

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HACIENDA LA PUENTE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014120050

DECISION

Student, by and through his Parents, filed a Due Process Hearing Request on November 19, 2014, with the Office of Administrative Hearings, State of California, naming Hacienda La Puente Unified School District.

Administrative Law Judge Clifford H. Woosley heard this matter in Hacienda Heights, California, on April 14, 2015, and May 5, 6, 12, 18 and 19, 2015.

Attorneys Surisa Rivers and Sarah Gross appeared on behalf of Student. Mother attended the entire hearing; Father was present for two days of hearing. Attorney Ricardo R. Silva represented District. Special Education Director Beth Nishida attended on behalf of District.

On the last day of hearing, a continuance was granted for the parties to file written closing arguments and the record remained open until June 15, 2015. Upon timely receipt of written closing arguments, the record was closed and the matter submitted for decision on June 15, 2015.

ISSUES

1. Did District fail to meet its child find obligation between November 2012

and October 2013 and, if so, did such failure deny Student a free appropriate public education?

2. Within two years before the filing of this due process complaint, did District deny Student a free appropriate public education by not finding Student eligible for special education placement and services as a child with autism or autistic-like behaviors?¹

SUMMARY OF DECISION

Student did not prove District violated its child find obligations from November 2012 to October 2013. The evidence demonstrated that Student was prospering in the 2012-2013 school year and, within a few days of school beginning in August 2013, District had signed an assessment plan. Though Mother made reference to suspecting Student might have autism, she did not provide a report or diagnosis to District. Student did not provide convincing evidence that autistic-like behaviors occurred at school. Mother's concerns were appropriately addressed in a student study team meeting. District did not violate its child find obligations.

Student did not prove that he met the criteria for autism eligibility and was entitled to special education services. District conducted comprehensive assessments for

¹ In his complaint, Student asserted he should have received services because he qualified under various eligibility criteria. Before hearing, Student withdrew these assertions and limited his eligibility claim to autism. 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.) The administrative law judge has restated Issue 2 to properly reflect Student's issue.

both the October 2013 and October 2014 individualized education program team meetings, which properly determined that Student was not eligible. The private assessments did not establish that Student had autistic like characteristics that required special education services for Student to benefit from his education. Student excelled in school, did not exhibit autistic -like behaviors in the school setting, was sociable with his peers, reciprocally communicated, had friends, did not perseverate, made eye contact, and was happy and engaged at school. Student failed to evidentially demonstrate that any of his behaviors could not be addressed by general education interventions and required special education services.

FACTUAL FINDINGS

1. Student was a nine-year-old, third grader, attending District's Mesa Robles School. In early 2013, an independent psychological evaluation found Student to have Asperger's Disorder.² At the time of hearing, he was not eligible for special education

² The *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision (2000) (DSM-IV-TR) included Asperger's Disorder as a diagnosis (299.80), distinct from autism. In May 2013, the American Psychiatric Association released the DSM-V, which eliminated the diagnostic category Asperger's Disorder and included it within the more general category of Autism Spectrum Disorder (299.00). Though no longer a recognized DSM diagnosis, the terms "Asperger's Disorder" and "Asperger's Syndrome" continue to be commonly used by psychologists, educational providers, other countries' mental health organizations, and the public as a shorthand reference to the characteristics listed in the DSM-IV diagnostic criteria. More recently, individuals with DSM-V's Autism Spectrum Disorder, who fit the profile of the DSM-IV's Asperger's diagnostic characteristics, are often referred to as "high functioning autistic."

services.

FIRST GRADE – 2012-2013 SCHOOL YEAR

2. For the 2012-2013 school year, Student attended first grade at Mesa Robles. His teacher was Sylvia Mattson, who testified at the hearing. Ms. Mattson had taught for 25 years – 5 years of kindergarten, 3 years of second grade, and 17 years of first grade. She possessed a clear teaching credential and a Cross-cultural, Language, and Academic Development (CLAD) Certificate. She had no experience teaching children with autism.

3. Student was happy and talkative. Ms. Mattson had no concerns regarding Student's social skills, other than his talking when others' were talking. Student was happy and talkative. He could be silly or immature, distracting other students during work time. Student would intermittently read aloud, when he was not supposed to, and occasionally talk to himself. Ms. Mattson did not recall anything unusual about Student's behavior.

4. He got along with classmates. He was not hyperactive or easily distracted. He often could not find his schoolwork; by the end of the school year, he would sometimes have difficulty following directions. He was not sensitive to sound or loud noises.

5. Student was very bright academically. He read and wrote very well, though he did not always enjoy an assignment's content. Student would become bored when he finished the regular class work before his classmates. On report cards, Ms. Mattson mentioned that Student would sometimes not complete assignments. However, this involved Student's "harder work" folder, which contained more difficult assignments. Ms. Mattson gave Student the more challenging work because Student was very smart and she wanted him to work to his potential.

6. For all three reporting periods of Student's first grade report card, Ms.

Mattson graded Student as "Excellent" in his study habit of managing his time and completing his work. Student participated in class, sometimes raised his hand at the wrong time or talked out of turn. Ms. Mattson did not consider these behaviors unusual for a first grader. Other students had similar behaviors and were learning how to behave in class.

January 2013 Psychological Evaluation – Dr. Meyers

7. Beginning in November 2012, Mother had Student evaluated by Robert Myers, Ph.D., a clinical child and adolescent psychologist with the University of California, Irvine Medical Center. Student was six years old. Dr. Meyers issued a January 15, 2013 report. Dr. Meyers did not testify at the hearing.

8. Dr. Myers utilized various standardized instruments and met with the family to obtain feedback about the testing results. He did not observe Student in the school setting or with other children. He did not consult with Student's teacher.

9. The Child Behavior Check List is a component of the Achenbach System of Empirically Based Assessment. Only Mother completed the check list. Mother scored Student in the clinical range for problems, internalizing, and externalizing, and thought problems syndromes. Mother had Student in the borderline clinical range for anxious/depressed and aggressive behavior syndromes. Dr. Meyer noted that Mother reported more problems than are typically reported by parents of boys aged six to 11.

10. Mother testified at the hearing. In November 2012, she told Ms. Mattson that she was concerned Student had autism, was having him assessed, and provided Ms. Mattson with the Achenbach's Teacher's Report Form. Ms. Mattson completed the form's questionnaire and reported that Student was far above grade level in language arts, math, and science, and somewhat above grade level in social studies. She commented on Student's lack of social skills and attention when someone else was talking. She noted that Student was very bright and would be learning, even when she

wondered if he was actually listening. She completed the checklist. She noted that Student often could not find school work and that he would talk to himself.

11. Ms. Mattson returned the completed Teacher's Report Form and checklist to Mother. Mother did not return the form to Dr. Meyer. If Dr. Meyer had scored the teacher's checklist, he would have found that Ms. Mattson rated Student within the normal range in all areas; nothing was in the borderline or clinical range.

12. Dr. Meyer had Mother complete the Autism Spectrum Rating Scales and the Behavior Rating Inventory of Executive Function. His report stated the pattern of Mother's scores indicated Student had symptoms directly related to the DSM-IV-TR diagnostic criteria, with many associated features characteristic of Autism Spectrum Disorders. All three rating scale instruments used by Dr. Meyer had teacher forms; the only responder in Dr. Meyer's report was Mother.

