

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SALINAS UNION HIGH SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2013070582

DECISION

The Salinas Union High School District (District) filed a due process hearing request with the Office of Administrative Hearings, State of California (OAH), on July 15, 2013, naming Student. The matter was continued for good cause on July 29, 2013.

Administrative Law Judge (ALJ) Margaret M. Broussard, heard this matter in Salinas, California, on November 12, 13, and 14, 2013.

The District was represented by Daniel Osher, Attorney at Law. Nancy Jones-Powers, District representative, was present on all hearing dates.

LaJoyce Porter, Attorney at Law, represented Student. Student's mother (Mother) was present on all hearing dates. Mother was assisted by Sarah Aracervantes-Weber, a Spanish interpreter. Student did not attend.

On the last day of hearing, November 12, 2013, the parties were granted a continuance to file written closing arguments by the close of business on December 9, 2013. On Student's motion, the time for filing closing briefs was further continued to

December 11, 2013. After the receipt of the written closing arguments on that day, the record was closed and the case submitted.¹

ISSUE²

May the District exit Student from special education and cease providing Student with special education services?

SUMMARY OF DECISION

The District generally contends that Student is no longer eligible for special education under the categories of specific learning disability and speech and language impairment, and that Student does not need special education services to benefit from his education. Student generally contends that Student should not be exited from special education, not because he is eligible for special education, but because the District did not request a finding that its assessments were appropriate, because the District did not tell Mother that her independent assessor could observe Student in the classroom, and because the District committed a procedural violation when it conducted

¹ Student's closing brief was not received until 5:11 p.m. on December 11, 2013. Student's brief, although late, was considered. Student's attorney is cautioned that late briefs may not be considered in the future.

² The issue has been rephrased and reorganized for clarity. The ALJ has 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.)

a continued individualized education program (IEP) meeting in May 2013 without Mother's presence.³

This Decision holds that Student is not currently eligible for special education under the categories of specific learning disability or speech and language impairment and that Student does not need special education to benefit from his education. As a result, the District may exit Student from special education.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTION

1. Student is a 14-year-old male who resides with Mother within the geographical boundaries of the District. He has been eligible for special education under the primary category of specific learning disability and the secondary category of speech and language impairment since 2009.

2. Student attended Alisal Union School District from kindergarten through sixth grade. Student was classified as an English language learner and was in a bi-lingual classroom from kindergarten through third grade. In fourth grade, he was placed in an English-only classroom. Student matriculated to the Salinas Union High School District in seventh grade, the 2011-2012 school year, and attended El Sausal Middle School. In the seventh grade, Student was reclassified as English proficient.

³ The IEP team meeting where the District first determined that Student should be exited from special education was held on May 30, 2012. Student has made no claims that there were procedural inadequacies at that meeting. The subsequent IEP team meetings on April 17 and May 31, 2013 were held so that the District could consider independent assessments.

3. According to Mother, Student always needed significant assistance after school from his maternal uncles to understand his classwork and to complete his homework, often for two to three hours per day. Student also attended an after school reading clinic from 2010 until the Spring of 2013. However, it is unknown how often student attended the reading clinic and what curriculum, if any, was used for Student. Student did not call any witnesses from the reading clinic to testify at hearing. Mother believed that Student's success in school has been attributable to his uncles' help after school and to the assistance he received at the reading clinic. Student has not attended the reading clinic during the 2013-2014 school year.

4. Student's initial IEP team meeting was held on September 29, 2009, when Student was in fifth grade. Student was found to have a specific learning disability because of an auditory processing disorder, and a significant discrepancy between Student's ability and his academic achievement in reading comprehension and listening comprehension. The IEP had goals in the areas of vocabulary, reading comprehension, reading aloud, and written communication. The IEP offered Student placement in the general education program for the majority of his school day, 60 minutes four times a week of specialized academic instruction by the resource specialist, 30 minutes two times a week of speech and language therapy, and 30 minutes three times a month of occupational therapy. Mother consented to the IEP in full. Mother has not consented to any IEP since.

5. Student was re-assessed by the District in Spring 2012, at the end of eighth grade. Mother was concerned that Student might be on the autism spectrum because Mother had seen Student trotting around in circles on tiptoes in Physical Education one day in middle school and she was also concerned about Student's lack of friends and her perception that his social skills were poor. The District included

assessment to look at eligibility under autistic-like behaviors as part of the 2012 assessments.

6. An IEP team meeting was held for Student on May 30, 2012. Based upon the most recent assessments of Student and his performance in school, the District members of the IEP team determined that Student was not eligible for special education in the areas of specific learning disability, speech and language impairment, or autistic-like behaviors, and the IEP proposed to exit Student from special education. Mother disagreed.

7. Mother asked the District for independent assessments at public expense because she disagreed with the Spring 2012 psychoeducational, occupational therapy, speech and language assessments, and the District's determination at the IEP team meeting that Student was no longer eligible for special education.⁴ The District filed for hearing to defend its assessments and a due process hearing commenced. After the hearing commenced, the parties reached a settlement and the District agreed to fund independent psychoeducational, speech and language, and occupational therapy assessments. Mother chose the assessors and the assessments were completed. In the meantime, the District continued to provide Student services based upon the last agreed upon IEP from 2009.

8. The District held an IEP team meeting for Student on April 17, 2013 to consider the independent assessments. All three independent assessments were discussed at the IEP team meeting. After a complete discussion of the assessments, the District discussed the eligibility criteria for special education and determined that Student did not meet the criteria in any suspected category. After this happened, but

⁴ The word assessment is used interchangeably in this Decision with the word evaluation, consistent with California Education Code section 56302.5.

before the team could complete the documentation on the IEP form, Mother asked that the meeting be adjourned and continued to another date. The team agreed to reconvene as soon as possible. Before she left the IEP meeting, Mother stated she would contact the District to reschedule the meeting.

