Special education teacher Blisten forcefully voiced his opinion during the IEP team meeting that he did not believe Student required IEP-based academic or behavioral support. However, he also made it clear that Los Angeles Unified was not trying to "kick [Student] out of the program." Rather than exiting Student from special education, Blisten suggested that Student be assessed in academics and functional behavior so that additional data could be gathered, as addressed in Issue 1. Blisten was unnecessarily strident in his opinions during the October 14, 2022 IEP team meeting. However, his suggestions to Parent that Student be assessed demonstrated he considered Parent's requests, was willing to consider other alternatives, and had not decided to exit Student from special education.

Other evidence demonstrated that Los Angeles Unified was not deeply wedded to a single course of action to exit Student from special education. At Student's next IEP team meeting on February 27, 2023 IEP, Parent specifically asked whether Los Angeles Unified was going to cancel Student's IEP, to which vice-principal Rosenthal stated that the IEP

team had no specific intentions. Los Angeles Unified made an offer of FAPE at the February 27, 2023 IEP team meeting, and again at the October 30, 2023 IEP team meeting.

Student presented no persuasive evidence that Los Angeles Unified ever made a proposal to exit Student from special education at the October 30, 2023 IEP team meeting, or at any IEP team meeting held prior to October 30, 2023. There was no evidence that any IEP offer made to Student by Los Angeles Unified prior to the filing of the complaint proposed to exit Student from special education. Without such proof, Student's claim of predetermination necessarily fails.

Student did not prove Los Angeles Unified denied Student a FAPE by predetermining to exit Student from special education prior to the October 30, 2023 IEP.

#### ISSUE 10A: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM OCTOBER 30, 2023, THROUGH THE FILING OF STUDENT'S COMPLAINT BY FAILING IN THE OCTOBER 30, 2023 IEP TO OFFER SUFFICIENT BEHAVIOR AIDE SUPPORT AND SUPERVISION?

Student's complaint alleges Los Angeles Unified denied Student a FAPE in the October 30, 2023 IEP by failing to offer behavioral intervention implementation services and behavioral intervention development services from a nonpublic agency. Student argues he failed to meet his previous behavior support goal and continued to demonstrate difficulty focusing to produce complete work independently because he struggled with time management. Student alleges the behavior intervention plan indicated he had poor organization and planning abilities, resulting in a lack of work production.

Los Angeles Unified contended at hearing that as part of the October 30, 2023 IEP, it offered Student goals, services, and supports directly addressing his needs. Los Angeles Unified contended it offered Student an educational program that allowed him to access the regular curriculum and make academic progress culminating with a high school diploma with a 4.26 grade point average. In its closing brief, Los Angeles Unified contends that aside from Parent's testimony, there was not an "iota" of evidence the behavior aides lacked education and training or that the lack of any education or training impacted Student's receipt of behavior services. Los Angeles Unified argues that what motivated this claim was Parent's "umbrage" against Los Angeles Unified, and Parent's desire for private services. Los Angeles Unified argues it was not required to acquiesce to Parent's demand for private services.

Los Angeles Unified admits there was a procedural error in the formation of the October 30, 2023 IEP when a special education resource teacher eliminated the vocational education goal after the IEP team meeting and placed the substance of the goal under the category of a behavior intervention goal. Los Angeles Unified argues that upon realizing the mistake, the teacher sought to correct it by scheduling a meeting to amend the goals and create an amended IEP, but Parent refused to cooperate or return the page of the IEP indicating her disagreement with the IEP. Los Angeles Unified argues that any procedural error did not amount to substantive denial of FAPE.

## THE FALL 2023 GOVERNMENT CLASS

Prior to the October 30, 2023 IEP team meeting, Parent requested Student be removed from his Advanced Placement Government class. Parent thought the teacher was condescending. This class was Student's first-period at the beginning of the 2023-2024 school year.

At hearing, school counselor Hodali recalled Parent was not pleased with the teacher in that class and Student was having a hard time passing that class. Hodali came up with an alternative plan for Student to fulfil the government course requirement to graduate. Student opted to participate in an online program, which he timely completed and got an A grade. The evidence did not establish exactly when Student began that online course, but it was sometime around the end of October 2023. The online program was not an Advanced Placement class, but a general education government class satisfying the government class requirement for graduation as well as eligibility for attending a four-year college directly out of high school.

