

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2018070073

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 28, 2018, naming Long Beach Unified School District. On July 16, 2018, and November 5, 2018, OAH granted a continuance of the due process hearing for good cause.

Administrative Law Judge Tara Doss heard this matter in Long Beach, California, on October 30 and 31, 2018, and November 14, 2018. Bruce Bothwell, Attorney at Law, represented Student. Student's mother attended on all hearing days. Student did not attend the hearing. Cynthia Yount, Attorney at Law, represented Long Beach. Rachel Heenan, Long Beach's Special Education Director, attended on all hearing days.

At the parties' request, OAH granted a continuance to December 5, 2018, to allow the parties to file written closing briefs. On December 5, 2018, the parties timely filed their written closing briefs, the record was closed, and the matter submitted for decision.

## ISSUES<sup>1</sup>

(1) Did Long Beach deny Student a free appropriate public education in the October 11, 2016 individualized education program by failing to:

- (a) identify Student as eligible for special education under the category of autism;
- (b) offer appropriate goals in academics, communication, behavior, and social interaction;
- (c) offer appropriate behavior services;
- (d) offer appropriate speech and language therapy;
- (e) offer appropriate occupational therapy; and
- (f) offer an appropriate placement in the least restrictive environment?

(2) Did District deny Student a FAPE in the November 15, 2017 IEP by failing to:

- (a) identify Student as eligible for special education under the category of autism;
- (b) offer appropriate goals in academics, communication, behavior, and social interaction;
- (c) offer appropriate academic instruction;
- (d) offer appropriate behavior services;
- (e) offer appropriate speech and language therapy; and
- (f) offer appropriate occupational therapy?

(3) Did Long Beach deny Student a FAPE in the May 16 and 30, 2018 IEP's by

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<sup>1</sup> Prior to the start of the hearing on November 14, 2018, Student withdrew Issues 1(a)-(f), 2(a)-(f), and 4, as stated in the October 19, 2018 prehearing conference order. The remaining issues have been renumbered and reorganized for clarity in this Decision. The ALJ has the authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

failing to:

- (a) offer appropriate goals in academics, communication, behavior, and social interaction;
- (b) offer appropriate behavior services;
- (c) offer appropriate speech and language therapy;
- (d) offer appropriate occupational therapy; and
- (e) offer appropriate placement in the least restrictive environment?

## SUMMARY OF DECISION

Student proved Long Beach denied her a FAPE during the 2017-2018 school year, when it failed to develop goals in all areas of need in the November 15, 2017, and May 16 and 30, 2018 IEP's; failed to offer appropriate academic instruction in the November 15, 2017 IEP; failed to offer appropriate occupational therapy in the form of an assessment, in the November 15, 2017, and May 16 and 30, 2018 IEP's; failed to offer appropriate behavior intervention services in the May 16 and 30, 2018 IEP's; failed to make a clear, written offer of speech and language therapy in the May 16 and 30, 2018 IEP's; and failed to offer appropriate placement in the least restrictive environment in the May 16 and 30, 2018 IEP's.

Student did not prove Long Beach denied her a FAPE during the 2016-2017 school year. Additionally, Student did not prove Long Beach denied her a FAPE during the 2017-2018 school year, by failing to identify Student as eligible for special education under the category of autism in the October 11, 2016, and November 15, 2017 IEP's; failing to develop goals in all areas of need in the October 11, 2016 IEP; failing to offer behavior intervention services in the October 11, 2016, and November 15, 2017 IEP's; failing to offer appropriate speech and language therapy in the October 11, 2016, and November 15, 2017 IEP's; failing to offer occupational therapy in the October 11, 2016

IEP; and failing to offer an appropriate placement in the least restrictive environment in the October 11, 2016 IEP.

## FACTUAL FINDINGS

1. Student was six years old and in the first grade at the time of hearing. She resided with her mother within Long Beach's boundaries at all relevant times. Spanish and English were spoken in the home but Student primarily expressed herself in English. Student initially qualified for special education at three years old under the category of speech or language impairment. At the time of hearing, Student was eligible for special education under the primary category of autism and the secondary category of specific learning disability. Student's placement was in a general education classroom with support from a resource specialist teacher. Student also received speech and language therapy.

2. Student's cognitive ability was low average with moderate delays in receptive language and severe delays in expressive language. Student's cognitive processing and language delays significantly impacted her ability to retain information. As a result, Student struggled academically in preschool and kindergarten. Student's delays also impacted her ability to develop and maintain relationships with peers.

## STUDENT'S INITIAL ASSESSMENT AND IEP TEAM MEETING

3. Prior to enrolling in Long Beach for preschool, Student received physical therapy, occupational therapy, and speech and language therapy from Harbor Regional Center.

4. Long Beach conducted an initial multidisciplinary assessment of Student on June 5, 2015, and issued a report on June 25, 2015. The assessment team included a school psychologist, school nurse, speech and language pathologist, occupational therapist, and a special education teacher. The assessment included a review of records

and previous assessments; parent interviews; play-based and clinical observations of Student; and formal assessment tools. Student's cognitive ability was in the low average range. Student's receptive language skills were in the low average range and her expressive language skills were in the significantly below average range. Student was not yet using words to communicate. Instead, she relied on word approximations, gestures, and some sign language. Student's verbal pragmatic language skills and articulation were also identified as areas of need.<sup>2</sup>

5. Student's fine motor, visual motor, gross motor, and sensory processing skills were appropriate to participate in the preschool setting. Student used a functional grip on writing tools and could imitate pre-writing lines. Student could also manipulate toys, use a pincer grasp, open and close a bottle top, and scan for pictures. Student had emerging skills in buttoning and unbuttoning clothing, and using scissors. Student's gross motor skills, including the ability to walk, run, sit, and climb, were age appropriate. Student did not demonstrate any significant sensory seeking or avoidance behaviors. She enjoyed movement, hugs, and tolerated different textures and noises.

6. On June 26, 2015, Long Beach held an initial IEP team meeting to review the multidisciplinary assessment results and determine eligibility for special education services. Mother attended the meeting. The team recommended special education eligibility under the category of speech or language impairment. Student's areas of need for communication were identified in expressive language and speech production. Student was producing approximately 10 words verbally, including "hi," "bye," "no," "papa," and "mom." She also used approximately five signs, including "all-done," "cookie," "more," and "please." The team proposed two speech and language goals. The

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<sup>2</sup> Pragmatic language refers to social language skills used during interactions with others.

first goal was in expressive language, and involved Student increasing her expressive vocabulary to 25 words. The second goal was in speech production, and involved Student producing words with age-appropriate phonemes (e.g. p, b, m, t, d, n, and w) when shown functional items or pictures.

7. The IEP team also recommended pre-academic goals in English language development, language arts, and math. The English language development goal involved Student engaging in stories, finger play, and songs in English. The purpose of the language arts goal was for Student to identify her name, and involved her putting the letters of her first name in order, with no more than one prompt. The team recommended two math goals. The purpose of the first goal was for Student to improve in counting skills, and involved her pointing, giving, or taking one to three objects upon request, with no more than one prompt. The purpose of the second goal was for Student to identify shapes, and involved her identifying eight simple two-dimensional shapes (e.g. circle, triangle, square), with no more than one prompt.

8. With respect to placement and services, the team recommended specialized academic instruction within a special day class preschool program for 180 minutes a day, group speech and language therapy for 20 minutes a week, and individual speech and language therapy for 20 minutes a week. The team did not recommend occupational therapy services because Long Beach's assessment team determined Student did not display any sensory processing or fine motor deficits that would impact classroom performance. Mother consented to the IEP.

#### 2015-2016 SCHOOL YEAR: STUDENT'S ENROLLMENT IN LONG BEACH

9. In Fall 2015, Mother enrolled Student in a mild to moderate special day class preschool program at Long Beach's Buffum Total Learning Center. LoRita Greer-Brown was Student's teacher. Ms. Greer-Brown held a master's degree in early childhood development. At the time of Student's enrollment, Ms. Greer-Brown had been

a special education teacher for approximately 12 years; and had taught at Buffum for nine years.

10. Ms. Greer-Brown described Student as very loving and eager to please in the classroom. She liked to hug Ms. Greer-Brown. Student demonstrated good eye contact and did not display any behavior issues. Student received academic instruction in whole group and small group settings during the three hour class schedule. Student also received speech and language therapy.

11. On October 30, 2015, Long Beach held an IEP team meeting to review Student's goals and placement. Mother, Ms. Greer-Brown, a general education teacher, a speech and language pathologist, and an administrator attended the meeting. The team discussed Student's present levels of performance and developed new goals. All goals from the June 2015 IEP were discontinued, but there was no discussion of whether Student achieved the goals. The team developed goals in language arts, math, reading, English language development, and speech and language.

12. The language arts goal addressed Student's need to speak clearly and involved Student being able to make one syllable approximations of classroom vocabulary. The math goal addressed Student's counting ability, and involved Student reciting numbers one through five. The reading goal addressed Student's ability to identify and track words in a book, and involved Student being able to track a line of print while attempting to read the words. The English language development goal involved Student being able to follow one or two step directions.

13. The team developed four speech and language goals. The first goal addressed articulation and involved Student producing consonant-vowel, vowel-consonant, consonant-vowel-consonant, and consonant-vowel-consonant-vowel sequences with 70 percent accuracy. The second goal involved Student understanding simple prepositions (such as "on," "at," "in," and "to") by following one to two step

directions within a structured language activity with 70 percent accuracy. The third and fourth goals addressed receptive language and involved Student identifying a targeted noun and verb, respectively, when provided a field of two possible answers, with 70 percent accuracy.

14. The team recommended continued eligibility under the category of speech or language impairment and placement in Ms. Greer-Brown's special day class for 180 minutes a day. The team also recommended four, 20 minute sessions a month of group speech and language therapy; and an increase of individual speech and language therapy to eight, 15 minute sessions a month. This was approximately 40 minutes of increased individual speech and language therapy a month for Student. The team also recommended eligibility for extended school year services to allow Student to receive special education services during a portion of the summer break. Mother consented to the IEP.

#### 2016-2017 SCHOOL YEAR: CONTINUED ENROLLMENT AT BUFFUM AND REVOCATION OF SPECIAL EDUCATION SERVICES

15. Student continued to attend Ms. Greer-Brown's special day preschool class during the 2016-2017 school year.

#### October 11, 2016 IEP Team Meeting

16. On October 11, 2016, Long Beach held an annual review IEP team meeting to discuss Student's progress and ongoing special education needs. Mother, Ms. Greer-Brown, a speech and language pathologist, a general education teacher, and a Long Beach administrator attended the meeting. Mother expressed concern with Student's lack of progress in communication. Student's speech was still difficult to understand. The team reviewed Student's progress on the goals from the October 30, 2015 IEP, and recommended new goals.



17. In language arts, Student met the previous goal and was able to make one syllable word approximations when calm and with adult assistance. When frustrated, she communicated through pointing and would sometimes cry. The team developed a new goal that involved Student making one syllable approximations of classroom vocabulary independently. In math, Student met the previous goal and was able to count to five but not beyond five consistently. The team developed a new goal that involved Student counting to 10 with a maximum of two verbal prompts. In reading, Student met the previous goal and was able to identify words in a book and track a line of print while attempting to read the words. The team did not develop a new reading goal. In English language development, Student met the previous goal and was able to follow one or two step directions. The team developed a new goal that involved Student identifying 10 or more letters of the alphabet with a maximum of two verbal prompts.

18. In speech and language, Student did not meet the previous articulation goal, but met the remaining three goals in prepositions and receptive language. In articulation, Student could not produce words, including some initial and many final consonants. The team continued the previous goal that involved Student producing vowel-consonant, consonant-vowel, consonant-vowel-consonant, and consonant-vowel-consonant-vowel words, but decreased the expected accuracy to 60 percent from 70 percent. The team did not develop new goals in prepositions or receptive language, or in any other areas of speech and language.

19. The team continued to recommend eligibility under the category of speech or language impairment and placement in Ms. Greer-Brown's special day class for 180 minutes a day. The team increased individual speech and language therapy to eleven, 15 minute sessions a month, but eliminated group speech and language services. Overall, Student's speech and language therapy decreased 35 minutes a month from her prior IEP. The team continued to recommend extended school year services.