9. Mother did not contact the District to reschedule the meeting. Student's case manager called Mother on April 23, 29 and 30, 2013, to try to schedule the IEP team meeting. On each of those occasions, Mother stated she would contact the District by the end of the week to provide available times and dates for an IEP team meeting. Mother never called the District back.

10. On May 3, 2013, the District sent a notice of IEP team meeting for May 9, 2013. Mother responded on May 7, 2013 that she could not attend on May 9 because of her work schedule and gave no alternative dates for the meeting. The District translator left messages for Mother on May 15 and May 17 to try to confirm an alternate IEP date. Mother did not call the District back. On May 21, 2013, Mother told the District she was unavailable to meet, without giving a reason. The District sent a letter to Mother on May 21, 2013 which detailed their efforts to reconvene the IEP team meeting and informed Mother that they were scheduling the meeting for May 31, 2013. The District encouraged the Mother to attend. The District also asked that if Mother was unable to attend on May 31, 2013, that she provide the District with alternative dates for the meeting prior to May 31, 2013. The District informed Mother that if she did not provide alternative dates or attend the meeting, the meeting would be held without her. The District ended the letter strongly encouraging Mother to either attend the IEP team meeting on May 31, 2013 or to give alternative dates prior to May 31, 2013.

11. On May 24, 2013, Mother responded with some available dates for an IEP team meeting in June 2013, after school ended for the year and the teachers were no longer available. On May 28, 2013, Mother sent another letter to the District stating that

she would not attend the May 31, 2013 IEP team meeting for work reasons. She then gave three dates in June that were different than the dates she had indicated in her letter of May 24, 2013. Mother claimed that the dates in the May 24, 2013 letter were wrong. The District responded on May 28, 2013, in a letter which was not in evidence. Mother responded again on May 30, 2013. Mother now stated that she wanted to postpone any IEP team meeting until the next school year and purported to “waive my right to have an IEP meeting” by the May 31, 2013 deadline.

12. The District made more than sufficient good-faith attempts to reconvene another IEP team meeting in the six weeks between the April 17, 2013 IEP team meeting and the end of the school year. Mother waited more than five weeks after she ended the April 17, 2013 IEP team meeting to even suggest dates for an IEP team meeting. The District was not unreasonable in wanting to finish the IEP team meeting before the end of the school year. In this case in particular, Student was leaving eighth grade and moving to high school. If the IEP team meeting were postponed until the new school year, none of the teachers at the new school would have experience with Student and the District wanted to complete the meeting so that Student’s schedule for high school could be determined.

13. Another IEP team meeting was held on May 31, 2013, the last day of school, but Mother did not attend. At the IEP team meeting on May 31, 2013, the District maintained its earlier determinations that Student was not eligible and completed the IEP paperwork to reflect this.

STUDENT’S ELIGIBILITY UNDER SPECIFIC LEARNING DISABILITY OR AUSTISTIC-LIKE BEHAVIORS

Student’s Grades and California STAR Testing Scores

14. California’s Standardized Testing and Reporting (STAR) Program measures a child’s progress in meeting California’s academic content standards. STAR results are

reported using several categories. The categories, from lowest to highest are: far below basic, below basic, basic, proficient, and advanced. The state target for all students is that they achieve scores in the proficient and advanced ranges.

15. Student's Spring 2009 STAR testing results in English-Language Arts and Mathematics were in the proficient range. Student's Spring 2011 STAR test results were in the proficient range in English-Language Arts and in the basic range in Mathematics. Student's scores in all English-Arts content areas were above the 50th percentile.

16. In the 2011-2012 school year, Student was placed in all general education classes in the 7th Grade and none of Student's grades were modified. He received the following semester grades:

Class	1st Semester	2nd Semester
Pre-Algebra 1	B	A
Science	B	B
Social Studies	B+	B-
English	A	A+
Physical Education	A	A-
Health		A
Tutorial/Enrichment		A+

17. In the 2012-2013 school year, Student was placed in all general education classes in the 8th grade and none of Student's grades were modified. Student received the following semester grades:

Class	1st Semester	2nd Semester
Algebra	A-	A-
Algebra Support	A-	B+
Science	A-	A
Social Studies	A-	A+

English	B+	A
Physical Education	A	A-

18. Student's 2013 STAR test results were proficient in History and advanced in English, Math, and Science.

19. In middle school, Student received "Renaissance Recognition," which recognizes Students with a "B" average or higher each quarter. Student received "Renaissance Recognition" all eight quarters while at middle school.

20. For the 1st quarter of the 2013-2014 school year, Student was taking Freshman Seminar as one of his classes. Student had a C+ in the class at the time of the hearing, primarily because he was pulled out of this class twice a week to attend his speech and language therapy. Student was also enrolled in Math 1, an honors class, and had a B+ at the end of the first quarter and an A at the time of the hearing. Math 1 is considered the most challenging math class for freshmen in the high school. Student's other first quarter grades were an A- in English, B+ in Biology, B+ in Japanese, and an A in Physical Education. None of Student's grades were modified.

May 2012 Assessment Psycho-Educational and Academic Assessment

21. When the District reassessed Student in May 2012, the District completed assessments in the areas of educational achievement, social/emotional/adaptive, cognitive/aptitude, psychomotor/perceptual development, language functioning, and health history. The psychoeducational assessment was completed by Xochitl Reyes, a credentialed school psychologist with seven years of experience as a school psychologist.