13. Dr. Meyers administered the Conners' Continuous Performance Test-II to measure Student's attention, concentration and impulse control. Student's scores were all within the non-clinical range. He used the Rorschach Inkblot Test which required Student to provide impressions of 10 ink blots. The ink blot interpretive report stated that Student appeared to be less capable than most people of dealing effectively with everyday social situations. The report concluded that Student was more likely than most people of his age to demonstrate generally adaptive interpersonal behavior most of the time.

14. Dr. Meyers stated impression was Asperger's Disorder and Adjustment Disorder, with mixed disturbance of mood and conduct. Since language development was not delayed, Student met the criteria for Asperger's Disorder that was primarily a social learning disorder. Dr. Meyers ruled out attention deficit disorders. Dr. Meyer recommended psychotherapy, social skills training, and formal psychological evaluation by the school district to determine beneficial accommodations and special services.

15. Student started therapy with psychologist Dr. Adriana Anaya in January 2013. Though Mother said she gave Dr. Meyer's report to a District secretary, she could not recall when; District had no record of receiving and did not have the report until the following school year.

February 19, 2013, MESA Meeting

16. Mother requested a MESA meeting, which Mesa Robles convened on February 19, 2013. MESA meetings were previously referred to as student study team meetings. A meeting can be called by a parent, teacher, or other school personnel for the purpose of initially addressing academic or behavior concerns and, as necessary, agreeing on strategies to address those concerns. Ms. Mattson, Mother, school psychologist Marc Ordonez, and an administrator attended.

17. The team worked on a MESA meeting form, which was a grid that recorded the issues and concerns, as well as needed further support. The team did not indicate a need for special education assessment, which would have been clearly indicated on the form. Mother called the meeting because she believed that Student did not have friends at school, did not socialize with the other children, and was frustrated when he could not complete his school work. Mother did not present Dr. Meyer's report to the MESA team.

18. Ms. Mattson was surprised because she had not observed the behaviors cited by Mother. Ms. Mattson recalled one incident when Student cried when he could not be the hero in a writing assignment about heroes. However, when Student was prompted to pick someone he knew to be the hero, he did so and completed his assignment. Otherwise, Student did not exhibit any defiance or emotional outbursts.

19. The MESA team agreed that Student's family would provide updates on how Student was doing on his social skills with his therapist. Ms. Mattson and other school staff would observe Student during playground time for social and emotional

behavior.

20. On the year-end report card, Student received grades identifying him as exceeding expectation for first grade in all 20 Reading Standards. He was proficient and at grade level in listening and speaking standards. For mathematics, Student was graded as proficient and at grade level expectations in 12 of the 13 standards. He was proficient and at grade level in science and secure with portions of the grade level standard for social studies. In 18 categories for effort, which included social skills and work study habits, Student was rated "excellent" in 14, "satisfactory" in three and "inconsistent" on one.

June 2013 Psychological Assessment – Dr. Anaya

21. At the conclusion of first grade, Student's therapist Dr. Anaya conducted a psychological assessment of Student, at Mother's request. Dr. Anaya stated that Student's ability to make friends had improved over the course of therapy, but Student was frustrated because his classwork was not sufficiently challenging. Dr. Anaya administered the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition, as well as the Woodcock Johnson, Tests of Achievement, Third Edition, Form A. Student took the tests on June 11 and 18, 2013.

22. The Wechsler found Student to be in the very superior range of intellectual functioning, with a Full Scale IQ of 140, which was in the 99.6 percentile. Student was in the very superior range on the Verbal Comprehension Index and the Visual Spatial Index. He was in the superior range on the Fluid Reasoning Index and high average range on the Working Memory Index. On the Processing Speed Index, Student was in the 84th percentile; though high average, it was an area of relative weakness.

23. The Woodcock Johnson found Student to be far above grade level in all tested areas. For example, when completing calculations in the form of word problems, Student performed at the 5.7 grade level. Student's writing fluency was at the 3.0 grade

level and his ability to spell was at an age equivalent of 9.0.

24. Dr. Anaya concluded that her patient was a very bright child, motivated by accomplishing tasks correctly, which could be a source of significant anxiety and adversely affect Student's performance. Dr. Anaya determined that Student was bored in the classroom. Her professional opinion was that the social benefit of keeping Student with his peers was superseded by the adverse impact the lack of academic stimulation was having on his mood, overall outlook, and self-esteem. Dr. Anaya recommended that Student be advanced to a higher grade where he could be intellectually challenged, which would lead to happiness in the school setting and motivation for improving social relationships.

SECOND GRADE – 2013-2014 SCHOOL YEAR

25. For the 2013-2014 school year, Student attended second grade at Mesa Robles. His teacher was Patricia Johnson, who testified at the hearing. Ms. Johnson taught for 27 years – four years in second grade, having previously taught first, fifth and sixth grades. She possessed a clear teaching credential and CLAD certificate. She regularly participated in District's training in math and science. Her son had autism and stated she had taught high functioning autistic children. She had no autistic children in her current class but asserted that she had one the prior year – Student.

26. Ms. Johnson said she identified Student as a child with autism within the first week of school, when she had long conversations with Mother. When Mother informed her that Student was diagnosed with autism, she understood what was going on with Student. Thereafter, Ms. Johnson and Mother talked almost every day, walking outside together, in addition to exchanging emails and phone calls. Ms. Johnson and Mother developed a very close relationship.

27. Ms. Johnson said that Student was not able to make and keep friendships and unable to work in cooperative groups in class. Student could not participate in, and

did not contribute to, group's projects. He would immediately go off task and become silly, putting his hands on the other kids. Sometimes, Student would stand and spin around. She stated that Student could not be cooperative in the classroom setting and would quickly go off task, especially when in close proximity of other students. Ms. Johnson said that Student's desk was constantly messy, indicative of his poor organizational skills. Student struggled to retrieve things from his desk and backpack.

28. Ms. Johnson claimed that she had a close, positive relationship with Student because he understood that she cared for him. Therefore, Student was at times very cooperative with Ms. Johnson. She invested a lot of time with Student, developing strategies to direct and redirect him when he got off task, touched classmates, was being silly, or talked too loud. These strategies included giving individual encouragement, reminders, and directions while standing at Student's desk, as well as hand signals when Ms. Johnson was in front of the class.

29. Though not reflected in her progress reports, Ms. Johnson testified that Student had very poor communication skills. He spoke in bursts and fragments, like bullets, jumping around with incomplete thoughts. Student was able to communicate, but it required a lot of effort by Ms. Johnson, asking him follow-up questions, to understand Student. She said that Student did not make eye contact unless asked, and then for just a short period.

30. She said that Student's communication with his peers was poor. Other pupils did not understand Student. When she asked classmates about Student, they would respond that he did not make sense and that he was weird and strange. Over the course of the school year, Student improved in keeping his hands off others but did not improve in his communication skills with his classmates. Ms. Johnson stated that Student's behaviors interfered with others because he was a huge distraction. She claimed that Student was incredibly loud and would scream if something startled him.

He also annoyed classmates because he would hum and talk to himself. She could not understand Student's talking; it just did not make sense to her.

31. Overall, Student received good grades. Ms. Johnson said that, without her support, Student would not have been academically successful.