20. Mother expressed her concerns that Student was not making enough progress to be ready for kindergarten. Student's speech was unintelligible to an unfamiliar person, and she was still only using word approximations to speak. Mother saw Student's frustration when unable to communicate her needs, which sometimes resulted in Student throwing tantrums. Mother consented to the IEP.

21. In May 2017, Long Beach conducted an assistive technology assessment. On June 2, 2017, Long Beach held an IEP team meeting to review the assessment report. The team recommended adding an assistive technology device to Student's program to allow her to access the academic curriculum. The team did not discuss Student's placement for the 2017-2018 school year. Mother consented.

22. By the end of the school year, Student could follow one to two step directions, and sit through a 20 minute circle time lesson. While Student participated appropriately in all classroom activities, she would often look around the room and required encouragement to focus her attention on the lesson. She attempted to use her language to make comments and describe items during play and structured activities. Student still relied on pointing to help others understand what she was trying to say. She was counting to five and matching shapes. She liked playing games with peers.

#### Mother's Revocation of Special Education Services

23. On June 15, 2017, Mother wrote a letter to a Long Beach program administrator revoking parental consent for Student to receive special education placement and services. Mother was dissatisfied with Student's progress in the special day program at Buffum and wanted Student placed in a general education kindergarten classroom at her school of residence, Bixby Elementary School. Mother believed a general education classroom would give Student a better opportunity to learn. Mother believed Student would continue to receive speech and language therapy in the general education classroom despite revoking special education services.

24. Prior to writing the revocation letter, Mother received a letter from Long Beach indicating it was assigning Student to a special day class kindergarten program for the 2017-2018 school year at a Long Beach elementary school that was not Student's school of residence. Mother knew nothing about the assigned program, as placement was not discussed during the June 2, 2017 IEP team meeting. On June 20, 2017, Long Beach responded to Mother's revocation letter in a prior written notice letter, acknowledging and granting Mother's request to revoke special education services. Long Beach informed Mother that Student would no longer receive specialized academic instruction or speech and language therapy. Long Beach also informed Mother she may request an evaluation at Student's school of residence if she was interested in special education services in the future.

#### 2017-2018 SCHOOL YEAR: REASSESSMENT FOR SPECIAL EDUCATION SERVICES

##### Placement in General Education and Mother's Request for Reassessment

25. At the start of the 2017-2018 school year, Student enrolled in a general education classroom at Bixby Elementary School. Michelle Beay was Student's teacher. At the time of Student's enrollment, Ms. Beay had been a general education elementary teacher for approximately 29 years. She held a bachelor's degree in liberal studies and a California teaching credential. She had never taught a special education classroom. Ms. Beay's classroom had approximately 26 students and no aide. On September 18, 2017, Mother requested an evaluation for special education services so that Student could resume speech and language therapy.

##### November 5, 2017 Psychoeducational Assessment

26. Long Beach school psychologist Lynn Saroyan conducted a psychoeducational assessment of Student and issued a written report on November 5, 2017. Ms. Saroyan held a bachelor's degree in sociology, a master's degree in

educational psychology, and an educational specialist degree in school psychology. She also held a California pupil personnel services credential in school psychology. At the time of the assessment, Ms. Saroyan had worked as a school psychologist for approximately two years.

27. As part of her assessment, Ms. Saroyan considered whether Student would qualify for special education under the eligibility categories of specific learning disability, autism, and/or intellectual disability. The assessment included a review of Student's records; interviews with Mother, Student's teacher, and Student; classroom and testing observations of Student; input from the school nurse; and standardized test measures.

#### INTERVIEWS AND OBSERVATIONS

28. Ms. Beay reported Student showed effort at school, but had challenges with starting and completing work independently, participating in class discussions, and requesting help when needed. Ms. Beay also had concerns regarding Student's ability to organize her materials, recall information, and apply concepts. Behaviorally, Student followed rules and classroom routines, and interacted well with peers. To address Student's challenges, the Ms. Beay provided her with various supports, including one-to-one direct instruction, asking simple "yes or no" questions, and assigning a peer to work with her.

29. Mother described Student as sweet and loveable. She got along well with her siblings. She enjoyed playing with others but often chose to play alone. Mother expressed concerns with Student's communication abilities and attention span.

30. At hearing, Ms. Saroyan stated she observed Student more than once, in the classroom and in different areas of the school site, for 10 to 30 minutes each observation. However, Ms. Saroyan's report did not reflect these observations and did not include details of what she observed of Student during classroom instruction or unstructured times, such as lunch and recess.

## STANDARDIZED ASSESSMENTS

31. Ms. Saroyan administered the Differential Abilities Scale, Second Edition to measure Student's memory, processing speed, and foundational skills for early school learning. Student often did not understand various tasks or directions clearly, but was cooperative when she understood what was being asked of her. When Student was unsure of an answer, she appeared to guess. Ms. Saroyan cautioned the validity of the test scores due to the variability of Student's responses.

32. The assessment measure consisted of three composites in nonverbal reasoning, spatial, and verbal. The nonverbal reasoning composite involves inductive reasoning that required mental processing. Overall, Student scored in the low average range in the 23rd percentile of same-aged peers. She performed in the average range when determining the relationship among abstract figures, but performed in the below average range when matching pictures with common elements.

33. The spatial composite involves complex visual-spatial processing tasks. Overall, Student scored in the below average range in the fifth percentile of same-aged peers. Student performed in the average range when asked to copy block patterns, but performed in the very low range when asked to use fine-motor coordination skills to copy line drawings.

34. The verbal composite involves knowledge of verbal concepts. Overall, Student scored in the very low range in the first percentile when compared to same-age peers. Student performed in the low average range on receptive language tasks, but performed in the very low range on the expressive language tasks.

35. Academically, Student was beneath expected proficiency levels for kindergarteners. She could not say or write her name. She could identify only seven upper case and six lower case letters, but not consistently. She could not consistently count or recognize numbers up to 10. She could not copy letters, dictate a story, or

draw a picture other than scribbles.

36. Ms. Saroyan utilized the Childhood Autism Rating Scale, Second Edition, which is a screening tool to identify children with signs of autism spectrum disorder. Ms. Saroyan provided Mother with a questionnaire to complete that rated Student's behaviors in various areas. Mother's responses rated Student in the minimal-to-no symptoms of autism spectrum disorder. Student adapted well to routine changes and liked trying new things. Student's communication was the greatest area of concern. Ms. Saroyan did not provide a rating scale to Student's teacher.

#### SUMMARY AND RECOMMENDATIONS

37. Based on the overall assessment results, Ms. Saroyan estimated Student's cognitive abilities were in the low average range. In her opinion, Student met the eligibility criteria for specific learning disability, in all academic areas, due to attention and cognitive processing disorders. Student's relative strengths were her visual processing skills. Student's challenges were with communication and attention. Specifically, Student displayed inattention and lack of focus in the classroom, during both group and individual tasks. As a result, Student struggled retaining new information and understanding what was being asked of her. Student did not meet the eligibility criteria for intellectual disability due to her low average cognitive ability and intact adaptive behaviors. Student also did not meet the eligibility criteria for autism because her nonverbal communication and social interactions did not appear to adversely affect educational performance. Additionally, Student did not exhibit significant characteristics of autism spectrum disorder.

#### November 8, 2017 Speech and Language Assessment

38. In addition to the psychoeducational assessment, Long Beach conducted a speech and language assessment. At the time of the assessment, Student was five years,

four months old. Speech and language pathologist Mercedes Scholnick conducted the assessment and issued a written report on November 8, 2017. Ms. Scholnick held a certificate of clinical competence in speech language pathology. At the time of the assessment, she had worked as a speech and language pathologist for approximately 26 years; conducting assessments and providing therapy. Ms. Scholnick tested Student over four sessions. Student was compliant during testing, but required moderate to maximum prompting, every 45 to 60 seconds, to stop moving or reaching for items. Ms. Scholnick also observed Student to fidget and move quickly back and forth in a repetitive rocking motion when excited.

39. Ms. Scholnick's assessment consisted of interviews with Mother and Ms. Beay; observation of Student in the classroom; and standardized test measures. Mother provided Ms. Scholnick with a copy of the August 2017 Riverview evaluation report.

#### INTERVIEWS AND OBSERVATION

40. Mother reported great concern with Student's development and communication, which Mother saw affecting Student's ability to make friends and learn. Mother expressed the desire for Student to make progress. Mother also stated her belief that Student needed occupational therapy to address fine motor concerns. Ms. Beay reported Student was struggling in class. Student did not have behavior issues, but was unable to complete any of the classroom work. She was unable to write other than scribble, and had difficulty with tracing and cutting.

41. During Ms. Scholnick's classroom observation, the students were engaged in an activity on the carpet that required them to sing a song titled, "Hello Neighbor," and to find a new peer partner at the end of each verse. Student was not able to find partners as quickly as the other students, but appeared happy to participate. While singing another song about the days of the week, Student mouthed the words with

minimal sound. Ms. Scholnick also observed her patting her cheeks and clapping out of turn.

#### STANDARDIZED ASSESSMENTS

42. To further assess Student's communication abilities, Ms. Scholnick administered the Preschool Language Scale, Fifth Edition; the Goldman-Fristoe Test of Articulation, Third Edition; took a language sample; and conducted an oral mechanism examination. On the Preschool Language Scale auditory comprehension subtest, Student scored in the below average range with receptive language skills similar to those of a child three years, nine months old. Receptively, Student was able to follow directions and routines; identify familiar objects and body parts; engage in pretend and symbolic play; understand pronouns (e.g. you, me, he, she); and identify some colors, shapes, and letters. Student had difficulty understanding quantitative and spatial concepts (e.g. under, next to, in front of).

43. On the expressive communication subtest, Student scored in the very low range with expressive language skills similar to those of a child one year, 11 months old. Expressively, Student was able to use at least five words, and use gestures and vocalizations to request objects. Student had difficulty combining three to four words in spontaneous speech; using a variety of nouns, verbs, and pronouns; using words for pragmatic functions; and answering "what" and "where" questions. In total language, Student scored in the very low range, with overall language skills similar to those of a child two years, 10 months old.

44. The Goldman-Fristoe assessed the production of English consonant sounds. Student scored in the very low range with articulation skills similar to those of a child less than two years old. Student displayed a severe articulation and phonological processing disorder which affected her ability to communicate. She was significantly unintelligible. She made articulation errors in the initial, middle, and final consonant



positions. Student showed frustration when not immediately understood and when asked to repeat a response.

45. Ms. Scholnick could not obtain a valid language sample due to Student's limited amount of intelligible speech. The oral mechanism examination assessed the structure and function of the speech sound mechanism. Upon visual inspection, Student's hard and soft palates were intact. Oral range of motion was decreased when Student performed coordinated tongue movements. Student was unable to produce alternating syllables in succession.

#### SUMMARY AND RECOMMENDATIONS

46. Based on the assessment results, Ms. Scholnick determined Student had a significant speech and language disorder. Ms. Scholnick recommended individual and small group speech and language therapy to improve Student's communication skills. Specifically, Student needed to improve her ability to express wants and needs; to produce functional phrases; to produce age appropriate phonemes (or sounds); and to receptively identify and label age appropriate vocabulary.

#### November 15, 2017 IEP Team Meeting

47. On November 15, 2017, Long Beach held an IEP team meeting to review the psychoeducational and speech and language assessments; and to determine whether Student met the eligibility criteria to receive special education services. Mother, Ms. Beay, Ms. Saroyan, Ms. Scholnick, a special education teacher, the Bixby Elementary School principal, and a school counselor attended the meeting. Mother again expressed her concerns regarding Student's communication and academic progress. Mother also requested occupational therapy services for Student. The team discussed Student's present levels of performance and recommended special education eligibility under the category of specific learning disability due to a disorder of cognitive ability of expression

(the process of ordering thought in a form that can be understood by others and to effectively communicate ideas through language).

48. The team developed annual goals in language arts, number sense, print concepts, articulation, expressive language, and functional phrases. In language arts, Student was able to identify seven upper case and six lower case letters. The goal involved Student identifying her name from a group of names and writing her first name with 100 percent accuracy. In number sense, Student was inconsistently identifying some numbers. The goal involved Student counting from zero to 10, and identifying the corresponding numeral with 100 percent accuracy. In print concepts, the goal involved Student identifying all upper case and lower case letters of the alphabet with 100 percent accuracy.

