

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019030607

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

DECISION

DECEMBER 3, 2019

On March 15, 2019, Student filed a due process hearing request with the Office of Administrative Hearings, State of California, naming Los Angeles Unified School District. The Office of Administrative Hearings will be referred to as OAH. Los Angeles Unified School District will be referred to as Los Angeles. On April 3, 2019, and June 20, 2019, OAH continued the case for good cause. On August 22, 2019, Student filed an amended due process hearing request.

Administrative Law Judge Tara Doss presided over the hearing in Van Nuys, California, on October 15, 16, 17, 22, and 23, 2019. Attorney Matthew Pero represented Student. Parent attended each day of hearing on behalf of Student. Student did not

attend the hearing. Attorney Meagan Kinsey represented Los Angeles. Natalie Hofland, Litigation Coordinator, attended on October 15, 16, 17, and 22, 2019, on behalf of Los Angeles. Anait Sinanian, Litigation Coordinator, attended on October 22 and 23, 2019, on behalf of Los Angeles.

At the request of the parties, OAH granted a continuance to November 18, 2019, to file written closing briefs. The parties timely filed written closing briefs. On November 18, 2019, OAH closed the record and submitted the case for decision.

ISSUES

1. Did Los Angeles deny Student a free appropriate public education, referred to as FAPE, by failing to timely complete Student's individualized education program, referred to as an IEP, consistent with California Education Code section 56344, after Parent consented to assessment on November 7, 2017?
2. Did Los Angeles deny Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018, by failing to offer appropriate goals and objectives, including:
 - a. failing to offer any goals and objectives based on Student's present levels of performance;
 - b. failing to offer goals that would allow Student to access the general education curriculum; and
 - c. offering goals in social-emotional, prevocational education, behavioral functioning, and pragmatic language, solely to justify Los Angeles's placement offer in a special day class program?
3. Did Los Angeles deny Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018,

by failing to offer an appropriate placement in the least restrictive environment, including failing to offer:

- a. access to the general education core curriculum;
 - b. appropriate teaching methods; and
 - c. appropriate accommodations, including a quiet environment to meet Student's auditory processing needs?
4. Is Student entitled to reimbursement from Los Angeles for the cost of an independent psychological evaluation conducted by Dr. B.J. Freeman on November 28, 2018?
 5. If Los Angeles denied Student a FAPE, is Student entitled to a remedy of reimbursement for the cost of private school placement at Westmark School from November 8, 2017, through the 2018-2019 school year, and for costs incurred up to the first day of hearing, of the 2019-2020 school year?
 6. If Los Angeles denied Student a FAPE, is Student entitled to a remedy of reimbursement for the future cost of private school placement at Westmark School, once those costs are incurred, for the 2019-2020, and 2020-2021 school years?

JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to

meet their unique needs and prepare them for further education, employment, and independent living; and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. §1400(d)(1); See Ed. Code, §56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) and (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, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Here, Student filed the complaint and has the burden of proof on all issues. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 16 years old and in the 11th grade, at the time of hearing. Student resided with his Mother within Los Angeles's attendance boundaries at all times relevant to this Decision. Student attended Westmark School, a private school in Encino, California, that specializes in educating children with language-based learning disabilities. Student had never attended a public school within Los Angeles.

ISSUE 1: DID LOS ANGELES DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION BY FAILING TO TIMELY COMPLETE STUDENT'S IEP CONSISTENT WITH CALIFORNIA EDUCATION CODE SECTION 56344, AFTER PARENT CONSENTED TO ASSESSMENT ON NOVEMBER 7, 2017?

Student contended Los Angeles failed to complete Student's IEP within 60 days after Mother consented to assessment on November 7, 2017. Student further contended Los Angeles failed to have an IEP in effect at the start of the 2018-2019 school year, and that such delay left Mother with no choice but to continue Student's placement at Westmark School. Finally, Student contended Los Angeles should have completed the IEP process without Mother's participation in order to timely offer Student a FAPE.

Los Angeles contended it held an IEP team meeting within 60 days, not counting the winter break, of Mother's consent to assessment in November 2017. Los Angeles further contended Mother's actions at the end of the 2017-2018, and start of the 2018-2019 school years, delayed the IEP process. Finally, Los Angeles contended Student was at all times, a parentally-placed private school student, and that it had no responsibility to offer Student a FAPE until Mother requested completion of the IEP process in November 2018.

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) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, and 300.39; Cal. Code Regs., tit. 5, § 3001, subd. (p).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176; *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000]; *E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

Procedural flaws do not automatically require a finding of a denial of a FAPE. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,1484, superseded by statute on other grounds by IDEA Amendments of 1997.) A procedural violation only constitutes a denial of FAPE if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

Once a parent consents to assessment, a school district must complete the assessment and develop an IEP team meeting within 60 days to determine whether the child qualifies for special education and related services. (20 U.S.C. 1414(a)(1)(C)(i)(I); 34 C.F.R. § 300.301(c)(1)(i); Ed. Code, § 56302.1, subd. (a); Ed. Code, § 56344, subd. (a).) The 60-day rule does not include days during school vacations of more than five days. (Ed. Code, §§ 56343.5, and 56344, subd. (a).)