August 19, 2013, MESA Meeting

32. Ms. Johnson participated in a MESA meeting for Student on August 19, 2013. She stated she regularly attended MESA meetings. The Mesa Robles school counselor, Adlina Minassi-Dugan attended. Mother brought Student's psychologist, who had a lot of information about Student, but Ms. Johnson believed that the meeting did not really provide much direction. Her general recollection of this meeting was that little happened.

33. She reviewed the MESA worksheet, which referred to supports of reminders and incentives. Ms. Johnson was to employ visual teaching techniques and the use of visual cue card regarding the day's activities. Ms. Johnson admitted she did not understand what the group meant by visual teaching. She believed that her strategies were doing what was necessary. Ms. Johnson's testimony demonstrated a dismissive attitude of the other participants' contributions.

34. Student was to receive social skills training as part of the social emotional learning curriculum for all students at Mesa Robles, which every teacher was to provide their class. Ms. Johnson did nothing regarding social emotional training with Student as outlined in the MESA meeting

35. Ms. Johnson further testified that she talked with the school psychologist after the MESA meeting and told him three or four times that he needed to assess Student. However, as requested by Mother on August 9, 2013, the school psychologist had already prepared an assessment plan which Mother signed at the MESA meeting. Therefore, Ms. Johnson's testimony that she hounded the school psychologist to assess

Student was not credible.

September 2013 Regional Center Psychological Evaluation – Dr. Frey

36. Clinical psychologist Edward G. Frey evaluated Student on September 17, 2013, at the request of San Gabriel/Pomona Regional Center, to assist in determining eligibility and/or program planning. Dr. Frey was not Student's treating professional and prepared the report solely for Regional Center purposes. Dr. Frey's assessment was conducted during the same period as District's assessment of Student. Mother did not inform Dr. Frey and the District of the other's assessment.

37. Dr. Frey interviewed Mother, who was the only person from whom he received any history regarding Student. He noted that there was a family history of emotional difficulty in that Mother said she was diagnosed as bipolar and with depression and Student's sister had depression. Mother reported that Student had difficulty getting along with peers. He wanted to play and interact with others, but was not accepted by them. Mother claimed that Student had significant problems understanding nonverbal cues and social rules and that he has immature behaviors, blurts things out in class, walks on his tip toes, does not like water on his face or things about his neck, purposely runs into walls, and has sensory issues. Mother told Dr. Frey that Student had unusual interests, such as the periodic table and electronics. Student was receiving therapy and had a 140 IQ. He reviewed Dr. Meyers' January 2012 evaluation; Mother did not provide Dr. Frey with Dr. Anaya's report.

38. Dr. Frey interviewed and observed Student. Student's expressive speech was very clear and easily understood. He had a broad vocabulary and demonstrated no difficulty understanding any question or direction. Student was cooperative throughout the interview and evaluation; he remained focused for completion of all assessment tasks. Student was in very good spirits throughout the assessment. Dr. Frey administered select items from the Autism Diagnostic Observation Schedule and found some autistic

like features but, by and large, Student did not appear to fall within the diagnostic classification of autism.

39. Dr. Frey found that Student was able to report events in detail and easily carried on back and forth conversations, though his use of gestures was somewhat weak. Student was able to sustain eye contact, which lessened as he began to interact. Dr. Frey did not observe any stereotyped or idiosyncratic use of words, though Mother reported Student was repetitive. Though Mother described various sensory issues, Dr. Frey did not observe any unusual sensory interests or hand and finger mannerisms. He displayed some "potty" humor, which Dr. Frey viewed as immature, not sexual. Dr. Frey concluded from the Autism Diagnostic Observation Schedule that Student did not meet DSM-IV criteria for an autistic disorder.

40. Mother's Gilliam Autism Rating Scale results had Student demonstrating autistic features. Dr. Frey concluded, however, that the autism rating scale did not support the presence of autism. Mother's Asperger's Syndrome Diagnostic scale suggested a probability of Asperger's Syndrome because of significant social difficulties. Based on the scale instruments completed by Mother, Dr. Frey said that Student was best viewed as a child with Asperger's Disorder based on the DSM-IV criteria.

41. Dr. Frey found a suggestion of Asperger's Disorder on the DSM-IV-TR criteria, but Student did not meet the diagnostic criteria for full syndrome autism. Based on Mother's history and scale responses, the primary area of concern for Student was social.

District's October 2013 Initial Psychoeducational Report

42. District school psychologist Marcie Fujishige assessed Student and prepared an Initial Psychoeducational Report dated October 11, 2013. School nurse Nerwin Lin did the health assessment and Health Information section. Special education teacher Christina Ly administered the academic achievement tests and prepared the

Academic Functioning section. The tests and other evaluation materials used by Ms. Fujishige and Ms. Ly in assessing Student were selected and administered so as not to be racially or culturally biased, and given for the specific purpose for which the standardized tests were validated.

43. Ms. Fujishige was not the school psychologist for Mesa Robles. She conducted the initial assessment because Mesa Robles' school psychologist had a conflict. Before Student's assessment, Ms. Fujishige had no contact with Student, Mother, or Ms. Johnson.

44. Ms. Fujishige testified at the hearing. She held a bachelor of arts in psychology, a master of arts in counseling, a clear pupil personnel services credential in school counseling, a second masters in educational psychology, and a clear pupil personnel services credential in school psychology.

45. Ms. Fujishige had worked 19 years for District, since September 1996. At the time of hearing, she was assigned to 3 elementary school sites, consisting of 3 resource specialist programs, 5 special day classes, 2 preschool special day classes, and 2 preschool intensive language classes. While at District, she has worked at 10 elementary schools, 3 middle schools, one comprehensive high school, and the alternative high school/community day school. Ms. Fujishige had worked with children of various disabilities, from non-severe to severely handicapped. She conducted more than 1000 assessments involving children with autism, approximately 10 percent of whom were high functioning autistic.

46. Ms. Fujishige was qualified by her education, training, experience and credentials to conduct the psychoeducational evaluation of Student and to evaluate and make recommendations based upon her interview and observations of Student. She was well versed in the protocols for the chosen standardized tests and scales, and had graded and reported the results in accordance with such protocols.

47. After reviewing Dr. Meyer's report and interviewing Mother, Ms. Fujishige also chose instruments to assess for specific learning disability. She reviewed Student's school file and Dr. Meyer's and Dr. Anaya's reports.

MOTHER INTERVIEW

48. Ms. Fujishige telephonically interviewed Mother. Mother's main concerns were that Student was a disruption in class, was easily distracted by noises, was not completing his work, was inattentive, daydreamed, and had difficulty socializing and interacting with his peers. Mother first noticed Student's difficulty in school during first grade. He would spend about an hour each night doing homework, but he was easily distracted and needed several breaks. Though friendly, Student did not have any friends in the neighborhood. He got along well with adults and could carry on conversations. He did not like sports and Mother thought him uncoordinated.

49. Student was very bright, reading at the fifth grade level. He enjoyed spending time alone in his room, reading or drawing. He followed the house rules and completed his chores. He did not like changes in routine or want to leave the house. He would tantrum by crying, kicking, throwing toys, or hitting. Mother said that Student was sensitive to joking and did not seem to understand jokes. Student also talked to stuffed animals, which Mother said the therapist saw as signs of depression. Ms. Fujishige accurately reported Mother's interview in the evaluation report.