49. In articulation, Student's speech intelligibility was affected by her inability to produce initial, middle, and final sounds of words. The team developed two articulation goals. The first goal involved Student producing vowel-consonant, consonant-vowel, consonant-vowel-consonant, consonant-vowel-consonant-vowel single words with 60 percent accuracy. The second goal involved Student improving the ability to produce "b," "p," "m," "t," "d," "k," and "g" letter sounds in the initial, middle, and final positions of words given auditory, visual, and tactile cues with 60 percent accuracy. In expressive language, the goal involved Student improving her ability to indicate her wants by using the phrase "I want..." with 60 percent accuracy. In functional phrases, the goal involved Student using phrases like "help me," "no more," and "my turn" with 60 percent accuracy and minimal assistance during speech sessions.

50. The team offered continued placement in general education with 60 minutes a week of group specialized academic instruction; seven, 30 minute sessions a month of group speech and language therapy; and four, 20 minute sessions a month of individual speech and language therapy. Additionally, the team recommended the

following accommodations: small group and individual instruction, seating in the front of class, extra time to complete tasks, visual support, multi-modal presentation, clarification of directions, providing small amounts of material, and checking for understanding. Ms. Saroyan informed Mother that the occupational therapist would do an informal screening of Student. Mother consented to the IEP.

#### April 13, 2018 Independent Psychoeducational Evaluation

51. Mother requested an independent psychoeducational evaluation after the November 2017 IEP team meeting and Long Beach granted the request. Mother selected licensed clinical psychologist Helena Johnson, Ph.D., to conduct the independent evaluation. Dr. Johnson conducted the evaluation in March 2018 and issued a written report on April 13, 2018. Dr. Johnson, held a bachelor's degree in psychology; a master's degree in pre-clinical psychology; a doctorate degree in clinical psychology; and completed a post-doctoral fellowship in evaluating children with autism. Dr. Johnson also held a certificate in applied behavior analysis for special education. At the time of the assessment, Dr. Johnson had been a California licensed clinical psychologist for approximately 12 years and had conducted approximately 30 independent evaluations for school districts. Dr. Johnson had extensive experience conducting assessments of students with autism.

52. Dr. Johnson's evaluation consisted of a review of Student's records; interviews with Mother and Ms. Beay; a school observation; and standardized testing measures. Mother's concerns as reported to Dr. Johnson were consistent with the concerns she expressed to Ms. Saroyan and Ms. Scholnick regarding Student's lack of progress in academics and communication. Mother also expressed concern with Student's socialization skills.

## INTERVIEWS

53. As part of Dr. Johnson's interview with Mother, she utilized the Autism Diagnostic Interview-Revised. The purpose of this measure is to obtain detailed descriptions of behaviors that could meet the eligibility criteria for autism. The interview focused primarily on characteristics specified in the Diagnostic and Statistical Manual, Fourth Edition. Dr. Johnson described four different developmental areas: qualitative abnormalities in reciprocal social interaction; qualitative abnormalities in communication; restricted, repetitive, and stereotyped patterns of behavior; and developmental abnormalities.

54. Student demonstrated abnormalities in reciprocal social interaction in the areas of failure to use nonverbal behaviors to regulate social interaction; failure to develop peer relationships; lack of shared enjoyment; and lack of social and emotional reciprocity. Mother reported Student had inconsistent eye gaze; showed an interest in other children, but did not engage with them; enjoyed being in her own world; and infrequently sought to share enjoyment with others.

55. Student demonstrated abnormalities in communication in use of gestures to compensate for spoken language; varied spontaneous social imitative play; initiating and sustaining conversational interchange; and use of stereotyped, repetitive, or idiosyncratic speech. Mother reported Student only engaged in a couple of familiar routines of imitation play; did not engage in social language or reciprocal language unless pulled from her; and used repetitive language with others and to herself.

56. Student demonstrated restricted, repetitive, and stereotyped patterns of behavior in the areas of preoccupations or circumscribed interests; compulsive adherence to nonfunctional routines or rituals; stereotyped and repetitive motor mannerisms; and preoccupation with parts of objects or nonfunctional elements of material. Mother reported Student had difficulty transitioning away from online videos

and superheroes; and demonstrated a sensory aversion with having her hands dirty until the age of four. Developmentally, many of Student's delays were related to communication.

57. The results of the Autism Diagnostic Interview were not conclusive to determine eligibility for autism. Mother's responses in the areas of social interaction and repetitive or stereotyped behavior were below the cutoff score necessary for autism. Mother's responses met the cutoff in the areas of communication and developmental abnormalities.

58. Dr. Johnson utilized the Social Skills Improvement System, Adaptive Behavior Assessment System, Third Edition, and the Social Responsiveness Scale, Second Edition to obtain information from Ms. Beay and Mother regarding Student's social skills, problem behaviors, adaptive skills, and any impairments associated with autism spectrum disorder. On the Social Skills Improvement System, there was a social skills scale and a problem behavior scale, both of which are made up of various subscales. A below average score on the social skills subscale meant the child may need instruction in that area. An above average score on the problem behavior subscales meant that the child was exhibiting more problem behaviors than same-aged peers.

59. On the social skills scale, Ms. Beay and Mother rated Student overall in the below average range. Ms. Beay rated Student below average in the communication, cooperation, assertion, empathy, and engagement subscales. Mother rated Student below average in the communication, assertion, and engagement subscales. On the problem behaviors scale, Ms. Beay rated Student in the above average range for internalizing behaviors and meeting the criteria of autism. Mother rated Student in the above average range for meeting the criteria of autism.

60. Ms. Beay rated Student's academic competence, motivation to succeed academically, and intellectual functioning in the lowest 10 percent of her class. Ms. Beay

reported Student almost always had nonfunctional routines or rituals; almost always used odd physical gestures in interactions; never participated appropriately in class; seldom showed concern for others; seldom interacted well with other children; and seldom made eye contact when talking.

61. The Adaptive Behavior Assessment System assessed Student's functioning in multiple practical skill areas required to function and meet every day environmental demands, including being able to care for herself and interact with others. Dr. Johnson gave Mother and Ms. Beay rating scales to complete. Mother's responses scored Student in the low range, in the third percentile when compared to same-aged peers. Mother rated Student in the extremely low range on the conceptual subscale, which included the areas of communication, functional academics, and self-direction. Mother rated Student in the below average range in the social subscale, which included the areas of leisure and social skills. Mother rated Student in the low range on the practical subscale, which included community, home, health and safety, and self-care skills. Ms. Beay's responses scored Student in the extremely low range, in less than the first percentile when compared to same-aged peers. Ms. Beay rated Student in the extremely low range in the conceptual, social, and practical subscales. Overall, Student's adaptive functioning was in the low to extremely low range at home and school.

62. The Social Responsiveness Scale identified social impairment associated with autism and quantified its severity. Dr. Johnson gave Mother and Ms. Beay rating scales to complete. On the social communication and interaction subscale, Mother's responses indicated moderate deficits. Ms. Beay's responses indicated severe deficits. On the restricted interests and repetitive behaviors subscale, Mother's responses indicated moderate deficits. Ms. Beay's indicated mild deficits. Overall, Mother's responses indicated moderate deficits; and Ms. Beay's indicated severe deficits. Student's social communication, social interaction, and patterns of behavior were

consistent at home and school; and were causing daily interference in her life.

63. Dr. Johnson attempted to interview Student's resource specialist teacher Ingrid Ingram, but Ms. Ingram did not respond to Dr. Johnson until after the report was completed.

#### STANDARDIZED ASSESSMENTS

64. Dr. Johnson administered several standardized test measures to Student at her private office. Student did not greet Dr. Johnson upon arrival, had limited eye contact, a flat affect, and her tongue often hung from her mouth. During testing, Student was often unintelligible and Dr. Johnson's attempts at social communication were met with a very low use of nonverbal behaviors or gestures from Student. Student engaged in unusual hand movements consisting of beating her fingers together; flapping her hands side to side while seated; and other repetitive arm and hand motions at her side. She had difficulty maintaining focus and looked around the room often. Student required a break after each subtest and showed low motivation to perform the tasks.

65. Dr. Johnson administered the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition, to assess Student's cognitive functioning in verbal comprehension, visual spatial, fluid reasoning, working memory, and processing speed. The composite score of these domains is used to determine full scale intelligence. The test is verbally administered, which requires students to have a certain level of verbal comprehension and auditory processing skills in order to obtain a true picture of their cognitive skills.

66. In verbal comprehension, Student scored in the extremely low range, in the second percentile when compared to same-aged peers. In visual spatial, Student scored in the borderline range, in the seventh percentile. In fluid reasoning, Student scored in the borderline range, in the third percentile. In working memory, Student

scored in the average range, in the 42nd percentile. In processing speed, Student scored in the average range, in the 66th percentile.

67. Dr. Johnson did not report a full scale intelligence score due to the significant differences among the scores in each domain. Student's scores on the verbal comprehension and fluid reasoning domains were expected due to her severe expressive language deficits. Student's score on the visual spatial domain was affected by her difficulty sustaining attention and ability to scan items with many details. Student's average scores on the working memory and processing speed domains showed Student's potential for learning.

68. Dr. Johnson administered the Universal Nonverbal Intelligence Test, Second Edition to assess Student's general intelligence based on memory, fluid reasoning, and quantitative reasoning domains. The test was entirely nonverbal, which meant no verbalizations are required for either the examiner or the examinee. The tasks alternated between symbolic and non-symbolic tests. Based on Student's language abilities and behavior, Dr. Johnson selected the non-symbolic quantity and analogic reasoning subtests to administer. On the non-symbolic quantity subtest, the non-symbolic images held no meaning for Student, and she did not appear to understand the tasks. As a result, Dr. Johnson did not score the subtest. On the analogic reasoning subtest, Student was able to recognize incomplete conceptual or geometric figures, and performed in the average range.

69. Dr. Johnson administered the Wechsler Individual Achievement Test, Third Edition to measure Student's academic achievement. The Wechsler consists of 16 subtests to evaluate listening, speaking, reading, writing, and math skills. The subtests combine to yield eight composite scores in oral language, total reading, basic reading, reading comprehension and fluency, written expression, math, math fluency, and total achievement.



70. Within oral language, Student performed in the average range in receptive vocabulary and in the low range in expressive vocabulary. In reading, Student performed in the borderline range on the early reading subtest and in the low range on the spelling subtest. Student identified three letter names correctly; letter sounds for two letters; and one of two rhyming word sets. Student was unable to state a word that rhymed with another word; identify beginning or ending letter sounds; blend sounds to say a word; or consistently match sight words to pictures.

71. In math, Student performed in the low range on the math problem solving skills and numerical operations subtests. Student understood how to use her fingers to indicate a number, although she did not correctly identify the number of fingers Dr. Johnson held up; she identified shapes; and correctly pointed to some single digit numbers. Student was not intelligible when counting; did not correctly count objects; did not understand the concepts of "less" and "same;" and did not answer any numerical operations correctly.

72. In writing, Student performed in average range on the alphabet writing fluency subtest and in the below average range on the written expression composite. Student used an improper grip on the pencil and had difficulty formulating letters. She wrote only eight letters. She did not print her name correctly with respect to letter size, formation, or spelling.

73. Dr. Johnson administered the Autism Diagnostic Observation Scale, Second Edition, to measure Student's social communication and social behavior, taking into account her lack of speech production. With respect to communication, Student used some spontaneous speech using mostly unintelligible single words and phrases. She did not demonstrate echolalia but frequently said "why" and "yeah" out of context.<sup>3</sup>

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<sup>3</sup> Echolalia refers to the meaningless repetition of spoken language. Echolalia is often an associated symptom of autism spectrum disorder.

She pointed, but with inconsistent coordinated eye gaze. She nodded only once. With respect to reciprocal social interaction, Student's overall affect appeared to be flat. She did not demonstrate directed facial expressions. She only smiled when she was anticipating being tickled. She evidenced shared enjoyment in a few activities. When highly motivated, she coordinated eye gaze and asked for help by saying "you he me." Student's responsiveness to social cues was limited, inconsistent, and awkward.

