BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

PLACENCIA-YORBA LINDA UNIFIED SCHOOL DISTRICT.

CASE NO. 2025040614

RESPONSE TO ORDER REMANDING THE CASE TO THE ALJ FOR FURTHER PROCEEDINGS

June 13, 2025

On October 18, 2023, the undersigned Administrative Law Judge, called ALJ, issued a Decision in *Parents on Behalf of Student v. Placentia-Yorba Linda Unified Sch. Dist.* (OAH Case No. 2023020915), referred to here as the Decision. The parties appealed the Decision to the United States District Court for the Central District of California. On April 8, 2025, that Court issued an order affirming the Decision on one issue but remanding the remaining issues to the ALJ for further proceedings.

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(*Placentia-Yorba Linda Unified Sch. Dist. v. K.F. et al* (SACV 24-00087-KK-DFMx), Order Affirming in Part the ALJ's Decision and Remanding the Case to the ALJ for Further Proceedings, called here the Remand Order.)

This Response only addresses the District Court's Remand Order. It does not amend or otherwise alter the ALJ's Decision of October 18, 2023.

PRELIMINARY MATTERS

RECORDS AVAILABLE TO THE ALJ WHEN THE DECISION WAS WRITTEN

The Remand Order stated that the ALJ failed to adequately cite the record supporting his findings and conclusions. (Remand Order, pp. 8-9.) For clarification, when the Decision was written in 2023, the ALJ did not have access to the Administrative Record that was later filed by the parties in the District Court. The Administrative Record did not exist until more than nine months after the end of the due process hearing.

The Individuals with Disabilities Education Act, called the IDEA, requires that the Office of Administrative Hearings, called OAH, render a decision in a special education due process matter within 45 days of the filing of the complaint, extended by any days added by continuance for good cause. (34 C.F.R. § 300.515(a)(2006); Code, §§ 56043, subd. (s), 56505 subd. (f)(3).)

Certified court reporters do not attend special education due process hearings in California. Instead, the presiding ALJ records the event and uploads the recordings to an OAH database. OAH then contracts with an outside agency to transcribe the unindexed

recordings of the hearing. With few exceptions, the requested transcript is not produced until long after the decision is issued. Accordingly, special education due process decisions do not cite to the Administrative Record.

An Administrative Record is only created if requested by a party. OAH then produces an Administrative Record for the use of the parties in an appeal. In this matter, for example, the hearing was closed on August 25, 2023, but the Administrative Record was not certified until June 7, 2024. (AR 3437, 3549.)

In writing the Decision, the ALJ had available the unindexed audio recordings of the hearing, notes taken at the hearing, the exhibits introduced in evidence, and the briefs of the parties. The ALJ could not cite the Administrative Record in the Decision because it did not exist at the time.

FORMATTING

The Remand Order also noted that the 58-page Decision had "a large font, excessively long bullet point lists, and spacing accounting for much of its length …" (Remand Order, p. 8.) For context, OAH's standard formatting, including font size, bulleted lists, and spacing is required to comply with the federal law governing accessibility for persons with disabilities.

The IDEA requires that OAH make its special education decisions publicly available. (34 C.F.R. § 300.513(d)(2)(2006).) OAH's special education decisions are published on the World Wide Web. (See <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Decisions> [as of June 4, 2025].)

Because OAH publishes its decisions on the Web, it is required to follow federal law in making its decisions accessible to people with disabilities. Section 794d of Title 29 of the United States Code requires generally that material available to the public provide access to disabled people that is comparable to the access that non-disabled people have. This provision has been implemented by incorporating the standards of the World Wide Web Consortium. Those standards dictate the fonts, margins, spacing, lists, and many other aspects of the appearance of a document placed on the Web by an affected agency. (See U.S. Dept. of Justice, Civil Rights Division, *Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps Provided by State and Local Governments,* <https://www.ada.gov/resources/2024-03-08-web-rule> [as of June 4, 2025].)

These rules are binding on OAH and have meant that every California special education decision appealed to a United States District Court appears in the format illustrated by the administrative decision in this matter. (See https://www.dgs.ca.gov/</OAH/Case-Types/Special-Education/Services/Decisions> [as of June 4, 2025].)

PARTIAL APPLICABILITY OF ADMINISTRATIVE LAW PRINCIPLES

The Remand Order also notes that, "the complete lack of a 'factual background' prevents the Court from knowing the universe of facts the ALJ considered in making his determinations and ultimately, what facts prevailed at the hearing." (Remand Order, p. 8.) As explained more fully below, unlike other administrative decisions, there is no federal or state requirement for special education decisions to contain a "factual background" section. Moreover, current OAH special education decisions incorporate relevant factual findings into the analysis of each issue rather than having a separate "factual background" section. This convention change applies to all of the decisions

made by OAH's Special Education Division, and occurred approximately five years ago. (See <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Decisions> [as of June 4, 2025].)