STUDENT INTERVIEW AND OBSERVATIONS

50. Ms. Fujishige interviewed Student, and observed him during testing, in the classroom and on the play yard. When Ms. Fujishige initially went to retrieve Student for his interview, she for the first time met Ms. Johnson. She retrieved Student two or three additional times on different days thereafter for testing sessions of one-and-a-half to two hours long. Student came willingly and easily transitioned to the testing room that

was across the school quad, through a gate, and on the middle school side of campus, walking about a 100 yards. They went into a small classroom, where there was a fan going because of the heat. Ms. Fujishige kept the door open so the room would not seem claustrophobic.

51. Throughout the assessment process, Student was cooperative, attentive, and pleasant. Ms. Fujishige easily established rapport with Student. He appropriately conversed about many topics, including his family, his sisters and their ages, and his interests. His non-verbal communication was also appropriate, including maintaining good eye contact. Student was comfortable and motivated by the tasks, displaying persistence and attention during the sessions. He did not impulsively talk or become distracted. He did not have any difficulty following directions.

52. Ms. Fujishige took special note of Student's reaction to sounds. The fan in the small room did not bother Student. When a school bell rang, suddenly and loudly, Student was not overly reactive. He did not cover his ears or indicate the bell bothered him. On cross-examination, Student's counsel suggested to Ms. Fujishige that Student did not react because it was a school bell that he would expect. However, the testing room was on the middle school campus, where bells marked separate periods as they moved from class to class. The middle school had a different bell schedule than Student's elementary school campus. Therefore, the school bell heard by Student was unexpected and he did not inappropriately react to its sound.

53. Ms. Fujishige had reviewed Ms. Johnson's General Education Teacher Report of Student. Ms. Johnson reported Student consistently scored high on all assessments, learning information quickly that he could thereafter clearly articulate. She stated Student required prompts to begin and complete tasks. He grasped concepts quickly in verbal and written form, but would only write when prompted. The report also stated the many behavioral and social deficits to which Ms. Johnson testified at the

hearing.

54. Ms. Fujishige observed Student for 40 to 45 minutes in the classroom during language arts. She watched Student listen as Ms. Johnson gave instructions on how the class was to give their oral Ancestor Report presentations. The class raised hands to ask questions and then pupils were called upon, one-by-one, to give their presentations. Student did not appear to pay attention to his classmates' oral presentations; instead he drew more detailed pictures for his report. He would occasionally move about in his chair. However, Ms. Fujishige thought that Student was paying attention. He did not talk to himself or others, never required redirection, and was not in any way disruptive.

55. The Ancestor Report presentations were not typical class instruction. The oral presentations were less structured. Student had to self-monitor his conduct for 45 minutes, remaining seated and not bothering others. The unstructured time was a better measure of Student's conduct. Ms. Fujishige's classroom observations provided reliable and meaningful information regarding Student's classroom behaviors.

56. Ms. Johnson claimed the classroom observation was only 15 to 20 minutes and the psychologist never returned; Ms. Fujishige returned to retrieve Student on multiple occasions. Ms. Johnson improperly dated the observation as taking place after Thanksgiving and misidentified the psychologist as Mr. Ordonez. Ms. Johnson's testimony in this regard was not credible or persuasive.

57. Ms. Fujishige observed Student on the playground for about 15 minutes. Student played on the equipment with another boy, as they talked. The boys went up and down the slide, twirled around poles, hung from the bars, and walked around. Student and the boy went from one activity to another, apparently having fun.

58. Ms. Fujishige did not see the serious behaviors and social pragmatic communication deficits cited by Parent or Ms. Johnson. Student was not withdrawn, had

appropriate reciprocating conversation with others, was not preoccupied with objects or resistant to controls, and had no self-stimulating or ritualistic behaviors.

ACADEMIC FUNCTIONING

59. Ms. Ly administered the Woodcock-Johnson III Tests of Achievement (Normative Update) to Student. She had worked at District for two years as a special day class and resource specialist teacher. She held a bachelor's of arts in human development, a mild-to-moderate special education teaching credential, with an autism spectrum disorders authorization, in 2013. As part of her education and credentialing, Ms. Ly had been trained in the administration of various standardized tests used to assess students for special education, including the Woodcock-Johnson.

60. Ms. Ly's education, training, experience, and credentials qualified her to assess Student's academic functioning and to evaluate and make recommendations based upon her interaction with and observations of Student, both in the classroom and during testing. Her administration, scoring, and reporting of her testing and observation of Student were appropriate and in accordance with applicable legal standards.

61. Ms. Ly did not have any experience with Student before testing. She did not talk with the school psychologist or Mother.

62. She pulled Student from class three or four times for testing; each session was 40 to 45 minutes. She took Student to the back of her special day classroom, which was relatively quiet. On the Woodcock-Johnson, Student performed in the average to the superior range in all areas. Student was in the superior range in broad math, brief math, broad reading, basic reading skills, brief reading, broad written language, and brief writing. Student was reading at the sixth grade level and comprehended at the instructional level of fifth grade; his decoding was at the eighth grade level. He was able to write complex sentences with few spelling errors. In math, he solved multi-digit subtraction and addition problems.

63. The protocols for the Woodcock-Johnson required Ms. Ly to observe Student during testing and enter behavior scores into its computerized program; behaviors could affect the scores. Throughout the testing Student was attentive, not distracted and focused. His activity level was typical for a second grade child; he was not fidgety or impulsive. He used age appropriate language, understood what Ms. Ly said to him, and did not talk to himself during testing. Student engaged in reciprocal conversation, talking about what he did outside of school, such as Legos. He moved from one category to another; he did not persevere on any topic.

64. Ms. Ly also observed Student in the classroom and saw him work well with his peers, especially in cooperative groups. He communicated well with his peers and teacher and was not afraid to ask questions to clarify an assignment or concept. Student was well-behaved, kind, safe, and worked hard. He would come to the classroom smiling, ready to work. Ms. Ly concluded that Student did not display any autistic-like characteristics.

COGNITIVE FUNCTIONING

65. Ms. Fujishige administered the Wechsler Intelligence Scale for Children – Fourth Edition, which specified four cognitive domains. Student’s verbal comprehension, working memory and processing speed abilities were in the average range and his perceptual reasoning abilities were in the very superior range. His full scale IQ score was in the high average of 119.

Psychological Functioning

66. Ms. Fujishige used three instruments to evaluate Student’s psychological processing. The Beery-Buktenica Developmental Test of Visual-Motor Integration, 6th Edition, measured Student’s integration skills by having him copy geometric figures of varying levels; he performed in the average range. The Test of Visual Perceptual Skills,

3rd Edition, found Student's visual processing abilities to be in the average to very superior range. Student visual perception abilities, basic processing and complex processing were in the very superior range. These results concurred with Student's perceptual reasoning index on the cognitive testing, which involved perceptual reasoning and organization. His sequential reasoning was a relative weakness, but was still within the average range.

67. The Test of Auditory Processing Skills, Third Edition, measured Student use and understanding of language commonly utilized in academic and everyday activities. Student's overall auditory processing abilities were in the average range. The results concurred with his average working memory index score on the cognitive testing.

BEHAVIORAL AND SOCIAL/EMOTIONAL FUNCTIONING

68. The Behavior Assessment System for Children, Second Edition, were designed to help identify a child's emotional problems and behavior disorders by having a parent and teacher rate various behaviors pursuant to established scales on standardized forms. Mother and Ms. Johnson completed the scales for Student.