Parents must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, and 56342.5.) School districts must take steps to ensure at least one parent attends each IEP team meeting, or has the opportunity to participate. (Ed. Code, § 56341.5, subd. (a).) IEP team meetings must be scheduled at a mutually agreed-upon time and place. (Ed. Code, § 56341.5, subd. (b).)

A student is considered a parentally-placed private school child with a disability, when a parent enrolls the student in a private school or facility. (34 C.F.R. § 300.130.) A parentally-placed private school child with a disability does not have an individual right to receive the same special education services the child would receive if enrolled in a public school. (34 C.F.R. § 300.137(a).)

Student did not prove Los Angeles denied him a FAPE by failing to complete his IEP within 60 days of Parent providing consent for assessment on November 7, 2017. The evidence showed Los Angeles held an IEP team meeting within days after the 60-day timeline expired, and that the short delay did not result in a denial of FAPE. The evidence also showed Los Angeles made multiple attempts to complete the IEP process and offer Student a FAPE, but that Parent and Parent's attorney consistently interfered with these efforts by refusing to participate. When Parent finally requested completion of Student's IEP, Los Angeles held an IEP team meeting, and offered Student a FAPE.

On November 7, 2017, Mother enrolled Student in Los Angeles, and consented to an assessment plan to allow Los Angeles to consider Student's eligibility for special education services. When Student enrolled with Los Angeles, he was not receiving special education services pursuant to an IEP. The last IEP Parent agreed to was held on September 15, 2015, and was implemented by a different school district. Student was not attending Westmark School through an IEP placement. Instead, Parent privately

paid for Student's placement there. On November 15, 2017, Student's attorney informed Los Angeles that Mother would not attend an IEP team meeting and Student would continue to attend Westmark School, until Los Angeles finished assessing Student.

On January 30, 2018, Los Angeles held an IEP team meeting. Los Angeles held the meeting 65 days after Parent consented to assessment, not counting the days of winter break. Los Angeles's winter break was from December 18, 2017, through January 5, 2018. The IEP team did not complete Student's IEP on January 30th, and held three continuation IEP team meetings on February 5, 8, and 28, 2018. During the four meetings, which each lasted four to six hours, the team discussed the assessments Los Angeles conducted, private assessment reports Parent provided, Student's present levels of performance, annual goals, and eligibility. During the February 28, 2018 meeting, the team began discussing placement options.

While Los Angeles committed a procedural error by not holding the January 30, 2018 IEP team meeting within 60 days of Parent's consent for assessment, Student did not prove the delay of five days impeded Student's right to a FAPE, Parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. Student was attending Westmark School by Parent's choice, and did not suffer any loss of special education services, or other educational benefits from the delay. Similarly, the delay did not impede Parent's opportunity to participate in the decision-making process, as she had the opportunity at the January and February 2018 IEP team meetings. Therefore, the 5-day delay in holding the IEP team meeting, did not result in a denial of FAPE.

Los Angeles scheduled a fifth IEP team meeting on March 8, 2018, to complete the IEP and make an offer of FAPE. Parent indicated on the March 8, 2018 IEP meeting notice that Los Angeles was not allowed to hold the meeting without her. After arriving for the March 8th meeting, Parent and her attorney, decided not to participate. They believed Los Angeles predetermined Student's offered eligibility would be autistic-like characteristics, and therefore, did not want to continue with the IEP process. Los Angeles did not hold the March 8th IEP team meeting without Parent because they believed Parent's input was necessary to offer a FAPE.

After Parent left the meeting, Los Angeles sent Parent a letter offering three alternative dates in March and April 2018, to complete Student's IEP. On March 9, 2018, Student filed a Request for Due Process Hearing with OAH, seeking an order that Los Angeles predetermined Student's eligibility. On March 12, 2018, Student's attorney notified Los Angeles that Parent would not continue with the IEP process, but would instead "go to due process." On June 1, 2018, Los Angeles sent Parent a letter indicating its treatment of Student as a parentally-placed private school student, and its request for Parent to contact the special education coordinator at Reseda Charter High School, Student's school of residence, when Parent was ready to complete the IEP process. On June 22, 2018, OAH issued a Decision in OAH case number 2018030412, holding that Los Angeles did not predetermine Student's eligibility leading up to the February 8, 2018 IEP team meeting.

On November 28, 2018, Parent contacted Los Angeles and requested an IEP team meeting to complete Student's IEP. Parent's primary reason for wanting to complete the IEP process and obtain an offer of FAPE from Los Angeles, was so she could seek reimbursement for Student's placement at Westmark School. Los Angeles and Parent

initially agreed to an IEP team meeting date of January 16, 2019, but rescheduled it to February 8, 2019. During the February 8th meeting, Los Angeles completed Student's IEP and offered Student a FAPE.