Most of the laws and regulations governing special education due process hearings in California are unique to those hearings. The hearings are not conducted according to the Administrative Procedure Act's provisions applicable to many California agencies. (See Gov. Code, §§ 11500 et seq.) Instead, special education hearings are partly governed by Government Code, sections 11400 et seq., with exceptions chosen by the State Board of Education. The hearing is also regulated by California's Education Code, which addresses a wide variety of matters ranging from the time and place of hearings to the time limits for exchange and disclosure of evidence, the limitations period, and finality. (Ed. Code, §§ 56505, subds. (b)-(m), 56507.)

The State Board of Education has statutory authority to adopt regulations for special education due process hearings. (Ed. Code, § 56505, subd. (a).) Those regulations appear in Title Five of the California Code of Regulations, starting at section 3080. The provisions of the Administrative Procedure Act that the Board of Education decided should not apply to special education due process hearings are set forth in section 3089.

The most important of the Board's regulations provides: "The hearings conducted pursuant to this section shall not be conducted according to the technical rules of evidence and those related to witnesses." (Cal. Code Regs., tit. 5, § 3082, subd. (b).) That regulation also addresses rules of relevancy and admissibility and sets forth a special rule for hearsay. (*Ibid.*) In addition, it addresses such matters as the issuance of subpoenas duces tecum, the presence and participation of attorney observers, the use

of interpreters, the circumstances in which the hearing is open or closed to the public, and the conduct of the hearing by remote electronic means. (*Id.*, subds. (c)(2), (d), (e), (f).)

A decision in a special education due process hearing does not contain separate lists of findings of fact and conclusions of law. Under the IDEA, federal and state laws provide that parents are entitled to "written … findings of fact and decisions." (Ed. Code, § 56505, subd. (e)(5).) As noted at page 11 of the Decision, "The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(g)(1)); Ed. Code, § 56505, subd. (e)(5).)" A factual background section is included below in response to the Remand Order. However, it is not intended to represent the "universe of facts the ALJ considered in making his determinations." (Remand Order, p. 8.) That universe included all the testimony heard over eight days of hearing, the admitted evidence, motions and objections made at hearing, and the parties' written closing briefs. The Ninth Circuit has found OAH decisions that use this format and method of analysis to be thorough and careful so to be entitled to substantial deference. (*C.D. v. Atascadero Unified Sch. Dist.* (9th Cir., April 9, 2024) 2024 WL 1526748, *2, affirming (C.D. Cal. June 5, 2023, Case No. 2:22-cv-05937-MCS-AGR) 2023 WL 3818352, **5-6.)

FACTUAL BACKGROUND

At the time of the original hearing, Student was a 13-year-old male residing with his Mother within the geographical boundaries of the Placentia-Yorba Linda Unified School District. He is an only child and his parents are divorced. Mother has a master's degree and teaches in public schools. (Exhs. S-1, S-2, test. Parent.)

Student's birth was premature, and he soon exhibited developmental delays. Student was diagnosed as having attention-deficit/hyperactivity disorder, autism, a speech and language disorder, anxiety, dyslexia, and dyscalculia. He had been receiving interventions for some of these limitations since he was two years old. (Exhs. S-1, S-2, test. Parent.)

Student began his education at Placentia-Yorba Linda's Mabel Paine Elementary School, where he was placed in a special day class. Special day classes are generally smaller than general education classes, have more adult assistance including a credentialed special education teacher, and are tailored to the needs of special education students who need more support than is available in general education classes. (See Cal. Code Regs., tit. 5, § 3053.) Student spent nearly two years in the special day class at Mabel Paine, in kindergarten and most of first grade. He was supported there by a resource specialist (Ed. Code, § 56362, subd. (b)) and a speech and language professional. Near the end of his first-grade year, he was transferred to general education classes in Placentia-Yorba Linda's Woodsboro Elementary School. (Exhs. S-1, S-2, test. Parent.)

Student struggled in general education classes, and was academically behind his peers in every subject. He behaved well, was always polite and respectful, and worked hard. Mother and his teachers noticed, however, that he learned better in small groups. (Test. Parent.)

In third grade, when Student was nine years old, Placentia-Yorba Linda conducted a Multidisciplinary Assessment as part of its triennial review of his special education needs. It used a team consisting of a school psychologist, a credentialed special

education teacher called an educational specialist, a speech and language pathologist, an occupational therapist, and an adapted physical education specialist. (Exh. S-1.)