22. Ms. Reyes' assessment consisted of a file review, conversations with Student's teachers and Mother, classroom observation, and formal assessments. The classroom observation was an important part of the assessment because the observation helped Ms. Reyes to determine if Student needed specialized instruction,

should Student meet the eligibility criteria. During her testimony, Ms. Reyes credibly explained all of the formal tests she gave Student, the areas each test covered, and Student's performance on each test. Ms. Reyes testimony showed she was very familiar with Student and the tests she administered to Student. Her testimony was matter of fact, consistent with the assessment she had performed, and she was able to explain even complicated testing results clearly. Her testimony is given great weight.

23. As part of her assessment, Ms. Reyes observed Student in his social studies class. During the observation, the class was watching a presentation. Student was on task during the observation and he took notes. Student seemed to understand all of the teacher's directions, as he complied with them all. Several of Student's teachers commented positively to Ms. Reyes about Student's behavior, knowledge of the curriculum, work habits, and work completion. Student's math teacher commented that the only time performance was ever low in his class was due to time constraints but when given more time, Student exceeded expectations.

24. Ms. Reyes met with Mother for approximately four hours as part of the assessment. Mother discussed her concerns that Student had few friends, that he had a difficult time learning since he was little, and that he had low motor skills.

25. Ms. Reyes gave Student the Universal Nonverbal Intelligence Test (UNIT). Student obtained a full scale intelligence quotient (IQ) score of 110 on this test. This is considered in the high average range.⁵

⁵ Testing results use a variety of scoring rubrics. Standard Scores have a mean of 100 and a standard deviation of 15. T-Scores generally have a mean of 50. Many tests also indicate what percentile a student's score fall into, the 1st percentile indicates that the student is lower than 99% of the other students and the 99th percentile indicates that the Student scored better than 99% of other students. What is considered a score in

26. Student was also given the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV). Student obtained a full scale IQ score of 106 on this test. This is considered in the average range. However, Ms. Reyes established that, due to the 17 point difference between Student’s verbal comprehension index score of 100 and his perceptual reasoning index score of 117, his full scale IQ is not the best indicator of his abilities and the perceptual reasoning index score of 117 should be used to measure any discrepancies between ability and achievement.

27. On the Beery Buktenica Developmental Tests of Visual-Motor Integration – Sixth Edition, an untimed test of perceptual motor skills, Student received a standard score of 87, which is in the average range.28. The Test of Visual Perceptual Skills – 3rd Edition assesses a student’s visual perceptual abilities without requiring motor involvement and is intended to measure various aspects of visual perceptual ability. The test provides three composite scores. Student received a Basic Processes Index standard score of 120, which is in the superior range; a Sequencing Index standard score of 90, which is in the average range; and a Complex Processes Index standard score of 120, which is in the superior range. Accordingly, Student showed no evidence of a visual processing disorder.

29. Ms. Reyes also administered the Test of Auditory Processing Skills -- 3rd Edition . This test is an assessment of auditory skills necessary for the development, use, and understanding of language. Student received a Phonological Index standard score of 99, which is in the average range; a Memory Index standard score of 88, which is in the low average range; and a Cohesion Index standard score of 83, which is in the low average range. However, the relatively low, but still average, auditory processing index

the average range may vary from test to test and where the range is indicated in the assessment, it is reported in this Decision.

scores were not consistent with previous testing for Student (such as the results of the WISC-IV), were still in the low average range, and were not consistent with his behavior in class, where he was able to follow instructions from the teacher. Ms. Reyes concluded that there was no evidence of an auditory processing disorder.

30. The Developmental Neuropsychological Assessment – Second Edition helps assess academic, social, and behavioral difficulties and was given because Mother expressed concerns about Student having autism. Student performed at or above the expected level on all subtests with the exception of the Theory of Mind Total Score and Verbal Score where Student scored below expected level and borderline level, respectively. Because Student scored low on the one subtest, Ms. Reyes added some rating scales to the assessment to look further at whether Student might qualify for special education under the autistic-like behavior category, but the further assessment did not establish that Student met the special education autistic-like behavior criteria.

31. Richard Cranston, special education teacher, administered the Weschler Individual Achievement Test – Third Edition, to test Student’s academic achievement. Student had the following Standard Scores:

Oral Language	96	Average
Total Reading	111	Average
Basic Reading	122	Superior
Reading Comprehension and Fluency	99	Average
Written Expression	123	Superior
Mathematics	102	Average
Math Fluency	93	Average
Total Achievement	108	Average

32. A student may be eligible for special education in the category of specific learning disability if his test scores show a severe discrepancy between intelligence and

achievement. Ms. Reyes defined a severe discrepancy, on tests using Standard Scores, with a mean of 100, as a 22.5 point difference between cognitive measures and academic achievement. Using the cognitive score from the UNIT of 110, Student does not have a severe discrepancy in any area. However, using the perceptual reasoning index score of 117 from the WISC-IV, there appears to be a severe discrepancy in the area of math fluency, which is one part of mathematical calculation and in which Student scored a 93. However, Ms. Reyes did not consider this difference as showing a severe discrepancy in mathematical calculation overall, thus meeting the eligibility criteria for special education, because Student did well in both math calculation and math reasoning overall, and was doing well in math class.

33. Student's social/emotional/adaptive behavior assessment consisted of several checklist and rating scale instruments and inquired into the possibility that Student might be autistic. Although Student was observed by his teachers and Mother to have some characteristics in common with students on the autism spectrum, overall, Student did not exhibit them across environments and to an extent that would meet the criteria for autistic spectrum disorder

34. In general, Ms. Reyes' psycho-educational report found that Student did not have a severe discrepancy between his cognitive ability and his academic achievement. She found no processing disorder, although the report acknowledged a relative weakness in visual-motor integration when under time constraints that could be corrected within the regular instruction program. The report concluded that Student did not meet the eligibility criteria for specific learning disability or autistic spectrum disorder. The report is well supported, clear, and was uncontradicted. It is given great weight as to Student's functioning in Spring 2012.