74. Student engaged in some functional play skills, including putting something in a truck and dumping it out; stacking blocks; and cause-and-effect button pushing. Student engaged in pretend play by herself with a doll, but did not sustain the pretend play when Dr. Johnson engaged her. Student demonstrated sensory interests, such as rubbing her hands back and forth on surfaces, and engaging in repetitive hand and finger movements. Overall, the results were consistent with autism spectrum disorder.

#### SCHOOL OBSERVATION

75. Johnson observed Student one time at school for approximately 90 minutes. Student's classroom had 21 students and one teacher. Student's behavior was cooperative and did not disrupt other students. There was no communication system in place and Ms. Beay did not facilitate Student's functional or social communication. Student emitted very little expressive language and her social interaction with peers was severely deficient. Student appeared to understand Ms. Beay's language and expectations within the classroom routines. During whole group instruction, Student directed her attention towards Ms. Beay and appeared to listen, although it was unclear whether she comprehended because she gave minimal verbal or nonverbal reactions.

76. During small group activities, Student watched what other students were doing and tried to imitate their letter sounds and words, often without success. When asked to put together a puzzle with another student, Student sat next to the student

and watched. Student did not help put the puzzle together or communicate with the other student in any way. Ms. Beay reported Student never asked for help. She also reported Student performed better on the day of Dr. Johnson's observation than a usual day. Ms. Beay agreed Student looked to other students to obtain answers to questions, but that one-to-one assessments showed Student was not learning from peer modeling.

77. Dr. Johnson also observed Student during lunch and on the playground. At lunch, Student sat with other female students but did not look at or communicate with them. She raised her hand and waited to be dismissed according to the routine. In line, a peer asked Student a question, to which she responded "no." The peer looked confused because Student's response was not appropriate to the question. Student displayed unusual repetitive arm movements as the students walked to recess. On the playground, Student used the play structure, including the slide and monkey bars. She transitioned quickly through activities, such as playing with a toy, coloring, bouncing a ball, and pushing a tricycle. She attempted to put her arms around Dr. Johnson and then tapped a peer. However, the peer did not understand what she was trying to communicate. A peer waved at Student, but she did not wave back. There were several activities she could have engaged in with other peers, such as hide and seek, tag, doll play, and throwing balls, but Student played by herself.

#### SUMMARY AND RECOMMENDATIONS

78. Based on the Diagnostic and Statistical Manual, Fifth Edition, Dr. Johnson concluded Student met the criteria for autism spectrum disorder, due to her deficits in verbal and nonverbal communication, social interaction, and repetitive behaviors. Student also met the criteria for specific learning disorders in reading, written expression, and math. Dr. Johnson recommended Student qualify for special education under the primary eligibility of autism and the secondary eligibility of specific learning disability.

79. Dr. Johnson recommended several interventions to promote Student's academic, communication, and behavioral progress. Academically, Dr. Johnson recommended continued placement in a general education classroom with a minimum of three hours a day of individual, multisensory academic instruction that is evidence-based for students with learning disabilities. With respect to academic IEP goals, Dr. Johnson recommended goals to prepare Student for first grade expectations and to address her deficits in phonemic awareness, letter identification, sound blending, recognizing sight words, identifying numbers, and number values. Dr. Johnson recommended all goals eliminate prompts to ensure promotion of Student's independence.

80. To address Student's behavior, Dr. Johnson recommended a functional behavior assessment, a behavior support plan, and a one-to-one aide at school, trained in applied behavior analysis. Dr. Johnson recommended an aide trained in applied behavior analysis because research showed it was the intervention of choice for children with autism in developing skills, such as attentiveness and social communication skills. The purpose of the aide was to facilitate Student's communication, socialization, and support her ability to sustain attention and participation in class. To support the aide, Dr. Johnson recommended services from a board certified behavior analyst to supervise and oversee Student's behavior support plan. Additionally, Dr. Johnson recommended ongoing training for Student's providers on educating children with autism, including monthly team meetings to collaborate and monitor Student's progress across settings. Dr. Johnson recommended IEP goals to increase task initiation and completion, attention, spontaneous participation, completing classroom routines, and asking for help.

81. Dr. Johnson recommended additional assessments in speech and language with oral motor and augmentative and alternative communication

components, central auditory processing, and occupational therapy. With respect to speech and language, Dr. Johnson encouraged the IEP team to consider increased individual speech therapy, facilitation of Student's language throughout school day, and consultation between the speech pathologist and Student's educational providers. Dr. Johnson recommended additional IEP goals to increase Student's ability to engage with peers, initiate social interactions, and use appropriate social language, such as greetings and asking questions.

#### May 16 and 30, 2018 IEP Team Meetings

82. On May 16 and 30, 2018, Long Beach convened IEP team meetings to review Dr. Johnson's report. Mother, Ms. Scholnick, Ms. Saroyan, Ms. Ingram, Ms. Beay, a Bixby Elementary administrator, a school counselor, an augmentative and alternative communication specialist, a behavior intervention supervisor, an occupational therapist, and a special education administrator attended the meeting. Dr. Johnson only attended the meeting on May 16. After a lengthy discussion about eligibility, the Long Beach IEP team members agreed with Dr. Johnson's recommendation of autism as Student's primary eligibility and specific learning disability as her secondary eligibility.

83. Ms. Ingram reported on the progress of Student's academic goals from the November 2017 IEP. On the language arts goal, Student achieved identifying her first name from a group of names and could write her first name using a model. The team continued the goal to include Student being able to write her first and last names independently. On the number sense goal, Student achieved rote counting to 10 and identifying the corresponding numeral to five. The team continued the goal to include Student being able to identify numerals to 10 in sequence. The team drafted two new math goals in rote counting and one-to-one correspondence. The rote counting goal involved Student counting to 20 independently. The correspondence goal involved Student writing or saying the number up to 10 that corresponded with the correct

number of objects presented. On the print concept goal, Student achieved identifying all lowercase letters but could only identify 15 uppercase letters. The team continued the goal as a decoding goal that involved Student identifying all uppercase letters. The team developed a new word recognition goal that involved Student reading 10 grade level high frequency words.

84. Ms. Scholnick reported on the progress of Student's speech and language goals from the November 2017 IEP. On the first articulation goal, Student achieved producing vowel-consonant, consonant-vowel, consonant-vowel-consonant, and consonant-vowel-consonant-vowel words using a model with 60 percent accuracy. On the second articulation goal, Student had not achieved producing the identified phonemes in the initial, middle, and final word positions with 60 percent accuracy, but had achieved the goal at 24 percent accuracy. Student achieved indicating her wants and needs by using the phrase "I want..." with 60 percent accuracy. Student had not achieved producing functional words and phrases with 60 percent accuracy, but had achieved the goal at 55 percent accuracy. Student's functional phrases included "my turn," "help me," "go potty," and "I'm hungry."

85. Overall, Student made progress in her communication abilities. Ms. Scholnick attributed Student's progress to her use of the P.R.O.M.P.T. (prompts for restructuring oral motor phonetic targets) method during speech sessions. This method involves the over-pronunciation and tapping of one's articulators in order to improve speech production and intelligibility. Student was able to produce 13 consonants and at times, produced four to five word-approximation sentences. Student also showed increased communicative intent and the ability to spontaneously share information with Ms. Scholnick and Ms. Ingram. Ms. Ingram's communicative interactions with Student had also improved. When Ms. Ingram started working with Student in November 2017, Student could only produce vowels.

86. While Student had progressed in speech and language, Ms. Scholnick identified her ongoing needs as improving phonological processing of initial and final consonants, vocabulary targeting verbs, and responding to “wh” questions. The team developed goals in articulation, expressive vocabulary, functional phrases/pragmatics, indicating wants and needs, phonological processing, and answering “wh” questions. The articulation goal continued Student’s previous goal of producing phonemes in the initial, middle, and final word positions with 60 percent accuracy. The expressive vocabulary goal involved Student labeling a minimum of 25 verbs with 80 percent accuracy given auditory, visual, and tactile cues. The functional phrases/pragmatics goal involved Student producing functional phrases such as “hi,” “how are you,” and “no more,” with 80 percent accuracy; and initiating social interaction with peers by using at least one social expression with minimal support. The indicating wants and needs goal involved Student using the phrase “I want...” outside of speech therapy with 60 percent accuracy and minimal cues. The phonological processing goal involved Student reducing initial and final consonant deletion to improve intelligibility with 80 percent accuracy given prompting, as needed. The answering “wh” questions goal involved Student responding to “wh” questions with 80 percent accuracy.

87. The IEP contained several accommodations including small group and individual instruction; sitting in front of the class; extra time to complete tasks; visual support with multimodal presentation; clarification of directions; breaking material into smaller chunks; allowing verbal approximations, gestures, and nonverbal responses; checking for understanding; having Student repeat things back; priming; reinforcement structured choice; peer support; teacher modeling; and a name tag to assist with writing her name.

88. Long Beach offered placement in a special day class for students with mild to moderate disabilities, for six hours a day; 90 minutes a week of individual speech and

language therapy; and extended school year services. Mother agreed to visit the proposed special day class. Long Beach provided Mother with an assessment plan for an occupational therapy screening, functional behavior, augmentative and alternative communication, and oral mechanism assessments. Mother did not consent to the IEP.

89. At hearing, Ms. Scholnick was surprised the May 2018 IEP's did not offer group speech and language therapy. Ms. Scholnick's intended recommendation was for Student to receive 30 minutes a week of individual therapy and 60 minutes a week of group therapy. Ms. Scholnick indicated she provided Student with 30 minutes a week of individual therapy and 60 minutes a week of group therapy. This duration and frequency was based upon the offer in the last agreed upon November 2017 IEP, as a result of Mother not consenting to the May 2018 IEP's. Ms. Scholnick's testimony regarding her intended recommendation of speech and language therapy at the May 2018 IEP's was not supported by any other evidence. Long Beach never revised Student's IEP to reflect an offer of 60 minutes a week of group therapy, and 30 minutes a week of individual therapy. Thus, Ms. Scholnick's testimony regarding Long Beach's offer of speech and language therapy was not credible.

90. Additionally, Ms. Scholnick's testimony regarding the amount of speech and language therapy she provided to Student after the May 2018 IEP's was not credible. The November 2017 IEP offered Student seven, 30 minute sessions of group therapy, and four, 20 minute sessions of individual therapy. The frequency and duration of these services was not consistent with the services Ms. Scholnick indicated she provided, and there was no other evidence to support Ms. Scholnick's testimony that Student received 60 minutes a week of group therapy and 30 minutes a week of individual therapy.

91. At the end of Student's kindergarten year, she was still struggling academically. She did not know all of her letters or letter sounds. She could rote count



up to six but could not match a numeral with the same number of objects. Student's fine motor skills were delayed compared to other students in Ms. Beay's class but her tracing and cutting had improved. She was unable to write independently. Student became frustrated when she could not do the same tasks as other students in class.

#### MS. BEAY'S OPINION REGARDING STUDENT'S PROGRESS AND PLACEMENT

92. In Ms. Beay's opinion, Student's needs could be more appropriately addressed in the special education setting. In the general education classroom, Ms. Beay was unable to give Student the small group or individual instructional time that she required. Ms. Beay was concerned that Student had not made significant progress in her class and that the level of instruction had far exceeded Student's academic level. Behaviorally, Ms. Beay saw Student make significant progress. At the beginning of the school year, Student moved around a lot during whole group instruction and was distractible. At the end of the school year, Student learned to imitate other students' behaviors and Ms. Beay did not observe any behaviors from Student that impeded her learning. Student would sometimes look around the room during whole group activities on the rug, but could focus during small group table-top activities.

93. Ms. Beay was a credible witness with respect to Student's performance in her classroom and her opinion that she, alone, could not meet Student's instructional needs. However, Ms. Beay did not demonstrate extensive knowledge of teaching students with Student's severe language and academic deficits, or the interventions available to address such needs. Ms. Beay did not demonstrate knowledge of special day class programs or why such a program was appropriate for Student.

#### MS. INGRAM'S OPINION REGARDING STUDENT'S PROGRESS AND PLACEMENT

94. Ms. Ingram was Student's teacher in the resource specialist program beginning in November 2017, and was still teaching Student at the time of hearing. Ms.