69. Mother rated Student in the at-risk range on the externalizing problems composite and in the clinically significant range on the internalizing problems range. Mother had behavioral symptoms composite in the clinically significant range, which included atypicality and withdrawal. Attention problems were in the at-risk range, which included being easily distracted and unable to concentrate for long periods of time. Mother had clinically significant rating on Social Skills (such as interacting successfully with peers) and daily living (independently performing everyday tasks without reminders) and at-risk ratings on adaptability.

70. Ms. Johnson's teacher rating scales needed to be interpreted with extreme caution because of a high F index. The F index was intended to identify those cases where a responder is attempting to portray the child in a highly negative fashion. Ms.

Johnson rated Student in the clinically significant range for externalizing problems, hyperactivity, aggressions, and conduct problems. Ms. Johnson rated Student in the average range for internalizing problems, with at-risk ratings on anxiety, depression, school problems composite and attention problems. Behavioral symptoms composite, atypicality and withdrawal, and the adaptive skills composite were in the clinically significant range. Both Mother and Mrs. Johnson scored Student average for functional communication. Mother and Ms. Johnson completed the Vineland Adaptive Behavior Scales: Second Edition, measuring personal and social skills. Mother rated Student's overall adaptive functioning in the average range while Mrs. Johnson scored Student well below average range, which was lower than his cognitive functioning due to difficulty in socialization. For communication and daily living skills, Mother rated Student high average while Ms. Johnson had him in the low average range. In the socialization domain, Mother and Ms. Johnson rated Student in well below average range.

71. Only Mother completed the rating scale form for the Gilliam Autism Rating Scale – Second Edition. Ms. Johnson did not return the completed teacher's form. Based on Mother's Gilliam rating scale responses, Student had a probability of autism.

72. Ms. Fujishige determined that Student displayed age appropriate development in speech and language. If she had observed any problem, she would have talked to a speech and language pathologist and recommended further assessment. In assessing for autism, Ms. Fujishige had found children eligible without the need of a separate speech and language evaluation. Student did not demonstrate any inappropriate language, withdrawal in relating to others, or extreme impairment in social interaction, which would have necessitated a speech and language assessment to determine Student's eligibility for services.

73. Student displayed appropriate gross-motor functioning. He played games with his peers during recess, lunch, and physical education class. Nurse Lin assessed

Student and found him in good health, with no health deficits that affected his school performance. He had 100 percent school attendance.

APPLICATION OF SPECIAL EDUCATION CRITERIA

74. Ms. Fujishige considered and applied the special education criteria for four different special education eligibilities: Specific Learning Disability, Serious Emotional Disturbance, Multiple Disabilities, and Autism.

75. In her opinion, Student did not meet eligibility criteria for Specific Learning Disability because Student did not present a severe discrepancy between intellectual ability and achievement in one or more academic areas. Student did not meet the eligibility criteria for Serious Emotional Disturbance because Student did not exhibit one or more of five characteristics, to a marked degree over a long period of time, which adversely affected his educational performance. Student did not meet the eligibility criteria for multiple disabilities because Student did not present eligibility concomitant impairments (such as intellectual disability and blindness). His intellectual functioning was average to very superior and his academic functioning was above grade level.

76. Lastly, Ms. Fujishige examined the autistic-like characteristics listed in the California regulations and concluded Student did not meet the eligibility criteria for autism: (1) Student did not have an inability to use oral language for appropriate communication. He communicated well with others, initiating and reciprocating conversation. He gave appropriate eye contact. Student interacted better with adults than children because his interests were at a higher level, such as his interest in the Periodic Table. Student was able to interact with his peers.

77 (2) Student did not have a history of extreme withdrawal or relating to people inappropriately. Student reported having friends and was seen playing with a friend. He often preferred working or playing alone; he interacted with peers and adults. (3) Student did not have an obsession to maintain sameness. Student had no problems

changing routines at school. He transitioned without any concerns for testing and interview sessions.

78. (4) Student did not have an extreme preoccupation with objects or inappropriate use of objects. (5) Student did not have an extreme resistance to controls. Student followed the rules at home and in school, did his chores at home, and was generally a well-behaved second grader. (6) Student did not have peculiar motoric mannerisms and motility patterns. (7) Student did not have self-stimulating or ritualistic behavior.

CONCLUSION AND RECOMMENDATIONS

79. Ms. Fujishige concluded that Student did not meet the eligibility criteria for autism. Ms. Fujishige found Student's use of speech and language was exceptional; Student did not exhibit motor development delays or deficits. Student's verbal comprehension on the Wechsler intelligence scale was average, his visual-motor integration on the Beery visual motor test was average, and auditory processing test was average. Parent and teacher rated functional communication to be average. On the Vineland scales, Parent rated Student's communication as high average and Ms. Johnson had low average.

80. Ms. Fujishige recommended that Student not be found eligible for special education. She proposed building Student's social skills by participation in group/class discussions and that Student be given the opportunity to build a broad knowledge base.

October 11, 2013 Initial IEP

81. On October 11, 2013, District timely convened an initial IEP team meeting. Attending were Mother, assistant principal Rosette Holmes, school psychologist Mark Ordonez, program specialist Trina Nakagawa, Ms. Fujishige, Ms. Ly, Ms. Johnson, a private psychologist assistant, and a psychologist intern.

82. Ms. Ly reviewed the academic assessment. Ms. Fujishige presented the psychological report, reviewing the results, findings, and recommendations. Mother expressed concern that Student may have done well in the one-on-one testing for the evaluation but with peers he was unable to focus. The team noted that Student's greatest weakness was in socializing and interacting with his peers and understanding social norms. Mother said she thought Student was doing well in class because he had a teacher who knew how to work with him. The team noted that if Student should struggle academically in the future, the school team could meet to implement interventions. However, at that time, Student was excelling academically.

83. The team adopted Ms. Fujishige's recommendation that Student did not meet the eligibility criteria for specific learning disability, autism, emotionally disturbed, or multiple disabilities. Mother signed the IEP in agreement.

The Remainder Of Student's Second Grade

84. Ms. Minassi-Dugan employed tiered interventions in response to Mother's expressed concerns regarding Student's social pragmatic skills. She testified at the hearing. Ms. Minassi-Dugan held a bachelor's of arts in journalism and a pupil personnel services credential in counseling. She worked six years for District, had been the Mesa Robles school counselor for five years and regularly worked with autistic students.

85. Her duties included working with at-risk students, individual and group counseling, parent conferences and response to intervention. Response to intervention was a three-tiered intervention model that was part of Mesa Robles culture. Teachers were required to complete a Tier questionnaire for each student, twice a year. Ms. Minassi-Dugan reviewed the teacher ratings and determined necessary tier intervention.

86. All students received Tier 1 intervention, which was the social emotional learning curriculum that addressed social skills, healthy friendships, self-control, anger

management, and dealing with bullies. Ms. Jackson was uncertain if she taught the curriculum to Student. Tier 2 intervention had additional supports, such as self-monitoring techniques or mentoring. Tier 3 intervention was for more impacted children, which might involve a pathologist, school psychologist, or other outside resources.

