

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**IN THE MATTER OF  
COLTON UNIFIED SCHOOL DISTRICT**

**v.**

**PARENT ON BEHALF OF STUDENT.  
OAH CASE NUMBER 2019090121**

**DECISION**

Colton Unified School District filed a due process hearing request with the Office of Administrative Hearings on September 4, 2019, naming Parent on behalf of Student. Office of Administrative Hearings is referred to as OAH. Colton Unified School District is referred to as Colton. On October 3, 2019, OAH granted Colton's request to file a first amended complaint.

Administrative Law Judge Judith L. Pasewark heard this matter in Bloomington, California, on October 29, 30, and 31, 2019.

Attorney Jim Sanft represented Colton. Robert Pearson, Director of Pupil Personnel Services, and Rick Homutoff, Program Manager for the East Valley Special Education Local Plan Area, attended on behalf of Colton. Katherine Walck, Special Education Coordinator, attended on October 30, 2019, on behalf of Colton. Student's

Mother attended the hearing each day on behalf of Student. Father attended the first day of hearing. Alma Villegas, certified Spanish interpreter, provided Spanish translation services for Parents. Student did not attend the hearing.

At the request of the parties, OAH granted a continuance to November 12, 2019, to file written closing briefs. However, given OAH's need to translate Student's closing brief from Spanish into English, the record closed on November 25, 2019. Colton filed a timely written closing brief. Mother did not submit a written closing brief. On November 25, 2019, the record closed and the matter was submitted for decision. On December 9, 2019, the parties agreed to a continuance of the issuance of the Decision until January 16, 2020.

## ISSUES

An individualized education program is referred to as an IEP. A free appropriate public education is referred to as a FAPE. An independent educational evaluation is referred to as an IEE.

The issues set forth by Colton are:

1. Did assessments conducted by Colton comply with state and federal law such that Student is not entitled to IEEs at public expense, specifically:
  - a. April 9, 2019 psychoeducational assessment,
  - b. March 11, 2019 academic assessment, and
  - c. April 8, 2019 speech and language assessment?
2. Did the April 9, 2019 IEP, further developed on May 28, 2019, and amended on August 12, 2019, and September 16, 2019, offer Student a FAPE in the least restrictive environment?

## FACTUAL FINDINGS

### BACKGROUND

Student is a sixteen-year-old boy who resides with his parents within the boundaries of Colton. Student is eligible for special education and related services under the category of specific learning disability and emotional disturbance.

Beginning in the ninth grade, Student attended Grand Terrace High School in the general education setting for the 2017-2018 school year. In March 2018, Colton placed Student on home-hospital instruction due to mental health concerns arising from a suicide attempt related to bullying at school. Student remained on home-hospital instruction through the remainder of the 2017-2018 school year, and into his 2018-2019 tenth grade school year.

On October 31, 2018, Student filed for due process naming Colton as the respondent, OAH Case No. 2018110036.

On January 10, 2019, Colton developed a comprehensive assessment plan for Student's triennial review. In the assessment plan, Colton offered to assess Student in the areas of psychoeducation, academics, speech, health, special circumstances instructional assistance, referred to as SCIA, functional behavior, and educationally related mental health services.

On January 25, 2019, Student and Colton reached a settlement of OAH Case No. 2018110036. As part of the settlement agreement, Colton agreed to provide Student with a one-to-one SCIA to support and monitor him throughout the school day during his transition back to school from home-hospital. Student began his transition back to Grand Terrace High School in March 2019.

The settlement agreement also included waivers and releases effective through the date of signature. Parents consented to the January 10, 2019 assessment plan at that time.

Student returned to school on a modified schedule in March 2019. Elizabeth Dickerson, Grand Terrace assistant principal, oversaw Student's transition back to the high school setting. Dr. Dickerson holds a master's degree in education, an administrative credential, and a doctorate degree in organizational leadership. Dr. Dickerson holds a level II education specialist instruction credential, and was previously employed as a special education teacher, moderate/severe. Dr. Dickerson presented as a knowledgeable and articulate witness at hearing.

Dr. Dickerson described Grand Terrace as a comprehensive high school campus of approximately 1800 students, ranging from students with special education disabilities to gifted students. Student returned to Grand Terrace on a modified class schedule for periods one through four of the school day. Student returned home after lunch, where he continued to receive home-hospital instruction. While at school, Student received an individual SCIA, who monitored Student's well-being and safety and to prevent bullying. The SCIA met Student each morning and remained with him during his time on campus. Various non-designated SCIA's accompanied Student. Initially Colton provided the SCIA as a temporary support service, pursuant to the settlement agreement. Colton anticipated that if the SCIA was adopted in the triennial IEP, a dedicated SCIA would be assigned to Student.

Colton utilized a communication log book with which adult staff members checked in with Student to monitor his well-being at school. The adults initiated the contact rather than wait for Student to come to them. The SCIA made entries into the log book, which was picked up and returned to Dr. Dickerson's office each day.

Based upon her observations and review of the communication log notes, Dr. Dickerson determined no significant issues were reported once Student returned to school. She described Student as a “pretty happy kid” who had friends and socialized at school.

#### PSYCHOEDUCATIONAL ASSESSMENT

Although Student’s primary language was Spanish, Colton reclassified him as fluent in English language proficiency. Therefore, Colton assessed Student in English. Interviews and ratings scales completed by Mother were conducted in Spanish. Michelle De Santis, a credentialed bilingual school psychologist for Colton, assisted with Mother’s interview and assessments in Spanish.

Brenda Kalberg, Colton’s lead school psychologist, conducted Student’s psycho-educational assessment. Ms. Kalberg holds a bachelor’s degree in psychology and a master’s degree in school psychology. Based upon her credential and experience, Ms. Kalberg was qualified to conduct Student’s assessment.

In conducting her assessments, Ms. Kalberg used a variety of assessment tools to gather relevant functional, developmental and academic information regarding Student. The tests and assessment materials selected and administered were not racially, culturally, or sexually discriminatory, because the tests were normed on a national population which did not factor in race, culture, or sex into the assessments. Ms. Kalberg conducted a review of records, and interviewed Student and his mother. She considered Student’s medical diagnoses and social emotional difficulties in the home setting which were reported by Mother.

Ms. Kalberg observed Student in his general education world history class, as well as during testing at home and at school. She obtained information from Student's teachers. Lindsey Kaiser, Student's home-hospital instructor, reported Mother's concerns about Student's anxiety at school. Student's doctor, however, wanted Student to continue his return to a comprehensive high school site. Student did well during home-hospital instruction. He utilized problem-solving skills. He completed his work, and wanted to understand and move forward. Student expressed that he felt out of place in school because he was so far behind the other students.

April McLeskey, Student's general education English teacher, reported no difficulties in her class. Student enrolled in her class in March 2019, and had 13 absences by June 2019. After an absence, Student requested to make up missed work. Ms. McLeskey described Student as an excellent student. He worked at grade level, and completed assignments. He worked to ensure that he understood the material and asked questions when he was confused. Student's social-emotional status appeared fine. He was quiet and stayed on task during class. Although shy, Student collaborated with peers and answered when called upon. Student successfully completed a presentation in front of the class. Ms. McLeskey noted Student strengths in his ability to explain and express himself in writing. Student did well in her class, and received A's and B's.

Ms. Kalberg established a rapport with Student. She reported Student was ready to work during the home assessments. Student spoke with multi-word phrases and coordinated his conversation with eye contact. He used conventional and emotional gestures to convey meaning to Ms. Kalberg. He sat at the table for the duration of an hour assessment session and did not request a break even when one was offered by the assessor. Student asked questions about assessment tasks.

During the assessments at school, Student came willingly to the office and engaged in appropriate conversation with Ms. Kalberg. Again, Student utilized appropriate conversational skills and use of vocabulary. He made appropriate eye contact and could attend to tasks for an hour with minimal prompting, but, at times, he needed instructions repeated. Student cooperated throughout the assessment.

Ms. Kalberg observed Student during his world history class. Student accessed educational material without assistance. He watched a video, followed the class discussion, and took notes on his worksheet. He did not answer aloud with others in the class, but slightly mouthed the answers. Student sat quietly and completed his assignment. He did not converse with the students sitting near him. Student did not engage in any maladaptive behaviors. About five minutes before the end of class, Student cleaned up his materials and prepared for his next class. He spoke briefly with another student while waiting for the bell to ring.