Student's arguments that Los Angeles should have had an IEP in effect for Student at the beginning of the 2018-2019 school year, and that Los Angeles should have completed Student's IEP without Parent's participation, were not persuasive. First, Student was a parentally-placed private school child with a disability, and thus, was not entitled to the same special education services he would be entitled to if he were enrolled in public school. Thus, Los Angeles was not required to have an IEP in effect for Student if Parent refused to complete the process. Second, Parent discontinued the IEP process at the March 8, 2018 IEP team meeting, and explicitly notified Los Angeles it did not have permission to complete the IEP without her. Instead, Parent decided to file a due process complaint. Parent waited five months after OAH issued its Decision, to contact Los Angeles about completing Student's IEP. Parent's actions showed she had no interest in completing the IEP process before she contacted Los Angeles in November 2018. Therefore, Student did not prevail on this issue.

ISSUE 2(A): DID LOS ANGELES DENY STUDENT A FAPE IN THE FEBRUARY 8, 2019 IEP, AS DEVELOPED DURING IEP TEAM MEETINGS ON JANUARY 30, 2018, AND FEBRUARY 5, 8, AND 28, 2018, BY FAILING TO OFFER APPROPRIATE GOALS AND OBJECTIVES BASED ON STUDENT'S PRESENT LEVELS OF PERFORMANCE?

Student contended Los Angeles failed to offer appropriate annual goals in the February 8, 2019 IEP, as developed at the IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018. Specifically, Student contended Los Angeles offered the

same annual goals in the February 2019 IEP that were proposed at the January 2018 IEP team meeting, and failed to update the 2019 goals based on Student's present levels of performance at the time. Student further contended the annual goals did not reflect Student's academic success at Westmark School, but instead, were offered to justify Los Angeles's desire to qualify Student for special education under the category of autistic-like characteristics.

Los Angeles contended the annual goals it offered in the February 8, 2019 IEP, were developed based on Student's present levels of performance, as reported from its January 2018 assessments, input from Parent, information from several private assessment reports Parent provided, and information from Westmark School. Los Angeles further contended that any lack of information it had on Student's present levels of performance in 2019, were the result of Parent's refusal to allow Los Angeles team members to obtain information from, and observe Student at, Westmark School.

In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel. (20 U.S.C. §§ 1401(14), and 1414(d)(1)(A); Ed. Code, §§ 56032, and 56345, subd. (a).) The IEP should include:

- the child's present levels of academic achievement and functional performance;
- a statement of measureable annual goals;
- a description of how the child's progress on the annual goals will be measured;
- a statement of special education and related services;
- any program modifications or supports necessary to allow the child to make progress;
- an explanation of the extent to which the child will not be educated with nondisabled children in general education classes; and

- the frequency, location, and duration of the services.

(20 U.S.C. § 1414(d)(1)(A); Ed. Code, § 56345, subd (a).)

The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).) An IEP must contain a statement of measurable academic and functional annual goals, designed to meet the child's needs related to a disability, to enable the child to be involved in and make progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

Student did not prove Los Angeles failed to offer Student appropriate goals and objectives based on Student's present levels of performance in the February 8, 2019 IEP. The evidence showed Los Angeles gathered data from several sources, including its own assessments of Student, input from Parent, information from private assessment reports Parent provided, and information from Westmark School, to establish Student's present levels of performance. Los Angeles relied on the present levels to develop Student's annual goals. The IEP team designed the goals to meet Student's needs that were identified in his present levels of academic and functional performance. Therefore, there was a direct relationship between Student's present levels of performance, and the goals Los Angeles offered in the February 8, 2019 IEP.

In January 2018, Los Angeles prepared assessment reports in several areas, including auditory processing, academics, psychoeducational, and speech and language, to establish Student's present levels of performance. The IEP team reviewed each of these reports at the meetings held in January and February 2018. The IEP team also used information Parent provided from clinical psychologist Dr. Marguery Lyvers, and

educational audiologists Dr. Bea Braun and Dr. Sherri Holguin, to establish Student's present levels of performance. Los Angeles professionals, including school psychologist Shelly Berger, resource specialist teacher Autumn (Sam) Pitts, and educational audiologist Dr. Susan Diaz-Rempel, observed Student at Westmark School in order to obtain current information regarding his academic and functional performance in the school setting. Parent also provided information regarding Student's present levels in academics and social functioning.

The IEP team discussed and documented Student's present levels of performance during the January and February 2018 IEP team meetings. The IEP team identified several areas of need for Student. Ms. Berger estimated Student's intellectual ability in the average range, based on test scores that ranged from below average to high average. He showed processing deficits in attention; visual processing; auditory processing; and association, conceptualization, and expression. In reading, Student had difficulty with reading comprehension, remembering what he read, and making inferences. In written language, Student had difficulty with spelling and editing his work. His handwriting was small and difficult to read. In math, Student needed to improve his skills in percentages and algebra, including equations with polynomials.

Behaviorally and socially, Student had poor peer relations, and sometimes appeared withdrawn and indifferent to topics of interest to other students. He also required prompting to stay on task. When using spoken language, Student had difficulty interpreting non-literal language, answering questions in a clear and organized way, speaking at an adequate volume, understanding other's perspectives, and social judgement. Dr. Diaz-Rempel concluded Student had characteristics of a central auditory processing disorder. Based on Student's identified areas of need, as discussed during

the January and February 2018 meetings, the IEP team developed annual goals in behavioral support, counseling, pragmatic language, written language, math, reading, auditory processing, and social skills.