### THE OCTOBER 30, 2023 IEP

At Student's October 30, 2023 IEP team meeting, the IEP team including Parent reviewed a draft of Student's proposed IEP. Others in attendance included

- administrative designee Flavia Di Monaco Souza e Silva,
- special education teacher Tacy Schull,
- school psychologist Garrett,
- the school nurse,
- recreational therapist Roeun,
- transition teacher Leiva, and
- one of Student's general education teachers.

The October 30, 2023 IEP documented Student had not yet met his vocational education goal or behavior goal but had met one short-term objective for each goal, noting that Student was not meeting accuracy. The IEP stated "Student has requested

more time” for his counseling goal, but that Student met both short-term objectives. Student did not establish he had a full year to work on the goals he did not meet or that Parent ever consented to the implementation of these goals.

## THE OCTOBER 30, 2023 IEP PRESENT LEVELS OF PERFORMANCE

Regarding reading, the IEP stated Student received an A in both semesters of Advanced Placement English language arts in 11th grade, Student was ready for college level courses, and his Los Angeles Unified weighted grade point average was 4.201. Student had no challenges, and he was on track to meet all A-G requirements for English language arts. Student’s disability did not impact his involvement and progress in the general education curriculum in the area of reading.

In writing, the IEP stated Student received an A in both semesters of Advanced Placement English language arts in 11th grade, and Student’s teachers reported Student had strong writing skills. Student had no challenges, and he was on track to meet all the A-G requirements for English language arts. Student’s disability did not impact his involvement and progress in the general education curriculum in the area of writing.

In math, the IEP stated Student received an A in Advanced Placement Calculus B and Advanced Placement Calculus C in 11th grade, and that he exceeded test scores on the math portion of another assessment. Student had no challenges in math and was on track to meet all A-G requirements for math. Student’s disability did not impact his involvement and progress in the general education curriculum in the area of math.

In behavior, Student worked independently and in groups of his peers cooperatively. He cultivated and maintained relationships with peers who shared similar interests. He was noted to be kind, respectful, courteous, and compassionate, exhibiting age-appropriate behaviors within and outside of the classroom setting. The IEP stated Student had no behavioral support needs, but Student had difficulty focusing on completing some of his classroom tasks and his independent work/homework. Parent reported Student struggled with time management. The IEP stated Student's autism and challenges with executive functioning tasks affected his ability to focus and turn in assignments on time, which impacted his involvement and progress in the general education curriculum.

As addressed in Issue 2, Student had shown enormous growth in social functioning. However, the IEP stated that his challenges with self-management and social-awareness skills may impact his involvement and progress in the general education curriculum.

Student was reported to be in good health based on a telephone interview with Parent, a review of school records, and observations of Student. He had no history of major medical illness, serious injury accident, or surgery or hospitalization reported for the past three years. He had no known allergies, and his speech was clear. He was independent in his self-help and gross motor skills. He passed both his vision and hearing screening in fall 2023. Student's health was not an area of need. Student's health did not impact his participation, progress, and access to his educational program.

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## THE OCTOBER 30, 2023 IEP OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

In the October 30, 2023 IEP, Los Angeles Unified offered a general education setting on the general education curriculum. It also offered Student the following services and supports:

- 500 weekly minutes of behavior aide support, called behavior intervention implementation or BII support by a Los Angeles Unified provider;
- 30 minutes monthly of counseling and guidance;
- 30 minutes weekly of resource specialist program support; and
- Accommodations in the form of:
  - Extended time on assignments;
  - Prompting to take pictures of the board;
  - Help with organizing skills, including organizing materials, self-monitoring checklists, and writing in a day-planner called an agenda book;
  - Prompting to put assignments in the agenda book;
  - Daily agenda checks;
  - Check-ins on longer assignments for progress on completion; and
  - Preferential seating near the board.

Los Angeles Unified's offer of special education also proposed an "early-stage intervention" in the form of a behavior intervention plan, identifying the behavior impeding learning as poor organization and planning, which was described as Student not completing classwork/homework in a timely manner, resulting in lack of work production monthly of about three minutes. To address this behavior, Los Angeles Unified proposed a variety of interventions, including a behavior goal focusing on completion of his classroom tasks and independent work/homework, and a host of environmental changes, structure and supports to remove the likelihood of this behavior, along with reinforcement procedures to use for establishing, maintaining, and generalizing the replacement behaviors, to be implemented by his teachers and support staff.