As a result of Student's triennial reassessments, Placentia-Yorba Linda convened an IEP team meeting in several segments beginning on May 22, 2019. Placentia-Yorba Linda then offered Student an individualized education program, called an IEP, which placed him in a special day class with services and supports. Mother consented to the IEP. The May 22, 2019 IEP was amended twice to make minor adjustments in services, but was the IEP in effect when Placentia-Yorba Linda closed its schools on March 13, 2020, in response to the COVID-19 pandemic. Student's education during the pandemic closure, including the implementation of his IEP, is described in the Decision, starting at page 14.

Placentia-Yorba Linda re-opened its schools for full time instruction in April 2021. Student, however, spent an additional year receiving virtual instruction due to Mother's concerns for the health of Student and his family. Student did not physically return to school until the end of August 2021, when he was again placed in a special day class. (Exh. S-91.)

Mother then decided that Student should be placed in general education rather than a special day class. The Placentia-Yorba Linda members of Student's IEP team acquiesced, and from October 2021, to the end of the 2021-2022 school year he was placed in general education, with services and supports. (Exh. D-19.) Mother was not satisfied with Student's program, and near the end of the 2021-2022 school year withdrew him from Placentia-Yorba Linda. (Exhs. S-123, S-152.) She unilaterally placed Student in The Prentice School, a private school, where he remains. Parent informed

Placentia-Yorba Linda that she did not believe Student was receiving a free appropriate public education, called a FAPE, so she was moving him to the private school and would seek reimbursement from the District. (Test. Parent; Exh. S-152.)

During Student's enrollment at Prentice, the parties continued to discuss possible placement changes at a series of IEP team meetings, but Mother did not consent to any IEP offer for a Placentia-Yorba Linda school placement. Student was still enrolled in The Prentice School at the time of hearing.

ISSUE 2: MATERIAL FAILURE TO IMPLEMENT STUDENT'S IEP

The ALJ ruled on Issue 2 of the Decision by finding that Placentia-Yorba Linda denied Student a FAPE between the closure of its schools due to the COVID-19 pandemic on March 13, 2020, and April 2021, when it resumed full-time in-person instruction of its students. (Decision, pp. 14-19.) In drawing that conclusion, the ALJ considered Student's entitlement to a six-hour instructional day in his governing IEP, the IEP of May 22, 2019. (Exh. S-2.)

The ALJ also considered Special Education Teacher Claire Viele's emails of March 23, 2020, admitted as Exhibit S-21, and March 30, 2020, admitted as Exhibit S-30. In addition, the ALJ considered the email of March 27, 2020, from substitute Special Day Class Teacher Cathleena Chavez and its attached video, admitted as Exhibit S-26. Each of those emails was addressed to all parents of students in the District who had IEP's, and each announced that Placentia-Yorba Linda's expectation and recommendation was that students receive instruction no more than two hours a day. Viele's March 30, 2020

email to parents stated that "your child's services will not match the minutes in their IEP." These three emails constituted the most formal announcement of Placentia-Yorba Linda's policy for instruction during the pandemic closure that parents received.

The use of virtual education after the pandemic closures was authorized by statute, and included both synchronous and asynchronous study. In the summer of 2020, the California Legislature passed emergency legislation relating to the pandemic. It included the authorization of distance learning in the public schools. Distance learning was defined broadly as:

1. Interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology;

2. Video or audio instruction in which the primary mode of communication … is online interaction, instructional television, video, telecourses, or other instruction that relies on computer or communications technology.

(Ed. Code § 43500 (repealed by Stats.2020, c. 24 (S.B.98), § 34, operative Jan. 1, 2022).)

The ALJ considered the testimony of

- Viele,
- Special Education Teacher Angella Prokup,
- Speech and Language Pathologist Karen Schneider,
- Occupational Therapist Kara Roberts,
- Teacher Michelle Grimsley, and
- Mother.

The most detailed testimony concerning Student's efforts during the closure was that of Viele, his special day class teacher and case manager during spring 2020. Of all the District witnesses, Viele was the witness most informed about Student's experience during that period. Viele testified in substance that Placentia-Yorba Linda's policy during the closure was to require from students no more than two hours a day of work. Those two hours included direct virtual instruction and assignments to be completed independently. In distributing study materials during the closure, Special Day Class Teacher Chavez informed parents in an email on March 23, 2020, that "[t]o be clear, I do not want to add any additional work onto your child's workload." There was no evidence that directly conflicted with these statements.