DECEMBER 2012 INDEPENDENT ASSESSMENT

35. Parent obtained an independent assessment from Central Coast Language and Learning Center, Inc. in December of 2012. That assessment was signed by Erica Lewis Herro, the Director of Evaluation and Instruction Services and Tarra B. Henry, a learning specialist. Neither assessor was called to testify at hearing. It is unknown what credentials or qualifications either assessor had to administer any of the tests purportedly given. No test protocols were presented as evidence in the hearing for any other expert to examine. The assessors made no mention of Student's grades, his STAR testing performance or any discussion with any of Student's teachers. There was no observation of Student in the school environment.⁶

36. The assessment report itself was rife with references to a female student, when Student is a male. The assessors relied on a test given called the SCAN to support

⁶ Student argues in his closing brief that the District did not give Mother a copy of the special education local plan area (SELPA) policy regarding independent educational evaluations which stated that an independent educational evaluator has a right to observe the student in school. Student provided no legal support for his contention that the District was required to notify the parent that the assessor could observe the Student in school and there is no allegation or evidence that the independent assessor was ever refused access to observe Student in school. There was not a Student filed issue in this case alleging that the failure to disclose the observation opportunity was a procedural violation. Therefore, this Decision comes to no conclusions regarding the District's obligation to inform Parent that an assessor performing an independent assessment may observe a student at school. This does not change the fact, however, that the independent assessor did not observe Student in school for the December 2012 assessment.

a “diagnosis” of auditory processing disorder.⁷ However, there are two versions of the SCAN, a child version called the SCAN C and one for older students called the SCAN A. If Student was given the wrong test, the wrong normative group would have been used and the test results would be invalid. The assessment report first states that the SCAN A was administered and then the results for the SCAN C are listed. Because of this, it is impossible to tell whether the correct test was administered.

37. The report states on page nine that Student’s composite score on the SCAN indicates an auditory processing disorder. The report goes on to recommend a full auditory processing evaluation for Student. However, the assessment also states that “Student presents a clear diagnosis of an auditory processing disorder.” The “clear diagnosis” is at odds with the “indication” of an auditory processing disorder and the referral for a full auditory processing evaluation. For all of these reasons, the 2012 independent assessment is given no weight.⁸

38. Overall, the evidence of Student’s grades, STAR testing results, past and present classroom performance, and assessment results establishes that Student does not meet the criteria for special education eligibility under specific learning disability.⁹

⁷ Because neither assessor testified, there was no evidence as to the meaning of the acronym SCAN.

⁸ In April 2009, Student was also assessed by the Central Coast Language and Learning Center. That assessment also did not include any classroom observations or discussions with teachers, is four years old, and is unreliable for the same reasons the 2012 assessment is unreliable. It is given no weight.

⁹ Although Mother raised concerns about Student perhaps being on the autism spectrum to the District, the District’s assessment established that Student did not meet the criteria. Further, the independent assessment Mother obtained did not assess

ELIGIBILITY UNDER SPEECH AND LANGUAGE IMPAIRMENT

District Speech and Language Assessment – May 2012

39. Student was assessed by the District in the area of speech and language by Lucy Sullivan on May 28, 2012.¹⁰ The assessment consisted of a vision and hearing screening, an informal voice evaluation, and three standardized assessments. Student passed his latest vision and hearing screenings and there were no concerns noted with Student's voice.

40. Ms. Sullivan was no longer working for the District at the time of the hearing. Dr. Alexandra Feinberg was called by the District as a witness to discuss Student's speech and language assessment and his needs in this area.¹¹ Dr. Feinberg has worked with Student since 2012.

Student in any area related to autism and came to no conclusions regarding this area of eligibility. This, when combined with Student's failure to argue that Student is eligible as a student with autistic like behaviors, leads to the conclusion that Mother abandoned this argument.

¹⁰ At the time the speech and language assessment was performed by Ms. Sullivan, she was in her clinical fellow year. She was qualified and authorized to perform speech and language assessments to students in school.

¹¹ Dr. Alexandra Feinberg holds a California Speech and Language Pathologist License. She is authorized to provide speech and language therapy in schools and has been authorized and providing services and assessments for 30 years. She works for the District as an independent contractor at both the middle and high schools providing speech therapy.

41. Student was given the Clinical Evaluation of Language Fundamentals – 4 (CELF-4). It is a language tool that aids in the identification, diagnosis and follow up of language and communication disorders. Student scored in the low average range on the concepts and following directions subtest with a percentile score of 9. Student scored in the average and above average range on all the other subtests with percentiles from 16-98. Student's overall Composite Score was in the average range with a percentile score of 34.

42. Student was also given the pragmatic protocol subtest of the CELF-4. The subtest is an observational rating scale that was given to five of Student's teachers. Five teachers completed the protocol regarding their experiences with Student. One of the five teachers completed the protocols showing the following areas of greatest concern: joins or leaves an ongoing communicative interaction appropriately, makes relevant contributions to a topic during conversation/discussion, uses language of his peer group appropriately, tells and understands jokes/stories that are appropriate to the situation, reminds others/responds to reminders appropriately, asks for help from others appropriately, offers to help others appropriately, asks others to change their actions/states appropriately "please move, stop tapping", appropriate body language, and appropriate voice intonation. It is unknown whether the same teacher noted all of these concerns, or whether the concerns were noted by different teachers. However, no more than one teacher stated that each skill was never observed. This suggests that Student has social abilities, but depending on the environment, may not display them when he is less comfortable.