Ms. De Santis interviewed Mother, who reported dramatically different observations of Student. Mother expressed concerns about Student's mental health based upon the 2017 bullying episodes which resulted in Student's home-hospital instruction. Mother described Student as anxious and nervous. He inconsistently engaged in conversations with familiar people and most interactions were initiated by others. Although Student might incorporate himself into a group of friends initially, he would later leave the group to be by himself. He remained self-conscious about his stuttering and how it impacted his communication with others.

Mother addressed her suspicions about autism. At home, Student required front-loading about future events to avoid increased anxiety. He struggled in adapting to unexpected changes. Student struggled to follow routines recommended by his psychologist. For example, Student might complete a few items, but would later abandon the schedule.

Ms. Kalberg administered the Woodcock-Johnson IV, Test of Cognitive Abilities to assess Student's cognitive abilities. She utilized the Comprehensive Test of Phonological Processing, second edition, and Beery-Buktenica Developmental Test of Visual Motor Integration, sixth edition, to assess Student's processing skills. Student's overall cognitive functioning fell within the below average range, with demonstrated strength in the area of visual processing, and weakness in the areas of association and short-term memory. Student's primarily long-term memory functions fell within the below average range. This indicated a slight weakness with the acquisition of generally acquired concepts and the ability to understand and use that information. Student scored in the average range for fluid reasoning. He displayed the ability to understand and identify rules that governed features and variables in abstract, visually-presented problems.

Ms. Kalberg measured Student's association abilities related to long-term memory. Student's scores on these subtests varied from low to average. Due to score discrepancies, Ms. Kalberg administered additional tests from the Wechsler Intelligence Scale for Children, fifth edition, to identify Student's abilities. On these selected subtests, Student scored in the low range. Student could recall information, but struggled when items to recall increased or became more abstract.

Student's ability with categorizing, quantitative, and sequential reasoning fell within the average range. However, his categorical reasoning and mental flexibility scores fell in the low range. Due to these discrepancies, Ms. Kalberg administered an additional subtest that measured deductive reasoning. Student scored in the average range and performed an increasingly complex system of mathematics. Student scored below average in expression. While Student provided responses for common objects with ease, he struggled as items increased in difficulty, but still provided responses which were close to target responses.

Ms. Kalberg assessed Student's auditory processing skills. This included Student's ability to discriminate sounds, repeat sounds, and store the information within the short-term memory, as well as phonological awareness, which included Student's awareness and ability to access the phonological structure of oral language. On three of the four subtests, Student scored in the average to high average range. On the phoneme isolation subtest, however, Student scored in the below average range, struggling with some sounds.

Ms. Kalberg administered a series of subtests to further measure Student's short-term memory. On short-term working memory, Student scored in the below average range. On verbal attention, Student recalled information in the correct sequence and scored in the average range. Student scored in the below average range on reverse number sequencing. Due to discrepancies between these subtest scores, Ms. Kalberg administered an additional object-number sequencing subtest, which placed Student in the low range. This additional subtest indicated Student could recall all objects in the correct sequence, but he struggled to recall the numbers that were given.

On the visual processing subtests, Student scored in the average range, except in the area of visualization where he performed below average. Student identified patterns, but struggled as they became more complex.

Ms. Kalberg assessed Student's sensory motor integration skills. Student generally performed in the average range. Student scored in the below average range for visual perception. As in other areas, when items increased in complexity, Student struggled. Student exhibited average range motor coordination.

Ms. Kalberg assessed Student's attention and processing speed. Student demonstrated good attention and concentration skills during all assessment tasks. Observation of Student in his classroom did not suggest any concerns with his ability to follow a teacher directive. Student worked quickly on each subtest. He performed in the average to low average range.

#### ACADEMIC ASSESSMENT

John Griffith, Student's resource service program teacher, conducted Student's academic assessment in February 2019, as part of the psycho-educational assessment. Mr. Griffith holds a California teaching credential, Level II, an educational specialist instruction credential, and an autism spectrum disorders certificate, all of which qualified him to teach children with mild-to-moderate disabilities, kindergarten through age twenty-two. Mr. Griffith was trained to look for signs of autism spectrum disorder in the students he assessed.

Mr. Griffith conducted the academic assessment in compliance with the requirements of the California Education Code. No single procedure was used to determine Student's eligibility for special education or to determine appropriate educational programs for Student. As with Colton's other assessments, the testing and

assessment materials and procedures used in Student's assessment were selected and administered so as not to be racially, culturally, or sexually discriminatory. The tests and assessment materials were valid for the specific purposes for which they were used, and were administered in conformance with the instructions for the test or other assessment materials. Mr. Griffith considered the test results valid.

Mr. Griffith observed Student during a short interview and during testing. Observations were limited as Student had not yet returned to school. Mr. Griffith noted Student sustained attention up to thirty minutes with minimal or no redirection, and was willing to try difficult items. Student exhibited appropriate social communication, and he took turns in conversation with Mr. Griffith. Student stated he wanted to go to college.

Mr. Griffith administered the Kaufman Test of Educational Achievement, third edition, to determine Student's skills and academic functioning in reading, math, and written and oral language. Overall, Student scored in the below average range for academic performance. The Kaufman measured Student's reading abilities in the areas of basic reading skills, reading comprehension, and reading fluency. The assessment measured Student's math skills in the areas of math computation and math concepts and applications. Student scored in the average range overall on the written language composite which included subtests in written expression and spelling. The assessment evaluated Student's oral language in the areas of oral expression and listening comprehension, which were areas of strength for Student. Based upon the entire academic assessment results, Student presented with deficits in the academic areas of reading comprehension and reading fluency or word recognition. He also displayed weakness in the areas of basic reading skills and math reasoning.

## ADAPTIVE BEHAVIOR AND SOCIAL-EMOTIONAL

The triennial assessment addressed Student's adaptive behavior and social-emotional issues. During his assessment interview, Student reported that he liked school and enjoyed coming back to school to see his friends. He liked world history and science, but found math difficult. Student liked talking with his friends, but did not like talking in front of the class or getting called on by the teacher in class. He did not like getting bad grades. Student wanted to get a part-time job, save money for college, and have a career with computers.

Prior to his hospitalization in March 2018, Student was well-behaved at school. He socialized with peers and adults. He remained quiet in class, but would appropriately seek others when needed.

Ms. Kalberg utilized the Adaptive Behavior Assessments System, third edition, to determine Student's functional skills. She used the Behavioral Assessment System for Children, third edition, which was designed to classify any emotional and behavioral disorders and assist in the design of a treatment plan. The Piers-Harris, second edition, assessment was offered to provide an overall view of Student's self-perception. These assessments consisted of rating scales to be completed by Mother and/or Student. As of the date of the assessment report, the completed rating scales for these assessments had not been received from Mother or Student. Mother provided the completed ratings scales at the IEP team meeting on April 9, 2019.

Mother and Student completed the Multidimensional Anxiety Scale for Children, second edition. The anxiety probability score estimated the likelihood of one or more anxiety disorders. Mother's overall ratings placed Student in the very high range, indicating Student experienced an elevated number of anxiety symptoms. Student rated

himself in the high probability range. Mother rated Student in the very elevated range related to the extent to which Student was anxious about being alone or scared of certain places or things. Mother reported Student was scared when Parents went away, he was afraid of going places, kept a light on at night, was afraid of bad weather, animals, and bugs. Student rated himself in the high average range, and disagreed with Mother's reporting. Both Mother and Student rated Student in the very elevated range on the general anxiety disorder index. Mother reported Student felt tense and restless, and worried about doing something stupid or embarrassing. At times, Student complained of feeling sick to his stomach or of difficulty breathing. Student confirmed he worried about what others thought of him, became tense, and felt sick to his stomach at times.

Mother rated Student in the very elevated range for compulsive behaviors. Student exhibited intrusive thoughts and engaged in excessive checking, and repetitive or ritualistic actions. Student rated himself in the very elevated range. He often had bad thoughts he could not stop. He feared he would be responsible for something bad happening and got concerned with sin and wrongdoing. Student confirmed he engaged in repetitive behaviors, checking things several times, counting things for no reason, and doing things over and over.

Mother and Student completed the subscales for panic and restlessness. Both Mother and Student rated Student in the very elevated range for experiencing panic symptoms. Student often felt strange, weird, or unreal. He often had sweaty or cold hands, and sometimes felt sick to his stomach. Student reported he often felt tense or uptight. He would sometimes get shaky or notice his hands shake.