#### THE TESTIMONY FROM STUDENT'S SPECIAL EDUCATION TEACHER AND THE ADMINISTRATIVE DESIGNEE

Schull was Student's case carrier and resource specialist during his senior year. Schull was employed by Los Angeles Unified for 27 years and had worked for five years in a mild-moderate special day class before she became a resource specialist provider. She was a credentialed special education teacher and was trained to work with students with autism.

Schull provided resource specialist services to Student for 30 minutes per week. Schull supported Student with his issues in organization and turning in homework by working with Student on his agenda book, checking his agenda book, and making sure his teachers knew he needed extra time to complete assignments. Schull explained that in assisting a student, the first step was to show the student how to do the task and then remind them to do the task. Behavior aides were responsible for a lot of things, including

redirecting Student and checking Student's agenda to see if he was taking notes. The behavior aides were trained by Schull or the administration to assist in teaching skills in the areas of planning, organization, and time management, such as reminder check-ins, communicating with the teachers, assisting with note taking, and taking pictures of notes.

Schull testified that based on the discussions with Student's teachers and reviewing his work, Student occasionally needed extended time to turn in his work. When she pushed into Student's classrooms at least 30 minutes a week, Student claimed he did not need any additional support. When Schull observed Student in class, he was on task. Sometime prior to the October 30, 2023 IEP team meeting, Student's Advanced Placement Government class teacher mentioned to Schull that Student had a lot of tardies in that first-period class and Student was not completing his work. In late October 2023, Schull became aware Student was failing his Advanced Placement Government class, but at hearing, claimed to be unaware Student had moved to an online government class. Based on Schull's observations, at the beginning of the 2023-2024 school year, Student seemed to "have a moment of getting it together, getting more organized, and then he did, and then he was doing really well." Schull did not believe Student would have benefitted from after-school programs working with an educational therapist or ADHD coach because she thought Student was doing well.

In making the behavior aide services IEP offer, Schull explained that the services were continued from the prior school year because it was Student's last year, and the IEP team did not want to remove the service so Student would have the support throughout his senior year. Schull testified that IEP team thought the behavior aide service was unnecessary.

After the October 30, 2023 IEP team meeting was over, Schull discovered she could not put the IEP in what she called "pending" status, which would "lock" the proposed IEP from further editing. Schull explained because the IEP offered Student a behavior aide, it needed a behavioral support plan and behavioral goal to lock it. Schull retitled what was offered as the vocational goal, a behavioral support goal. The evidence was unclear, but Schull may have also added a behavioral intervention plan. In making this change, Schull electronically wrote over the IEP discussed with Parent during the October 30, 2023 IEP team meeting. Schull was then able to put the IEP in "pending" status and lock it against further editing. She also sent a copy of the revised IEP to Parent. Either the same day as the IEP team meeting or the next day, Schull called Parent and informed her about the revision she made to the IEP. There were also some emails exchanged about this issue between Parent, Schull, and Di Monaco, none of which were proffered as evidence by any party. The record was unclear as to the exact sequence of the communications. Parent told Schull she disagreed with the change made by Schull, asserting that the IEP needed a vocational goal. Schull offered to convene an amendment IEP team meeting to correct the IEP, but Parent refused.

Administrative designee Di Monaco characterized what Schull did as a mistake that Schull immediately acknowledged and offered an amendment IEP to fix the error she made. Di Monaco explained the mistake could have been corrected with an amendment IEP but given the limitations of the computer program and/or Los Angeles Unified policy, Parent needed to first sign the IEP disagreeing with it, so that the document could then be unlocked and an amendment created. Parent never returned the signature page or agreed to an amendment IEP team meeting to correct the mistake.

## HODALI'S TESTIMONY

During Student's senior year, Parent contacted school counselor Hodali frequently, and Hodali spoke to Parent many times. Parent was concerned about Student's ability to turn assignments in on time, especially through the college application process. Hodali felt Parent was impatient and wanted Hodali to take on what Hodali believed were Parent's responsibilities. A lot of the conversations also revolved around Parent complaining about the teachers, as well as Student's executive functioning issues.