In preparation for the February 8, 2019 IEP team meeting, the Los Angeles team members sought updated information from Parent and Westmark School. On November 30, 2018, Parent signed an authorization to allow Westmark School to share information with Los Angeles. Parent set an end date for the authorization on December 31, 2018. Due to Los Angeles's winter break, that only allowed approximately two weeks for Los Angeles to communicate with, or observe Student at Westmark School. When Los Angeles requested an extension of the authorization, Parent refused, stating Los Angeles had enough information to complete Student's IEP. Thus, Los Angeles relied on input from Parent, Student's most recent report card from Westmark School, and a November 2018 private psychological assessment Parent obtained from Dr. Freeman, to update Student's present levels of performance.

Los Angeles continued to offer the same annual goals in the February 8, 2019 IEP that the IEP team drafted during the January and February 2018 meetings, with the exception of the behavioral functioning and counseling goals, which were removed at Parent's request. The team made changes to the remaining goals, as necessary to align with Student's updated present levels. Ms. Pitts, who conducted an academic assessment of Student, proposed the written language, math, and reading goals. Ms. Pitts attended each of Student's IEP team meetings, and discussed the goals with the team. The written language goal involved Student revising his writing assignments so they were clear and legible at grade level. The math goal involved Student identifying zeros in polynomials and then constructing a graph of the function. There

were two reading goals, which involved Student identifying key words in written grade level text, and demonstrating an understanding of metaphors. These goals were directly related to Student's present levels and academic needs that the IEP team identified.

Los Angeles speech and language pathologist, Pallavi Hullenahalli, who conducted a speech and language assessment of Student, proposed four speech and language goals, which addressed nonliteral language, inference, language pragmatics, and loudness. Ms. Hullenahalli attended the January and February 2018 IEP team meetings and discussed the goals with the team. Ms. Hullenahalli could not attend the February 8, 2019 IEP team meeting, so Los Angeles speech and language pathologist Daniel Cascio attended to address any concerns regarding Student's speech and language needs. During the meeting, Parent indicated Student's needs had not changed, and the team did not make any changes to Ms. Hullenahalli's 2018 proposed speech and language goals.

Each of the proposed goals addressed Student's pragmatic, or social language needs. The nonliteral language goal involved Student using figurative language during conversation. The inference goal involved Student retelling, paraphrasing, and explaining what a speaker said in a written text. The language pragmatics goal involved Student increasing his use of feelings, nonverbal cues, and emotions during oral communication. The loudness goal involved Student speaking with adequate volume, and in coherent and complete sentences. These goals were directly related to Student's present levels and speech and language needs that the IEP team identified.

Dr. Diaz-Rempel, who conducted a central auditory processing and audiology assessment of Student, proposed the auditory processing goals. Dr. Diaz-Rempel attended each of Student's IEP team meetings, and discussed the goals with the team. The first auditory processing goal involved Student using learned organizational

strategies to follow at least four verbal instructions. The second auditory processing goal involved Student identifying stressed words in an oral reading passage, and describing what information the stressed words were trying to convey. These goals were directly related to Student's present levels and auditory processing needs that the IEP team identified.

Several IEP team members participated in developing the social skills goals, including Ms. Berger and Ms. Pitts. The team discussed Student's need for social skills during the IEP team meetings. The first social skills goal involved Student successfully interpreting nonverbal cues, such as facial expressions, and being able to respond appropriately. The second social skills goal involved Student successfully interpreting gestures, such as hand movements, and being able to respond appropriately. These goals were directly related to Student's social skills needs that the IEP team identified.

Student acknowledged Los Angeles updated Student's present levels of performance at the February 8, 2019 IEP, but argued the annual goals offered at the meeting were not based on the updated information. The evidence did not support Student's contention, and instead showed the IEP team, including Parent, discussed the goals, and made changes to them as needed. Parent's ultimate disagreement with the goals did not make them inappropriate.

Student's argument that Los Angeles offered the goals it did to justify Student's eligibility under autistic-like characteristics, was not persuasive for two reasons. First, Student's eligibility in the February 8, 2019 IEP was specific learning disability, and not autistic-like characteristics. Second, the evidence showed the annual goals were directly related to Student's present levels and needs that the IEP team identified. Therefore, Student did not prevail on this issue.

ISSUE 2(B): DID LOS ANGELES DENY STUDENT A FAPE IN THE FEBRUARY 8, 2019 IEP, AS DEVELOPED DURING IEP TEAM MEETINGS ON JANUARY 30, 2018, AND FEBRUARY 5, 8, AND 28, 2018, BY FAILING TO OFFER APPROPRIATE GOALS AND OBJECTIVES THAT WOULD ALLOW STUDENT TO ACCESS THE GENERAL EDUCATION CURRICULUM?

Student contended Los Angeles failed to offer annual goals that would have allowed Student to access the general education curriculum. Los Angeles contended Student's goals were based on the California general education content standards for Student's grade level.