Both Mother and Student rated Student in the high average range for harm avoidance. Student checked to make sure things were safe. He tried to obey his

parents and asked permission to do things. Student indicated he tried to do things that other people would like.

### BEHAVIORAL FUNCTIONING

Ms. Kalberg administered the Autism Diagnostic Observation Schedule, second edition, Module Four, and the Adaptive Behavior Assessment System, third edition, to obtain a picture of Student's language and communication skills, his social skills, and his responses to sensory input. Student utilized verbal and nonverbal communication appropriately to initiate, engage in, and maintain social contact. He spontaneously offered information about his own thoughts and experiences. He responded appropriately to questions. He understood social cues and age appropriate humor and jokes. Student exhibited appropriate reciprocal social interaction. He maintained eye contact and utilized gestures effectively. He communicated a wide range of emotions and described personal feelings that included relationships and the perspective of others. Student expressed an interest in the ideas of others and sometimes showed good peer interaction. Student did not engage in any sensory-seeking behaviors. He did not display interest in highly restricted topics or objects. He did not insist on doing things the same way each time, nor was he obsessed with details. Based upon these assessment results, Student did not demonstrate characteristics of an autism spectrum disorder.

### CONCLUSIONS OF PSYCHOEDUCATIONAL ASSESSMENTS

Based upon the results from Student's comprehensive triennial assessments, Colton's assessors concluded Student qualified for special education and related services under the category of specific learning disability. Student demonstrated a severe discrepancy between his intellectual ability and achievement in reading

comprehension and reading fluency due to a disorder in auditory processing and association. These deficits adversely affected Student's educational performance and could not be solely met within the general education classroom.

Student also qualified for special education and related services under the category of emotional disturbance. Since April 2018, Student presented with a history of depressive and anxiety concerns, and received home-hospital instruction due to mental health concerns. Student's academic achievement was below expected for a student his age. He was not able to access his educational curriculum at a comprehensive site due to mental health concerns.

Student did not qualify for special education under the category of other health impairment. Student did not exhibit any concerns regarding his ability to follow and remain attentive in class. Student did not present as a student with limited strength, vitality, or alertness due to a chronic or acute health problem.

Student did not qualify for special education under the category of autism. At the time of the assessment, Student did not have a diagnosis of autism spectrum disorder. Student used appropriate verbal and nonverbal communication skills to engage in social interactions. Student identified emotions and provided insight in typical social interactions. He did not avoid social settings or interactions with his peers. Student's assessed behaviors did not adversely affect his education.

#### EDUCATIONALLY RELATED MENTAL HEALTH EVALUATION

Colton referred Student to the East Valley Special Education Local Plan Area for an educationally related mental health evaluation, conducted in February 2019. A special education local plan area is referred to as a SELPA. Gloria Ybarra, the SELPA

assessor, conducted Student's educationally related mental health service assessment. Ms. Ybarra holds a master's degree in counseling psychology, and a pupil personnel services credential. She is a licensed marriage and family therapist, as well as a clinical behavioral health counselor for the SELPA. Ms. Ybarra explained that mild to moderate behavioral issues were assessed and serviced at the school district level. The SELPA handled referrals from school districts for high risk students with intensive behaviors.

The educationally related mental health evaluation contained a review of school records, a history of Student's emotional problems, Parent and Student interviews, teacher interviews, and observation of Student in his home-hospital program. Ms. Ybarra conducted a risk assessment of Student. Mother reported Student was bullied in his math class in August 2017. Student attempted suicide seven times, resulting in two hospitalizations. Student's most recent suicide attempt in 2018, took paramedics twenty minutes to revive him. Student was placed on home-hospital study in April 2018. At the time of the assessment, Student remained on home-hospital instruction. Student denied any suicidal thoughts since May 2018. Student expressed a desire to return to school. He wanted help with the work he missed, and wanted to take fewer classes when he returned. He wanted someone to check on him during school.

Student completed the Beck Youth Inventories, second edition, which consisted of five self-reported scales. These scales assessed Student's experience with depression, anxiety, anger, disruptive behavior, and self-concept. When compared to same aged peers, Student scored in the extremely elevated range for anxiety, moderately elevated range for depression, mildly elevated range for anger, and in the much lower than average range for self-concept. He was nervous about returning to the high school setting. Student received medications and counseling in the home setting. The

assessment determined Student would benefit from additional counseling at school to help reduce his anxiety by teaching him additional coping skills and providing him assistance in processing his feeling.

#### FUNCTIONAL BEHAVIOR ASSESSMENT

Ms. Kalberg conducted a functional behavior assessment of Student between February 21, 2019, and April 4, 2019, targeting Student's anxiety exhibited through off task behaviors. The analysis of Student's behavior consisted of interviews with teachers, Mother, and Student. The assessment included observation of Student in the classroom and testing settings. Mother completed her interview and ratings scales in Spanish. Mother repeated her concerns about Student's anxiety and depression, and again expressed her suspicions about autism.

The assessor determined Student did not engage in disruptive or off-task behaviors at school. He remained attentive in class and completed work without prompts. Student did not require a behavior intervention plan or other positive behavior strategies. The functional behavior report concluded that Student could vocalize his anxiety to adults. Colton determined that, as of April 9, 2019, Student was ready to transfer to a comprehensive high school campus on a modified schedule with support from Colton staff.

#### SPEECH AND LANGUAGE ASSESSMENT

Christina Cabrera, Colton's speech and language pathologist, conducted Student's speech and language assessment in March 2019. Ms. Cabrera holds a post-bachelor's degree in communicative disorders and master's degree in communications sciences and disorders, a California teaching administrative credential, and cleared credential for language, speech, and hearing services. Ms. Cabrera

possessed extensive experience with autism spectrum disorders, and previously assessed and administered early intervention programs for children with autism. Diana Padilla, Colton's bilingual speech and language pathologist collaborated with Ms. Cabrera by providing Spanish language assistance to Mother.

Ms. Cabrera conducted a records review. Mother completed a questionnaire that identified her concerns regarding Student's speech and communication. Mother reported Student had difficulty with speech sound production and did not use complete sentences when speaking. She reported Student had difficulty comprehending and understanding. She also reported her suspicions that Student was on the autism spectrum. Ms. Cabrera observed Student in his English class on March 13, 2019. Student communicated and interacted with his peers, initiated conversations, asked questions, and laughed at jokes.

Student's testing took place in the home. Student presented as attentive and cooperative, and completed all of the tasks asked of him to the best of his ability. Prior to the assessment, Student passed a hearing and vision screening conducted by the school nurse. Student's speech mechanism and motor function appeared within normal limits.

Ms. Cabrera administered the Goldman Fristoe Test of Articulation, third edition. She observed Student informally in conversation. Student displayed intelligible speech but demonstrated atypical speech errors. His voice quality appeared within expectancy for his age and gender.

Ms. Cabrera conducted the Overall Assessment of the Speaker's Experience of Stuttering, which measured the impact of stuttering on a person's life. Student scored in the moderate-to-severe range. Student reported he was aware of his stuttering and

he experienced an increase in stuttering incidents when social demands increased or when he became anxious or nervous. He found it hard to talk with adults or in situations outside of class.

Ms. Cabrera measured Student's overall language development using the Comprehensive Assessment of Spoken Language, second edition. This test assessed Students expressive and receptive language skills, as well as his oral language processing skills of comprehension, and expression in the categories of lexical/semantic, syntactile, supralinguistic, and pragmatics. In overall language skills, Student placed in the below average range. Ms. Cabrera administered the Social Language Development Test-Adolescent to diagnose Student's social language skills. Student showed deficits with his pragmatic language skills. Ms. Cabrera utilized both of these assessments to address Mother's concerns about autism. Although Student's scores indicated a deficit in pragmatics, the scores did not support an eligibility finding of autism.

Ms. Cabrera concluded Student presented with below average expressive language and articulation skills. Although Student's speech fluency assessments revealed below average scores, his impairments were clinically judged to be secondary to those language and articulation deficits. She recommended Student remain eligible for special education and related services based upon speech and language impairment.

#### TRIENNIAL IEP TEAM MEETINGS HELD APRIL 9, 2019, AND MAY 28, 2019

Colton held Student's triennial IEP team meeting on April 9, 2019, pursuant to the terms of the January 25, 2019 settlement agreement. Due to time constraints, the triennial IEP team meeting reconvened on May 28, 2019, for further discussion and development. The two IEP team meetings are collectively referred to as the triennial IEP.