87. Ms. Minassi-Dugan had known Student since kindergarten, when she regularly observed him as part of her playground supervision responsibilities. Student was happy, liked being at school, and had a good relationship with the kindergarten teacher. Student played with other children and reciprocally communicated. Student used appropriate language with his classmates and adults; he was not reserved. He had no self-stimulating or perseverating behaviors. She did not see Student exhibit any autistic-like behaviors in kindergarten. If his teacher's universal screening questionnaire indicated he was in need of more than a Tier 1 intervention for first grade, Ms. Minassi-Dugan would have implemented an intervention.

88. Ms. Minassi-Dugan interacted with Student after he was brought to her attention by the universal screening questionnaire and the August 2013 MESA meeting. She had Student and classmates come to her office and play board games. Ms. Johnson did not believe this was very helpful, because other students usually did not want to go.

89. After the October 2013 IEP, Ms. Minassi-Dugan implemented Tier 2 intervention for Student. She e-mailed Ms. Johnson on November 20, 2013, outlining an incentive self-monitoring process, which was intended to assist Student in consistently tracking his own behavior and receiving quick feedback on his performance.

90. Mustang Monitoring was a daily form that Student and Ms. Johnson would complete. The form listed three goals and associated tasks. For each task, Student would rate himself and Ms. Johnson would indicate if she agreed. If Student scored enough points, he received an incentive reward that he chose. For example, Student chose a

front-of-the-line pass. Student regularly earned his incentive rewards. Student took home a Tier 2 Parent Intervention Letter, explaining the Mustang Monitoring process, which started on November 21, 2013.

91. Ms. Johnson complied, working with Student on his daily form and returning them to Ms. Minassi-Dugan. Ms. Minassi-Dugan regularly inquired of Ms. Johnson for the remainder of the school year to confirm consistent implementation and to make needed adjustments of the behaviors or incentives. Ms. Johnson thought the process was of little benefit and ridiculed incentives; she made no suggestions.

92. Student successfully obtained his daily, weekly, and monthly incentives for the remainder of the school year. Ms. Minassi-Dugan also observed Student in Ms. Johnson's class and did not see any autistic-like characteristics.

93. On the universal response to intervention questionnaires, Ms. Johnson repeatedly identified her classes to contain substantially more at-risk children than all the other second grade teachers combined. Yet, Ms. Minassi-Dugan accepted Ms. Johnson's questionnaires and implemented response to intervention for each identified student. Similarly, when Ms. Johnson referred a student for assessment, District would assess.

94. Per Ms. Johnson, Student's classroom behaviors improved significantly over the school year, but his social relationships did not. She criticized Ms. Minassi-Dugan and Ms. Holmes for not providing more social training or counseling.

95. For the final second grade progress report, of the 48 academic areas in which Student was graded, Ms. Johnson rated Student as exceeding grade level standards in 8 areas and proficient in the remaining 40. She rated Student satisfactory in all social skills, including respect, citizenship, responsibility, trustworthiness, fairness, and caring. In work and study habits, Ms. Johnson rated Student unsatisfactory in keeping his work area and materials neat and organized, inconsistent in managing his time,

doing his work carefully, and working productively with groups. He was satisfactory in working independently, doing his homework, and following instructions. Ms. Johnson noted that Student maintained a positive attitude throughout the year, worked very hard, and made good progress.

THIRD GRADE – 2014-2015 SCHOOL YEAR

96. For the 2014-2015 school year, Student attended third grade at Mesa Robles. His teacher was Esther Shin, who testified at the hearing.³ Ms. Shin had taught for 29 years; the past 21 were for District. She had been a third grade teacher for the last 13 years, having previously taught fourth grade, a third-fourth grade combination class, and a second-third combination class. Before coming to District, she taught second grade and was an elementary director at private schools. She held a bachelor of arts in psychology a multiple subject teaching credential, a master of arts from Westminster Theological Seminary. She was CLAD certified and certificated in the Kaplan differentiated curriculum program for gifted students. Ms. Shin was Teacher of the Year for Mesa Robles in 2012-2013.

97. Three of her 24 students had IEP's; none with autism. Ms. Shin previously had two autistic students. She received training regarding autistic students. She did not refer Student because he did not exhibit any behaviors or conduct that warranted assessment.

98. Ms. Shin had a structured classroom style. She clearly explained what she expected from her students. She used a lot of visual aids and gave homework every day to instill responsibility and practice what was learned in class. Her students had a weekly

³ Student was in Ms. Shin's class at the time of hearing. Evidence concerning matters that occurred after the complaint's November 2015 filing was not considered.

work folder, with a log that parents reviewed and signed. A student's grade was unrelated to completion of homework. Each day, she assigned two or three pieces of homework. She was strict in marking homework; missing one problem on a math assignment would render the homework incomplete. If a student did not complete an assignment for which there was ample time during class, the student would have to complete the assignment during recess. If a student did not complete a homework assignment in language arts, the student could complete the assignment during recess. If her students did not do math homework, they could make up on their own time.

99. Student always did most of his homework. His incomplete homework was typically missing the spelling packet, though Student was an unusually good speller. Ms. Shin would ask Student to do his incomplete homework during recess, once or twice a week. He would sit outside at a table with benches, where he worked with other pupils. Ms. Shin saw Student talk and interact with his classmates when doing work at the table. Ms. Shin did not report the homework issue to anyone other than Mother because Student knew his subjects and academically performed quite well. If she believed the homework indicated a significant issue, Ms. Shin would have called a MESA meeting or consulted with other professionals.

100. Student had some challenges with timely finishing classwork writing assignments. Typically, there were two to three open-ended writing assignments at any given time. Student struggled in getting started on an assignment. He said there were so many ideas in his mind that he had difficulty choosing. Once Student understood the writing prompt, Ms. Shin would encourage Student. She might use a thought organizer to help in his decision-making or put a timer on Student's desk to prompt him to write a topic sentence. Ms. Shin used such strategies with many pupils and did not consider Student to have a significant problem with his writing because he always completed his assignments.

101. Student was engaged in class, listening well and participating in lessons. He raised his hand as much, if not more, than other students. Student was always able to answer the question when picked. He did not disturb others, would do what he was asked, and followed directions. Student did not have any behaviors that were strikingly different than most third graders. He doodled in class but the drawing seemed to help Student focus on what was being said. Student's Language Arts formative assessment average was above 90 percent; his Math formative assessment average was 97 percent. Student read between the 4.4 through 7.6 grade level.

102. Student did not react to loud or unexpected sounds or complain about the class's noise level. Student did not enjoy music and would occasionally cover his ears to indicate his dislike. This was not a sensory issue but an indication of Student's preference. Ms. Shin did not require Student to participate in music class.

103. Like other third graders, Student would daydream for a short time at least once a week, but not every day. He quickly returned to task when redirected by Ms. Shin, who used signs, bells and other cues with all the students. Student did not talk at inappropriate times; he did not talk to himself. His desk was messy, as were 25 percent of her pupils' desks. When Student took time to find something, he always found it.

104. At the beginning of the year, Mother told Ms. Shin about an incident in which Student was trying to join a group of boys playing at recess, when one yelled at Student to go away and quit following them. Ms. Shin talked to the offending boy, who apologized. Mother claimed that the lack of friends was something that Student had gone through "his whole life." Yet, Student considered some of his classmates to be friends. A classmate reported to the whole class that he accepted Student's invitation to visit his house, instead of doing something with his own family. The classmate indicated he made the right choice and enjoyed himself.