Ingram held a master's degree in special education and several California teaching credentials, including a special education credential that allowed her to teach students with mild to moderate disabilities. As of November 2017, Ms. Ingram had been teaching for approximately 29 years.

95. Ms. Ingram worked with Student two times a week, for 30 minutes each session, in a separate classroom. Although the November 2017 IEP indicated specialized academic instruction would be done in a group, Ms. Ingram worked with Student individually because she did not have any other students on her caseload appropriate to pair with Student. Student was cooperative during sessions, seemed eager to participate, and did not display any negative behaviors. The sessions focused on Student's reading, writing, and math skills. When Ms. Ingram began working with Student, she was performing very low academically. Student only recognized seven letters and counted to seven. She did not recognize any sight words and she could not write her name independently. Student also displayed fine motor deficits, and Ms. Ingram worked on Student's fine motor skills during their sessions together.

96. While Student made some progress over the duration of the school year, she had difficulty retaining concepts and required a lot of repetition. Ms. Ingram provided visual support and hands-on activities. Towards the end of the school year, Student could identify 20 uppercase letters in sequence; read sight words "A," "I," and "to" independently; use a model to independently write her name; and count to 10 with assistance.

97. In Ms. Ingram's opinion, Student benefitted from an individual instructional setting more than a group setting, due to her short attention span and distractibility. Additionally, Ms. Ingram did not believe two, 30 minutes sessions a week of specialized academic instruction were sufficient to meet Student's needs. Instead, Ms. Ingram believed Student's needs would be best met in a special day class program for

students with mild to moderate disabilities, where Student would have the benefit of specialized academic instruction for the full day, in a smaller class setting; and could receive more individualized instruction than in a general education classroom. Ms. Ingram explained that special day class teachers are trained to provide specialized academic instruction, and to organize their time so that all students' needs in the class are met. At hearing, Ms. Ingram insisted she provided Student with four, 30 minute sessions a week of specialized academic instruction. However, this was not supported by what was written in the November 2017 IEP, or any other credible evidence.

98. Ms. Ingram was a credible witness. Her educational background and extensive teaching experience was apparent throughout her testimony. However, Ms. Ingram did not demonstrate any extensive knowledge regarding Student's needs in light of her autism eligibility, or the appropriate interventions to address those needs. Ms. Ingram never conducted a formal assessment of Student. Ms. Ingram also never formally observed Student in the general education classroom or during lunch or recess. Other than brief observations of Student in Ms. Beay's class when Ms. Ingram collected her for their sessions, or inadvertently seeing Student on the playground, her knowledge of Student's behavior and academic needs was restricted to their one-on-one sessions in a separate classroom. For these reasons, Ms. Ingram's opinions regarding Student's placement and services were not as persuasive as Dr. Johnson's opinions, as further explained below.

#### DR. JOHNSON'S OPINIONS REGARDING STUDENT'S PROGRESS AND PLACEMENT

99. Dr. Johnson disagreed with the adequacy of some components in the November 15, 2017, and May 16 and 30, 2018 IEP's. With respect to goals, Dr. Johnson was concerned Student had been working on goals, such as identifying letters, writing her name, and counting to 10, for multiple years with minimal progress. Additionally, Dr. Johnson believed Student should have had goals to address her needs in attention and

social interaction with peers. With respect to academic instruction, Dr. Johnson believed 60 minutes a week of specialized academic instruction as offered in the November 15, 2017 IEP, was insufficient to address Student's multiple areas of learning challenges; especially when taking into account her phonological and communication deficits.

100. In Dr. Johnson's opinion, Student's strengths in cognitive processing and working memory indicated an ability to learn. However, because Student had difficulty generalizing what she learned and applying it to other settings, Dr. Johnson believed she required intensive academic instruction on material that was meaningful to her. Dr. Johnson also believed that in order for Student to meaningful progress, she required at least three hours a day of individual instruction, with the remaining three hours a day being spent in a general education classroom with a one-to-one aide trained in applied behavioral analysis. With individual instruction, the instructor could consistently provide priming, feedback, and repetition.

101. In Dr. Johnson's opinion, based on the special day class programs she had visited throughout her career, Student's needs could be met in such a program. Dr. Johnson did not believe Student required the slower pace of a special day program, but rather intensive individual instruction without the distraction of other students. Moreover, Dr. Johnson believed Student's tendency to observe and imitate other students would not be well served in a special day class, where students often had more behavioral challenges than in a general education class. Instead, Dr. Johnson believed Student benefited from strong peer models in a general education classroom.

102. However, in order to be successful in the general education classroom, Student required supports. Dr. Johnson did not observe anyone in Ms. Beay's classroom implementing many of the accommodations listed in the November 15, 2017 IEP. In her opinion, Student required an individual other than the teacher to implement the accommodations; as well as a behavior support plan to address her deficits in attention.

103. Dr. Johnson was a credible witness. Her educational background and experience related to assessing children with autism was apparent throughout her testimony. Dr. Johnson's testimony was well-reasoned, consistent, and supported the findings in her psychoeducational report. Dr. Johnson demonstrated thorough knowledge of Student's educational history and needs based on her review of records, interviews with Mother and Student's teachers, observations of Student, and standardized test results. Dr. Johnson also demonstrated knowledge regarding the type of placement and services from which Student could receive educational benefit. For these reasons, Dr. Johnson's testimony was very persuasive and given significant weight.

## LEGAL AUTHORITY AND CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>4</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, 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>5</sup>; Ed. Code, § 56000 et seq.; Cal. Code Regs., 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).)

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<sup>4</sup> The legal citations in this Introduction are incorporated by reference into the analysis of the issues discussed below.

<sup>5</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise stated.

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.*) Additionally, the Court stated, “for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, ‘be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” (*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).) Here, Student is the petitioning party and has the burden of proof on the issues in the case.

#### FAPE ANALYSIS

7. 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.*)

8. 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).)

9. 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.*)

10. The IDEA requires school districts to make a clear, written IEP offer that parents can understand. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F. 3d 1519, 1526, cert. den., 513 U.S. 965.) 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.*)



## ISSUES 1(A) AND 2(A): DID LONG BEACH FAIL TO IDENTIFY STUDENT AS ELIGIBLE FOR SPECIAL EDUCATION UNDER AUTISM?

11. Student contended that Long Beach should have determined Student was eligible for special education under the category of autism at the October 11, 2016 and November 15, 2017 IEP team meetings. With respect to the October 11, 2016 IEP, Student contended Student's inattentiveness and distractibility in Ms. Greer-Brown's class were evidence of autism-related deficits. Student further contended that Student's reported behaviors during the 2017-2018 school year, and Dr. Johnson's report demonstrated the same autistic-like characteristics existed in 2016, sufficient to identify Student as eligible under autism.

12. With respect to the November 15, 2017 IEP, Student contended that Ms. Sorayan's psychoeducational assessment and Ms. Scholnick's speech and language assessment put Long Beach on notice that Student's special education needs were attributable to more than a speech or language impairment or specific learning disability. Specifically, Student contended Ms. Saroyan's assessment indicated Student had challenges with communication and attention that impeded her learning; and Ms. Scholnick's assessment indicated Student's need for moderate to maximum prompting during testing and referred to Student engaging in a repetitive rocking motion. Student contended these behaviors from Student were sufficient to establish a special education eligibility of autism.

13. Long Beach contended there was no evidence to support an eligibility of autism at the October 11, 2016 or November 15, 2017 IEP's. With respect to the October 11, 2016 IEP, Long Beach contended Student's eligibility was appropriately determined as a speech or language impairment, and was supported by its initial multidisciplinary assessment in June 2015. Long Beach further contended no IEP team member, including Mother, suspected Student had autistic-like characteristics. With respect to the

November 15, 2017 IEP, Long Beach contended Ms. Saroyan's psychoeducational assessment ruled-out autism as a possible eligibility for Student. Ms. Saroyan's assessment determined Student did not meet the eligibility criteria for autism because Student's nonverbal communication and social interactions did not adversely impact her educational performance; and Student did not exhibit characteristics related to autism spectrum disorder.

14. The IEP team is charged with the duty of reviewing assessment results, determining eligibility, determining the contents of an IEP, and making recommendations regarding a student's program and placement. (Ed. Code, § 56342.) Parents are required members of the IEP team. (Ed. Code, § 56341, subd. (b)(1).) A child qualifies as an individual with exceptional needs if the results of an assessment demonstrate that the degree of the child's impairment requires special education. (Cal. Code Regs., tit. 5, § 3030, subd. (a).) The IEP team shall make the decision as to whether or not the child's impairment requires special education after taking into account all relevant material available on the child. (*Ibid.*)

15. In California, a child may qualify for special education under the category of autism if certain criteria are satisfied. Specifically, autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (*Ibid.*) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria are satisfied. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1)(B).)

16. A child may qualify under the category of specific learning disability if the

child has a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do math calculations. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) The basic psychological processes include attention, visual processing, auditory processing, phonological processing, sensory-motor skills, and cognitive abilities. (*Ibid.*)

17. A child may qualify under the category of having a speech or language disorder if the child demonstrates difficulty understanding or using spoken language that results from either: (1) an articulation disorder, such that the child's production of speech significantly interferes with communication; (2) abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness; (3) fluency difficulties which result in an abnormal flow of verbal expression to such a degree that it adversely affects communication between the child and listener; (4) inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the child's language performance is significantly below the performance of peers; or (5) hearing loss which results in a speech or language disorder. (Ed. Code, § 56333.)

October 11, 2016 IEP

18. Student did not prove Long Beach should have qualified her for special education under the category of autism at the October 11, 2016 IEP team meeting. At the time of the meeting, the IEP team attributed Student's deficits in communication to a speech or language impairment. Neither the October 30, 2015, nor October 11, 2016 IEP's indicated the team, including Mother, suspected Student displayed autistic-like characteristics. Student did not display any deficits with social interaction. She was loving and affectionate with Ms. Greer-Brown, had appropriate eye contact, and did not display any behavior issues. Additionally, there was no evidence Student displayed any other characteristics often associated with autism, such as stereotyped movements,

resistance to environmental change, or unusual responses to sensory experiences. Accordingly, the evidence did not support a finding that Long Beach had any reason to suspect Student was a child with autism at the October 11, 2016 IEP.

November 15, 2017 IEP

19. Student did not prove Long Beach should have qualified her for special education under the category of autism at the November 15, 2017 IEP team meeting. The IEP team has discretion to determine eligibility of a child with exceptional needs after reviewing assessment results and other relevant material. Ms. Saroyan's psychoeducational assessment considered whether Student met the eligibility criteria for specific learning disability, intellectual disability, and/or autism. Based on the assessment results, Ms. Saroyan recommended eligibility under specific learning disability, and determined Student did not meet the eligibility criteria for autism because Student's nonverbal communication and social interactions did not adversely impact her educational performance. The IEP team, including Mother, agreed.

20. Moreover, none of the IEP team members, including Mother, suspected Student displayed autistic-like characteristics. At school, Student followed classroom rules and routines, and interacted well with peers. At home, Student was sweet and loveable, and got along well with her siblings. Additionally, On the Childhood Autism Rating Scale, Mother's responses indicated Student had minimal to no symptoms of autism spectrum disorder. Accordingly, the evidence did not support a finding that Long Beach had any reason to suspect Student was a child with autism at the November 15, 2017 IEP.

**ISSUES 1(B), 2(B), AND 3(A): DID LONG BEACH FAIL TO OFFER APPROPRIATE GOALS IN ACADEMICS, COMMUNICATION, BEHAVIOR, AND SOCIAL INTERACTION?**

21. Student contended the October 11, 2016, November 15, 2017, and May 16

and 30, 2018 IEP's did not include goals in all areas of need. With respect to the October 11, 2016 IEP, Student contended the IEP team should have developed goals in pragmatic language or socialization; attention; functional communication to express wants and needs; and writing. With respect to the November 15, 2017 IEP, Student contended the IEP team should have developed goals in attention; social interaction; and pragmatic language. With respect to the May 16 and 30, 2018 IEP's, Student contended the IEP team should have developed goals in attention; social interaction; foundational reading skills, such as phonemic awareness, phonological processing, letter-name identification, blending sounds, and sight words; writing; task initiation and completion; spontaneous class participation; completing expected classroom routines; functional communication; and pragmatic language in the classroom setting. Long Beach contended Student's goals in the October 11, 2016, November 15, 2017, and May 16 and 30, 2018 IEP's were appropriate and addressed Student's areas of need.