IEP goals must align with state academic content standards for the grade in which the student is enrolled. (*Dear Colleague Letter*, 66 IDELR 227 (OSERS/OSEP 2015).)

Student did not prove Los Angeles offered goals and objectives that would not allow Student to access the general education curriculum. The evidence showed Student's goals were aligned with the California general education content standards, and would allow him to access the general education curriculum.

Ms. Pitts held a special education teaching credential that allowed her to teach children with mild to moderate disabilities, such as Student's processing deficits. She had worked as a resource specialist teacher at Reseda Charter High School for 21 years. At hearing, Ms. Pitts showed a direct relationship between the proposed academic goals, and the California Department of Education content standards for English language arts and math, at Student's grade level. In Ms. Pitts's opinion, the academic goals were appropriate for Student's grade level, and would allow him to make progress in the general education curriculum. Ms. Pitts's testimony was consistent with

documentary evidence, based on direct knowledge of Student, and informed by her extensive years of experience as a special education teacher. Thus, Ms. Pitts was credible and persuasive.

Mr. Cascio held a bachelor's degree in communication studies, and a master's degree in communication disorders. He also held a preliminary speech-language pathology services credential, which allowed him to conduct assessments and provide school-based speech and language services. Mr. Cascio had worked as a speech and language pathologist for just longer than one year, all of which was with Los Angeles. At hearing, Mr. Cascio showed a direct relationship between Student's proposed speech and language goals, and the California Department of Education content standards for English language arts at Student's grade level. Mr. Cascio's testimony was consistent with documentary evidence, and informed by his experience as a school-based speech and language pathologist. Thus, Mr. Cascio was credible and persuasive.

Dr. Diaz-Rempel held bachelor's and master's degrees in communicative disorders, and a doctorate degree in audiology. She had worked for Los Angeles as an educational audiologist for 19 years. In Dr. Diaz-Rempel's opinion, her proposed goals would help Student's auditory processing skills improve, and help him access the general education curriculum. Dr. Diaz-Rempel's testimony was well-reasoned, based on direct knowledge of Student, and informed by her extensive years of experience as an educational audiologist. Thus, Dr. Diaz-Rempel was credible and persuasive.

Student did not offer any evidence to contradict the credible testimony of Ms. Pitts, Mr. Cascio, and Dr. Diaz-Rempel, which showed the annual goals were aligned with the California content standards, and would allow Student to access the general education curriculum. Therefore, Student did not prevail on this issue.

ISSUE 2(C): DID LOS ANGELES DENY STUDENT A FAPE IN THE FEBRUARY 8, 2019 IEP, AS DEVELOPED DURING IEP TEAM MEETINGS ON JANUARY 30, 2018, AND FEBRUARY 5, 8, AND 28, 2018, BY OFFERING GOALS IN SOCIAL-EMOTIONAL, PREVOCATIONAL EDUCATION, BEHAVIORAL FUNCTIONING, AND PRAGMATIC LANGUAGE, SOLELY TO JUSTIFY LOS ANGELES'S PLACEMENT OFFER IN A SPECIAL DAY CLASS PROGRAM?

Student contended Los Angeles offered annual goals in the areas of social-emotional, prevocational education, behavioral functioning, and pragmatic language, solely to justify its offer of placement in a special day class program. Los Angeles contended its offer of placement in the special day class program did not determine which goals the IEP team developed, but rather, Student's needs determined the goals.

During the January and February 2018 IEP team meetings, Los Angeles proposed goals in various areas, including counseling or social-emotional, behavioral functioning, and pragmatic language. During the February 8, 2019 IEP team meeting, Los Angeles agreed to remove the counseling and behavioral functioning goals, at Parent's request. The IEP team did not offer a goal in prevocational functioning. Accordingly, this Decision will address only Los Angeles's pragmatic language goals. Mr. Cascio credibly testified that Student's speech and language goals were based on his present levels of performance and needs, as identified in Ms. Hullenahalli's assessment report. Mr. Cascio also credibly testified that the speech and language goals were not based on Student's proposed classroom setting, and that speech and language services could be provided to students in any type of classroom setting.

Student's argument that Los Angeles offered pragmatic language goals to justify an eligibility under autistic-like characteristics, and Student's placement in a special day class program, was not persuasive. The documentary evidence and witness testimony did not support Student's contention. Moreover, Student did not offer any evidence that contradicted Mr. Cascio's credible testimony that the speech and language goals were based on Student's needs, and not to justify a particular placement. Therefore, Student did not prevail on this issue.

ISSUE 3(A): DID LOS ANGELES DENY STUDENT A FAPE IN THE FEBRUARY 8, 2019 IEP, AS DEVELOPED DURING IEP TEAM MEETINGS ON JANUARY 30, 2018, AND FEBRUARY 5, 8, AND 28, 2018, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT THAT INCLUDED ACCESS TO THE GENERAL EDUCATION CORE CURRICULUM?

Student contended Los Angeles's offer of placement at the February 8, 2019 IEP team meeting, at Reseda Charter High School in the special day class program, was not appropriate. Specifically, Student contended it did not represent the least restrictive environment. Student further contended Student could not maintain the academic progress he achieved at Westmark School in a special day class program because the special day class program did not teach from the general education core curriculum. Finally, Student contended changing Student's school would have a negative impact on his academic and emotional progress.