43. Ms. Sullivan gave Student the Expressive One-Word Vocabulary Test. This test assesses a student's vocabulary. Student scored in the 99th percentile with a Standard Score of 138. On the Receptive One-Word Picture Vocabulary Test which

assesses a Student's understanding of vocabulary, Student scored in the 53rd percentile with a Standard Score of 10, which is in the average range.

44. The assessment showed that Student presented with above average vocabulary abilities and average abilities in passage comprehension and sentence recall. Student demonstrated low average abilities for following directions and has some mild pragmatic (social) impairments. Student's mild pragmatic impairments were a result of his varying comfort levels in particular environments, as Student has been reported shy and reserved in new settings. His reserved nature is not a true impairment as it is not consistently observed. Student did not have needs in the area of speech and language and did not meet the criteria for eligibility as a student with a speech and language impairment.

Independent Speech and Language Assessment – January 2013

45. Student obtained an independent speech and language assessment from Central Coast Language and Learning Center in January 2013. The assessment was conducted by Brittany Warby, M.S., CF-SLP (speech language pathologist). Ms. Warby was not called as a witness at hearing.

46. Ms. Warby administered the CELF-4 to assess Student's expressive communication and auditory comprehension skills. Student's subtest percentiles ranged from 25-95, all in the average and above average ranges.

47. An informal language sample revealed no expressive language issues. Ms. Warby also administered the Goldman Fristoe Test of Articulation to assess the articulation of consonant sounds. Student received a Standard Score of 104 placing him in greater than the 24th percentile.

48. Overall, the independent assessment agreed with the District assessment that Student's language was within the normal limits for his age and that speech and

language therapy was not recommended for Student.¹² However, this assessment is not given much weight. The assessor was not called to testify and her qualifications and experience were not in evidence.

49. The evidence established that Student does not meet the criteria for special education eligibility under the category of speech and language impairment.

STUDENT'S NEED FOR SPECIAL EDUCATION

Special Education Services

50. Student's September 2009 IEP from the Alisal Union School District included specialized academic instruction, outside of class ("pull-out"), by the resource teacher for 60 minutes, four times a week. This IEP was signed by Parent and was implemented for Student as written. At the end of the 2009-2010 school year, Student transitioned to 7th grade at El Sausal Middle School in the District.

51. In the 2011-2012 and 2012-2013 school years, while at El Sausal Middle School, Student did not receive specialized instruction from a Resource Specialist Program teacher in a "pull-out" model. As was explained to Mother when Student transferred into middle school, the middle school uses an in-class ("push-in") model for resource support so that students remain in their core curriculum classes and get special education support from a special education teacher in the general education classroom.¹³

¹² The independent speech and language assessment did not assess Student in the area of pragmatics or social skills, despite Mother claiming this was her main area of concern for Student in the area of speech and language.

¹³ Whether a unilateral change from pull-out services to push-in services was appropriate is not an issue in this case and is not being analyzed in this Decision.

52. In the 2011-2012 school year Richard Cranston, Student's resource teacher, attended his IEP team meetings, pushed into his English and Science classes daily and met with Student individually several times. In the 2012-2013 school year, Student participated in these classes without needing any assistance from Mr. Cranston, although he was present in the classroom specifically for Student. Student occasionally used extra time to complete assignments. Student was bright and overall a good student who never had to be prompted. Student interacted with other students appropriately, had good insights and contributed to the classes. Mr. Cranston did not notice that Student had any auditory processing problems and did not believe that Student needed any special education support.

53. The evidence established that during the 2012-2013 school year, in his Algebra 1 math class, Student did everything he was asked and was seen as a leader by his peers. Student often volunteered to read aloud in class and to help his peers. Student understood oral directions and followed them correctly. Student was also enrolled, at Mother's request, in the Algebra 1 support class, a general education course. Student's teacher did not believe he needed the extra support from that class, based in his performance in her Algebra 1 class, but the District accommodated Mother's scheduling request.

54. In the 2013-2014 school year, Student matriculated to high school, where Vivian Moises is his resource teacher.¹⁴ Ms. Moises has supported Student in his general education English class during the 2013-2014 school year. Ms. Moises has attended Student's class daily for the entire period and Student was the only student on her

¹⁴ Ms. Moises has a resource teacher credential and has been an employee of the District for 12 years. She acts as Student's case manager and is familiar with Student and his needs.

caseload in the class. Ms. Moises took notes in class, in case Student might need to copy the notes. Student never needed Ms. Moises' notes. Ms. Moises also periodically asked Student whether he understood the material or needed help and Student never had questions for her and did not need any assistance to complete his work. Student did not need the special education support that Ms. Moises was in the classroom to provide.

55. Ms. Moises' conclusion that Student does not need any specialized instruction is supported by the evidence. Her testimony was clear, full of detail regarding Student's classroom behavior and learning, and forthright. Her testimony is given great weight.

STUDENT'S CURRENT CLASSROOM PERFORMANCE

56. At the time of the hearing, Student was taking a college preparatory course load in high school with no modifications or accommodations. Student was enrolled in Freshman Seminar, Biology, Math 1 (Honors), English, Japanese, and Physical Education. Student was focused in class and on task. None of Student's general education teachers had expressed any concerns about how to assist Student in their classes. Student participated in the general education curriculum without any accommodations or modifications. Student responded when asked questions, read aloud in class, took notes, and completed classwork and homework on time. He was not observed to take more time to read material out loud or to himself in the classroom than the other students in the class this year. Student understood oral instructions and complied with them in a timely manner. Student was less distracted than other students. Student interacted with peers and worked well in groups, when group work was assigned. Student did not need extra time on any assignment during this school year. Student's handwriting was legible, but not age appropriate, and he was able to write quickly enough to complete work in class. Although Student has access to a laptop, he did not use the laptop at school.