Hodali recalled Student missing some of his classes during 12th grade, including some social communication classes. Hodali did not know if it was because of "senioritis" or not, but recalled Student achieved good grades even though he had a hard time turning in his work in many classes.

## PARENT'S TESTIMONY REGARDING THE BEHAVIOR AIDE SERVICES

When asked about Issue 10A, Parent testified Student was denied a FAPE because the October 30, 2023 IEP reduced Student's behavior aide service to 500 minutes per week. Parent also complained that the behavior aide was not a specialized aide and was untrained, and that Student should have had an aide who was trained, with a college degree. Parent asserted Student needed an aide from a nonpublic agency because nonpublic agencies had trained, college-educated aides. Parent also asserted Student's aide, who was supposed to help Student, was working in the Science Academy office instead of helping Student.

In other parts of her testimony, Parent asserted that at the beginning of the 2023-2024 school year, Student was tardy to his Advanced Placement Government class 11 times before October 25, 2023, absent at least twice, and was failing the course. Parent

also testified that based on some documents she pulled from a platform used by Los Angeles Unified called Schoology, Student was missing homework in his Advanced Placement English Literature class, or some homework had not been recorded for that class, and Student was failing English as of August 28, 2023. Based on printouts from the same platform, Parent testified Student was failing his Social Communication course. Parent also asserted at hearing Student was failing Economics in fall 2023.

STUDENT DID NOT PROVE HE WAS DENIED A FAPE BECAUSE  
LOS ANGELES UNIFIED FAILED TO OFFER SUFFICIENT BEHAVIOR AIDE  
AND SUPERVISION SERVICES

Student failed to meet his burden of proof in establishing that Los Angeles Unified denied him a FAPE by failing to offer sufficient behavior aide and supervision services in the October 30, 2023 IEP.

For the same reasons discussed in Issues 3A and 5A, Student failed to prove by a preponderance of the evidence that the offered behavior aide services were inadequate. Student did not establish that the aides failed to satisfy the requirements of California Code of Regulations, title 5, section 3051.23, subdivision (b). The evidence at hearing failed to establish that the behavior aides lacked proper training or education for the position they held. Schull testified that she or the administration trained the behavior aides, and Student failed to call any of the aides as witnesses or anyone else knowledgeable about the training the aides received. The evidence also failed to prove any of the aides were incompetent. The fact that the male aide may have sometimes worked in the office did not establish that Los Angeles Unified's offer of 500 minutes a week of behavior aide services was inadequate, or that the aide was incompetent, or that

he lacked appropriate training and education for his position. For the same reasons stated in Issues 3A and 5A, Student did not prove behavior aide services or behavior supervision services from a nonpublic agency were required for Student to receive a FAPE.

Student failed to prove he required a behavior aide more than 500 minutes a week to assist with his goals and to implement the offered accommodations and behavior intervention plan. At the time of the October 30, 2023 IEP team meeting, Student had some executive functioning issues regarding his organization and timely completion of his assignments. However, Student failed to establish that the behavior aide service by a Los Angeles Unified employee offered in the October 30, 2023 IEP was not reasonably calculated to provide Student with educational benefit required by *Rowley* and *Andrew F.*

There were clearly issues with Student's Advanced Placement Government class. However, it was not persuasively established why Student was tardy or absent to that class, or why he was not turning in his assignments. On one of the documents Student proffered into evidence, Parent wrote that Student had to drop out because the teacher was condescending. Hodali recalled Parent had some issues with the teacher and made complaints about Student's other teachers. Again, Student did not testify, and Parent offered no specific convincing evidence that the 11 times Student was tardy or the two times he was absent were due to Student's executive functioning challenges or Los Angeles Unified's failure to offer adequate behavior aide and supervision support. In any event, by the time of the October 30, 2023 IEP team meeting, Student had already enrolled in his online government class, which he completed and earned an A grade in the 2023 fall semester.