The number of hours of instruction that Student missed in the relevant period could not be determined precisely. However, the number was not disputed by witnesses or in Placentia-Yorba Linda's briefing, and no conflicting credibility determinations were necessary. The Placentia-Yorba Linda witnesses were all careful to describe their own deliveries of education and services, but did not claim to know how many hours were contributed by other staffers or spent by Students. Mother sat by Student most of the time he was online, but had her own class to teach and sometimes relied on a nanny, and therefore could not precisely estimate the hours of remote instruction Student received. There was no separate evidence describing how much time Student spent on asynchronous activities, meaning educational activities not conducted online interacting with the teachers and other students.

Since Placentia-Yorba Linda's expectation was that Students would work no more than two hours a day overall, Viele's and Chavez's testimony and emails established that the two hours included both synchronous and asynchronous instruction and activities.

This reduction of instructional time constituted a failure to implement Student's IEP. That failure to implement was material. The ruling on Issue 2 was based upon the Ninth Circuit's decision in *Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 815, 822, holding that a district has materially failed to implement a student's program when there is more than a minor discrepancy between the services provided and those required by the IEP. The *Van Duyn* majority observed that a student's lack of progress would "tend to show" a material failure, whereas progress would "tend to show" that the deviation was not material. (*Id.* at p. 822; see Remand Order, p. 8.)

The Court's choice of the phrase "tend to show" suggests that while progress is one factor in determining whether there has been a material failure to implement an IEP, it is not determinative. *Van Duyn* itself illustrates the point. The Court excused most of the school district's deviations from the IEP, but it did find that one departure constituted a material failure. The student was entitled to eight to 10 hours a week of math instruction, but the district partially failed to implement the math provision of the IEP by an average of five hours a week. (*Van Duyn, supra,* 502 F.3d at p. 823.) The only reason that the Court did not order relief from that violation was that the ALJ had already remedied it by ordering additional math instruction, and the district had already complied. (*Id.* at pp. 815, 817, 825.) The student in *Van Duyn* had been making progress. (*Van Duyn, supra,* 502 F.3 at pp. 816, 823, and fn. 6.) The Court still held that the math shortfall was a material failure.

Deficits in the implementation of IEP's that were less than or similar to the shortfall here have been held as material failures to implement. (See *Termine v. William S. Hart Union High Sch. Dist.* (9th Cir. 2007) 249 Fed.Appx. 583, 586 [nonpub. opn.] (student placed in special day class by IEP given 32 percent of her instruction in general education); *Sumter County Sch. Dist. 17 v. Heffernan* (4th Cir. 2011) 642 F.3d 478, 486

(student received some educational benefit but shortfall of five to seven-and-a-half hours a week of applied behavior analysis, when entitled by IEP to 15 hours, held material); *Wade v. District of Columbia* (D.D.C. 2018) 322 F.Supp.3d 123, 130-134 (unilateral reduction of 27.5 hours a week to 20 hours a week of specialized instruction in small setting, amounting to 27 percent of IEP requirement); *Shaun M. v. Hamamoto* (D. Hawai'i, Jan. 27, 2010, CV. No. 09-00075 DAE) 2010 WL 346451, *2 (26-day failure to implement IEP).)

In this matter there were considerations other than Student's progress that supported the finding that the shortfall in instructional hours from March 2020 to April 2021 was a material failure to implement his IEP. The subject matter, math, was not just a related service. It was one of the three basic elements of early learning, and the delivery of instructional hours was at the core of the school's educational duties. The period of deprivation was long, lasting for 51 school days. A two-thirds then one-third failure to deliver such a basic element of public education over a sustained period of time cannot be dismissed as a minor failure. The ALJ, therefore, found that despite some educational progress, Placentia-Yorba Linda's reduction of Student's education and services from March 2020 to April 2021 was a material failure to implement his IEP within the meaning of *Van Duyn, supra.*

The incompleteness of the evidence of Student's loss of instruction in 2020 and 2021 would not have justified denying appropriate relief. Once an IDEA hearing officer determines that there has been a denial of FAPE, relief must be awarded. (*Stanton v. District of Columbia* (D.D.C. 2010) 680 F.Supp.2d 201, 207 (remand for award of compensatory education notwithstanding inadequate record); see also *Fry v. Napoleon Community Schools* (2017) 580 U.S. 154, 167 (once a violation of FAPE has been found, "the hearing officer must order relief" [dictum]).)

ISSUES 3 THROUGH 9

Issues 3 through 9 are not addressed in detail here because the Remand Order does not identify specific areas requiring further development.

Charles Marson
Administrative Law Judge
Office of Administrative Hearings