22. An IEP must contain a statement of measurable academic and functional annual goals, designed to: (1) meet the child's needs that result from a disability to enable the child to be involved in and make progress in the general curriculum; and (2) meet each of the child's other educational needs that result from a disability. (20 U.S.C. § 414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (Letter to Butler, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

October 11, 2016 IEP

23. Student did not prove Long Beach should have developed additional speech and language goals at the October 11, 2016 IEP team meeting. The October 30, 2015 IEP team developed speech and language goals in articulation, understanding

prepositions, and receptive language. At the October 11, 2016 IEP, Student did not meet the articulation goal, but did meet the prepositions and receptive language goals. Student's communication needs as identified in the IEP addressed her inability to produce any words and her reliance on word approximations, gestures, and pointing. The team developed an articulation goal to address this need. The team did not identify any additional speech and language needs.

24. Student did not prove Long Beach should have developed additional goals in attention or writing. Attention was not identified as an area of concern in the June 2015 multidisciplinary assessment; or in the June 2015, October 2015, or October 11, 2016 IEP's. Writing was also not specifically identified as an area of concern for Student. The June 2015 multidisciplinary assessment indicated Student used a functional grip for writing tools and could imitate pre-writing lines, but did not indicate writing as an area of need. Moreover, neither the October 2015, nor October 11, 2016 IEP's indicated writing was an area of need for Student. Accordingly, the evidence did not support a finding that Student required goals in these areas.

#### November 15, 2017 IEP

25. Student proved Long Beach should have developed a goal in the area of attention at the November 15, 2017 IEP team meeting. Ms. Sorayan's November 2017 psychoeducational assessment indicated Student met the special education eligibility criteria for specific learning disability due to attention and cognitive processing disorders. Ms. Saroyan's assessment also indicated Student displayed inattention and lack of focus in the classroom, during both group and individual tasks, which impacted Student's ability to retain new information. During Ms. Scholnick's speech and language assessment, Student required moderate to maximum prompting, every 45 to 60 minutes to stop moving and return to task, further indicating an attention deficit. Thus, the IEP team had notice attention was an area of need for Student, and should have developed

a goal in this area.

26. Student did not prove Long Beach should have developed a goal in pragmatic language at the November 15, 2017 IEP team meeting. Ms. Scholnick's assessment concluded Student had a significant speech and language disorder. Specifically, the assessment identified Student's areas of need as improving her ability to express wants and needs; to produce functional phrases; to produce age-appropriate phonemes (or sounds); and to receptively identify and label age-appropriate vocabulary. The assessment did not identify pragmatic language as an area of need. When Ms. Scholnick observed Student in class, Student participated in a social activity that required her to find other students to partner with. Although Student did not find partners as quickly as the other students, she appeared happy to participate. The IEP team developed goals based on the results of Ms. Scholnick's assessment, including two articulation goals to improve Student's speech production; an expressive language goal to improve Student's ability to indicate her wants and needs; and a goal to improve Student's use of functional phrases. Student did not offer any credible evidence to support a finding that pragmatic language was an area of need or that Student required a pragmatic language goal in the November 15, 2017 IEP.

27. Student did not prove Long Beach should have developed a social interaction goal. Student offered no credible evidence to support a finding that social interaction was an area of need for Student.

May 16 and 30, 2018 IEP's

28. Student proved Long Beach should have developed a goal in attention at the May 16 and 30, 2018 IEP's. As discussed above, both Ms. Saroyan and Ms. Scholnick's assessments identified attention as an area of need for Student. Additionally, Dr. Johnson's report indicated attention as an area of need for Student. During Dr. Johnson's assessment, Student had difficulty maintaining focus and required a break

after each subtest. The assessment also revealed Student displayed inattentiveness in Ms. Beay's class during both whole group and small group activities. In whole group, Student often looked around the room. In small group, Student would often look at what other students were doing instead of focusing on her own tasks. Dr. Johnson recommended a goal in attention and a one-to-one aide, trained in applied behavior analysis to help support Student's improvement in attentiveness. However, the IEP team failed to develop a goal in attention; and as a result, disregarded Student's demonstrated need in this area.

29. Except in the area of attention, Student did not prove Long Beach should have developed goals in any additional areas, other than those developed at the IEP team meeting. The IEP team developed six academic goals and six speech and language goals that addressed Student's areas of identified need, including many of the goals recommended in Dr. Johnson's report. In academics, the team developed goals in language arts, math, and reading. These goals encompassed Student's development of skills in writing, counting, letter identification, and word recognition. Student's speech and language goals encompassed development of her skills in articulation, expressive language, using functional phrases, social interactions with peers, expressing wants and needs, improving intelligibility, and answering "wh" questions. The goals developed were based on Student's present levels of performance as reported by Ms. Ingram, Ms. Beay, Ms. Scholnick, and Dr. Johnson. While there may have been additional goals Dr. Johnson recommended at the IEP team meeting, the goals developed addressed Student's identified areas of need.

#### ISSUE 2(C): DID LONG BEACH FAIL TO OFFER APPROPRIATE ACADEMIC INSTRUCTION IN THE NOVEMBER 15, 2017 IEP?

30. Student contended the November 15, 2017 IEP failed to offer appropriate academic services that would allow Student to make meaningful progress. Specifically,



Student contended Long Beach's offer of two, 30 minute sessions of group specialized academic instruction did not meet Student's academic needs. Long Beach contended the academic instruction offered in the November 15, 2017 IEP was appropriate, as evidenced by Student's limited but steady progress in Ms. Beay's class, commensurate with her abilities and challenges.

31. Related services, when needed, are determined by the IEP. (Cal. Code Regs., tit. 5, § 3051, sub. (a)(2).) 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).) The IEP must also include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

32. Student proved Long Beach failed to offer appropriate academic instruction in the November 15, 2017 IEP. At the time of the IEP team meeting, Student had been enrolled in Ms. Beay's general education kindergarten class for approximately two and one half months. Ms. Beay's class had approximately 26 students and no aide. Ms. Saroyan's psychoeducational assessment revealed Student's cognitive ability was in the low average range, but that Student was performing beneath expected proficiency levels for kindergarten. Student could not say or write her name. She only recognized seven letters and counted to five. She could not copy letters, dictate a story, or draw anything other than scribbles. As a result, Ms. Saroyan recommended eligibility for special education under the category of specific learning disability, due to deficits in all academic areas.

33. During Ms. Scholnick's speech and language assessment, Ms. Beay

reported Student was unable to complete any work in her class. At the IEP team meeting, Ms. Beay reported Student had challenges starting and completing work independently, organizing her materials, recalling information, and applying concepts. As a result, Ms. Beay provided Student with various supports, including one-to-one instruction when time allowed.

34. The academic annual goals the IEP team developed further showed the extent of Student's deficits. The goals included Student identifying and writing her name; counting and identifying numbers to 10; and identifying all letters of the alphabet. The October 11, 2016 IEP also included goals involving Student counting to 10 and identifying 10 or more letters. The fact that Student had not achieved these skills in a year's time indicated the severity of Student's academic needs.

35. Long Beach's offer of continued placement in general education with two, 30 minute sessions a week of group specialized academic instruction and various accommodations was not reasonably calculated to enable Student to make progress appropriate in light of her ability to learn and significant deficits in all academic areas. Ms. Beay, Ms. Ingram, and Dr. Johnson credibly testified Student benefitted from individual instruction. Moreover, both Ms. Ingram and Dr. Johnson credibly testified that 60 minutes a week of specialized academic instruction was insufficient to meet Student's needs. Ms. Ingram believed Student needed specialized academic instruction for the full day in a special day class; and Dr. Johnson believed Student needed at least three hours a day of individual instruction.

36. While Student showed some academic progress once specialized academic instruction began in the general education setting, it was minimal. At the time of the May 16 and 30, 2018 IEP's, Student was still working on writing her name; identifying numbers to 10; and identifying letters of the alphabet. Ms. Beay was concerned Student had not made significant progress in her class and that the level of

instruction had far exceeded Student's academic level. Student's lack of progress was further indication that the specialized academic instruction offered in the November 15, 2017 IEP, was not appropriate. Accordingly, Student prevailed on this issue.

ISSUES 1(C), 2(D), AND 3(B): DID LONG BEACH FAIL TO OFFER APPROPRIATE BEHAVIOR SERVICES?

37. Student contended Long Beach should have offered behavior intervention services to Student, such as applied behavior analysis, in the October 11, 2016, November 15, 2017, and May 16 and 30, 2018 IEP's. Student contended these services would support Student's challenges with attention. Long Beach contended Student did not exhibit any behaviors that impeded her learning or that of others. Thus, Long Beach contended Student did not require behavior intervention services to benefit from her special education services.

38. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).)

October 11, 2016 and November 15, 2017 IEP's

39. Student did not prove Long Beach failed to offer appropriate behavior services at the October 11, 2016 and November 15, 2017 IEP's. Student's contention that Student required applied behavior analysis to address her communication and attention needs during the timeframes of these IEP meetings is not persuasive. Dr. Johnson credibly testified that applied behavior analysis is an intervention for children with autism in developing skills, such as attentiveness and social communication skills. Student was not identified as having autism spectrum disorder until Dr. Johnson's report in April 2018. As discussed above, neither the October 11, 2016, nor the November 15,

2017 IEP teams, including Mother, suspected Student exhibited any autistic-like characteristics. Therefore, applied behavior analysis was not an appropriate related service for Student. Student did not offer any credible evidence to support Student's need for applied behavior analysis during these time periods.

May 16 and 30, 2018 IEP's

40. Student proved Long Beach failed to offer appropriate behavior services at the May 16 and 30, 2018 IEP's. Dr. Johnson conducted a very thorough psychoeducational assessment of Student in March and April 2018, and presented her report at the May 16, 2018 IEP team meeting. Dr. Johnson's report revealed Student had autism spectrum disorder. Dr. Johnson recommended, and the IEP team agreed, that Student qualified for special education under the primary category of autism. Dr. Johnson's opinions regarding Student's needs related to an autism eligibility were persuasive. Specifically, Dr. Johnson indicated Student required behavior intervention services in the form of a functional behavior assessment; a behavior support plan; a one-to-one aide trained in applied behavior analysis; and a board certified behavior analyst to supervise the aide and oversee Student's behavior support plan. Dr. Johnson agreed with Long Beach team members that Student was cooperative during class and did not exhibit behaviors that disrupted other students. However, Dr. Johnson's opinion that Student required behavior intervention services to facilitate her communication and socialization; and to support her ability to sustain attention and participation in class, was persuasive. Accordingly, Student prevailed on this issue.

#### ISSUES 1(D), 2(E), AND 3(C): DID LONG BEACH FAIL TO OFFER APPROPRIATE SPEECH AND LANGUAGE THERAPY?

41. Student contended Long Beach failed to offer appropriate speech and language therapy in the October 11, 2016, November 15, 2017, and May 16 and 30,

2018 IEP's. Specifically, Student contended the frequency and duration of therapy was insufficient to address Student's severe speech and language needs. Student further contended Long Beach's offer of group speech and language therapy in the November 15, 2017 IEP was inappropriate.

42. Long Beach contended the speech and language therapy services offered in the October 11, 2016, November 15, 2017, and May 16 and 30, 2018 IEP's were appropriate to address Student needs at the time. Long Beach contended Mother's revocation of special education in June 2017 affected Student's ability to make progress in speech and language at the beginning of the 2017-2018 school year, but that once eligibility was re-established in November 2017, Student made significant progress.

#### October 11, 2016 IEP

43. Student did not prove Long Beach failed to offer appropriate speech and language therapy in the October 11, 2016 IEP. At the October 30, 2015 IEP, Long Beach developed four speech and language goals; and offered four, 20 minute sessions a month of group speech and language therapy, and eight, 15 minute sessions a month of individual speech and language therapy. At the October 11, 2016 IEP, Student met three of the four previous speech and language goals. As a result, the team developed only one speech and language goal in articulation. To support this goal, Long Beach offered eleven, 15 minute sessions a month of individual speech and language therapy. While Student's total speech and language therapy reduced by 35 minutes a month, Student's individual therapy increased by 45 minutes a month. Student's contention that the frequency and duration of therapy offered was insufficient is not persuasive. As discussed above, Student did not prove she required additional speech and language goals at this IEP team meeting. Thus, the question to be determined is whether the IEP team's offer of eleven, 15 minute sessions a month of individual therapy was sufficient to support Student's articulation goal. Student did not offer any credible evidence to

prove that it was not sufficient. Accordingly, Student did not prevail on this issue.