The triennial IEP team consisted of an administrator, general education teacher, two speech and language pathologists, the educationally related mental health counselor, home-hospital teacher, special education teacher, SELPA counselor, three school psychologists, Mother, and a Spanish language interpreter for Mother.

Each of the assessors attended the IEP team meetings to review their assessment results and answer questions regarding recommendations. Colton provided Mother with a copy of procedural safeguards in both English and Spanish.

#### April 9, 2019 IEP Team Meeting

Ms. Cabrera reported on Student's speech and language progress. Student only partially met his articulation goals. Student's assessment scores showed deficits with his pragmatic language skills, as well as below average expressive language and articulation skills. Student continued to qualify for special education under the category of speech and language impairment. In response to Mother's questions regarding Student's low sentence expression, Ms. Cabrera explained Student needed to expand his sentences and questions into grammatically correct sentences. He also needed to work on creating more complex sentences.

Ms. Kalberg reviewed the psychoeducational assessments, and reported the discrepancies between Student's intellectual ability and academic achievement. She also reported on Student's mental health concerns. Mother reported Student displayed repetitive movements with his head, hands, and legs, suggesting autism. These movements were not observed at school, and Student did not qualify for special education for autism under the California Education code. Mother also reported Student suffered from insomnia and depression that impacted his school performance. She informed the IEP team that Student was nervous and anxious in class. Ms. Kalberg

acknowledged Student's anxieties, and explained those concerns were considered in finding Student eligible for special education under the category of emotional disturbance.

Ms. Kalberg reported on the findings of the functional behavior assessment. Student did not engage in maladaptive, disruptive, or defiant behaviors. He appropriately attended to task. Although Student became anxious when called upon in class, he did not demonstrate a need for a behavior intervention plan.

Mother shared that Student exhibited behavioral issues at home and would continue to receive outside counseling.

Mr. Griffin reported on Student's academic assessments, and overall academic performance. He confirmed that the resource program staff worked closely with Student's general education teachers to ensure Student received appropriate accommodations in class. Those accommodations included shortened assignments, preferential seating, reiteration of facts and details, clarifications, visual models, chunking text, writing prompts, scaffolding strategies, extra time to complete assignments, and ability to redo low scoring tests and assignments.

Mother reported that Student and one of his friends were playing around during lunch and the friend hit him, causing his hand to swell. Mother took Student to the emergency room, and requested that Colton investigate the incident.

The IEP team meeting was adjourned due to time constraints, and reconvened on May 28, 2019, to complete the review of assessments and the triennial IEP.

## May 28, 2019 IEP Team Meeting

Ms. Ybarra reviewed her mental assessment. Additionally, Gabriel Gaytan, Colton's educationally related mental health service counselor, reported on Student's mental health history, anxiety, and his private counseling services. Mr. Gaytan holds a bachelor's degree in psychology and sociology, and a master's degrees in school counseling and pupil personnel services. Mr. Gaytan recommended Student receive additional counseling at school to help reduce his anxiety by learning additional coping skills. Further, educationally related mental health services consultation from the SELPA was offered to provide Student with extra support and accommodations at school. Mother stated Student could be difficult and did not often state what was actually happening. The IEP team members explained that Mother's concerns were part of the reason for the behavior intervention services being offered. The educationally related mental health services counselor was trained to work with students to increase their self-advocating skills to learn to express their feelings in regards to various situations. Mother agreed with this service, but did not consent to the IEP.

At hearing Mr. Gaytan presented as a qualified mental health witness. Mr. Gaytan provided crisis intervention services at Grand Terrace, and was assigned as Student's case manager. Mr. Gaytan was one of Colton's "trusted adults," available to Student in times of stress. As Student's case manager, if Student sought the assistance of any "trusted adult" or had an anxiety episode, Mr. Gaytan would be notified. His anxiety intervention plan provided that, in times of stress, Student could come to Mr. Gaytan's office to calm down, and talk with him. Student could return to class when he was ready to do so. Student never sought Mr. Gaytan's support, nor did Mr. Gaytan receive any reports of Student's anxiety or stress at school.

Ms. Kalberg discussed Student's need for a special circumstance instructional aide or SCIA. As part of the settlement agreement, Colton provided Student a SCIA during his time at school. The SCIA was to assist Student's reintegration to the school setting, and make him comfortable in his transition. The IEP team requested an assessment to determine whether Student continued to require SCIA service.

Nora Zeller, a credentialed school psychologist for Colton, conducted the SCIA assessment, which consisted of a rubric. She observed Student at school and noted he functioned quite well, and able to participate in the general education setting with minimal supports. Student reported everything was going well at school, but he felt more comfortable with the SCIA. The results of the assessment indicated Student required little to no assistance to function within the school setting. Under normal circumstances, Student would not qualify for SCIA services. In light of Mother's concerns, and Student's desire to maintain the SCIA, the IEP team agreed to continue SCIA services for the remainder of the 2018-2019 school year, intending to fade out the service during the first six-to-eight-weeks of the 2019-2020 school year. The IEP team recommended that Student's need for a SCIA be reviewed at the end of the school year. The IEP team sought to support Student in a manner that promoted his independence and self-reliance. In lieu of the SCIA, the IEP team suggested consideration of accommodations such as seating Student with friendly and helpful peers, and providing Student a check-in, check-out system.

Mother expressed concern that Student's anxiety increased since seeing the peers with whom he had previous conflicts. Mother expressed concern regarding the current SCIA. A new SCIA would be assigned after the IEP team meeting. The IEP team

discussed moving Student to another school in an attempt to reduce his anxiety. Student did not want to change schools. He felt it would be difficult to start at a new school and make new friends.

Ms. McLeskey reported Student's absences had increased in the last few weeks, and he was missing more assignments. Mother reported Student struggled to complete assignments and often asked his home-hospital teacher for additional support. Mother asked the IEP team to increase Student's home-hospital instruction time. Mother did not want Student to receive homework. Mr. Griffin agreed to work with the general education teachers to modify Student's homework and provide Student time within his resource period to complete his assignments, including homework. The IEP team agreed to work together to ensure Student received only homework that was a review of skills already learned.

The IEP discussed an individualized transition plan for Student. Student completed a career cluster interest survey, and expressed an interest in becoming a computer technician. The IEP team delineated Student's remaining curriculum needed for graduation with a diploma. The IEP team created a transition goal to assist Student with his post-graduation transition and career goals.

The IEP team discussed a total of nine proposed goals for Student. Each of the goals contained updated baselines that comported to each area of Student's needs. The IEP team appropriately constructed each goal, and designed each goal to be achievable over the period of a year, based upon Student's academic performance and assessment results.

Mr. Griffith created a reading comprehension goal using grade level text, which required Student to cite strong textural evidence that supported an analysis of what the text said explicitly, as well as inferences drawn from the text, including where the text left matters uncertain. He designed a math goal that required Student to prove theorems about lines and angles, triangles, and parallelograms, and to make formal geometric constructions with a variety of tools and methods. Mr. Griffith developed a writing goal that required Student to improve his writing by writing arguments to support claims and counterclaims fairly and thoroughly, and supplying evidence for each point while pointing out the strengths and limitations of both anticipating the audience concerns/biases.

Mr. Griffith created a transition goal, which required Student to research data and information on career opportunities, including salaries, job opportunities, working conditions, benefits, educational requirements, and job duties in a post-secondary setting.

Ms. Cabrera created an articulation goal to improve Student's articulation skills by producing vocalic 'r' at the word level, within structured speech activities and minimal cues. She developed an expressive language skills goal to increase Student's expressive language skills by asking questions and producing grammatically correct and complete sentences appropriate to the conversation or discussion within a structured language activity with minimal cues. She crafted a social language/pragmatic function goal to improve Student's pragmatic language by responding to inference questions in social situations with minimal cues. Ms. Cabrera added a second social language/pragmatic function goal to improve Student's problem solving skills by identifying a problem and generating and justifying two solutions appropriate to the situation in social situations.

The IEP team created a social-emotional goal to address Student's anxiety by Student verbally communicating his needs in class when he developed a problem. The goal sought for Student to practice calming techniques learned in counseling when he felt anxious or overwhelmed, demonstrated by an increase in self-advocacy, asking an adult for help, or asking a peer when appropriate. Both Mr. Gaytan and Ms. Ybarra found these goals appropriate to support Student's emotional needs. Ms. Ybarra informed Mother that the IEP provided Student with special education counseling services, but Student needed to attend school for the services to be implemented.