Parent's reliance on the documents she pulled from Schoology was also unconvincing on Student's claim in Issue 10A. While it is true the documents listed missing assignments and course grade percentages, they were confusing without testimony from Student or Student's teachers regarding the significance of information reflected on the printouts. They did not prove Student was failing the courses as asserted by Parent, because it was never established how those assignments or the deadlines for the assignments related to his grade in the class. In fact, where the notations "missing" occurred, Parent wrote "turned in." Further, all the assignment dates on the printouts were in August 2023, and the school year only began on August 14, 2023. Student did not establish that Student's teachers based his grades on just this sliver of time, or the assignments listed, rather than a longer period or some other measure. None of Student's 12th-grade teachers testified besides Schull, the documents presented by Parent were too cryptic, and Parent otherwise failed to demonstrate she had a proper basis for drawing the conclusions she drew from the printouts. In fact, in the fall 2023 semester of Student's 12th-grade year, he received an A in all but one of his eight classes, including

- Advanced Placement English Literature,
- Statistics and Probabilities A and B,
- Principles American Democracy,
- Advanced Social Communication,
- Decathlon, and in something abbreviated as
- "Comp Prg & Game DS A."

Student's only B was in Advanced Placement Biology.

Parent asserted that the behavior aide services offered in the October 30, 2023 IEP were insufficient to meet Student's needs, but as discussed in Issue 1, Parent refused to allow Los Angeles Unified to conduct a three-year psychoeducational reevaluation for his October 30, 2023 IEP. Having refused to consent to Student's fall 2023 three-year reevaluation, Parent cannot claim Student had needs in this area that were not addressed at the October 30, 2023 IEP. While Student had some issues with executive functioning, Student failed to offer any persuasive evidence establishing that the behavior aide services offered in the October 30, 2023 IEP were not reasonably calculated to enable Student to make appropriate progress.

This Decision does not address whether FAPE was denied because Schull revised the October 30, 2023 IEP without Parent's consent after the IEP team meeting concluded. Parent was aware of the changes Schull made to the IEP at the time Student filed his complaint. Student's complaint did not challenge the sufficiency of the behavior aide support and supervision on this ground. Moreover, there was no evidence that Schull changed the offer for behavior aide services component Student challenged. As such, the revisions made by Schull after the October 30, 2023 IEP team meeting, are outside the scope of Issue 10A and are not adjudicated by this Decision.

Student did not prove Los Angeles Unified denied him a FAPE in the October 30, 2023 IEP by failing to offer behavioral intervention implementation services and behavioral intervention development services from a nonpublic agency. Los Angeles Unified did not deny Student a FAPE by failing to offer Student sufficient behavior aide support and supervision in the October 30, 2023 IEP.

ISSUE 10B: DID LOS ANGELES UNIFIED DENY STUDENT A FAPE FROM OCTOBER 30, 2023, THROUGH THE FILING OF STUDENT'S COMPLAINT BY FAILING IN THE OCTOBER 30, 2023 IEP TO OFFER STUDENT AN ADEQUATE INDIVIDUAL TRANSITION PLAN?

Student's complaint is confusing as to the scope of the challenge to the October 30, 2023 IEP individual transition plan. However, based on the totality of the pleading, Student appears to be challenging the October 30, 2023 IEP transition plan for the same reasons he challenged the transition plans in the March 16, 2022 amendment IEP and February 27, 2023 IEP. As discussed in Issues 3B and 5B, Student alleges the October 30, 2023 IEP transition plan did not have transition goals to ensure Student's transition to adulthood. Student alleges that Los Angeles Unified should have developed goals based on Student's plans to attend higher education and pursue a career. Student also alleges that Los Angeles Unified failed to offer transition services to help Student work toward his post-secondary plans, including services to address independent living skills to help Student integrate into life after completing school.

Los Angeles Unified contended at hearing that Student's post-graduation plans were to attend a four-year college and pursue a degree in engineering. Los Angeles Unified argued that it offered an appropriate transition plan to enable Student to reach these goals and prepare him for a college program in engineering. In its closing argument, Los Angeles Unified contends Student was assessed to develop his career paths and interests. It also asserts that it placed Student in a work-based learning program where he gained practical experiences and skills including tracking his time, turning in his time sheets, and going to work. It contends Student also developed a resume. Los Angeles Unified argues that during his senior year, Student continued to receive mentoring

from the school counselor and met with his transition teacher. It argues that during her testimony, Parent failed to allege any rational basis for claiming the transition plan was inadequate.