57. The evidence showed that Student is quiet and shy unless he is comfortable. Student is also described as “quirky” and “slow to warm up.” These characteristics have likely made it harder for Student to form friendships with other students. However, all of Student’s teachers described him as interacting appropriately with other students. Student has a great sense of humor and uses it differently with adults and peers, in an appropriate way. The evidence showed that Student did not have a social skills disorder, but has a personality that tends to be quiet and reserved in some situations. While Mother reported that Student did not have friends, she also stated that she often holds pizza parties at her home, and that other students from school attend and interact with Student. During the summer of 2013, Student went on a school field trip to Washington D.C. On the trip, Student was very social and was always seen talking to his peers and having a good time. The evidence did not show that Student cannot make friends or is unable to maintain friendships.

58. Mother observed Student three or four times in the classroom at the high school. Mother felt that Student needed more assistance from the teachers than other Students. This is not consistent with any report from any of Student’s teachers or anyone else who has observed Student in class. It is noted that one of Mother’s observations was the first day of high school for Student. Mother equated her observation that Student looked around the classroom with him not understanding what to do in class. However, the evidence showed that Student was on task and completing his classwork and that Student understood classroom directions. None of his teachers reported giving Student any more assistance than they give other students.

59. When asked about what special education services she believes Student needs, Mother testified that he needs one-to-one services in reading maybe 2-3 times a week and speech and language therapy for social skills. Student’s most recent

assessments and current teacher reports do not support Mother's view that Student has any needs in the area of reading or social skills.

Student's Performance in Speech and Language Therapy

60. Student has received speech and language therapy from Dr. Feinberg two times a week for 30 minutes for the last year. Dr. Feinberg has extensive experience working with students both on the autism spectrum and with other speech and language difficulties. Dr. Feinberg did not see any characteristics of autism in Student. Student interacted with other students, has exceptional use of language, and has high functioning social and pragmatic language.

61. Student was described by Dr. Feinberg as a very sophisticated thinker who receives language well and expresses himself well. Student has the ability to understand nuances and inferences and can convert stress to humor. Student is polite, respectful and has a tendency to speak only when spoken to, but he can maintain a conversation. Overall, Dr. Feinberg described Student as having "normal and regular speech abilities." Dr. Feinberg testified credibly in the hearing. Her testimony displayed extensive expertise in the speech and language field, an understanding of Student's needs which came from time spent talking to Student, and an understanding of the requirements of special education. Her testimony was uncontradicted. As a result, her testimony is given great weight.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹⁵

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The 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 employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "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 California, related services are also called designated instruction and services.]) 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

¹⁵ Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist. (Mercer)* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Mercer, supra*, 592 F.3d at p. 950, fn. 10.)

4. 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); 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, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3) (C), (D).) 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. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

ISSUE 1 – MAY DISTRICT EXIT STUDENT FROM SPECIAL EDUCATION AND CEASE PROVIDING STUDENT WITH SPECIAL EDUCATION SERVICES?

5. The District contends that Student is no longer eligible for special education as a student with a specific learning disability or speech and language impairment.

6. Student does not make any argument that he is eligible for special education. Instead, Student raises three arguments: that the District never obtained a finding from an ALJ that the assessments upon which it is relying on to exit Student from special education are appropriate; that the District interfered with Parent's right to have an independent expert observe him in class; and that the District denied Mother meaningful participation in the IEP process by holding the May 31, 2013, without her.

7. Student provided no legal support for his contention that the District must obtain a specific finding in a due process hearing that its assessments are appropriate

prior to presenting them as evidence in a hearing or relying on them to exit a student from special education. The District is relying, in part, on its assessments from May 2012 to show that Student is not eligible for special education. Student claims that he was not aware that the District was going to present evidence that its assessments were appropriate during the hearing, but that is not the purpose for which the District used the assessments at hearing. If a parent requests an independent educational evaluation, a district must either agree to fund the independent assessment or initiate a due process hearing to show that its assessment was appropriate. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c).) In this case, the District was not responding to a parental request for an independent assessment, the District was seeking to exit Student from special education. The assessments, which were admitted into evidence, are subject to an analysis by the administrative law judge regarding the amount of weight they should be given. While some of the analysis regarding how much weight to give the assessments might overlap with the analysis that would be done in an independent assessment case to find district assessments appropriate, there is no requirement that to rely on assessments in a hearing, the District must first obtain a ruling that they are appropriate. Whether the District has to provide an independent assessment is not an issue in this case, therefore, there is no specific finding required that the District's assessments were appropriate.

8. The District's psycho-educational and speech and language assessments were thorough. They were performed by properly credentialed assessors who used a variety of assessment tools. The psychoeducational assessor observed Student in the classroom and received input from Student's teachers. Extensive testimony regarding the District's assessments was provided at the hearing. The assessments are considered a valid measure of Student's functioning at the time they were given. The District's assessments from May 2012 are given substantial weight regarding Student's

functioning at the time the assessments were completed and, where consistent with Student's current performance, Student's current functioning.

9. In his second argument regarding classroom observation by the independent assessor, Student contends that the District was obligated to notify him that the independent assessor, chosen by Student, was able to observe him in his classroom as part of the independent assessment. This argument is unrelated to eligibility. To the extent Student raises this argument in an attempt to rehabilitate the independent assessment and the failure of the assessor to observe Student in the classroom, the argument fails as well. The assessment report is unreliable as discussed above in the Factual Findings for a myriad of other reasons. If Student wanted the independent assessment to be relied upon to show continued eligibility because it showed that Student has an auditory processing disorder, Student failed to make any argument that the assessment supported such an argument. Finally, Student did not call the assessors as witnesses to explain their report; the report is solely hearsay and cannot be relied upon as the sole basis of a finding of eligibility, as it is the only assessment that purports to show that Student has a processing disorder.