The IEP team discussed the least restrictive environment for Student. The IEP team agreed that Student would continue the blended schedule of attendance at Grand Terrace and home-hospital instruction until the end of the 2018-2019 school year. Student did not qualify for extended school year services. However, he could attend summer school at Grand Terrace with the SCIA and transportation. Ultimately, Student did attend general education summer school in 2019 and passed his class.

Commencing at the beginning of the 2019-2020 school year, Colton offered to return Student full-time to Grand Terrace. Colton offered placement consisting of five periods in general education classes and one period of resource support. Colton also offered Student pull-out services from other service providers. Colton would not place Student in classes or on busses with the peers with whom he previously had conflict.

Mother did not agree with general education placement. She requested Student either be returned to home-hospital instruction or placed in a special day class setting because it would be easier for Student. Ms. Kalberg explained that Student's cognitive assessments indicated he did not need a special day class. Student's academic

functioning was higher than students in a special day class. Student would stand out in the class, further contributing to his anxiety. Further, Student required a letter from a doctor before reinstatement of home-hospital instruction could be considered.

#### Offer of FAPE

Colton offered Student placement in the general education classroom for 83 percent of the school day, with 17 percent of the school day outside the regular classroom for specialized academic instruction and pull-out services. Colton offered placement at Grand Terrace with bus transportation.

The nine goals described above were offered to address Student's unique needs. To support the goals, the IEP team offered Student the following services:

1. 60 minutes per week of specialized academic instruction in general education;
  - a. 250 minutes per week of specialized academic instruction in separate classroom;
  - b. 180 minutes per week of home-based specialized academic instruction outside of school hours;
  - c. 120 minutes per month of pull-out speech and language therapy, including individual and group settings.
  - d. 90 minutes per month of pull-out individual counseling;
  - e. 30 minutes per month of behavior intervention consultation; and
  - f. 60 minutes per year of vocational counseling.

Mother did not consent to the IEP. Mother disagreed with the provision of 120 minutes per month of speech and language services. Mother disagreed with 250 minutes per week of specialized academic instruction. She indicated the services

offered by Colton were not enough. Student needed more. Mother did consent to the 90 minutes per month of individual counseling and 30 minutes per month of counseling consultation. Mother further requested independent educational evaluations in the areas of psycho-education, academics, and speech and language.

At hearing, Ms. Cabrera responded to Mother's contention that Student needed more speech therapy services. The offer of FAPE increased Student's speech therapy from 90 to 120 minutes monthly. The increase in service added 30 minutes per month of group therapy to address a new pragmatics goal. The group setting addressed pragmatics and social language. Ms. Cabrera opined that 120 minutes per month was sufficient to work on Student's goals, but Student needed to attend school to implement the service and benefit from it.

#### AUGUST 12, 2019 ADDENDUM IEP TEAM MEETING

Colton held an IEP team meeting on August 12, 2019, to reconsider whether home-hospital instruction was appropriate for Student. Student did not attend the IEP team meeting. Mother explained that Student had attended the first day of school and developed anxiety. She took him to the doctor, and he was currently under observation. In response to IEP team questions, Mother reported Student had a crisis, but was not hospitalized. Student remained on medication and continued to receive outside therapy and medication management. Mother felt that Student required the most intensive services available to support him educationally. She indicated Student had diagnoses of major depressive disorder, with recurrent psychotic features, post-traumatic stress disorder, insomnia, general anxiety disorder, and autism. Mother did not present any medical documents or letters at the IEP team meeting, but indicated she would provide documentation.

The IEP team reviewed Student's academics. Student attended his Algebra II class only once in three days. When Student returned to school, he asked for his missing assignments. Ms. Kaiser reported Student worked hard.

Based upon the information available to the IEP team at the time, Colton made no changes to its offer of FAPE. Mother continued to disagree with placement.

#### SEPTEMBER 16, 2019 ADDENDUM IEP TEAM MEETING

Colton held an addendum IEP team meeting on September 16, 2019, to review parental concerns regarding placement, services and goals. Four school psychologists, the special education coordinator, educationally related mental health counselor, special education teacher, home-hospital teacher, school nurse, speech and language pathologist, SELPA behavior health counselor, and general education teacher attended the IEP team meeting on behalf of Colton. Mother and Student attended with a non-attorney representative, also known as an advocate, and his assistant. Colton provided Mother with a Spanish language interpreter. Colton provided Mother with a copy of procedural safeguards which were explained to her by her advocate.

Ms. Ybarra, inquired whether Student continued to receive home therapy services. Student received 60 minutes per week of therapy through Mother's insurance. The draft of the IEP at this meeting included an increase in counseling services. Colton offered to increase this service because Student's private therapy might end, as the home therapy services were provided on a six-month basis. Mother indicated she was asking for an extension of the six-month period. Ms. Ybarra also discussed that the IEP team would need to look at what mental health and/or social work services Student

received to determine whether additional services were actually needed. The IEP team also discussed the importance of discussing how services would be implemented before Mother made a decision.

Ms. Ybarra discussed an offer of social work services, which included a social coach and family therapist. These wraparound services, in which outside therapy was provided in the home, were offered to determine Student's needs which originated in the home. The SELPA and Colton would collaborate with the social worker to make certain Student's needs were met at school. The IEP team offered these services because Student's anxiety continued to negatively impact his attendance and affected his access to his education.

The advocate shared that Student felt anxious in the general education classroom. The class size was too large. Student also felt overwhelmed when administrators asked how he was doing during the school day.

The advocate reviewed the April 9, 2019 IEP, and reported Mother signed the IEP with an exception. He claimed Mother agreed to the goals and services but not placement. Mother now wished to consider a non-public school placement. The advocate stated he was unsure if a non-public school was "the ultimate placement" to meet Student's needs, and he asked about services. The IEP team discussed non-public school options. A non-public school was more restrictive. Team members shared their concern that Student would be exposed to a more restrictive environment and the greater behavioral issues of the student population. Mr. Griffith, who previously taught at a non-public school for four years, did not recommend a non-public school for Student.

In her testimony, Mother explained why she wanted a non-public school. Mother believed a non-public school provided better special education services than a public school and teachers at non-public schools were more experienced with special education. Mother, however, never visited a non-public school to observe the environment or the students.

During the IEP team meeting, Regina Claussell, Student's special education case manager, opined Student needed access to general education peers which he would not receive in a non-public school. She explained that research showed that students with special needs made more progress when they had access to general education peers. Student had anxiety, but Colton was able to support his access to education.

The IEP team briefly discussed placement in a special day class. Colton IEP team considered placement in a special day class inappropriate, as it would not provide Student with the core classes he needed to attend a four-year college. Student successfully completed grade level curriculum in the general education setting. Colton IEP team members agreed the general education offer of placement was appropriate and constituted the least restrictive environment for Student.

Ms. Claussell noted Student was offered a transfer to another comprehensive high school site and/or independent study within Colton. Colton based these offers on Mother's information that Student's anxiety was due to the bullying incident. The IEP team requested a release of information so Colton personnel could work with Student's treating doctors and obtain updated information. Mother was hesitant to provide the release of information, but after consultation with her advocate, she provided consent to a release of information from Student's mental health providers. Mother did not agree to release medical records, as she considered that personal and sensitive information.

Without additional medical information or a letter from a physician recommending home-hospital placement, Colton could not authorize further home-hospital instruction for Student.

The IEP team amended its offer of FAPE for the 2019-2020 school year to include 2055 minutes per week of dedicated SCIA services, and 3000 minutes per year of social work services in the home. The IEP team amended accommodations to include a "trusted adult" to check in with Student throughout the school day, as well as access to the school counselor, staff or assistant principal as needed. To avoid drawing unwanted attention, the IEP team offered Student nonverbal signs to alert teachers and staff that he needed assistance. The IEP team created an additional social-emotional goal for Student to practice his coping skills to lower his anxiety. Colton did not change its offer of placement for general education at a comprehensive school.