Los Angeles contended its offer of placement was appropriate and in the least restrictive environment, based on Student's academic, language, and social needs. Los Angeles further contended placement in a special day class program for part of

Student's day would be similar to his placement at Westmark School, and would help to ease his transition from a small private school setting. Finally, Los Angeles contended Student would be taught using the general education core curriculum.

The IEP team is charged with the duty of reviewing assessment results, determining eligibility, determining the contents of an IEP, and making recommendations regarding a student's program and placement. (Ed. Code, § 56342.) In determining the educational placement of a child with a disability, a school district must ensure that:

1. the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;
2. placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home;
3. unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
4. in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
5. a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

A school district must make available a continuum of placement options. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115.) In California, this includes instruction in regular education programs, resource specialist programs, designated instruction and services,

special classes, and nonpublic, nonsectarian school services, among others not at issue here. (Ed. Code, § 56361.) Placement must be in the least restrictive environment, which means school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes, with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); Ed. Code, § 56031.)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314. A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a student to constitute a FAPE under the IDEA, a school district's offer of educational services and placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

Student did not prove Los Angeles's placement offer in a special day class program at Reseda Charter High School was not the least restrictive environment for Student's needs, or that it denied Student access to the general education core curriculum. Reseda Charter High School was Student's school of residence, and therefore, where he would attend if he did not have an IEP. At the February 28, 2018 IEP team meeting, the team discussed a continuum of placement options. First, the team

discussed placement in general education classes with and without support from the resource specialist teacher. Because of the large class sizes and fast-paced instruction, the team, including Parent, agreed placement in general education classes would not meet Student's academic and functional needs. Next, the team discussed placement in a special day class program for students with autism, who were learning from the general education core curriculum. At the time, the Los Angeles team members were considering whether Student met eligibility for special education under the category of autistic-like characteristics, due to his social communication needs.

When the IEP team meeting reconvened on February 8, 2019, the team agreed Student's eligibility would be specific learning disability, and not autistic-like characteristics. Los Angeles offered Student placement in the special day program at Reseda Charter High School for 68 percent of his school day. The program was designed for students with various learning disabilities, who were learning from the general education core curriculum. Student would participate in general education classes for an elective and physical education class. Student would also interact with general education peers during unstructured time, such as lunch.

Reseda Charter High School offered multiple special day classes for students with learning disabilities. The classes were subject matter specific, and examples of courses included Geometry, U.S. History, and English. All classes in the program met the University of California and California State University requirements for admission, called "a-g" requirements. The special day classes used the same curriculum and text books used in the equivalent general education classes. Class sizes ranged from six to 16 students, with one teacher and at least one teacher's assistant. Because of the smaller class size, the special day class teachers were able to give more attention to their

students and provide instruction at a slower pace. Students who took special day classes could also take advanced placement or honors general education classes, with the appropriate supports.

Student argued the special day class program at Reseda Charter High School was not in the least restrictive environment because all students in the program had an IEP, and Student would not have access to the general education core curriculum. Instead, Student argued Westmark School was the appropriate placement for Student because Student was educated with peers who had similar needs as he did, using the general education core curriculum. Student's arguments were not persuasive because they were not consistent with the documentary evidence and witness testimony.

Dr. Lyvers conducted a neuropsychological evaluation of Student in 2017, and observed him at Westmark School in October 2019. In Dr. Lyver's opinion, Westmark School was an appropriate placement for Student, and a transition to public school would be inappropriate due to Student's vulnerability of adaptive skills, poor adjustment ability, and other psychological deficits. Similarly, Katy Spielman, Director of the Upper School at Westmark School, thought Student would not be successful in a public high school because it would not be able to provide as much support as Westmark School. However, neither Dr. Lyvers's nor Ms. Spielman's testimony was persuasive because they had never observed Student in a public school setting, or visited Los Angeles's offered placement at Reseda Charter High School.

The analysis of whether Los Angeles offered Student a FAPE in the least restrictive environment, must focus on the appropriateness of the offered program at Reseda Charter High School, and not Parent's preferred placement at Westmark School. The evidence showed the IEP team, including Parent, agreed Student required a small classroom setting, with a low student to teacher ratio, similar to the setting at Westmark

School. The team also agreed Student should be learning from the general education core curriculum. The special day class program at Reseda High School satisfied these requirements. Moreover, Reseda Charter High School offered Student the opportunity to interact with nondisabled students. Westmark School did not. Therefore, Student did not prevail on this issue.

ISSUE 3(B): DID LOS ANGELES DENY STUDENT A FAPE IN THE FEBRUARY 8, 2019 IEP, AS DEVELOPED DURING IEP TEAM MEETINGS ON JANUARY 30, 2018, AND FEBRUARY 5, 8, AND 28, 2018, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT WITH APPROPRIATE TEACHING METHODS?