10. Student's third argument is that the District committed a procedural violation by having the May 31, 2013 IEP team meeting without Mother present and because the IEP was not procedurally compliant, the District may not exit Student.

11. Under the IDEA, in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the parents' child; or caused a deprivation of educational benefits. (20 U.S.C. 1415(f)(3)(E)(ii).)

12. California has enacted a similar statute that requires in a hearing conducted pursuant to this section, the hearing officer shall not base a decision solely

on non-substantive procedural errors, unless the hearing officer finds that the non-substantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the IEP. (Ed. Code, § 56505 subd. (j).)

13. Procedural inadequacies that result in the loss of educational opportunity or seriously infringe on the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a FAPE. (*Shapiro v Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078. See also *Amanda J. v. Clark Cnty. Sch. Dist.*, (9th Cir. 2001) 267 F.3d 877, 892.) A procedural error results in the denial of educational opportunity where, absent the error, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered." (*M.L. v. Federal Way Sch. Dist.* (9th Cir. 2003) 394 F.3d 634, 657 (Gould, J. concurring in part and concurring in the judgment).) Thus, an IEP team's failure to properly consider an alternative educational plan can result in a lost educational opportunity even if the student cannot definitively demonstrate that his placement would have been different but for the procedural error. (*Ibid.*)

14. When confronted with the situation of complying with one procedural requirement of the IDEA or another, the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, the agency is allowed reasonable latitude in making that determination. (*Doug v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038.)

15. The evidence showed that the District first determined at the May 30, 2012 IEP team meeting, based on District assessments, that Student did not continue to meet the eligibility criteria for special education. Mother did not agree with the District's assessments or the determination that Student was no longer eligible and asked for

independent assessments. During this time period, Student continued to be served under the last agreed upon IEP because there was no parental agreement to exit Student. Mother asked for independent assessments at public expense which were eventually provided by the District. When the independent assessments were completed, the District scheduled an IEP team meeting to discuss them on April 17, 2013. Mother attended the meeting and fully participated. The independent assessments were fully discussed and the IEP team discussed the eligibility criteria for special education. The independent assessments did not show that Student met the eligibility criteria for special education, as discussed below. Mother asked that the IEP be stopped and reconvened. However, the purpose of the IEP team meeting, which was to go over the independent assessments and determine whether Student had met the eligibility criteria, had already been accomplished.

16. All that was left to be done at the IEP team meeting was to mark the forms on the IEP document that showed that Student did not meet the criteria for special education. It is unclear whether the District even needed to reschedule a meeting to do this, as the April 17, 2013 IEP team meeting notes show that the team had already discussed eligibility and determined that Student did not qualify. Mother was not cooperating with the District's attempts to reschedule the IEP team meeting before the end of the school year.

17. At this point, the District had a difficult decision. Under *Doug*, the District had to decide whether to delay the completion of the IEP documentation that Student was not eligible for special education or to convene an IEP team meeting without the parent to complete the document. The entire purpose of the reconvened IEP was to fill out a form whose contents had already been discussed. Student was moving to high school from junior high and the District wanted the issue of eligibility determined before he started high school. Also, without the parent's consent to exit Student from special

education eligibility, the District was required to file for a due process hearing to ask to have Student exited. The District had determined that Student did not meet the eligibility criteria at the May 30, 2012 IEP team meeting, almost exactly a year earlier. The District waited to file to exit Student to allow the parent to obtain independent assessments at public expense and then to allow the District to consider the results of the assessments at an IEP team meeting. The District was entitled to move forward without waiting for yet another school year to begin and it was reasonable for the District to want to complete the IEP team meeting before filing for hearing. Student is entitled by law to be in the least restrictive environment and the District took the action of holding the IEP team meeting without Mother to allow them to move forward and litigate the issue of exiting Student from special education. This was the least likely avenue to result in a denial of FAPE to Student.

18. The determination to hold the May 31, 2013 IEP team meeting without Mother was reasonable in this case. Because the District made more than enough good faith efforts to schedule the meeting so that Mother could attend and because the District was reasonable in holding the IEP team meeting without Mother, it was not a procedural violation to hold the May 31, 2013 IEP team meeting without Mother. Even if it were a procedural violation, there was no denial of FAPE that occurred.

19. There was no denial of FAPE because the evidence showed that the parent was not denied meaningful participation in the IEP development process and because Student was not denied educational benefit. There were no topics of discussion at the May 31, 2013 IEP team meeting that were not duplicative of the discussions at the May 30, 2012 and April 17, 2013 IEP team meetings, so Mother was not deprived of her ability to meaningfully participate in the IEP process. The District made repeated attempts to reschedule the IEP team meeting and Mother appeared to be uninterested in continuing the IEP team meeting where it was clear that the District was

recommending that Student be exited from special education. Finally, there was no evidence presented that shows that Student met the eligibility criteria for special education at April 17, 2013 IEP team meeting. Even so, Student suffered no loss of educational benefit or opportunity, as shown by his performance in school and on various assessments.

20. All of Student's arguments fail. The burden remains on the District to show that Student does not qualify for special education.

Eligibility in General

21. Under the IDEA, only some children with certain disabilities are eligible for special education. (20 U.S.C. § 1401(3)(A); Ed. Code § 56026, subd. (a).) For purposes of special education eligibility, the term "child with a disability" means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, requires instruction, services, or both, which cannot be provided with modification of the regular school program. (20 U.S.C. § 1402(3)(A)(ii); 34 C.F.R. § 300.8(a).) Similarly, California law defines an "individual with exceptional needs" as a pupil who is identified by an IEP team as "a child with a disability" pursuant to 20 U.S.C. section 1402(3)(A)(ii), and who requires special education because of his or her disability. (Ed. Code § 56026, subds. (a), (b).)