#### Additional Evidence

Mother presented an August 19, 2019 letter from Dr. Ian P. Chand to Colton in support of her concerns at the August 12, 2019 IEP team meeting. The letter indicated Dr. Chand was Student's psychotherapist since October 14, 2018, and had seen Student for a total of 22 sessions. Dr. Chand reported Student was diagnosed with adjustment disorder, major depression, and autism. He was bullied at school and attempted suicide. He had problems at school and at home. Student's academic grades suffered, and he got angry often. Student had difficulty getting out of bed and did not want to attend school. Furthermore, Student was going through a transition from adolescence to adulthood. Dr. Chand reported Student had made significant progress. He concluded,

“As his therapist, it is my recommendation that he have an IEP that is customized to his academic and emotional needs and that he get the needed help to achieve his full potential.”

On August 27, 2019, following receipt of this letter, and in response to Mother’s requests at the August 12, 2019 IEP team meeting, Colton provided Student with a prior written notice letter pursuant to title 34 Code of Federal Regulations section 300.503. The letter noted that Colton provided Mother with a tour of four special day classes, and Mother cancelled a follow-up IEP team meeting to further discuss Student’s placement. Colton provided a proposed IEP addendum which offered special education transportation for Student due to anxiety experienced on the general education bus, as reported by Mother. Additional accommodations included scheduled check-ins with a “trusted adult” and development of a nonverbal sign to indicate a need for assistance. The proposed IEP also included a new goal to assist Student with his anxiety and attendance. Mother did not respond to this letter, as requested by Colton.

On September 6, 2019, Colton sent another prior written notice letter to Mother requesting her response to the proposed August 2019 IEP addendum. The letter noted Student left school early on August 22, 2019, and failed to attend school since that date. Mother initially informed Colton that Student’s absence was due to strep throat, but later informed Colton that Student’s absence was due to increased anxiety. Colton offered to hold another IEP team meeting to discuss Student’s absences and anxiety, and provided three dates for the meeting. The parties reconvened for the IEP team meeting on September 16, 2019.

At hearing, Mother presented a letter from Dr. Chand, dated October 28, 2019. This letter repeated much of the information contained in his August 19, 2019 letter, with the following addition. "Due to the trauma Student suffered at school, at times he has been unable to attend school. Perhaps a different learning environment designed for special needs students, where the student-teacher ratio is low, may be more suitable to his needs. It is quite likely that a private school that specifically addresses the needs of students like him may be a better option than a regular public school. If you have any further questions, please feel free to contact me." Dr. Chand's letters provided little credible significance. Student provided no information regarding Dr. Chand's professional credentials. He did not testify at hearing, or provide any supporting information. The information contained in the letters was based upon information provided to him by Mother and Student. He made no direct contact with Colton, Student's teachers, or service providers, and exhibited minimal knowledge of special education and related services.

Between January 31, 2019, and October 14, 2019, Mother provided Colton with a series of ten medical excuses for extended periods of time ranging from one day to two weeks. These letters, submitted by Mother, were provided by California Medical Behavioral Health, a private agency, and written on behalf of Yashwant Chaudhri, M.D., Ph.D. None of the letters were signed by Dr. Chaudhri, but appear to have been written by staff members and nurse practitioners. None of the medical excuses explained why Student could not attend school. No one from California Medical Behavioral Health, including Dr. Chaudhri, testified during the hearing.

Robert Pearson, Colton's director of pupil personnel services, testified at hearing. Mr. Pearson contacted Dr. Chaudhri's office on several occasions in an attempt to obtain medical and/or mental health information to support Mother's continuing request for home-hospital instruction. Dr. Chaudhri did not respond to Mr. Pearson.

On October 25, 2019, Mr. Pearson finally spoke to Chrystanya Adeniji, a nurse practitioner in Dr. Chaudhri's office, who had signed several of Student's medical excuses. Ms. Adeniji signed the notes on Dr. Chaudhri's behalf, and indicated their primary concern was Student's ability to attend school due to his anxiety. In her conversation with Mr. Pearson, Ms. Adeniji reported that she and Dr. Chaudhri were unaware of Student's IEP and the services offered by Colton. They were surprised as Mother had led them to believe Student received no services from Colton. Dr. Chaudhri agreed Student did not require home-hospital instruction if the services offered by Colton were in place. Student did not require a non-public school. No one from California Medical Behavioral Health testified at hearing. While Mr. Pearson's testimony relayed hearsay, it indicated no supporting information was presented to Colton to support Student's need to remain on home-hospital instruction or attend school in a more restrictive environment.

On September 25, 2019, Mother obtained an autism assessment from Gunn Psychological Services, conducted by Glenda Ramos, Psy.D. Mother presented Dr. Ramos' written assessment report, dated October 17, 2019, at the hearing. This assessment took place after the September 16, 2019 IEP team meeting and was not presented to the IEP team. Dr. Ramos did not testify at hearing. As a result, the assessment report and Dr. Ramos' findings are of little relevance to the issues in this matter.

On its face, it appears Dr. Ramos conducted a comprehensive autism assessment of Student which focused on autism as it related to services sought through medical insurance or through the regional center. All information presented in the assessment report came from Student and Mother. No information was obtained from Colton, and none of Student's teachers or service providers were interviewed or asked to complete ratings scales, which were part of several of the assessments administered. It is noted by the ALJ, however, that on the Autism Diagnostic Observation Schedule and the Adaptive Behavior Assessment System assessments, conducted by both Dr. Ramos and Ms. Kalberg, the findings of each assessor were similar. While Dr. Ramos made a clinical determination of autism, she did not determine or conclude Student qualified for special education or related services under the category of autism. While Dr. Ramos made suggestions for accommodations and strategies for use in the school setting, these recommendations were generic in nature, most of which had already been incorporated into Student's IEP.

## LEGAL CONCLUSIONS

### INTRODUCTION – USE OF LEGAL CONCEPTS THROUGHOUT THE DECISION

In the discussion herein, unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below. All references in this discussion to the Code of Federal Regulations are to the 2006 version.

### Legal Framework Under the Individuals with Disabilities Education Act

This hearing was held under the Individuals with Disabilities Education Act, or IDEA, its regulations, and California statutes and regulations intended to implement it. (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 Individuals with Disabilities Education Act is often referred to as the "IDEA." The main purposes of the IDEA are:

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

A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "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 general, an IEP is a written statement that is developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, needs, and academic and functional goals related to those needs. It also provides a statement of the special education; related services, which include transportation and other supportive services; and program modifications and

accommodations that will be provided for the child to work towards the stated goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (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, 300.39 Cal. Code Regs., tit. 5, § 3001, subd. (p).)

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

The Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.* (March 22, 2017) 580 U.S. \_\_ [137 S.Ct. 988] (*Endrew F.*). In *Endrew F.*, the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstances.” “[E]very child should have a chance to meet challenging objectives.” (*Ibid.*) *Endrew F.* explained that “[t]his standard is markedly more demanding than the ‘merely more than de minimis’ test . . . . [¶] . . . The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in

*Endrew F.*, as the Court was “[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court’s analysis in that case.” (*Id.* at p. 1001.) The Court noted that “[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

To assist courts and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947 (*Mercer Island*)). “First, has the State complied with the procedures set forth in the Act? Second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” (*Rowley*, *supra*, 458 U.S. at pp. 206-207.) “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” (*Id.* at p. 207.)

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, 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Colton requested the hearing in this matter. Colton has the burden of proof on all issues.

#### ISSUE 1: APPROPRIATENESS OF ASSESSMENTS

Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child in all areas of suspected disability. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) The school district must assess a student in all areas, including, *if appropriate*, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).)

A reassessment of the pupil shall be conducted if the local educational agency determines that the educational or related service needs, including improved academic and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teachers request a reassessment. (Ed. Code., § 56381 subd. (a)(1).) A reassessment shall occur not more frequently than once a year, and shall occur at least every three years, unless the parent and the local educational agency agree, in writing, that a reassessment is unnecessary. (Ed. Code § 56381, subd. (a)(2).)

In conducting an assessment, a school district must follow statutory guidelines that prescribe both the content of the assessment and the qualifications of the assessor or assessors. The district must select and administer assessment materials in the

student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must also be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent district personnel must administer special education assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.)

In performing an assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student, and to decide whether modifications or additions in the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).) In performing an assessment, an educational agency cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability and in preparing the appropriate educational plan for the pupil. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).) Persons who conduct assessments shall prepare a written report, as appropriate, of the results of each assessment. (Ed. Code, § 56327.)

Colton contends Student's triennial assessments were appropriate and complied with state and federal law. Student disagreed with Colton's psychoeducational, academic, and speech and language assessments and requested IEE's in those areas.

#### PARENTS' REQUEST FOR AN IEE

On May 28, 2019, Parent disagreed with Colton's assessments and requested that Colton fund an IEE.