### THE OCTOBER 30, 2023 IEP INDIVIDUAL TRANSITION PLAN

The October 30, 2023 IEP contained an individual transition plan. It was based on a web-based interest inventory administered to Student in September 2023. Based on the results of the assessment, Student's strengths were in the areas of social, investigative, and conventional. Social referred to people who like to work with other people, rather than things. Investigative referred to people who like to watch, learn, analyze, and solve problems. Conventional referred to people who are very detail-oriented and like to work with data. Student was interested in careers in counseling, engineering, and psychology. Student was interested in attending college.

Based on the assessment results, Los Angeles Unified developed two goals along with activities to support each goal. In education/training, Student had a post-secondary goal that upon completion of high school he would enroll in and attend either a two- or four-year college, supported by the activity of requesting/completing a college or training program application to be completed by June 3, 2024. The people responsible for assisting Student with the development of a personal career/education plan were Parent, the special education teacher, and counselor. In employment, Student had a post-secondary goal that upon completion of high school he would be competitively employed. The activity to support this goal was "developing a work portfolio including a resume, letters of recommendation, etc.," implemented by Parent, the transition teacher, and college advisor. These activities were to be completed by August 2, 2024, but this was a typographical error. There were no goals or activities developed for independent living.

The transition plan also contained a course of study, which documented that Student was working toward a high school diploma. The course of study was provided to Parent, and Los Angeles Unified staff reviewed it with Parent and Student in relation to the courses completed, the courses in which Student was currently enrolled, and the courses Student still needed to graduate. It noted that additional courses and activities were discussed that might support Student's secondary goals, specifically community experiences and participation in school clubs or organizations. The October 30, 2023 IEP transition plan also documented that Student had received mentoring, college awareness preparation, and career awareness, and completed transition activities in the areas of education/training, employment, and independent living skills. It stated Student was referred to and placed in an outside agency, the Department of Rehabilitation. It stated there were agencies currently or prospectively providing or paying for transition services and Parent gave permission to Los Angeles Unified to invite the agencies to the next IEP team meeting in which transition services would be discussed, naming the Department of Rehabilitation.

At hearing, transition teacher Leiva explained that because Student was in his last year of high school and Student indicated he was interested in attending college, a goal was developed as part of his October 30, 2023 IEP transition plan for Student to complete a college application. Leiva followed up with Student to determine if Student completed any college applications, but Student refused to answer because Parent told him not to tell anyone. During Student's senior year, Leiva met with Student once a week or every two weeks. Leiva also referred Student to the Department of Rehabilitation, which provided work-based experiences for students while in high school. It provided students with 100 hours of paid work experience. Los Angeles Unified limited those learning experiences to placements on school campuses.

Student worked in an after-school program on campus helping and supervising other students beginning mid-October 2023 through the beginning of April 2024, which included submitting weekly timeslips. Student was supervised by Leiva and the after-school class teacher. Student was one of the first out of 50 students to return his paperwork to apply for the nine positions available. Student participated in a short interview and submitted a resume. Student later described his after-school work experience as “assisting students in completing their homework and studying for tests,” and more specifically, as teaching sixth through 12th-grade material and Advanced Placement subjects using “a holistic approach to help students grasp and apply concepts.”

## PARENT’S TESTIMONY REGARDING THE OCTOBER 30, 2023 IEP TRANSITION PLAN

Parent testified she had the same objections to the transition plan in the October 30, 2023 IEP that she did to the transition plans in the March 16, 2022 amendment IEP and February 27, 2023 IEP. In addition, Parent complained no resume was developed and there was no actionable plan or goals as to how Student was going to be supported. Parent contended that the transition assessment completed in September 2023 should have been done earlier. Parent asserted Student had an interest in psychology but was not allowed to take classes in the areas he showed interest in, and that “nothing matched.” Referring to Student’s Department of Rehabilitation after-school work experience, Parent asserted Student was not properly connected to the community, “to a job place,” “not just a convenient way to put him at the Science Academy and tutor students who wanted to just play.” Parent asserted Los Angeles Unified should have gotten Student a job 20 minutes away from school to test if he could arrive on time.

Parent's testimony was confusing, but she seemed to claim that she taught Student how to take a bus locally, and that Student taught himself how to do it in other areas. Parent admitted Student got to his after-school program on time "according to them," but asserted Student was already at school. Parent testified that Student could get to class if he was already there because he was very responsible and not truant. Parent also asserted that Student's executive functioning challenges were affecting him socially, and that these were transitional issues. Parent claimed that on Saturdays when Student was supposed to meet his friends to hang out or play golf, he was one or two hours late because he walked around the house endlessly. Parent asserted the transition plan did not have a "smart goal," a goal that was specific, measurable, attainable, relevant, and time bound, and which addressed Student's needs.