Student contended the February 8, 2019 IEP did not indicate what teaching methods would be used in the special day class program at Reseda Charter High School. Student further contended the program did not offer appropriate teaching methods, such as Lindamood Bell, to academically challenge Student. Los Angeles contended it had the discretion to choose the teaching methodology used with Student. Los Angeles further contended the teaching strategies used in the special day class program were reasonably calculated to provide Student with educational benefit.

School districts are not required to include specific teaching methodologies in the IEP. (34 C.F.R. § 300.320(d)(1); 71 Fed. Reg. 46,665 (2006).) A parent's disagreement with a school district's educational methodology is insufficient to establish an IDEA violation. (*Carlson v. San Diego Unified School Dist.* (9th Cir. 2010, unpublished) 380 F. App'x 595; see also, *Lachman v. Illinois State Board. of Education* (7th Cir. 1988) 852 F.2d

290, cert. denied at 488 U.S. 925 (holding that parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing for the education of a student with a disability).)

All of the teachers in the special day class program Los Angeles offered to Student, had special education credentials that qualified them to teach students with mild to moderate disabilities, such as Student's processing deficits. Some of the teachers also had a single-subject general education credential in their subject-matter of expertise, such as social science or English. Through obtaining the special education credential, the teachers received training on how to teach students with learning disabilities, including auditory and other processing disorders. Teachers used various methods to address their students' needs, including multimodal teaching, preparing lesson plans for students at different academic levels, breaking down information to make it easier to understand, and providing visual and auditory supports.

Student offered evidence that Student improved academically at Westmark School using the Lindamood Bell reading program. However, Student did not offer any evidence that proved Student required Lindamood Bell in order to receive educational benefit. Student also did not offer any evidence that challenged the qualifications of the teachers, or proved Los Angeles's teaching methods were inappropriate. The IDEA allows school districts discretion in selecting teaching methodologies, and Parent's disagreement with Los Angeles's methods did not mean they denied Student a FAPE. Therefore, Student did not prevail on this issue.

ISSUE 3(C): DID LOS ANGELES DENY STUDENT A FAPE IN THE FEBRUARY 8, 2019 IEP, AS DEVELOPED DURING IEP TEAM MEETINGS ON JANUARY 30, 2018, AND FEBRUARY 5, 8, AND 28, 2018, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT WITH APPROPRIATE ACCOMMODATIONS, INCLUDING A QUIET ENVIRONMENT TO MEET STUDENT'S AUDITORY PROCESSING NEEDS?

Student contended the February 8, 2019 IEP did not offer appropriate accommodations. Specifically, Student contended the IEP failed to include assistive technology and instructional modifications to support Student's auditory processing needs. Student further contended that the learning environment in the special day class program at Reseda Charter High School was too loud to accommodate Student's auditory processing needs. Los Angeles contended the accommodations it offered were appropriate to address Student's learning needs. Los Angeles further contended the noise level in the special day class program classes would not impact Student's ability to access the curriculum.

An IEP should include a statement of the program modifications or supports that will be provided for the child to:

1. advance appropriately toward attaining the annual goals;
2. be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
3. be educated and participate with disabled and nondisabled children in those activities. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd (a.) (4).)

Student did not prove Los Angeles failed to offer appropriate accommodations in the February 8, 2019 IEP. The February 8, 2019 IEP included several supports, called instructional accommodations, including:

- visual supports when auditory information presented;
- checklist, rubrics, and graphic organizers;
- examples and sample of finished projects;
- checking for understanding of assignments and instructions;
- ability to repeat assignment instructions back to the teacher;
- check lists or visual reminders when given multi-step instructions;
- teacher-facilitated peer interactions; and
- use of descriptive words and prompts, to visualize information read or heard.

These accommodations were based on Student's needs that the IEP team identified, and were offered to help Student access the curriculum and make progress toward his annual goals. Moreover, Student did not offer any evidence to challenge the appropriateness of these accommodations. Student's argument that the IEP failed to include assistive technology and instructional modifications will not be addressed in this Decision because they were not included as issues in the complaint.

Student also did not prove the noise level in the special day class program at Reseda Charter High School would impact Student's ability to receive educational benefit. Dr. Diaz-Rempel observed Student in six different classes at Westmark School. The noise level in the classrooms varied from quiet to loud. One classroom had a fan blowing in the background, while another had students being playful and talking loudly. Student did not use an assistive listening device. Student did not have any difficulty understanding speech or following teacher instructions when there was background noise.

Parent observed several special day classes at Reseda Charter High School. Parent observed classical music playing in many classes. Parent also observed behavioral disruptions from some students. In Parent's opinion, these noises would interfere with Student's ability to access the curriculum. However, the evidence showed the noise level in the classes was typical of other high school classrooms, and at times quieter, due to the smaller class sizes. The classes ranged in noise level, depending on whether the students were working in groups or independently. While some teachers played music softly in the background in order to mentally stimulate and calm the students, they turned it down or off if a student was bothered by the noise.

Dr. Diaz-Rempel's finding that background noise in the classroom did not interfere with Student's ability to access the curriculum was more persuasive than Parent's opinion. Dr. Diaz-Rempel was an educational audiologist, trained to assess students' auditory processing needs. Parent did not have any professional training in audiology. Therefore, Student did not prevail on this issue.