When a parent disagrees with a school district's assessment, he or she may request an IEE at public expense. The school district must either provide the independent educational evaluation at public expense, or initiate a due process hearing without unnecessary delay. (34 C.F.R. § 300.502(b).)

On June 26, 2019, Colton sent Parent a prior written notice that it would not fund their requested IEE. On September 4, 2019, Colton filed a complaint for due process to defend its assessments.

Colton's complaint was filed without unnecessary delay. Therefore, the issue at hand is whether Colton's assessments met legal requirements.

#### April 9, 2019 Psychoeducational Assessment

Colton's psychoeducational assessments were administered by qualified school psychologists. Both Ms. Kalberg and Ms. De Santis were credentialed school psychologists. Ms. De Santis was bilingual and assisted Mother with Spanish language translations of assessment tools. Ms. Kalberg utilized a variety of assessment tools, including a records review, observations, interviews, information provided by Mother, and numerous standardized assessments. The assessment tools sought information which comported with Student's areas of known and suspected disabilities. The

assessment tools were not racially, culturally, or sexually discriminatory. In areas where Student's subtest scores indicated discrepancies, Ms. Kalberg conducted additional assessments. No evidence was presented to suggest the assessments or their resulting scores were invalid.

Mother's objection to the April 9, 2019 psychoeducational assessment arose from her belief Colton failed to assess Student for autism. This contention was unfounded. Ms. Kalberg assessed Student's behavioral functioning and utilized the Autism Diagnostic Observation Schedule and the Adaptive Behavior Assessment System, both of which specifically addressed autism and sensory-seeking behaviors. In conjunction with the psychoeducational assessment, as part of Colton's speech and language assessment, Ms. Cabrera utilized the Social Language Development Test and the Comprehensive Assessment of Spoken Language, which addressed Mother's autism concerns.

Mother presented no evidence to suggest Colton's psychoeducational assessment was inappropriate or failed to assess Student in all areas of suspected disability, including in the area of autism. Mother simply disagreed with the assessment's conclusions. While Student may have exhibited some behaviors associated with autism, Ms. Kalberg's assessment report appropriately considered the statutory criteria of the relevant special education eligibility categories, and applied Student's results to each. Mother's last-minute presentation of Dr. Ramos's autism assessment did not invalidate Colton's psychoeducational assessment. Even if Dr. Ramos's assessment report had been presented to Colton in a timely fashion, the assessment results did not discredit Ms. Kalberg's assessments. Colton's assessments targeted Student's education needs, Dr. Santos's assessment did not. The April 9, 2019 psychoeducational assessment was appropriate and met all statutory requirements.

### March 11, 2019 Academic Assessment

Mr. Griffith is an experienced and credentialed teacher, qualified to assess Student in academic areas. As with the psychoeducational assessment, Mr. Griffith administered the academic assessments in compliance with statutory requirements. Mr. Griffith interviewed Student, observed him during testing, and administered relevant academic assessment subtests to determine Student's skills and academic functioning in reading, math, writing, and oral language. Mr. Griffith reported the assessment results as valid. Student presented no evidence to suggest the academic assessment was inappropriate or inaccurate. Instead, Mother's objection to the academic assessment arose from her disagreement with Colton's offer of placement in a general education setting, which she considered too stressful for Student. Colton's academic assessment was appropriate and complied with statutory requirements.

### April 8, 2019 Speech and Language Assessment

Ms. Cabrera and Ms. Padilla were both credentialed speech and language pathologists. Ms. Cabrera also possessed extensive experience working with children with autism spectrum disorders. Ms. Cabrera utilized a variety of assessment tools and gathered relevant information regarding Student. The assessment materials were appropriately administered and were not racially, culturally, or sexually discriminatory, and were normed to Student's age. Ms. Cabrera's assessments complied with each statutory requirement.

The speech and language assessment was thorough and comprehensive. Student's speech and language deficits were significant. Ms. Cabrera determined Student continued to qualify for speech and language services due to his articulation difficulties and stuttering. She assessed Student's expressive, responsive, and pragmatic

language skills. Several of these assessments specifically addressed Mother's concerns regarding autism. Student's assessment results did not support an eligibility of autism. Ms. Cabrera, however, determined that Student's language scores supported additional speech and language services for social language and pragmatics, and her assessment report recommended additional goals and service time to address these areas. Student presented no evidence to suggest the speech and language assessment was inappropriate or invalid. Colton's speech and language assessment was appropriate and met statutory requirements

An IEE is an evaluation conducted by a qualified assessor who is not employed the school district responsible for the student's education. Under certain conditions, a student is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329.]

Colton sufficiently demonstrated that its psychoeducational assessment, academic assessment, and speech and language assessment were appropriate. Student is not entitled to IEEs at public expense.

## ISSUE 2: 2019 TRIENNIAL IEP AND OFFER OF FAPE

Colton in the its 2019 triennial IEP offered Student a FAPE in the least restrictive environment.

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. This statement describes the child's needs, and academic and functional goals related to those needs. It also provides a statement of the special education,

related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers.

The annual IEP team meeting shall review the student's IEP to determine whether the annual goals for the student are being achieved, and revise the IEP program as appropriate, to address, among other matters, the following:

1. a lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;
2. the results of any reassessment;
3. information about the student provided to or by the parents;
4. the student's anticipated needs; and
5. any other relevant matters.

(Ed. Code, § 56341.1, subd. (d)(1)(2)(3)(4)(5).)

Each meeting to develop, review, or revise the IEP of a student shall be conducted by an IEP team. The IEP team must include:

1. one or both of a student's parents;
2. no less than one general education teacher;
3. no less than one special education teacher or, if appropriate, a special education provider of the student;
4. a representative of the district who is qualified to provide or supervise specially designed instruction, and who is knowledgeable about the general education curriculum and the availability of district resources;
5. an individual who can interpret the instructional implications of assessment results; and

6. the student, if appropriate.

(20 U.S.C. §1414(d)(1)(B); Ed. Code, § 56341(b).)

The triennial IEP team meetings complied with procedural requirements. All required members of the IEP team attended each meeting. The IEP team reviewed Student's triennial assessments which were presented by each assessor. The IEP team discussed Student's academic, social-emotional, and mental health needs, and appropriately determined Student's categories of eligibility for special education and related services. The IEP team discussed Student's progress on goals, and present levels or benchmarks in developing new goals. Mother provided significant input, which was addressed by IEP team members. The IEP team developed goals, offered services to meet those goals, and created accommodations to support Student's educational needs.

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, 1501, abrogated in part on other grounds by *Schaffer v. Weast, supra*, 546 U.S. at pp. 56-58.) In addition, educational needs include functional performance. (20 U.S.C. § 1414 (d)(1)(A)(i)(I); Ed. Code § 56345, subd. (a)(1).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child'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 (*San Diego*).)

The IEP must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee* (1st Cir. 1993) 998 F.2d 1083, 1089.) A school district is required to provide educational instruction specially designed to meet the unique needs of a child with a disability, supported by such

services as are necessary to permit the child to benefit from the instruction. (*Rowley, supra*, 458 U.S. 176, 188-189; *Endrew F., supra*, 137 S.Ct. 988, 997-1002; *San Diego, supra*, 93 F.3d at p. 1468.)

An annual IEP must contain a statement of measurable annual goals designed to meet the individual's needs that result from the individual's disability, to enable the pupil to be involved in and make progress in the general curriculum; and meet each of the pupil's other educational needs that result from the individual's disability. (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).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

Based upon assessments and available information regarding Student, the IEP team carefully and logically determined Student's areas of unique needs, and created goals to address each area of need. Mr. Griffith created academic goals for reading comprehension, math, and writing. Ms. Cabrera developed an articulation goal for Student. She created an expressive language goal and two social language/pragmatics goals to further develop Student's language skills. A vocational goal was created to support Student's individualized transition plan. The IEP team created a social-emotional goal to address Student's anxiety. Each goal was appropriately constructed and understandable. Each goal was designed to be completed over a year's period of time.

Each goal was supported by a corresponding service. The IEP team provided a resource class to provide specialized academic instruction. Speech and language service was increased by 30 minutes per week to accommodate an additional goal and group

therapy. Although Mother requested additional speech and language services, she provided no explanation why more than two hours per week of therapy was needed, nor what benefit she expected from additional support. Student's only evidence regarding the speech and language service were the undisputed facts that Student was self-conscious of his stutter, and he became stressed when required to speak in class. From this, Mother broadly asserted that additional services would cure Student's articulation problems and lessen his stress when speaking to others. Student's assumptions were unpersuasive.

The IEP team carefully considered Student's anxiety and mental health. Numerous school psychologists and the educationally related mental health counselors participated in the IEP team meeting. The IEP team continued to provide Student a modified class schedule, which included home-hospital instruction. Safeguards were set up to assist Student in transition back to the high school setting. Although considered unnecessary, the IEP team continued Student's SCIA support for the remainder of the school year. Accommodations were created to support Student both academically and emotionally. Mother agreed with the social-emotional goal and counseling.

#### Offer of FAPE

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. (*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 disabled pupil to constitute a FAPE under the IDEA, a school district's offer 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.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. "An IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir.1993) 993 F.2d 1031, 1041.)

Colton's offer of FAPE was designed to fade out Student's modified program by the end of the 2018-2019 school year. For the 2019-2020 school year, Colton offered Student placement in the general education classroom at Grand Terrace for 83 percent of the school day, with 17 percent of the school day outside the regular classroom for specialized academic instruction and pull-out services.

The nine goals corresponded to Student's areas of identified needs, and were designed to support Student in accessing the general education curriculum. The corresponding services were sufficient to allow Student to make progress on his goals and benefit from his education. The goals and services could be implemented in the general education setting.

#### Least Restrictive Environment

School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (a)(2); Ed. Code, §§ 56031, 56033.5, 56040.1, subd. (b), 56342, subd. (b).)

A school district is required to have a continuum of program options available for a child. (Ed. Code, § 56360.) The continuum of placement options includes, but is not limited to, regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction; and instruction using telecommunications in the home or hospitals or institutions. (Ed. Code, § 56361.)

Pursuant to least restrictive environment requirements, discussion of the continuum requires consideration of potential placement options to begin with full-time placement in a general education setting, before considering more restrictive options. By legal definition, placements outside of the general education setting are more restrictive placements. Further, the least restrictive environment requires the discussion of the continuum to exhaust possible school district placements before considering non-public schools or residential placement. As a result, school district placements must always be considered before non-district placements. Once an appropriate placement that complies with the least restrictive environment is identified, the IEP team is not required to consider more restrictive placements, even if another option is preferred by the student's parents.

Mother's opposition to the 2019 triennial IEP focused on the offer of placement in the general education setting. Mother remained fixed on the bullying incidents in 2018, which resulted in Student's suicide attempts. Throughout the hearing, Mother returned to the bullying which occurred at Grand Terrace in the general education setting. Mother did not want Student near the general education peers who bullied him. She wanted Student in a smaller, more protected environment. Those concerns, however, had been addressed in Student's prior request for due process complaint. As

of the January 25, 2019 settlement agreement, Mother agreed to allow Student to return to the general education setting on a modified schedule with supports intended to transition him back to school full-time.

While Mother's concerns were understandable, she failed to consider Student's educational needs. Colton provided safeguards for bullying, such as the SCIA, counselling, and accommodations. Student had always been part of the general education setting and accessed grade level curriculum. His return to Grand Terrace was successful. No discernable anxiety was noted by teachers or staff. Student completed his work and made up assignments when absent from class. Student's academic goals were developed at grade level. He was on track for graduation and wanted to attend a four-year college. Placing lesser demands on Student would be contrary to the spirit of *Andrew F.* in which every child should have a chance to meet challenging objectives. Finally, there was no evidence that Student was bullied at school following the January 25, 2019 settlement agreement.

The IEP team discussed a continuum of placements for Student, which included Mother's requested placements of either a special day class or home-hospital instruction. Both of these placements consisted of more restrictive environments for Student. The special day class was inappropriate for a student who exhibited academic success in general education. Consideration of home-hospital instruction was unavailable without substantiation from Student's doctors, which was not provided to the IEP team. (Ed. Code, § 48206.3.)

The IDEA requires that a school district provides a special education student with a program in the least restrictive environment. Removal from the general education environment is allowed only when the nature or severity of the student's disabilities is such that he cannot be educated in a regular classroom with the use of supports and

services. Colton's determination to provide Student placement in the general education setting constituted the least restrictive environment for Student.

Colton's offer of FAPE as contained in the 2019 triennial IEP was reasonable at the time it was developed. It was designed to meet Student's unique needs, comported with his IEP, and was reasonably calculated to provide him with educational benefit in the least restrictive environment. The 2019 triennial IEP constituted a FAPE for Student.

#### AUGUST 12, 2019 IEP

The August 12, 2019 IEP team meeting was convened at the beginning of the school year to discuss Mother's request for home-hospital instruction. Mother reiterated Student's mental health diagnoses and reported Student was in crisis due to anxiety upon his return to Grand Terrace. Because Mother did not consent to the 2019 triennial IEP, Student's placement remained in the modified transitional program. Mother submitted a generic attendance excuse from Student's doctor that provided no information regarding the nature of Student's condition, and failed to provide information that would have established a need for home-hospital instruction. No changes in Student's health or other circumstances were provided to the IEP team. Student's teachers reported no difficulties at school. Student successfully completed a summer school program at Grand Terrace. With no new information to suggest a need for change, Colton's offer of FAPE, as contained in the 2019 Triennial Assessment, remained appropriate.

#### SEPTEMBER 16, 2019 IEP

Colton convened the September 16, 2019 IEP team meeting to discuss Mother's concerns regarding placement, goals, and services as well as Student's dramatic decline

in school attendance. The IEP team met all procedural requirements for the meeting. Mother attended with the assistance of an advocate.

Mother contended Student was overwhelmed on the comprehensive high school campus. The general education classroom was now too large for Student. As a result, Mother continued to provide Colton with generic attendance excuses for larger periods of time. Mother's request for placement in a non-public school was not supported by any information presented to the IEP team. Nor could Mother or her advocate identify a non-public school which they believed would appropriately support Student.

Once again, the IEP team was left in a void as to Student's current medical and mental health status which might assist the team in reevaluating Student's placement. Mother failed to provide the IEP team with any new information. She reluctantly consented to a release of Student's mental health records, but refused consent to a release of medical information. This information was crucial for the IEP team's consideration of Mother's request for a more restrictive placement. Colton staff attempted to obtain necessary information from Dr. Chaudhri and Dr. Chand. Both doctors remained unavailable and non-responsive to inquiries.

The IEP team discussed the option of non-public school placement and determined Student's disabilities and educational needs, as known to them at the time, would not be well-served in a significantly more restrictive environment. The IEP team briefly discussed the option of a special day class, but determined it would limit Student's access to core classes needed for college. The IEP team renewed its offer to transfer Student to another high school or provide him with an independent study program. Based upon information known at the time, Student remained a general education student performing at grade level. Any further restriction on his placement would constitute a violation of the least restrictive environment mandate.

Nevertheless, the IEP team seriously considered Student's anxiety and stress as an antecedent to his failure to attend school. In response to those concerns, the IEP team amended the offer of FAPE to include an increase in Student's counseling and provide Student and his family with social worker services. Dedicated SCIA services were added. The IEP team created an additional social-emotional goal to allow Student to practice coping skills to lower his anxiety. Accommodations providing for a trusted adult and access to school counselors and staff were created. A non-verbal cue was offered to alert staff when Student needed assistance. All of these amendments were based upon Mother's representations of Student's anxiety and stress at school. Colton offered the amendments to the IEP to address Student's increasing social-emotional and mental health needs. They were reasonably calculated to provide Student with educational benefit. The amendments could be implemented in the general education placement, which continued to constitute the least restrictive environment. The September 16, 2019 addendum IEP constituted a FAPE.

## ORDER

1. Colton Unified School District's April 9, 2019 psycho-educational assessment, March 11, 2019 academic assessment, and April 8, 2019 speech and language assessment were appropriate and each complied with state and federal law. Student is not entitled to individualized educational evaluations at public expense.

2. Colton Unified School District's April 9, 2019 IEP, further developed on May 28, 2019, and amended on August 12, 2019, and September 16, 2019, offered Student a FAPE in the least restrictive environment. Colton may implement the April 9, 2019, as amended, without parental consent if Student seeks special education and related services from Colton.

## 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. Here, Colton prevailed on both issues.

## RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: January 15, 2020

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Judith Pasewark  
Administrative Law Judge  
Office of Administrative Hearings