November 15, 2017 IEP

44. Student did not prove Long Beach failed to offer appropriate speech and language therapy in the November 15, 2017 IEP. Long Beach offered seven, 30 minute sessions a month of group speech and language therapy; and four, 20 minute sessions a month of individual speech and language therapy. This offer was based on the results of Ms. Scholnick's speech and language assessment. Ms. Scholnick concluded Student had a significant speech and language disorder and recommended individual and small group speech and language therapy to improve Student's communication skills. The IEP team developed four speech and language goals, including two articulation goals, an expressive language goal, and a goal related to using functional phrases. The offered speech and language therapy was reasonably calculated to support Student's progress on the goals. Student did not offer any credible evidence to prove Long Beach's offer of speech and language therapy was inappropriate, or any evidence of the frequency and duration of services that was appropriate. Accordingly, Student did not prevail on this issue.

May 16 and 30, 2018 IEP's

45. Student proved Long Beach failed to offer appropriate speech and language therapy in the May 16 and 30, 2018 IEP's. School districts are required to make a clear, written offer of placement and services. Long Beach failed to make a clear, written offer of speech and language therapy at the May 2018 IEP's. Ms. Scholnick testified she provided Student with 60 minutes a week of group therapy, and 30 minutes a week of individual therapy. However, the IEP offers three, 30 minute sessions a week of individual speech and language therapy. Ms. Scholnick's testimony that what appeared in the IEP was not correct, was not supported by any other evidence and was therefore,

not credible. Long Beach never revised the IEP to reflect what Ms. Scholnick intended to recommend. Thus, the appropriateness of three, 30 minute sessions a week of individual therapy must be determined.

46. The IEP team developed speech and language goals in articulation, expressive vocabulary, functional phrases/pragmatics, indicating wants and needs, phonological processing, and answering “wh” questions. The functional phrases/pragmatics goal involved Student initiating social interact with peers using social expressions. Student required group therapy with peers in order to successfully achieve this goal. Moreover, Ms. Scholnick’s intention of recommending 60 minutes a week of group therapy, and 30 minutes a week of individual therapy, supports a finding that 90 minutes a week of individual therapy was not appropriate. Accordingly, Student prevailed on this issue.

#### ISSUES 1(E), 2(F), AND 3(D): DID LONG BEACH FAIL TO OFFER APPROPRIATE OCCUPATIONAL THERAPY?

47. Student contended Long Beach should have offered Student occupational therapy services due to fine motor deficits, in the October 11, 2016, November 15, 2017, and May 16 and 30, 2018 IEP’s. Long Beach contended Student did not have any fine motor deficits that required occupational therapy services in order to benefit from her special education program.

48. A school district must assess a child once it has notice the child may have a suspected area of disability. (*Timothy O. v. Paso Robles Unified Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121.) School districts cannot disregard a suspicion of a suspected disability because of subjective views of its staff members concerning the outcome of the assessment, and it cannot satisfy the requirement to assess through informal observation. (*Ibid.*) An assessment must be performed so that parents can “receive notification of, and have the opportunity to contest, conclusions regarding their

children." (*Timothy O., supra*, citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, 802.)

October 11, 2016 IEP

49. Student did not prove Long Beach failed to offer appropriate occupational therapy in the October 11, 2016 IEP. Long Beach's June 2015 multidisciplinary assessment determined Student's fine motor, visual motor, gross motor, and sensory processing skills were appropriate to participate in the preschool setting, and did not recommend occupational therapy services. Moreover, Ms. Greer-Brown did not indicate Student had any fine motor needs that could not be addressed in the classroom during the 2015-2016 and 2016-2017 school years. There was no additional evidence presented to support a finding that Student had a need for occupational therapy at the October 11, 2016 IEP team meeting. Accordingly, Student did not prevail on this issue.

November 15, 2017 IEP

50. Student proved Long Beach failed to appropriately address Student's occupational therapy needs in the November 15, 2017 IEP. There were several instances during the 2017-2018 school year, leading up to the November 15, 2017 IEP, that put Long Beach on notice that occupational therapy was an area of suspected disability for Student. In Ms. Saroyan's psychoeducational assessment, Student performed in the very low range on the spatial composite of the Differential Abilities Scale, which required use of fine motor coordination skills to copy line drawings. Additionally, Student was unable to write her name; copy letters; or draw a picture other than scribbles. During Ms. Scholnick's speech and language assessment, Mother stated her belief that Student needed occupational therapy to address fine motor concerns. Finally, Ms. Beay reported Student could not write anything other than scribbles, and had difficulty with tracing and cutting. Finally, Mother requested occupational therapy services at the IEP team



meeting. Pursuant to *Timothy O.*, once Long Beach had notice occupational therapy was an area of suspected disability for Student, it had an obligation to conduct an assessment. Instead, Long Beach only offered an informal screening by an occupational therapist. An informal screening did not satisfy the requirements of *Timothy O.* to conduct an assessment, and did not provide Mother with notification of Student's needs in occupational therapy. Thus, Long Beach failed to comply with IDEA procedures when it failed to at least offer an assessment to determine whether Student required occupational therapy. Accordingly, Student prevailed on this issue.

May 16 and 30, 2018 IEP's

51. Student proved Long Beach failed to appropriately address Student's occupational therapy needs in the May 16 and 30, 2018 IEP's. Long Beach continued to be on notice that occupational therapy was an area of suspected disability throughout the 2017-2018 school year. When Ms. Ingram began working with Student, she displayed fine motor deficits. Ms. Ingram worked with Student on fine motor skills during their sessions together. When Dr. Johnson assessed Student in March and April 2018, Student used an improper grip on writing utensils, and had difficulty writing letters. Student could not print her name correctly with respect to letter size or formation. As a result of the fine motor deficits Dr. Johnson observed, she recommended Long Beach conduct an occupational therapy assessment. Again, instead of offering to assess Student in occupational therapy at the May 16 and 30, 2018 IEP's, Long Beach offered another informal screening. For the same reasons discussed with respect to the November 2017 IEP, Long Beach failed to comply with IDEA procedures when it failed to offer an assessment to determine whether Student required occupational therapy. Accordingly, Student prevailed on this issue.

ISSUES 1(F) AND 3(E): DID LONG BEACH FAIL TO OFFER APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

52. Student contended Long Beach failed to offer Student an appropriate placement in the least restrictive environment when it continued to offer a preschool special day class program at Buffum in the October 11, 2016 IEP; and when it offered placement in a special day class program for students with mild to moderate disabilities at the May 16 and 30, 2018 IEP's. With respect to the May 2018 IEP's, Student contended she could be successfully educated in the general education environment with appropriate related services, as recommended by Dr. Johnson.

53. Long Beach contended it offered Student an appropriate placement in the least restrictive environment when it offered a preschool special day class program at Buffum in the October 11, 2016 IEP. Long Beach further contended it offered Student an appropriate placement in the least restrictive environment when it offered a special day class program for students with mild to moderate disabilities at the May 16 and 30, 2018 IEP's. Finally, Long Beach contended Dr. Johnson's recommendation that Student spend three hours a day in general education with a one-to-one aide and three hours a day receiving intensive individual instruction was more restrictive than a special day class program.

54. 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.)

55. 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).)

56. The Ninth Circuit court in *Sacramento City Unified School District Board of Education v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, adopted a four-factor balancing test to determine whether a school district has complied with the mainstreaming requirement of the IDEA. The factors include: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student has on the teacher and children in the regular class; and (4) the costs of mainstreaming. (*Id.* at 1404.)

October 11, 2016 IEP

57. Student did not prove Long Beach failed to offer an appropriate placement in the least restrictive environment in the October 11, 2016 IEP. Prior to Student's placement in Ms. Greer-Brown's preschool special day class program, Long Beach conducted an initial multidisciplinary assessment in June 2015 and held an IEP team meeting on June 26, 2015. The IEP team at that meeting arrived at the offer of placement based on Student's special education eligibility of speech or language impairment, as well as Student's communication and pre-academic needs. Student's placement in Ms. Greer-Brown's class continued throughout the 2015-2016 and 2016-2017 school years. Although Student's progress was slow, Student met all her previous

academic goals at the October 11, 2016 IEP. Additionally, Student participated appropriately in all classroom activities, followed one to two step directions, and was able to sit through a 20 minute circle time lesson.

58. Student offered no persuasive evidence to support a finding that Ms. Greer-Brown's class was inappropriate. Moreover, Student did not offer any evidence regarding what alternative placement would have been appropriate for Student. Finally, Student did not offer any evidence to support a finding that Ms. Greer-Brown's class was not the least restrictive environment. Accordingly, Student did not prevail on this issue.

#### May 16 and 30, 2018 IEP's

59. Student proved Long Beach failed to offer an appropriate placement in the least restrictive environment in the May 16 and 30, 2018 IEP's. At the time of these IEP team meetings, Long Beach had the benefit of the extensive findings and recommendations from Dr. Johnson's psychoeducational assessment. Dr. Johnson's report revealed layers of Student's academic and functional needs that Long Beach had not discovered. The IEP team adopted Dr. Johnson's recommendation that Student should qualify for special education under the category of autism, and incorporated some of Dr. Johnson's recommended goals into the IEP. However, the IEP team did not adopt Dr. Johnson's recommendations with respect to placement, or the type of academic and behavior intervention services Student required to receive an educational benefit from her special education program. Instead, the IEP team offered placement in a special day class for students with mild to moderate disabilities, and did not offer any behavior intervention services. Since Long Beach did not conduct its own assessment prior to the IEP team meeting, it is unclear what the team relied upon in making its offer of placement and services to Student.

60. Except for the two to three month timeframe Mother removed Student from special education services in 2017, Student received continuous special education placement and services from Long Beach for the 2015-2016, 2016-2017, and most of the 2017-2018 school years. In that time, Student made minimal academic progress. When Student entered Ms. Greer-Brown's class at the beginning of the 2015-2016 school year, she was not yet using words, and instead relied on word approximations, gestures, and some sign language to communicate. She had approximately 10 word approximations in her vocabulary. Student was not able to follow one to two step directions; could not identify her name; could not identify shapes; and was not yet counting numbers.

61. When Student began receiving specialized academic instruction from Ms. Ingram in November 2017, two years after she began special education, she only recognized seven letters and counted to seven. She did not recognize any sight words and could not write her name independently. When Dr. Johnson assessed Student in March 2018, Student still could not identify all letters of the alphabet; write her name independently; or consistently count to 10. Additionally, Student could not identify beginning or ending letter sounds; blend sounds to say a word; or consistently match sight words to pictures. At the May 16 and 30, 2018 IEP's, Student could count to 10 but could not identify numbers to 10; could identify all lowercase letters, but only 15 uppercase letters; and was still using word approximations, gestures, and other nonverbal cues to communicate. Student was still working to achieve basic skills she had been working on for more than two years.

62. Long Beach staff believed Student would achieve more progress in a special day class program for students with mild to moderate disabilities. Both Ms. Beay and Ms. Ingram believed the smaller class size, and increased opportunity for small group and individualized instruction would better serve Student's academic needs. However, neither Ms. Beay's, nor Ms. Ingram's opinions regarding Student's placement

were persuasive. Ms. Beay had no knowledge of the special day class program recommended for Student. Ms. Beay also had no knowledge of what interventions and services were available to address Student's needs in the general education classroom. Ms. Ingram never conducted a formal assessment of Student, or formally observed Student in the general education classroom. Instead, her knowledge of Student's needs was restricted to their one-on-one sessions.