## STUDENT DID NOT PROVE HE WAS DENIED A FAPE BECAUSE LOS ANGELES UNIFIED OFFERED AN INADEQUATE TRANSITION PLAN

Student failed to prove by a preponderance of the evidence that the transition plan offered as part of the October 30, 2023 IEP was inadequate such that it denied Student a FAPE.

The October 30, 2023 IEP transition plan documented the transition assessment conducted and the results, Student's interests and preferences, and his course of study. The transition plan included post-secondary goals related to education/training and employment, transition activities to help Student achieve those post-secondary goals, and the people responsible for helping student complete those activities. The transition goals properly reflected the desires and plans of Student, which was to attend college and possibly pursue a career in engineering, among other areas. It also properly included

activities to support those goals such as preparing a college application and developing a work portfolio including a resume and letters of recommendation, some of which he did with Hodali and Leiva as referenced in Issues 3B and 5B.

To the extent Student has raised the same objections to the October 30, 2023 IEP transition plan as he did to the March 16, 2022 amendment IEP and February 27, 2023 IEP transition plans, those objections are unconvincing for the same reasons they were unpersuasive as to those other IEPs as discussed in Issues 3B and 5B. Parent's other objections were equally unconvincing to support Student's claim in Issue 10B. Whether Student prepared a resume or not is an implementation claim and does not make the transition plan itself inadequate. Parent failed to demonstrate why doing the transition assessment in September 2023 rendered the October 2023 IEP transition goals or services inadequate. The evidence did not establish Student was prevented from taking classes in psychology or how that rendered the transition plan flawed. Student demonstrated interest in several subjects, but his plan was to attend college, which the transition plan's goals were designed to address.

Parent also took issue with Student's work program, but failed to demonstrate how it rendered the transition plan inappropriate, given Student's primary goal of attending college and preparing for a career after high school. The transition plan stated that additional courses/activities that could support Student's post-secondary goals were discussed with Student and Parent. It was right before the October 30, 2023 IEP team meeting that Student began working in the after-school program on campus helping and supervising other students, and Parent approved his employment. Parent seemed at the

hearing to object to the program because she did not think it properly addressed Student's executive functioning issues, but the transition plan was not required to address those concerns. Los Angeles Unified was not required to address Parent's concerns as to how Student interacted with his friends on weekends.

Student presented no convincing or specific evidence establishing why either the post-secondary goals or transition activities in the October 30, 2023 IEP transition plan were inadequate given the results of the transition assessment administered to Student, and Student's post-secondary plans to attend college. There was no convincing evidence that the transition goals needed to be any more specific than they were, why they were not relevant, why they were not either measurable or attainable, and why they were not time-bound. Each of the goals had a timeline for Student to complete the activities to support the goal. Parent's conclusory objections were not properly supported with evidence or argument necessary to demonstrate that the transition plan was inadequate. Parent admitted she was never concerned Student would not attend a four-year college. Student's resume indicated he was already involved in community activities, including

- acting in a video advertisement for a nonprofit organization in June 2023, where he received compliments on being very easy to work with,
- being a tutor/math assistant for Adesuwa Academy since 2020 helping students and preparing lesson plans,
- volunteering at church activities and events, and
- participating in youth groups since 2021, among other things.

As with Issues 3B and 5B, Student failed to prove that he required a transition program that covered independent living skills to receive a FAPE. There was no persuasive evidence Student had functional skill deficits, requiring transition services in this area. Moreover, Student's issues with executive functioning were already being addressed in other places in his IEP, as discussed in Issue 10A, and were not the type of challenges required to be addressed by his transition plan. Significantly, as discussed in Issue 1, Parent refused to allow Los Angeles Unified to conduct a three-year psychoeducational reevaluation for Student's October 30, 2023 IEP. Having refused to consent to the three-year psychoeducational reevaluation, Parent cannot claim Student had life skills needs that were not addressed in the October 30, 2023 IEP.