22. California Code of Regulations, title 5, section 3030 includes a list of conditions that may qualify a pupil as an individual with exceptional needs and thereby entitle the pupil to special education if required by "the degree of the pupil's impairment." Thus, there are many children who have varying ranges of weaknesses, deficits, areas in need of improvement, and disability who do not qualify for special

education because they do not meet the narrow categories specified by law for this federally funded program, including the requirement that the pupil's instruction or services cannot be provided with modification of the regular school program.

Specific Learning Disability

23. Eligibility under the category of specific learning disability requires that a pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C. §1401(30); Ed. Code, § 56337, subd. (a).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(1).) The criteria mandate the use of standardized achievement tests to measure the pupil's levels of academic competence and, for eligibility, require finding a severe discrepancy of at least 1.5 standard deviations between the cognitive ability of the pupil and his or her academic achievement. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(4).)

BASIC PSYCHOLOGICAL PROCESSING DISORDER

24. Student does not have a basic psychological processing disorder. The District assessment data from May 2012 does not show a processing disorder. Student's current classroom functioning and reports from teachers do not establish that Student currently has a processing disorder. Although Student seemed to contend, in hearing, that he has an auditory processing disorder, the December 2012 Central Coast Learning Center assessment that purports to show the disorder relies on the SCAN test, and it is unclear whether the proper version of the test was given. Further, even if the results of

the test show an auditory processing disorder, the results would be inconsistent with Student's performance in the classroom and performance on other standardized assessments. Finally, the December 2012 assessment states in one part that the results of the SCAN indicate an auditory processing disorder, then it recommends a full auditory processing assessment and in another section discusses a clear diagnosis of an auditory processing disorder. Student did not put on any evidence to clarify these contradictory statements. The entire assessment from December 2012 is not reliable because of these kind of contradictions and errors in the assessment report itself. Also, because no assessor from the December 2012 assessment testified, the independent assessment results are hearsay and cannot be relied upon alone to conclude that Student has a processing disorder. (Cal. Code Regs., § 3082, subd. (b).)

SEVERE DISCREPANCY

25. Even if Student had a basic psychological disorder, Student must also have a severe discrepancy between cognitive ability and academic achievement to qualify in the category of specific learning disorder. Ms. Reyes established that such a discrepancy would be 22.5 points. In the District's 2012 assessment, two tests of cognitive ability were given, the UNIT and the WISC-IV. There was no severe discrepancy between Student's score on the UNIT and any area of academic achievement. There is a severe discrepancy between Student's perceptual reasoning score of 117 on the WISC-IV and his math fluency score of 93. However, math fluency is only a part of math calculation. Student's performance in math calculation overall and math reasoning, his advanced level on the 2013 STAR testing in math, his current performance in an honors math class with a grade of an A, and the fact that one of the cognitive tests did not show a significant discrepancy support Ms. Reyes conclusion that Student does not have a severe discrepancy in the area of math calculation, even with the lower score in math fluency. (See Ed. Code, § 56337, subd. (a).) There is nothing in Student's current

academic functioning that would indicate the presence of a severe discrepancy in any academic area, including math calculation. Accordingly, the District met its burden to show that Student is not eligible for special education as a student with a specific learning disability.

Speech and Language Impairment

26. A student is eligible for special education and related services under the category of speech and language impairment if she demonstrates difficulty understanding or using spoken language under specified criteria and to such an extent that it adversely affects her educational performance, which cannot be corrected without special education. (Ed. Code, § 56333.) The criteria are:

- (a) Articulation disorder: the child displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention;
- (b) Abnormal voice: a child has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness;
- (c) Fluency Disorders: a child has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener;
- (d) Language Disorder: the pupil has an expressive or receptive language disorder, in pertinent part, when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile, for his or her chronological age or developmental level, on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics.

(Ed Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (c).)

27. Neither the District speech and language assessment, the independent speech and language assessment or the current reports from Student's speech and language therapist show that Student qualifies for special education as a student with a speech and language impairment. Student does not have an articulation disorder, a fluency disorder or abnormal voice. Student did not score below the seventh percentile on two or more standardized tests. Current reports from Dr. Feinberg show that Student does not have any need for intervention in the area of speech and language. The District met its burden to show that Student is not eligible for special education under the category of speech and language impairment.

Need for Special Education

28. Finally, even if Student met the other eligibility criteria for specific learning disability or speech and language impairment, Student must also need special education in order to qualify. All current information regarding Student indicates that he is functioning very well in the general education environment without accessing any of the special education support available to him. Student is taking college preparatory classes, including honors math and Japanese, and getting very good grades. On the Spring 2013 STAR testing Student scored advanced in all areas, except History where he scored proficient. Student also needs no modifications or accommodations to the general education curriculum. Even if Student's tutoring at the reading clinic could be considered special education, and there was no evidence that it could, Student is not receiving the tutoring at all this year and there are no reported problems with Student's reading ability.

29. The totality of the evidence shows that the District met its burden to show that Student does not meet the eligibility criteria for specific learning disability or speech and language impairment and that Student does not have a need for special

education. The District may exit Student from special education immediately and cease providing all special education and related services.

ORDER

1. The District may exit Student from special education immediately and cease providing special education and related services to Student.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, the District prevailed on the only issue heard and decided.

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 9, 2014

/s/

MARGARET BROUSSARD

Administrative Law Judge

Office of Administrative Hearings