63. On the contrary, Dr. Johnson's opinions regarding what constituted an appropriate placement for Student was persuasive. Dr. Johnson had extensive experience assessing students with autism. Dr. Johnson demonstrated thorough knowledge of Student's academic and behavioral needs, and relied on the findings in her psychoeducational assessment to support her recommendation that Student required three hours a day of intensive individual instruction, three hours a day in a general educational classroom with a one-to-one aide trained in applied behavior analysis, and additional behavior intervention services. Furthermore, Dr. Johnson's opinion that Student would not benefit from placement in a special day class program was persuasive. Dr. Johnson's report revealed, and Ms. Beay credibly testified, that Student modeled other students' behavior. As such, Dr. Johnson's opinion that a special day class, where students were likely to have more behavioral challenges, was not appropriate for Student. Moreover, Student made minimal progress when she attended Ms. Greer-Brown's special day class program, so there was no evidence that Student would receive more educational benefit in a special day class than in a general education classroom with the appropriate services and supports.

64. Student's placement in a general education classroom is further supported when considering the *Rachel H.* factors. The first factor is the educational benefits Student would receive from full-time placement in the general education classroom. During the 2017-2018 school year, Student did not receive significant educational

benefits from Ms. Beay's general education class. However, for reasons stated elsewhere in this Decision, the November 15, 2017 IEP, was not reasonably calculated to enable Student to make progress. Specifically, Long Beach failed to develop a goal to address Student's attention needs; and failed to offer sufficient specialized academic instruction. As previously discussed, Dr. Johnson's opinion that Student would benefit from placement in a general education classroom with a one-to-one aide trained in applied behavior analysis, along with other behavior intervention services, was persuasive. There was no credible evidence that Student would benefit from placement in a more restrictive special day class program.

65. The second factor is the non-academic benefits Student would receive from a general education classroom. The evidence showed Student received immense non-academic benefits from her general education peers. Ms. Beay indicated Student often observed and imitated what other students were doing. Thus, Student benefited from strong peer models. Student also benefitted from the opportunity to engage socially with her general education peers and was happy to participate in group activities. The third factor is the effect Student would have on the teacher and other students. The evidence showed that Student could follow the classroom routine; could attend to task during small group table-top activities; and did not exhibit any disruptive behaviors that negatively impacted the classroom or teacher. The fourth and final factor of the cost of mainstreaming was not argued by either party or offered into evidence.

66. Ultimately, Long Beach's offer of placement in a special day class program for students with mild to moderate disabilities failed to offer Student a FAPE because it was not designed to meet Student's need for individualized instruction, strong peer models, or behavior support related to Student's autism. Moreover, Long Beach's offer of placement did not constitute the least restrictive environment, as the evidence did not support a finding that Student could not be successfully educated in a general

education classroom with appropriate services and supports.

## REMEDIES

1. Student prevailed on issues 2(b), 2(c), 2(f), 3(a), 3(b), 3(c), 3(d), and 3(e). Specifically, Long Beach failed to develop goals in all areas of need in the November 15, 2017, and May 16 and 30, 2018 IEP's; failed to offer appropriate specialized academic instruction in the November 15, 2017 IEP; failed to offer appropriate occupational therapy in the form of an assessment, in the November 15, 2017, and May 16 and 30, 2018 IEP's; failed to offer appropriate behavior intervention services in the May 16 and 30, 2018 IEP's; failed to offer appropriate speech and language therapy in the May 16 and 30, 2018 IEP's; and failed to offer appropriate placement in the least restrictive environment in the May 16 and 30, 2018 IEP's. Student is entitled to a remedy for prevailing on these issues.

2. As a remedy, Student requested the following: (1) placement in a general education classroom; (2) individual academic instruction for three hours a day; (3) reimbursement to Mother for privately funded academic tutoring, behavior therapy, speech and language therapy, and occupational therapy; (4) compensatory academic instruction, behavior therapy, speech and language therapy, and occupational therapy; (5) intensive individual behavior therapy program from a nonpublic agency experienced in working with children with autism, provided at home and at school, on a year-round basis; (6) independent educational evaluations in speech and language and occupational therapy; and (7) appropriate speech and language therapy and occupational therapy provided at home and at school, on a year-round basis.

3. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable



authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When school districts fail to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, at pp. 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Id.* at p. 374.)

4. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington, supra*, at p. 370; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.)

5. Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief that may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. (*Puyallup, supra*, at p. 1496.) The purpose of compensatory education is to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Ibid.*) The remedy of compensatory education depends on a "fact-specific analysis" of the individual circumstances of the case, and the conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1497.)

6. There is no obligation to provide day-for-day compensation for time missed. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Puyallup, supra*, at p. 1497.) The

award must be fact-specific and "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid, supra, at p. 524.*)

7. An independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-823.)

8. Student did not present any evidence to support a remedy of reimbursement to Mother for privately funded academic tutoring, behavior therapy, speech and language therapy, and occupational therapy. Therefore, this requested remedy is denied.

9. Long Beach's failure to develop an attention goal in the November 15, 2017, and May 16 and 30, 2018 IEP's, deprived Student of educational benefit by impeding Student's progress in the area of academics. As such, Student is entitled to compensatory academic instruction to help overcome the lost educational opportunity. Long Beach's failure to include a goal in attention persisted from November 15, 2017, until the end of the 2017-2018 school year. Based on Long Beach's school calendar, Student went 26 weeks without an attention goal. This calculation does not include the time Mother removed Student from special education or school breaks. Student is entitled to one hour a week of compensatory academic instruction, for a total of 26 hours, through a nonpublic agency of Mother's choice. Mother's selected nonpublic agency must fall within Long Beach's written guidelines for contracting with nonpublic agencies, unless Long Beach agrees to waive such guidelines.

10. Long Beach's failure to offer sufficient specialized academic instruction to Student in the November 15, 2017 IEP resulted in a lack of educational progress during the 2017-2018 school year. As such, Student is entitled to compensatory academic instruction to help overcome the lost educational opportunity. Long Beach's failure to

offer appropriate specialized academic instruction persisted from November 15, 2017 through the end of the 2017-2018 school year. Student received one hour a week of specialized academic instruction during this time. Ms. Ingram intended to provide Student with two hours a week. Thus, as an equitable remedy, Student is entitled to one hour a week of compensatory academic instruction. Based on Long Beach's school calendar, Student went 26 weeks without appropriate specialized academic instruction. This calculation does not include the time Mother removed Student from special education or school breaks. Student is entitled to an additional 26 hours of compensatory academic instruction by a nonpublic agency of Mother's choice. Mother's selected nonpublic agency must fall within Long Beach's written guidelines for contracting with nonpublic agencies, unless Long Beach agrees to waive such guidelines.

11. Long Beach had notice that occupational therapy was an area of suspected disability for Student. Therefore, Long Beach had a duty to assess Student. An informal screening did not satisfy this duty. In order to determine whether Student requires occupational therapy services, Student is entitled to a formal occupational therapy assessment, that includes an assessment plan, a review of records, interviews with Mother and Student's teachers, classroom observations, and standardized testing. The assessment shall be conducted by Long Beach staff.

12. With respect to Long Beach's failure to offer appropriate behavior intervention services in the May 16 and 30, 2018 IEP's, Student offered credible evidence through Dr. Johnson's report regarding the appropriate remedy. Long Beach shall fund an independent functional behavior assessment by an assessor of Mother's choice. Mother's selected assessor must fall within Long Beach's written guidelines for independent assessments, unless Long Beach agrees to waive such guidelines. Long Beach shall fund up to four hours for the assessor to travel and attend an IEP team meeting to review the results of the assessment, and develop a behavior intervention

plan. Additionally, Long Beach shall provide Student with a full-time one-to-one aide, during her time in the general education classroom, to support Student's communication, social interactions, attention and participation. The aide shall be trained in applied behavior analysis or have experience working with children on the autism spectrum. Long Beach shall also provide four hours a month of supervision and consultation from a board certified behavior analyst to support the aide's services and oversee the implementation of the behavior intervention plan. If Long Beach does not have the staff to provide a full-time aide and supervision from a board certified behavior analyst, Long Beach shall contract with a nonpublic agency to provide the services. The services from the aide and the board certified behavior analyst shall continue until the end of Long Beach's first semester of the 2019-2020 school year, unless the services are changed through the IEP process and Mother agrees to the change.

13. Long Beach failed to make a clear, written offer of speech and language therapy at the May 2018 IEP's. Long Beach also failed to offer Student group speech and language therapy. The IEP's offered Student three, 30 minute sessions a week of individual therapy. However, Ms. Scholnick was actually providing 60 minutes a week of group therapy, and 30 minutes a week of individual therapy. Therefore, Student did not suffer a loss of educational benefit from Long Beach's failure to make a clear, written offer. Moreover, Student did not offer any evidence as to the frequency or duration of speech and language services Long Beach should have offered. Accordingly, Student is not entitled to a remedy.

14. Finally, this Decision finds that Long Beach failed to offer Student an appropriate placement in the least restrictive environment in the May 16 and 30, 2018 IEP's. In Dr. Johnson's persuasive opinion, Student requires placement in a general education classroom with the support of a one-to-one aide, and with some amount of individual, intensive academic instruction. However, Student did not present sufficient

evidence to support a remedy of three hours a day of pull-out individual academic instruction. In light of the ALJ's broad discretion to award an equitable remedy, and in light of Student's significant needs in all areas of academics, Long Beach shall provide one hour a day of pull-out, individual specialized academic instruction, by a resource specialist teacher, at Student's school of attendance. The one hour a day of specialized academic instruction shall continue until the end of Long Beach's first semester of the 2019-2020 school year, unless the amount of specialized academic instruction is changed through the IEP process and Mother consents to the change.

## ORDER

1. Long Beach shall fund 52 hours of compensatory academic instruction for Student through a nonpublic agency, either by directly contracting with an agency of Mother's choice, or by reimbursing Mother, at Mother's discretion, subject to proof of services and payment. Mother's selected nonpublic agency must fall within Long Beach's written guidelines for contracting with nonpublic agencies, unless Long Beach agrees to waive such guidelines. Within 15 days of this Order, Long Beach shall provide Mother with a list of potential nonpublic agencies that provide academic instruction, and with Long Beach's written guidelines for contracting with nonpublic agencies. Student shall have two years from the date the services begin to access the hours. Student may access the hours irrespective of whether she resides within Long Beach's boundaries or attends a Long Beach school, and whether or not school is in session.

2. Within 15 days of this Order, Long Beach shall provide Mother with an assessment plan to conduct an occupational therapy assessment that assesses Student's fine motor, visual motor, gross motor, and sensory processing skills. The assessment shall, at a minimum, include a review of Student's records, interviews with Mother and Student's teachers; classroom observations; and standardized test measures. Within 60 days after Mother's consent to the assessment plan, Long Beach shall convene an IEP

team meeting to discuss the results of the assessment.

3. Within 15 days of this Order, Long Beach shall provide Mother with a list of potential independent assessors to conduct a functional behavior assessment, and with Long Beach's written guidelines for independent assessments. Long Beach shall establish a contract with the assessor to conduct the assessment within 30 days after Mother selects an assessor. Long Beach shall convene an IEP team meeting within 30 days after receiving a copy of the assessment report, to review the assessment results, and develop a behavior intervention plan. Long Beach shall fund up to four hours for the assessor to attend the IEP team meeting.

4. Within 30 days of this Order, Long Beach shall convene an IEP team meeting, to implement the following placement and services: (1) Student placement in a general education classroom; (2) a full-time one-to-one aide, trained in applied behavior analysis or experience working with students on the autism spectrum, during the time Student is in the general education classroom; (3) four hours a month of supervision and consultation from a board certified behavior analyst to support the aide and oversee the behavior intervention plan; (4) and one hour a day of pull-out, individual specialized academic instruction, by a resource specialist teacher at Student's school of attendance. If Long Beach does not have the staff to provide a full-time aide and supervision from a board certified behavior analyst, Long Beach shall contract with a nonpublic agency to provide the services. The placement and services offered in the IEP, as outlined in this Order, shall continue until the end of Long Beach's first semester of the 2019-2020 school year, unless changed through the IEP process and Mother consents to the changes.

5. All other relief sought by Student is denied.

## 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. Student prevailed on issues 2(b), 2(c), 2(f), 3(a), 3(b), 3(c), 3(d), and 3(e). Long Beach prevailed on issues 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 2(a), 2(d), and 2(e).

## 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 16, 2019

\_\_\_\_\_/s/\_\_\_\_\_  
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TARA DOSS

Administrative Law Judge

Office of Administrative Hearings