ISSUE 4: IS STUDENT ENTITLED TO REIMBURSEMENT FROM LOS ANGELES FOR THE COST OF AN INDEPENDENT PSYCHOLOGICAL EVALUATION CONDUCTED BY DR. B.J. FREEMAN ON NOVEMBER 28, 2018?

Student contended he was entitled to reimbursement for the private psychological evaluation Dr. Freeman conducted in November and December 2018, because Los Angeles denied Student a FAPE. Student further contended Los Angeles forced Parent to seek a private assessment because the Los Angeles IEP team members

insisted Student met eligibility criteria under the category of autistic-like characteristics. Finally, Student contended Los Angeles relied on Dr. Freeman's evaluation results to find Student eligible under the category of specific learning disability and not autistic-like characteristics.

Los Angeles contended Student was not entitled to reimbursement for Dr. Freeman's evaluation because Parent never requested an independent educational evaluation from Los Angeles, and never expressed disagreement with any of Los Angeles's assessments. A parent has the right to obtain an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) Student did not prove he is entitled to reimbursement for Dr. Freeman's evaluation. Parent did not inform Los Angeles that she disagreed with any of the assessments Los Angeles conducted in January 2018, including Ms. Berger's psychoeducational assessment. Parent also did not request an independent educational evaluation at Los Angeles's expense. Moreover, because Student did not prove Los Angeles denied him a FAPE, he is not entitled to reimbursement for Dr. Freeman's evaluation as a remedy. Therefore, Student did not prevail on this issue.

ISSUE 5: IF LOS ANGELES DENIED STUDENT A FAPE, IS STUDENT ENTITLED TO A REMEDY OF REIMBURSEMENT FOR THE COST OF PRIVATE SCHOOL PLACEMENT AT WESTMARK SCHOOL, FROM NOVEMBER 8, 2017, THROUGH THE 2018-2019 SCHOOL YEAR, AND FOR COSTS INCURRED UP TO THE FIRST DAY OF HEARING OF THE 2019-2020 SCHOOL YEAR?

Because this Decision finds that Los Angeles did not deny Student a FAPE, Student is not entitled to a remedy of reimbursement, for the cost of Student's placement at Westmark School, for the requested time period during the 2017-2018, 2018-2019, and 2019-2020 school years.

ISSUE 6: IF LOS ANGELES DENIED STUDENT A FAPE, IS STUDENT ENTITLED TO A REMEDY OF REIMBURSEMENT FOR THE COST OF PRIVATE SCHOOL PLACEMENT AT WESTMARK SCHOOL, ONCE THOSE COSTS ARE INCURRED, FOR THE 2019-2020, AND 2020-2021 SCHOOL YEARS?

Because this Decision finds that Los Angeles did not deny Student a FAPE, Student is not entitled to a remedy of reimbursement, for the future cost of Student's placement at Westmark School, for the 2019-2020 and 2020-2021 school years.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to 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. Los Angeles prevailed on all issues heard and decided. Specifically:

1. On Issue 1, Student did not prove that Los Angeles denied Student a FAPE by failing to timely complete Student's IEP consistent with California Education Code section 56344, after Parent consented to assessment on November 7, 2017.
2. On Issue 2:
 - a. Student did not prove Los Angeles denied Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018, by failing to offer appropriate goals and objectives based on Student's present levels of performance.
 - b. Student did not prove Los Angeles denied Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018, by failing to offer appropriate goals and objectives that would allow Student to access the general education curriculum.
 - c. Student did not prove Los Angeles denied Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018, by offering goals in social/emotional, prevocational education, behavioral functioning, and pragmatic language, solely to justify Los Angeles's placement offer in a special day class program.
3. On Issue 3:
 - a. Student did not prove Los Angeles denied Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018, by failing to offer an appropriate placement in the least restrictive environment, including access to the general education core curriculum.

- b. Student did not prove Los Angeles denied Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018, by failing to offer an appropriate placement in the least restrictive environment, including appropriate teaching methods.
 - c. Student did not prove Los Angeles denied Student a FAPE in the February 8, 2019 IEP, as developed during IEP team meetings on January 30, 2018, and February 5, 8, and 28, 2018, by failing to offer an appropriate placement in the least restrictive environment, including appropriate accommodations like a quiet environment to meet Student's auditory processing needs.
- 4. On Issue 4, Student did not prove Student is entitled to reimbursement from Los Angeles for the cost of an independent psychological evaluation conducted by Dr. B.J. Freeman on November 28, 2018.
 - 5. On Issue 5, Student did not prove Los Angeles denied Student a FAPE, and Student is entitled to a remedy of reimbursement for the cost of private school placement at Westmark School from November 8, 2017, through the 2018-2019 school year, and for costs incurred up to the first day of hearing, of the 2019-2020 school year.
 - 6. On Issue 6, Student did not prove Los Angeles denied Student a FAPE, and Student is entitled to a remedy of reimbursement for the future cost of private school placement at Westmark School, once those costs are incurred, for the 2019-2020, and 2020-2021 school years.

ORDER

All of Student's claims for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Tara Doss
Administrative Law Judge
Office of Administrative Hearings