As was the case with the March 16, 2022 amendment IEP and February 27, 2023 IEP transition plans, even if the transition plan proposed as part of the October 30, 2023 IEP was flawed, it was harmless error. (See *Virginia S., supra*, 2007 WL 80814, \*10.) Student failed to prove the October 30, 2023 transition plan or October 30, 2023 IEP lacked a basic framework sufficient to ensure Student received transition services. Student did not establish that the transition plan was inadequate such that it impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student or caused Student to be deprived of educational benefits. The record established Student received transition services during his senior year. Student prepared a very impressive resume, albeit with Parent's assistance, and successfully applied to and was accepted to a University of California college. Thus, he

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ultimately achieved his post-secondary transition education goal of attending a four-year college, putting him on track to achieve his post-secondary employment goal of being competitively employed, in the field of engineering or in some other area of interest.

Los Angeles Unified did not deny Student a FAPE by failing to offer in the October 30, 2023 IEP an adequate individual transition plan.

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1:

Los Angeles Unified did not deny Student a FAPE by failing from January 16, 2022, through the filing of Student's complaint to conduct a three-year-review psychoeducational assessment.

Los Angeles Unified prevailed on Issue 1.

### ISSUE 2:

Los Angeles Unified did not deny Student a FAPE by failing from January 16, 2022, through the filing of Student's complaint to assess Student's educationally related mental health.

Los Angeles Unified prevailed on Issue 2.

### ISSUE 3A:

Los Angeles Unified did not deny Student a FAPE from March 16, 2022, through February 27, 2023, by failing in the March 16, 2022 IEP to offer Student sufficient behavior aide support and supervision.

Los Angeles Unified prevailed on Issue 3A.

### ISSUE 3B:

Los Angeles Unified did not deny Student a FAPE from March 16, 2022, through February 27, 2023, by failing in the March 16, 2022, IEP to offer Student an adequate transition plan.

Los Angeles Unified prevailed on Issue 3B.

### ISSUE 4:

Los Angeles Unified did not deny Student a FAPE from March 16, 2022, through February 27, 2023, by materially failing to implement the transition services of Student's March 16, 2022 IEP.

Los Angeles Unified prevailed on Issue 4.

### ISSUE 5A:

Los Angeles Unified did not deny Student a FAPE from February 27, 2023, through the filing of Student's complaint by failing in the February 27, 2023 IEP to offer Student sufficient behavior aide support and supervision.

Los Angeles Unified prevailed on Issue 5A.

#### ISSUE 5B:

Los Angeles Unified did not deny Student a FAPE from February 27, 2023, through the filing of Student's complaint by failing in the February 27, 2023 IEP to offer Student an adequate transition plan.

Los Angeles Unified prevailed on Issue 5B.

#### ISSUE 6:

Los Angeles Unified did not deny Student a FAPE from February 27, 2023, through the filing of Student's complaint by materially failing to implement the transition services of Student's February 27, 2023 IEP.

Los Angeles Unified prevailed on Issue 6.

#### ISSUE 7:

Los Angeles Unified did not deny Student a FAPE by failing to assess Student for recreational therapy as requested by Parent at the February 27, 2023 IEP team meeting.

Los Angeles Unified prevailed on Issue 7.

#### ISSUE 8:

Los Angeles Unified did not deny Student a FAPE by failing to provide Parent a prior written notice regarding its denial of Parent's February 27, 2023 request for compensatory educational services.

Los Angeles Unified prevailed on Issue 8.

## ISSUE 9:

Los Angeles Unified did not deny Student a FAPE by predetermining to exit Student from special education prior to the October 30, 2023 IEP, without parental consent.

Los Angeles Unified prevailed on Issue 9.

## ISSUE 10A:

Los Angeles Unified did not deny Student a FAPE from October 30, 2023, through the filing of Student's complaint by failing in the October 30, 2023 IEP to offer Student sufficient behavior aide support and supervision services.

Los Angeles Unified prevailed on Issue 10A.

## ISSUE 10B:

Los Angeles Unified did not deny Student a FAPE from October 30, 2023, through the filing of Student's complaint by failing in the October 30, 2023 IEP to offer Student an adequate individual transition plan.

Los Angeles Unified prevailed on Issue 10B.

## ORDER

All relief sought by Student is denied.

## RIGHT TO APPEAL THIS DECISION

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

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings