

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ALHAMBRA UNIFIED SCHOOL DISTRICT,

v.

PARENT, ON BEHALF OF STUDENT.

OAH Case No. 2018070497

<sup>1</sup>CORRECTED DECISION

Alhambra Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on July 11, 2018, naming Parent on behalf of Student. OAH granted a continuance of the matter for good cause on July 26, 2018.

Administrative Law Judge Tara Doss heard this matter in Alhambra, California, on September 4, 5, and 6, 2018. Sharon Watt, Attorney at Law, represented Alhambra. Patricia Mahony, Alhambra's Director of Secondary Special Education, appeared on behalf of Alhambra on all days of hearing. Mother did not appear on the first day of hearing. Mother appeared during the morning of the second day of hearing. Mother appeared during the full third day of hearing.<sup>2</sup> Student did not attend the hearing.

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<sup>1</sup> The decision is corrected only to include paragraph numbers. No other changes have been made.

<sup>2</sup> During the prehearing conference on August 27, 2018, Mother notified the ALJ and Alhambra's counsel that she may not be available to appear for the entirety of the hearing due to work obligations. Mother further indicated she did not want to request a

At the parties' request, OAH granted a continuance to September 24, 2018, to allow the parties to file written closing briefs. On September 24, 2018, the parties timely filed their written closing briefs, the record was closed, and the matter submitted for decision.

## ISSUE

1. Did Alhambra offer Student a free appropriate public education for the 2018-2019 school year, in the individualized education programs developed on February 5, March 22, and May 22, 2018, such that Alhambra may implement the IEP's without parental consent?

## SUMMARY OF DECISION

Alhambra proved it offered Student a FAPE for the 2018-2019 school year in the February 5, March 22, and May 22, 2018 IEP's. The IEP's complied with the procedural requirements of the Individuals with Disabilities Education Act, with the exception of Alhambra's offer of speech and language therapy and adapted physical education services. However, Alhambra's procedural errors did not result in a denial of FAPE to Student. Additionally, Alhambra's offer of special education placement, supports, and services were designed to meet Student's unique needs, comported with Student's IEP, and were reasonably calculated to provide Student with educational benefit in the least restrictive environment. As such, Alhambra may implement the February 5, March 22,

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continuance of the hearing and instead, wanted the hearing to continue as scheduled. Mother requested the hearing be open to the public so that a friend could attend and audio record the hearing in Mother's absence. Alhambra did not object to Mother's friend audio recording the hearing. Mother's friend attended and audio recorded the hearing during the entire first day and the afternoon of the second day.

and May 22, 2018 IEP's without parental consent, if Student continues enrollment within Alhambra for the 2018-2019 school year.

## FACTUAL FINDINGS

1. Student was 14 years old and in the ninth grade at the time of hearing. Student resided with Parents within the Alhambra boundaries at all relevant times. Student was diagnosed with Down syndrome at birth and initially qualified for special education at three years old under the category of intellectual disability. Student's disability has resulted in significant global delays across all aspects of her functioning levels.

2. Garvey School District was Student's district of residence from preschool through eighth grade. Garvey serves students only through eighth grade, so Alhambra became Student's district of residence beginning in ninth grade during the 2018-2019 school year. From preschool through third grade, Student attended a special day class program for students with mild to moderate disabilities at Bitely Elementary School in Garvey. From fourth grade through eighth grade, Student attended a special day class program for students with moderate to severe disabilities at Fremont Elementary School within Alhambra.<sup>3</sup> At the time of hearing, Student attended a special day class program for students with moderate to severe disabilities at Mark Keppel High School within Alhambra, with assistance from a one-to-one aide throughout the school day. Student also received speech and language therapy, occupational therapy, assistive technology support, and adapted physical education.

3. Student is a nonverbal communicator. She communicates through a

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<sup>3</sup> Garvey remained Student's district of residence but Student attended Alhambra's program because Garvey did not have a special day class program for students with moderate to severe disabilities.

combination of gestures, signs and sign approximations, vocal sounds, picture icons, and voice output devices.<sup>4</sup> Beginning in February 2017, Garvey loaned Student an iPad with Proloquo2Go software to use as a voice output communication device.

Proloquo2Go is a grid-based software program containing rows and columns of different icons that can be loaded onto an iPad or similar device. Student touches the icons to navigate to different pages and to activate a digitized vocal response from the iPad. Through use of the communication device Student has the ability to indicate her wants and needs. Student requires adult support and verbal prompting to use the iPad effectively for communication.

## 2016-2017 TRIENNIAL ASSESSMENTS

4. During the 2016-2017 school year, as part of Student's triennial review, Alhambra and Garvey conducted psychoeducational, speech and language, and occupational therapy assessments of Student. The psychoeducational assessment report was issued on February 6, 2017, by Alhambra school psychologist Claudia Bahamonde. Ms. Bahamonde held a bachelor's and master's degree in psychology and was a licensed educational psychologist. At the time of hearing, Ms. Bahamonde had been a school psychologist with Alhambra for approximately 18 years and conducted approximately 50 psychoeducational assessments each year.

5. The assessment revealed Student was functioning independently in the 12 to 18 month range, with splinter skills in the 18 to 24 month and two to four year range. On the Southern California Ordinal Scales of Development, Student was able to complete 100 percent of tasks in the 12 to 18 month range, 70 percent of tasks in the 18 to 24 month range, and 29 percent of tasks in the two to four year range. These scores

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<sup>4</sup> "Signs" and "sign approximations" as used throughout this Decision refer to Student's use of American Sign Language to communicate.

were an accurate reflection of Student's developmental levels.

6. Mother was concerned that Student may also qualify for special education under the category of Autism. Ms. Bahamonde administered the Gilliam Autism Rating Scale-Third Edition to address Mother's concern. As part of the Gilliam, Student's teacher, Ray Crummitt, completed a questionnaire to determine the likelihood of Student having autism spectrum disorder. Mr. Crummitt's scores revealed the probability of Student having Autism was "very likely." However, Mr. Crummitt noted that many of the reported behaviors were also consistent with characteristics of an intellectual disability, and that Student did not engage in any repetitive or stereotyped behaviors, or have difficulty with emotional regulation, which are often traits seen in children with Autism.

7. Based on data obtained from Mother and Mr. Crummitt, all areas of Student's adaptive functioning were in the extremely low range, including communication, academics, social skills, and self-care. Overall, Student's intellectual functioning fell within the severely delayed range of intellectual disability. Ms. Bahamonde's report concluded Student met criteria to receive special education services as a student with an intellectual disability.

8. At hearing, Ms. Bahamonde explained that developmentally, Student was performing in the pre-symbolic range with emerging skills in the symbolic range. In the pre-symbolic range, Student did not consistently understand that one thing can represent something else. For instance, Student did not understand that two different pictures of cats both represented cats. Consequently, Student relied on different modalities and all of her senses to understand the world around her.

9. The speech and language assessment report was issued on February 6, 2017, by Alhambra speech language pathologist Maria Rubalcaba. Ms. Rubalcaba held a bachelor's and master's degree in communicative disorders, as well as a certificate of

clinical competence in speech language pathology from the American Speech Language Hearing Association. At the time of hearing, she had been a speech language pathologist with Alhambra for approximately 18 years.

10. The assessment revealed severe delays in speech, and receptive and expressive language. Expressively, Student was primarily a nonverbal communicator, but also used gestures, sign language and sign approximations, limited eye gaze, and augmentative or alternative communication. Receptively, Student's understanding of spoken language was at the short phrase and single sentence level. Student required significant repetition, prompting, and modeling to successfully complete tasks. Overall, Student's language abilities were consistent at the 18 to 24 month range with emerging skills in the 36 to 48 month range.

11. The occupational therapy assessment report was conducted in December 2016, by Garvey occupational therapist Marina Toranian. Ms. Toranian held a master's degree in occupational therapy and was a licensed occupational therapist in California. At the time of the assessment, Ms. Toranian had been an occupational therapist with Garvey for approximately two years. During the assessment, Student navigated the classroom, but was easily distracted, and had difficulty tolerating some sounds. Student demonstrated two-hand coordination when cutting, stringing beads, carrying a lunch tray, and opening a water bottle. Overall, Ms. Toranian concluded Student did not exhibit sensory seeking behaviors. Ms. Toranian did not assess Student's ability to button/unbutton or zip/unzip because she determined these were not school-related skills. Ms. Toranian did not assess Student's ability to open containers because Student had a one-to-one aide who performed this task. Ms. Toranian recommended continued occupational therapy services to work on Student's typing, writing/tracing, and visual motor skills.

## 2017 TRIENNIAL IEP

12. Garvey convened Student's triennial IEP team meeting over the course of three meetings on March 10, April 28, and May 22, 2017, to review the assessment reports, progress towards previous goals, draft new goals, and make an offer of FAPE. In attendance at all three meetings were Mother, a Garvey program specialist, Mr. Crummitt, Ms. Bahamonde, Ms. Rubalcaba, Ms. Toranian, augmentative and alternative communication specialist Myrna Ramirez, and adapted physical education teacher Roger Palomino. Also in attendance at the March 10 meeting were Alhambra instructional specialist Cathleen Wu, a school nurse, and Student's home applied behavior analysis therapist. Ms. Wu also attended the May 22 meeting. Academically, Student made progress and met six of eight functional academic IEP goals. She followed the classroom routine with minimal assistance and participated in whole and small group activities. Receptively, she identified letters, animals, school objects, food items, 9 colors, simple shapes, and some community signs. Student did not meet any of her four speech and language goals, including combining three or more signs or sign approximations to form phrases, following two-step verbal directions, imitating speech sounds, or using 15 new manual signs. Student used her communication device to make simple requests (e.g. "I want...") with prompting from her one-to-one aide and would occasionally generate spontaneous responses (e.g. "all done").

13. Behaviorally, Student was playful with a good sense of humor. She was friendly with other students but often preferred to play alone. She stayed on task for up to 20 minutes depending on motivation and cared for most of her self-care needs independently. Student met one of two of her occupational therapy goals. She improved her hand grip but was still working towards her self-regulation goal. She completed two-step activities with prompting, but was not yet able to complete three-step motor activities.

14. The team drafted 12 new goals. Goal 1 was in writing and involved Student copying 10 simple sentences using a keyboard. Goal 2 was in craft/structure and involved Student matching 10 word icons with the corresponding picture icon. Goal 3 was in numbers and involved Student grouping objects by attribute (e.g. color, size, shape). Goal 4 involved Student putting objects away in the right place when finished using them. Goal 5 involved Student using her communication device to select a preferred activity during free time.

15. Goals six through nine were in functional semantics. Goal 6 involved Student combining three visual icons to form a short phrase with no more than three prompts during speech sessions. Goal 7 involved Student verbally producing consonant approximations in consonant-vowel or vowel-consonant combinations through imitation or on demand. Goal 8 involved Student using core vocabulary at least 10 times a day through her communication device, picture icons, and signs. Goal 9 involved Student answering "who" questions with a short phrase or sentence, using her communication device, picture icons, and signs.

16. Goal 10 was in adapted physical education and involved Student rolling a ball underhanded toward a target. Goal 11 was also in adapted physical education and involved Student performing 10 sit-ups without assistance. Goal 12 was in occupational therapy and involved Student typing her name, address, and phone number with two to three verbal prompts.

17. Garvey's offer of FAPE included 1544 minutes a week of specialized academic instruction in a special day class program for students with moderate to severe disabilities, 240 minutes a month of individual speech and language therapy, 60 minutes a month of individual occupational therapy, 120 minutes a month of group adapted physical education, 60 minutes a month of individual assistive technology



support, and 1500 minutes a week of intensive individual services from a one-to-one aide.

18. Mother expressed several areas of disagreement with Garvey's proposed placement and services. Mother disagreed with Student's continued placement in a special day class program for students with moderate to severe disabilities and asked to visit classrooms for students with mild to moderate disabilities. Mother also asked that Student be retained in seventh grade and be provided with a behavior aide to help increase her compliance at school. Finally, Mother disagreed with the psychoeducational, speech and language, and occupational therapy assessments and requested independent educational evaluations in each area. Mother did not return the signature page of the IEP until November 29, 2017, when she provided consent with the exception of the assessments; Garvey's refusal to draft a behavior intervention plan, retain Student in seventh grade, and offer a different placement; and her belief that Student required additional occupational therapy goals.

19. On July 12, 2017, Garvey filed a due process complaint to support the appropriateness of the psychoeducational, speech and language, and occupational therapy assessments. OAH designated the matter as OAH Case No. 2017070426. On October 3 and 4, 2017, ALJ Sabrina Kong conducted a due process hearing in the case and issued a decision on November 20, 2017. ALJ Kong determined Ms. Bahamonde's psychoeducational and Ms. Rubalcaba's speech and language assessments were appropriate and Student was not entitled to independent educational evaluations in these areas. ALJ Kong determined Ms. Toranian's occupational therapy assessment was not appropriate because it failed to assess all areas of Student's functional abilities, and that Student was entitled to an independent educational evaluation in occupational therapy.<sup>5</sup>

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<sup>5</sup> Official notice was taken of the decision in OAH Case No. 2017070426 with

## 2017-2018 SCHOOL YEAR

20. Student was in Kandra Pierce's moderate to severe special day class program at Fremont Elementary during the 2017-2018 school year. Ms. Pierce held a special education teaching credential for students with mild to moderate disabilities. She had taught students with moderate to severe disabilities for approximately two years. Prior to that, she taught high school students with mild disabilities for 20 years. Ms. Pierce's class had between 10 and 12 students. For the most part, all of her students were nonverbal and had developmental levels similar to Student's. Ms. Pierce described Student as delightful and always smiling. Student fit well into her class and engaged with peers and classroom activities. Student was never disruptive or upset.

21. Ms. Rubalcaba provided speech and language therapy services to Student in Ms. Pierce's classroom. Ms. Rubalcaba had a designated area in the classroom where she worked with Student individually or in a small group. She typically worked with Student two times a week. Initially, Student showed greater attention span during individual services, but by the end of the school year, she was more motivated to work in a group. During speech sessions, Ms. Rubalcaba relied on visual stimuli, auditory prompting and cueing, and tactile prompting and cueing to increase Student's communication levels. At hearing, Ms. Rubalcaba expressed her opinion that Student's speech and language abilities in eighth grade were consistent with the results of the

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respect to the appropriateness of the psychoeducational, speech and language, and occupational therapy assessments conducted during the 2016-2017 school year. ALJ Kong's decision is binding on the parties until such time that it is overturned. Thus, this Decision does not include an analysis of whether the assessments were appropriate. At hearing, Mother indicated she still disagreed with the psychoeducational and speech and language assessments and had appealed ALJ Kong's decision.

2017 speech and language assessment, which placed her at a 18 to 24 month developmental level.

22. Ms. Ramirez provided assistive technology support services to Student, Student's one-to-one aide, and to Ms. Pierce. Ms. Ramirez held a bachelor's degree in communicative disorders and a master's degree in speech and language pathology. She had worked as a speech language pathologist for Alhambra for approximately 17 years and as an assistive technology/augmentative and alternative communication specialist for approximately two years. Ms. Ramirez began working with Student during the 2016-2017 school year, and provided training on how to use the Proloquo2Go software system on the iPad. She was also responsible for updating the iPad, creating new vocabulary pages, and communicating with Mother. Ms. Ramirez observed Student enjoying the iPad and using the device to make requests and label objects. The display screen was set up to allow Student to put together simple phrases such as "I want...cookie" but Student required verbal and gestural prompts in order to produce a two button message.

23. Garvey convened Student's annual IEP team meeting over the course of three meetings held on February 5, March 22, and May 22, 2018. During the February 5, 2018 meeting, the team discussed Student's strengths, Mother's concerns, Student's present levels and proposed annual goals in academics, speech and language, occupational therapy, and adapted physical education. The team relied on the results of the 2017 triennial assessments to inform them on Student's developmental level and abilities. In attendance at the meeting were Mother, Ms. Bahamonde, Ms. Toranian, Ms. Rubalcaba, Ms. Ramirez, Ms. Pierce, an adapted physical education teacher, and an administrative designee. Garvey presented Mother with information regarding her parental rights and procedural safeguards.

24. Ms. Pierce reviewed Student's pre-academic and functional skills. Overall, Student made progress. She followed the class routine and participated in whole and small group lessons with minimal assistance. Consistent with the 2017 triennial IEP, she identified letters, numbers up to 12, school objects, food items, nine colors, simple shapes, and some community signs. Student met two academic goals and made partial progress on three academic goals. Student exceeded the goal of matching 10 picture icons to corresponding word icons and was able to match 20 words. Student communicated a preferred activity during free time using her communication device. Student copied 10 written sentence strips using a keyboard, although not yet with appropriate spacing or without numerous prompts. Student sorted objects by color and shape, but not by size. Student picked up and put away objects after playing with them, but not in a timely manner or without numerous prompts.

25. Ms. Rubalcaba reviewed Student's communication skills. Student made some progress, and met two of four speech goals. She combined three visual communication icons/pictures to form a short phrase during speech sessions; and she used functional vocabulary at least 10 times a day, using her communication device, picture icons, and/or signs. Student was unable to produce consonant sounds or close approximations in consonant-vowel or vowel-consonant combinations. She was unable to answer simple comprehension questions with her communication device, picture icons, and/or signs with 70 percent accuracy but completed the skills with 60 to 65 percent accuracy, with prompting and repetition. Mother expressed concern that Student was not yet speaking.

26. Ms. Toranian reviewed Student's fine motor progress. Student met her occupational therapy goal of using a keyboard to type her name, address, and phone number with a visual model strip; however, she continued to show inconsistency with paper and pencil tasks. In adapted physical education, Student met both goals of rolling

a ball underhanded and completing 10 sit-ups; and fully participated in the class with assistance from her one-to-one aide.

27. Behaviorally, Student was well-behaved and respectful towards adult authority. She got along well with peers and adults. Occasionally, Student acted “silly” and needed redirection, but she followed one step directions and stayed on task for up to 30 minutes with aide assistance. Student continued to care for most of her daily living needs on her own or with minimum assistance, such as feeding herself, toileting, and navigating the campus.

28. The IEP team drafted 14 new annual goals. The progress on all goals would be measured by staff observation and/or data collection. Goal 1 was in reading and involved Student, with verbal prompting, giving or pointing to an unfamiliar item when presented with familiar and unfamiliar items, for 20 new words, in four of five opportunities over five trial days. Goal 2 was in writing and involved Student, with gestural and verbal prompts, using her communication device to select a claim about the day (e.g. “I will have a good day”) from a field of three claims, in four of five opportunities over five trial days. Goal 3 was in math and involved Student using her communication device and gestures, with two verbal prompts, to select a rational number between 10 and 20 from a field of two, with one being a distractor, in four of five opportunities over five trial days. Goal 4 was also in math and involved Student, with two verbal prompts, grouping objects by attribute (e.g. size and category), four times per attribute with 80 percent accuracy in four of five opportunities. Goal 5 was in daily living skills and involved Student, with verbal and gestural prompts, stirring and mixing ingredients with 85 percent accuracy. Goal 6 related to Student’s access to the community and involved Student, with verbal prompts, recognizing the logo of three preferred restaurants or stores with 85 percent accuracy in four of five trials. Goal 7 was in recreation/leisure and involved Student participating in a game that involved rolling

dice or using a spinner to move forward or backward in four of five opportunities for five trial days.

29. Goals 8 through 11 were in speech and language. Goal 8 involved Student, during speech sessions and with no more than three visual, verbal or physical prompts, combining four visual communication icons, her communication device, and/or sign approximations to form a short phrase, at least four times per speech session for four consecutive sessions. Goal 9 involved Student, with moderate verbal and gestural prompts, answering basic functional comprehension questions (e.g. who, what, where, etc.) through verbal expression and the use of visual communication icons, her communication device, and sign approximations to form a short phrase and/or single sentence with 60 percent accuracy for four consecutive sessions. Goal 10 involved Student, with no more than three visual, verbal or physical prompts, initiating communication to engage in social interactions and asking for assistance utilizing her visual/augmented systems, icons, signs, sign approximations, at least four times per speech session for four consecutive sessions. Goal 11 involved Student, with moderate prompting, pairing verbalizations with other means of communication such as her communication device and sign approximations, consonants or close approximations, at least four times per session for one week, through imitation or on demand.

30. Goal 12 was in adapted physical education and involved Student, with no more than five prompts, actively participating in small or large group activities during class, 80 percent of the time. Goal 13 was also in adapted physical education and involved Student, with verbal prompting and visual demonstration, kicking a gently rolled ball towards a target at a distance of 10 feet, in three of four trials. Goal 14 was in occupational therapy and involved Student, with three to four verbal prompts, typing five to seven lines using a visual model, in four of five opportunities.

31. During the meeting, Mother expressed disagreement with Student's use of pictures or icons for expressive communication. Instead, Mother wanted Student to only use her communication device and sign language. Garvey and Alhambra team members discussed at length the importance of Student using a multimodal communication system that included gestures, sign approximations, vocalizations, pictures and a voice output device. The team further discussed how the use of pictures or icons were used throughout the classroom curriculum and could increase Student's ability to use her communication device.

32. Mother also had questions regarding the proposed adapted physical education goals and inquired as to whether additional occupational therapy goals would be developed. The adapted physical education teacher who drafted the goals was not present to respond to Mother's questions, but the team assured her they would be answered in the continuation IEP team meeting. The occupational therapist indicated an independent educational evaluation in occupational therapy was in process and would be reviewed once completed. The meeting adjourned due to time constraints of Mother and other team members and a continuation meeting was rescheduled for March 22, 2018.

33. Student's annual IEP reconvened on March 22, 2018, to discuss Student's placement, supports, and services. In attendance at the meeting were Mother, Ms. Bahamonde, Ms. Rubalcaba, Ms. Toranian, Ms. Pierce, Mr. Palomino, a Garvey program specialist, Ms. Wu, Fremont Elementary's school principal, and educational specialist Molly Rearick (invited by Mother).<sup>6</sup> Mother made several requests and expressed various

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<sup>6</sup> Ms. Rearick's role was not clearly identified in the IEP or through witness testimony. For example, it was not specified whether she provided direct service to Student or acted as an advocate for Student/Mother. Ms. Rearick did not testify at hearing.

concerns during the meeting. Mother requested additional adapted physical education goals in participation, catching, hitting a ball, and increasing Student's walking speed. Mr. Palomino responded that Student already had some of these skills, as well as the endurance to access the school environment. Mother again raised her disagreement with Student using picture icons to communicate. Mother believed Student had mastered pointing at pictures to communicate her wants and needs, and that she should instead, be relying on her communication device. Specifically, Mother did not want the use of picture icons incorporated in any of Student's speech and language goals. Garvey and Alhambra team members did not agree with Mother's request because they believed picture icons were an important component of Student's communication. Ms. Rubalcaba explained picture icons were incorporated in Student's use of the communication device and were necessary for her to access the device.

34. Garvey's offer of FAPE for the remainder of the 2017-2018 school year was 1544 minutes a week of specialized academic instruction, 240 minutes a month of individual and group speech and language therapy, 120 minutes a month of group adapted physical education, 60 minutes a month of individual and group occupational therapy, 60 minutes a month of individual assistive technology support, and 1500 minutes a week of intensive individual support from a one-to-one aide. Garvey's offer of FAPE for extended school year 2018 was 1350 minutes of specialized academic instruction, 90 minutes a month of group speech and language therapy, 30 minutes a week of adapted physical education, 60 minutes a month of occupational therapy, 60 minutes a month of assistive technology support, and 1350 minutes a week of intensive individual support from a one-to-one aide. Mother verbally agreed with Garvey's offer of placement and services during the meeting.

35. Next, the team discussed Student's transition to high school. Garvey and Alhambra team members recommended continued placement in a special day class



program for students with moderate to severe disabilities at Mark Keppel. Michael Lee was the teacher of the recommended class at Mark Keppel. Mr. Lee held a special education teaching credential for students with moderate to severe disabilities. He had been a teacher with Alhambra for approximately three years. Prior to teaching, Mr. Lee held positions as a student teacher and paraprofessional with another school district, and as a behavior specialist with the Center for Autism and Related Services. Mr. Lee's class includes a combination of functional academic time in language arts and math, recreation time using games and computers, gardening that gives students hands-on experience with the planting and growing process for various food items (e.g. tomatoes, zucchini, and squash), and social skills. All students in Mr. Lee's class receive adapted physical education services. Mr. Lee's class also takes a field trip once a week to expose the students to community-based experiences. The class consisted of eight students, two classroom aides, and four one-to-one aides. Including Mr. Lee, there were seven adults in the classroom.

36. Alhambra's offer of FAPE for the start of the 2018-2019 school year through Student's next annual IEP meeting in February 2019 was 1650 minutes a week of specialized academic instruction in the moderate to severe program at Mark Keppel, 60 minutes a month of individual and group occupational therapy, 60 minutes a month of individual assistive technology support, and 1500 minutes of intensive individual services from a one-to-one aide. The IEP was unclear as to the dates of service, frequency, and duration of speech and language therapy and adapted physical education services offered to Student. With respect to speech and language therapy, one entry on the services page indicated Student would receive 240 minutes a month of group therapy from February 5, 2018 to the end of the 2018-2019 school year. A separate entry indicated Student would receive 120 minutes a month of individual and group therapy from the start of the 2018-2019 school year to February 5, 2019. With

respect to adapted physical education, one entry on the services page indicated Student would receive 120 minutes a month of services from February 5, 2018 to the end of the 2018-2019 school year, and a separate entry indicated she would receive 180 minutes a month of services from the start of the 2018-2019 school year to February 5, 2019. The IEP notes indicated Student would receive 120 minutes a month of individual and group speech and language therapy and 180 minutes a month of adapted physical education services.

37. At hearing, Student's speech language pathologist at Mark Keppel, Susanna Nam, admitted being confused by the discrepancy on the services page. Ms. Nam indicated she had been providing Student 240 minutes a month of individual speech and language therapy since the beginning of the 2018-2019 school year, and was working with Student on the speech and language goals in the IEP. Alhambra did not introduce any other testimony to explain the discrepancy in speech and language therapy minutes. Student's adapted physical education teacher at Mark Keppel did not testify and Alhambra did not introduce any other testimony to explain the discrepancy in service minutes in the IEP.

38. The IEP also offered various classroom supports and accommodations, including but not limited to alternate assessment accommodations, preferential seating, auditory and visual aids, and staff training. Mother expressed disagreement with Student's placement in a program for students with moderate to severe disabilities for high school. Mother asked to observe all mild to moderate and moderate to severe special day class programs available in Alhambra.

39. At hearing, Mother challenged the idea that Student was developmentally in the moderate to severe range. Mother believed Student showed more progress when she was in the mild to moderate program in her early elementary years and that the 2017 psychoeducational and speech and language assessments underestimated her

ability levels. In Mother's opinion, placement in a moderate to severe program was depriving Student of opportunities to socialize. Mother's opinions were based on her personal experience with Student and an assessment conducted by a private psychologist six years earlier that was not introduced into evidence. Mother did not call any experts to testify on Student's behalf and did not introduce any documentary evidence to support her opinions. Additionally, Mother's testimony was not consistent with Alhambra's witnesses or the documentary evidence. Thus, Mother's testimony was not persuasive.

40. After the March 22, 2018 IEP team meeting, Mother contacted Ms. Wu and requested a list of available programs for Student. Mother also requested that Ms. Rearick be allowed to visit the programs on Mother's behalf. On May 8, 2018, Alhambra's Director of Secondary Special Education, Pat Mahony, sent Parents a letter in response to Mother's requests. In the letter, Ms. Mahony denied Mother's request for a list of special education programs, and her request to visit mild to moderate special day class programs. Alhambra believed its offered program at Mark Keppel addressed Student's needs as identified in the 2017 triennial assessments, and was reasonably calculated to confer educational benefit similar to the benefit Student received from the moderate to severe program at Fremont Elementary. In an effort to facilitate placement questions, Ms. Mahony identified Ms. Wu as being able to set up a visit for Mother at Mark Keppel and to schedule an IEP team meeting to further discuss Mother's concerns.

41. Garvey convened another IEP team meeting on May 22, 2018, as a continuation of the February 5, and March 22, 2018 IEP team meetings. In attendance were Mother, Ms. Bahamonde, Ms. Toronian, Mr. Palomino, Ms. Rubalcaba, Ms. Ramirez, Ms. Pierce, Ms. Mahony, a general education teacher, and Garvey's Director of Special Education. Mother indicated she had visited the moderate to severe special day class program at Mark Keppel and did not have any questions. She renewed her request for a

list of all available programs for Student. Ms. Mahony reiterated that Alhambra would not provide a list. Ms. Mahony also reviewed the continuum of placement options with Mother, including general education with support from the resource specialist program, the special day class program for students with mild to moderate disabilities working towards a high school diploma, the special day class program for students with moderate developmental delays who were performing academically at the kindergarten to second grade level, the special day class program for students with moderate to severe disabilities who had developmental levels between 12 and 24 months, with splinter skills up to three years old, and nonpublic school placements. Garvey and Alhambra team members reiterated their recommendation that placement in the moderate to severe program at Mark Keppel was appropriate for Student based on her developmental level and academic/functional needs. Ms. Mahony reviewed Alhambra's offer of FAPE and the meeting concluded.

42. Mother did not consent in writing to Student's February 5, March 22, or May 22, 2018 IEP's which prompted Alhambra to file the due process complaint at issue in this Decision on July 11, 2018. On August 27, 2018, Mother returned the signature page to the May 22, 2018 IEP to Alhambra indicating her consent to the IEP with the following exceptions: (1) disagreement with the 2017 psychoeducational and speech and language assessments; (2) disagreement with annual goal 10 (using a multimodal approach to engage in communication during speech sessions); (3) a request for additional goals pending a new IEP (it was not clear what goals Mother was referring to); (4) the denial of a behavior intervention plan to address Student's noncompliance; (5) use of a picture exchange communication system with speech goals; (6) the allocation of individual versus group speech services; and (7) being denied access to explore alternative placement options.

43. At hearing, all witnesses who testified on behalf of Alhambra agreed the moderate to severe special day class program at Mark Keppel was appropriate for Student. In Ms. Bahamonde's opinion, Mr. Lee's class offered a similar program to Ms. Pierce's class in terms of level of instruction with a focus on functional and life skills. Ms. Bahamonde observed Student being successful in the moderate to severe program. In Ms. Rubalcaba's opinion, the moderate to severe program was appropriate for Student based on her significant language impairment and lack of literacy skills. In Ms. Pierce's opinion, the students in the mild to moderate program demonstrated higher level developmental and academic skills than Student, and the moderate to severe program was the most appropriate for Student. In Mr. Lee's opinion, Student was appropriately placed in his class and he estimated her developmental level and performance fell in the mid-range when compared to other students in his class. Alhambra's witnesses were consistent with each other and the documentary evidence. Their opinions were persuasive and given significant weight.

## LEGAL AUTHORITY AND CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT<sup>7</sup>

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)<sup>8</sup>; Ed. Code, § 56000 et seq.; Cal. Code Regs.,

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<sup>7</sup> The legal citations in this Introduction are incorporated by reference into the analysis of the issue discussed below.

<sup>8</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise stated.

tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE 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).)

2. 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 for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, that describes the child's needs, academic and functional goals related to those needs, and specifies 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. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690], 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.)

4. The Supreme Court clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S. Ct. 988]. *Endrew* provided that an IEP must be reasonably calculated to enable “progress appropriate in light of the child’s circumstances.” (137 S.Ct. at p. 999.) The Court recognized that this required crafting an IEP that required a prospective judgment, and that judicial review of an IEP must recognize that the question is whether the IEP was reasonable, not whether the court regards it as ideal. (*Ibid.*)

5. 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, evaluation, 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).)

6. 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decisions is preponderance of the evidence].) Here, Student is the petitioning party and had the burden of proof on all issues in the case.

ISSUE: DID ALHAMBRA OFFER STUDENT A FAPE FOR THE 2018-2019 SCHOOL YEAR, IN THE FEBRUARY 5, MARCH 22, AND MAY 22, 2018 IEP'S?

7. Alhambra contended it offered Student a FAPE in the February 5, March 22, and May 22, 2018 IEP's. Alhambra contended Student's present levels of performance were accurately reflected and the annual goals were appropriately based on Student's needs. Alhambra also contended its offer of placement in a moderate to severe special day class program with one-to-one aide support and various related services represented the least restrictive environment for Student, based on her developmental level and academic/functional performance.

8. Mother contended the IEP's were not reasonably calculated to enable Student to make progress in light of her circumstances. Mother disagreed with Alhambra's 2017 assessment results and the opinion of Alhambra's witnesses that Student was severely developmentally delayed. Mother argued Student's abilities were higher than being reported and that Student would receive more educational benefit from placement in a mild to moderate special day class program. Mother further argued Student required a behavior intervention plan and a behavior aide to address her noncompliance in completing tasks during class and therapy sessions. Finally, Mother argued Alhambra impeded her opportunity to meaningfully participate in the IEP process by refusing to provide Student with a list of placement options in addition to the moderate to severe program at Mark Keppel.

FAPE ANALYSIS

9. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was



designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

10. Procedural flaws do not automatically require a finding of a denial of a FAPE. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,1484, superseded by statute on other grounds by IDEA Amendments of 1997.) A procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

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

12. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged exclusively in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Ibid.*) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

## IEP Development

13. An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the IDEA, and that includes: (1) a statement of the child's present levels of academic achievement and functional performance; (2) a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs resulting from the disability; (3) a description of how the child's progress toward meeting the annual goals will be measured; (4) a statement of the special education and related services and supplementary aids to be provided to the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals; (5) an explanation of the extent, if any, to which the child will not participate with nondisabled children; (6) a statement of any appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments; and (7) the projected date for the beginning of the services, and the anticipated frequency, location, and duration of those services. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a); Ed. Code, § 56345, subd. (a).)

14. In developing an IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).) The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

15. The IEP team must include: (1) the parents of the child; (2) at least one general education teacher if the child is, or may be, participating in the regular education environment; (3) at least one special education teacher of the child, or where

appropriate, at least one special education provider of the child; (4) a representative of the school district who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency; (5) an individual who can interpret the instructional implications of evaluation results; at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the child; and the child when appropriate. (20 U.S.C. § 1414(1)(B); 34 C.F.R. § 300.321(a).)

### Placement and Least Restrictive Environment

16. Placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) School districts must ensure a continuum of program options are available to meet the needs of special education students. (Ed. Code, § 56360.) The program options must include, but are not limited to: (1) regular education programs, (2) a resource specialist program, (3) designated instruction and services, (4) special classes, and (5) nonpublic, nonsectarian school services. (Ed. Code, § 56361.)

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

18. The IDEA recognizes that some students should not be placed in general education. Despite this preference for “mainstreaming” children with disabilities, that is, educating them with nondisabled children, Congress recognized that regular classrooms simply would not be a suitable setting for the education of many disabled children. The Act expressly acknowledges that “the nature or severity of the disability [may be] such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (20 U.S.C. § 1412(a)(5).) The Act thus provides for the education of some disabled children in separate classes or institutional settings. (*Rowley*, *supra*, 458 U.S. at p. 181, fn. 4 [citation omitted].)

#### Predetermination and Parental Participation

19. Parents must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child’s problems, attends the IEP meeting, expresses disagreement with the IEP team’s conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools*. (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

20. An educational agency’s predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (See *W.G. v. Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1485, superseded by statute on other grounds by IDEA Amendments of 1997 (citations omitted).) Predetermination occurs when an educational agency has made its determination prior to the IEP team meeting, and enters the IEP team meeting with a

“take it or leave it” position. (See *Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, *superseded by statute on other grounds* (citation omitted) [“A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification.”].) Developing an IEP that does not fully conform to a parent’s wishes does not mean the district engaged in predetermination. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

#### Requirement of a Formal Written Offer

21. The IDEA requires school districts to make a formal, written IEP offer that parents can understand. (*Union School Dist. v. Smith* (9<sup>th</sup> Cir. 1994) 15 F. 3d 1519, 1526, cert. den., 513 U.S. 965.) The requirement of a formal, written offer creates a clear record that will do much to eliminate factual disputes in the future. (*Ibid.*)

22. Alhambra developed the February 5, March 22, and May 22, 2018 IEPs in conjunction with Garvey, which was Student’s district of residence at the time of the meetings. Because Student attended an Alhambra program during the 2017-2018 school year, Alhambra’s teachers, related service providers, and administrators participated in the IEP team meetings and contributed to the development of Alhambra’s offer of FAPE for the 2018-2019 school year. Mother was presented with information regarding her parental rights and procedural safeguards.

23. Each of the three meetings had all required IEP team members in attendance, including Mother, Student’s special education teacher, several related service providers, and an administrator who was knowledgeable about Alhambra’s programs. At the February 5, 2018 meeting, the team discussed Student’s strengths, Mother’s concerns, Student’s present levels and proposed annual goals in academics, speech and language, occupational therapy, and adapted physical education. The team relied on the results of the 2017 triennial assessments to inform them on Student’s

developmental level and abilities. Ms. Pierce reviewed Student's academic and functional performance in her class; Ms. Rubalcaba reviewed Student's communication skills and progress; and Ms. Toranian and Mr. Palomino reviewed Student's motor abilities.

24. The team developed 14 new annual goals in Student's areas of need as identified by the IEP team. The team developed seven academic and functional goals that encompassed reading, writing, math, and daily living skills; four speech and language goals focused on improving Student's communication skills through use of visual communication icons, her communication device, and sign approximations; and two adapted physical education and one occupational therapy goal to improve Student's gross and fine motor skills. All goals were measureable as written and progress was to be measured using staff observation and data collection.

25. At the March 22, 2018 meeting, the team discussed Student's placement and services. Garvey made an offer of special education placement and services for the remainder of the 2017-2018 school year and extended school year 2018. Alhambra reviewed the continuum of placement options with Mother, and made an offer of special education placement and services for the start of the 2018-2019 school year through Student's next annual IEP in February 2019. Alhambra's offer included 1650 minutes a week of specialized academic instruction in the moderate to severe program at Mark Keppel, 60 minutes a month of individual and group occupational therapy, 60 minutes a month of individual assistive technology support, and 1500 minutes of intensive individual services from a one-to-one aide. The IEP also offered various classroom supports and accommodations, including but not limited to testing accommodations, preferential seating, auditory and visual aids, and staff training. The team did not agree to Mother's request for a behavior intervention plan or a behavior aide because the school district team members observed Student as being well-behaved

and compliant, respectful towards adult authority, and able to remain on task for up to 30 minutes with the assistance of her one-to-one aide. Alhambra's offer of placement, services, supports and accommodations, as described herein were clear, in writing, and indicated the projected beginning date of services, frequency, location, and duration. Thus, this portion of Alhambra's offer of FAPE met the procedural requirements of IDEA.

26. However, Alhambra's offer of speech and language therapy and adapted physical education services did not meet the procedural requirements of IDEA. While the offered services were in writing, the beginning date of the services, frequency, location and duration were unclear. As discussed above, there were two separate entries for each respective service with conflicting dates of service, frequencies, and duration. Speech and language therapy also indicated a different delivery method of services, group versus individual and group. Alhambra did not introduce any witness testimony to explain the discrepancies in services. Alhambra's failure to make a clear, written offer of speech and language therapy and adapted physical education services resulted in a procedural violation of the IDEA. Because procedural flaws do not automatically trigger a denial of FAPE, an analysis will be done below to determine whether Alhambra's procedural violation (1) impeded Student's right to a FAPE; (2) significantly impeded Mother's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student; or (3) caused a deprivation of educational benefits.

27. At the May 22, 2018 meeting, the team met to finalize Student's annual IEP and address any questions Mother had after visiting the moderate to severe program at Mark Keppel. Alhambra's Director of Secondary Special Education attended the meeting to review the continuum of placement options again with Mother. The team discussed the differences between the three different special day class programs for students with mild to moderate, moderate, and moderate to severe developmental delays,

respectively. Alhambra team members reiterated why they believed the moderate to severe program was appropriate for Student.

28. Mother meaningfully participated in the development of Student's annual IEP. At each of the three meetings, Mother engaged the IEP team with questions and concerns regarding all aspects of Student's special education program. Specifically, Mother vocalized her concerns with Student's lack of verbal skills, the use of picture icons when working on her expressive language IEP goals, the addition of adapted physical education and occupational therapy goals, and her disagreement with Student's placement in a moderate to severe special day class program. Alhambra responded to Mother's questions and concerns during each of the three IEP team meetings, and also in a prior written notice letter on May 8, 2018. Alhambra's refusal to acquiesce to Mother's demands did not deny her meaningful participation in the IEP process. School districts are not required to provide a parent's preferred program or provide a parent with a list of all available programs. Instead, districts are required to make a formal, written offer of placement and services, that address a student's unique needs, comport with the IEP, and are reasonably calculated to provide the student with some educational benefit in the least restrictive environment.

29. Based on the analysis above, Alhambra complied with the IDEA procedures in developing the February 5, March 22, and May 22, 2018 IEP's with the exception of its offer of speech and language therapy and adapted physical education services, which will be discussed in further detail below.

#### SPEECH AND LANGUAGE THERAPY AND ADAPTED PHYSICAL EDUCATION SERVICES

30. Although the IEP's were unclear as to the dates of service and the amount of speech and language therapy Student was to receive for the 2018-2019 school year, Ms. Nam indicated she had been providing 240 minutes a month of individual therapy to Student. This was the same frequency of speech and language therapy Student



received during the 2017-2018 school year, and was the higher of the two frequencies listed in the IEP. Additionally, Ms. Nam was working with Student on attaining her speech and language IEP goals. There was no indication in the March 22, 2018 IEP, or evidence presented at hearing, that Alhambra impeded Mother's opportunity to participate in the decision-making process regarding speech and language therapy. Despite the discrepancy in how speech and language therapy was written in the IEP, Student continued to receive the service and was working towards her IEP goals. Therefore, Alhambra's procedural violation with respect to speech and language therapy did not result in a denial of FAPE to Student.

31. Similarly, Alhambra's procedural violation with respect to how adapted physical education services were written in the IEP did not result in a denial of FAPE to Student. While Alhambra did not introduce any testimony at hearing to explain the discrepancy, there was no other evidence in the record resulting in a conclusion that Student was not receiving adapted physical education services as a result of the error, or that Alhambra impeded Mother's opportunity to participate in the decision-making process. In fact, all students in Mr. Lee's class received adapted physical education as part of the program.

#### PLACEMENT, SUPPORTS, AND OTHER SERVICES

32. With respect to Student's offered placement and services, Alhambra relied on information from Student's 2017 triennial assessments, Student's performance during the 2017-2018 school year, and input from Mother and Alhambra staff in developing a program for the 2018-2019 school year. The triennial assessments revealed Student was functioning at the pre-symbolic level which developmentally placed her at the 18 to 24 month range, with some scatter skills up to three years old. Student's delays affected all areas of her school experience, including academics, communication, fine and gross motor, social and daily living skills. Alhambra took these deficits into

account when developing Student's annual IEP and drafted 14 new goals that addressed each of these areas. To assist Student in attaining her IEP goals, the team offered speech and language therapy, occupational therapy, assistive technology support, adapted physical education, and support from a one-to-one aide.

33. Student made progress in the moderate to severe special day class program during the 2017-2018 school year, and all of Alhambra's witnesses credibly testified the moderate to severe program continued to be appropriate for Student. Mr. Lee's class offered a small class size with students who had similar developmental levels as Student. Mr. Lee's class also offered a combination of functional academics, recreation time, daily life skills, social skills, and community-based experiences. Mother did not offer any testimony or documentary evidence to corroborate her opinions or to challenge the appropriateness of the moderate to severe special day class program at Mark Keppel. Mother's disagreement with the placement was based on her belief that Student was performing at a developmental level higher than reported by Alhambra team members and that Student would make more progress in a mild to moderate special day class program. As previously discussed, Mother's opinions were not supported by the evidence and were not persuasive.

34. For the reasons discussed herein, Alhambra met its burden of proving it offered Student a FAPE for the 2018-2019 school year, and that the special education placement, supports, and services offered in the February 5, March 22, and May 22, 2018 IEP's were designed to meet Student's unique needs, comported with Student's IEP, and were reasonably calculated to provide Student with educational benefit in the least restrictive environment.

## ORDER

Alhambra may implement the February 5, March 22, and May 22, 2018 IEP's without parental consent, if Student continues enrollment within Alhambra for the 2018-2019 school year.

## 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, Alhambra prevailed on the single issue presented.

## 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: November 1, 2018

\_\_\_\_\_/s/\_\_\_\_

TARA DOSS

Administrative Law Judge

Office of Administrative Hearings