105. Student was occasionally shy, but he appropriately reciprocated with

others. He sometimes preferred doing things on his own, like reading, but always enjoyed and interacted with his peers whenever approached. Student relished giving oral presentations in class, preparing index cards to which he seldom needed to refer; he made direct eye contact with his audience. He liked group work, where he participated by leading his group as the secretary or the writer. When gathering supplies as the table monitor, he would have short conversations with peers. When in line and waiting to take his turn, he initiated quick exchanges with classmates.

106. Student typically sat at the outside table during recess and lunch, drawing. His classmates viewed Student as a good drawer and Student enjoyed the recognition and shared his drawings with other students who would come to him at the table. On a class field trip, Student conversed, laughed, and giggled with his group. Student was frequently the first to come into school, smiling and motivated. Generally, Student functioned well in the classroom and was a happy learner, making good progress and grades.

107. Sometime during the school year, Mother told Ms. Shin that Student had been diagnosed with autism. Ms. Shin did not observe any autistic-like behaviors in Student.

108. Ms. Minassi-Dugan continued to work with Student in third grade to fully evaluate his social interactions because of Mother's continued expressed belief that Student did not have any friends. In August 2014, she implemented a "Fun Friday" time when Student would bring a board game of his choice. He and classmates played the games during Friday's morning recess, on a bench in the playground, while Ms. Minassi-Dugan monitored the interaction. Five to eight pupils would play each Friday, while Student would lead the games. He taught the rules to new children who wanted to participate. Once, Student got upset and told a pupil he was playing wrong and might be cheating. Ms. Minassi-Dugan suggested that the pupil might not know how to play,

at which point Student then explained how to play the game, in an appropriate voice. Student socialized and communicated with the other children, similar to other students who had participated in Fun Friday activities.

109 Ms. Minassi-Dugan met with Mother, providing reports following each Fun Friday. Student was able to initiate and maintain appropriate social peer relationships with classmates, as well as adults. Fun Fridays stopped after about six weeks. Mother stopped the Fun Fridays because she believed that the social relationships were forced and temporary. She believed Student would just get hurt because the friendships would not last. Student wondered why Fun Fridays ceased; Mother never told him that she stopped the activity.

STUDENT'S EXPERT, PAUL MANCILLAS, PH.D.

110. Paul Mancillas performed an evaluation of Student at Parents' request. He testified at hearing. Dr. Mancillas had a 1981 degree in psychology from California State University, Los Angeles, and a 1996 doctorate in clinical psychology from the California School of Psychology. He obtained a certificate in clinical neuropsychology from the Fielding Institute in 2004. He was licensed in 1988 and maintained a private practice. As a psychologist, he also worked with the Lanterman Developmental Center, most recently from 2001 through 2014.

111. Dr. Mancillas assessed Student, producing a report dated September 20, 2014. Dr. Mancillas interviewed Parents. Mother reported she was diagnosed as Bipolar, as was her father and grandfather, and her family has had obsessive-compulsive disorders, depression, anxiety, and alcoholism. Mother said that Student did not get along well with other children, had substantial behavior problems at school, would yell out words in class and refused to do work even if recess would be taken away. She said Student had no friends and hated school.

112. Dr. Mancillas administered a series of standardized tests on Student. He

found Student to have superior intelligence, with superior perceptual reasoning and working memory. On verbal subtests, Student was average to superior, exhibiting abstract reasoning and thinking. His vocabulary was superior and comprehension above average. Student's overall academic functioning was measured to be in the very superior level (99th percentile rank). Dr. Mancillas stated there was no identifiable learning disability that would impact Student future learning or require special education.

113. Dr. Mancillas gave Student three standardized tests on executive functioning. Student performed in the average to above average range. He was in the lower end of average on one subtest. Dr. Mancillas found that Student was in the average range on executive functioning, with no inclination to perseverate. The only indications that Student struggled with executive functioning came from Mother by way of the Barkley's Deficits in Executive Function Scale.

114. Student had no deficits in auditory or visual attention. Student's memory functioning was in the average range, with some struggles in verbal memory and story memory. His visual memory was superior. On subtest scores, Student performed from impaired to very superior levels.

115. Standardized testing demonstrated that Student's language processing and expression were exceptional, with possible difficulty in spontaneity. Student's visual spatial processing was excellent and his motor functioning was in the normal range, with fine manual control at the superior level. Dr. Mancillas found only a mild indication of motor problems, but this was presented only by way of Parents' history.

116. In looking at the possibility of attention deficit hyper activity disorder, Dr. Mancillas had Parents complete rating scales; their responses strongly supported an ADHD diagnosis. However, Dr. Mancillas stated that the Student's testing results would not support an ADHD diagnosis because Student consistently performed well within normal limits on various tasks of attention. Parents completed various rating scales

relevant to autism; their responses supported a diagnosis of autism, because of deficits in social awareness, communication, and motivation.

117. There were no standardized tests results showing ADHD. Dr. Mancillas diagnosed ADHD by relying upon Parents' rating scales, especially those of Mother. Dr. Mancillas also diagnosed Student with Autism Spectrum Disorder, severe, primarily based on Parents' indications of socialization deficits. In diagnosing autism, Dr. Mancillas said he was very much swayed by the previous assessments and that he was even more swayed by Mother's presentation of history and current status.

118. His autism diagnosis related only to Student's socialization deficits, and not any accompanying intellectual impairment. However, Dr. Mancillas never observed Student with another child. He testified that such observations were not very helpful; his presence itself made such observations unreliable. He did not seek data from any teacher. Dr. Mancillas recommended a one-on-one aide for Student at school. His recommendation in this regard was not persuasive.

119. During his testimony, Dr. Mancillas said that he started to recognize autistic-like characteristics in Student during the assessment process. These included difficulty in regulating emotions, rocking back and forth, difficulty with eye contact, and the need for multiple prompts. However, Dr. Mancillas did not refer to such personal observations in his 14-page report as a basis for his diagnosis of autism and ADHD. He also testified about a single subtest showing Student to be very impaired in verbal memory, which would greatly impact his learning. Again, this was not stated in his report as a basis for either diagnosis. His testimony in this regard was not persuasive.

DISTRICT'S OCTOBER 2014 SUPPLEMENTAL EVALUATION OF STUDENT

120. In response to a request from Student's attorney, District prepared an Assessment Plan that Mother signed on September 2, 2014. District would assess in the areas of behavior and social/emotional development by a school psychologist, language

and speech by a pathologist, and motor development with occupational and physical therapy assessments by an occupational therapist. District produced an October 31, 2014 Multi-Disciplinary Supplemental Report, detailing the assessment results, except for the occupational therapy and physical therapy assessments, which were separately reported.

121. Mother's concerns generally related to behavior, sensory integration, motor skills, and pragmatic language. Specifically, she asserted Student's inability to: communicate and socialize with peers; attend and complete assigned tasks in class without being distracted; engage in physical activities; and manage significant anxiety and depression regarding school. Mother testified that Student had no friends, evidenced by Student sitting alone at a table on the playground at every recess. She believed that Student was eligible for special education services because of autism and emotional disturbance.

122. The tests and other evaluation materials used by District in assessing Student were selected and administered so as not to be racially or culturally biased, and given for the specific purpose for which the standardized test was validated. Those who administered the tests were experienced, trained, and qualified in the instruments used.

SPEECH AND LANGUAGE FUNCTIONING

123. Christina P. Moon assessed Student's language and speech. She held a bachelor of arts, a master of arts in education, and a second master of arts in speech-language pathology, communicative disorder. She held a clear speech-language pathology services credential, a certificate of clinical competence in speech-language pathology and a license from the Speech-Language Pathology and Audiology Board of California. Ms. Moon had been a speech-language pathologist for District since 2011. Previously, she was a pathologist at Casa Colin Center for Rehabilitation for two years, St. Joseph Hospital for one year, and East Whittier City School District for one year. She

also was a teacher and educational consultant in the language development program at Whittier for six years.

124. Her District duties were speech and language assessment in the areas of articulation, phonology, fluency, voice, assistive technology, expressive and receptive language, morphology, and pragmatic language. She assisted in development and implementation of IEP's, with multi-disciplinary team collaboration. She provided evidence-based therapy services, collected data of students' progress, determined appropriateness of therapy goals and objectives, supervised speech-language pathologist assistants, and educated staff and parents regarding speech and language development.

125. Ms. Moon had conducted more than 200 assessments for the District and more than 400 as a speech pathologist. Of these, 30 to 40 percent involved autism; about 10 percent involved high functioning autism. Ms. Moon was qualified by her education, credentials, training and experience to conduct assessment of Student's speech and language functioning. She met all legal standards for evaluating Student, properly reporting her findings and recommendations.

126. Ms. Moon was not Mesa Robles' assigned speech-language pathologist and never before worked at Student's school. She did not know Student before the assessment.

127. Ms. Moon reviewed the October 2013 psychoeducational report, Student's school file and history; she interviewed Mother, Student, Ms. Shin, and Ms. Minassi-Dugan. Ms. Shin had no concerns regarding Student; Ms. Minassi-Dugan reported on Student's experience with Fun Fridays. Mother restated her prior concerns, also telling Ms. Moon that Student perseverated, daydreamed, stuttered, mumbled, and could not appropriately work or talk with classmates.

128. Ms. Moon observed Student on nine different days in class and on the

playground. Student was fully engaged in class and regularly initiated short conversational exchanges with classmates. He quickly and willingly stood before the class and shared about his research on "babushkas," holding notes to which he did not have to refer. When Ms. Shin went to the back of the room, she signaled Student should speak a little louder; he did. Student referred to his grandmother wearing babushkas, how older women were often called "babushkas," and joked "So, a babushka wearing a babushka." He explained his internet research. Afterwards, when another student was sharing from his reading, Student turned toward him and listened.

129. At lunch, Student sat in the cafeteria with a group of three boys. When the school counselor approached and asked if he wanted to play board games afterwards, Student declined, saying he wanted to read. He talked with the other boys at the table, changing subjects, continuing to chat. As the boys left, one by one, Student remained to finish eating when a nearby girl struck up a conversation with Student about frozen treats and Student's pet bunny, causing him to laugh. Another girl joined the conversation, talking about books, then snow, frozen treats, other foods. Student told the girls about something amusing he read in his book. He finished his lunch and went to the playground. Soon, the bell rang and Student lined up with the other children.

130. Student did not have any difficulties in his socialization or pragmatic communication. He was very expressive, initiating conversations, and reciprocating whenever he was approached by others. He did not perseverate on any subject, quickly changing topics in multiple conversations. He never stuttered. Student used higher language skills and concepts; he maintained appropriate eye contact with his peers and school staff.

131. Ms. Moon detailed Student's behaviors during formal testing. Student was very friendly and cooperative, readily establishing rapport and easily answering informal questions. He initiated repetition of test items as needed and as allowed. He maintained

a good demeanor and pleasantly participated in casual conversation between tests.

132. Ms. Moon gave standardized tests. The Comprehensive Assessment of Spoken Language measured oral language processing of auditory comprehension, oral expression and word retrieval (knowledge and use of words and grammatical structured), use of language for special tasks required higher cognitive functioning, and the knowledge and use of language in communication with others. The Clinical Evaluation of Language Fundamentals, Fifth Edition (Ages 6-8) assessed receptive and expressive language abilities in areas of syntax, morphology, semantics, and pragmatics.

133. On the spoken language assessment, Student scored above average on the overall composite language functioning, and receptive language, while his expressive language was well above average. On the language fundamental test, Student scored above average for core language and for receptive and expressive language indexes. Ms. Moon provided detailed review and analysis of what these two instruments revealed in the specific language areas of semantics, syntax/morphology, and pragmatics.

134. Ms. Moon found Student's overall performance on supralinguistic measures demonstrated that he could understand figurative and contextual meaning given varied language style and communicative setting. Student's skills were in the above to high average range for the area of semantics and the high average for syntax and morphology. Student's skills were most likely higher than reported because Student's communication capability was superior to some of the instrument's ability to measure.

135. For the assessment of Student's pragmatic language skills, Ms. Moon utilized additional instruments. The test of Pragmatic Language – 2, assessed the use of language in social contexts. The test's subcomponents looked at areas of physical setting, audience, topic introduction and changes, abstract language (i.e., proverbs,

metaphors), purpose (i.e., informing, explaining, requesting), and monitoring of facial expressions, body language, and gestures. Student scored in the average range. He responded appropriately to scenarios related to indirect language, making complaints, changing conversational topics, use of sarcasm, maintaining topic, explaining similes and idioms, repairing communication breakdown, identification of overly detailed narratives, appropriate storytelling, making polite requests, and convincing a parent of a desired request with an reasonable argument.

136. The teacher's pragmatics profile of the Clinical Evaluation of Language Fundamentals, Fifth Edition, assessed Student's use or understanding of verbal and nonverbal social communication; Ms. Shin completed. Student received an overall score within the average range. Ms. Moon administered the Goldman-Fristoe Test of Articulation 2, assessing how sounds were produced, for purposes of evaluating articulation and phonology. Student scored in the average range. Student's fluency was within normal limits, with appropriate pitch, loudness, and overall quality of speech, appropriate for his age and gender.

137. In his interview, Student said the he did not have any problems with other students and that he got along well with his classmates. Student referred to having friends. The assessment could not identify any apparent reason why Student would report to Mother that he perceived himself as not having any friends. Ms. Moon meticulously and comprehensively described her testing, observations, and conclusions in the District's Multi-Disciplinary Supplemental Report. Student demonstrated average pragmatic language functioning. Ms. Moon recommended that Student did not need speech and language services.

BEHAVIOR AND SOCIAL/EMOTIONAL DEVELOPMENT

138. School psychologist Keith Wescott assessed Student for his behavior and social/emotional development. He testified at the hearing. Mr. Wescott held a bachelor

of arts in psychology, a master's in psychology and an education specialist degree and credential. He has worked for District for about 14 years, having previously interned as a school psychologist at Chaffey Joint Union High School District for two years. Mr.

Wescott was a certified Behavior Intervention Case Manager.

139. Since August 2009, he had been District's co-lead psychologist, which was a resource to District's other psychologists, assisting in training and their assessments. As co-lead, he attended SELPA meetings on mental health and managed the transfer of students in and out of District. He also conducted student assessments. About 20 percent of Mr. Wescott's assessments involved children with autism; about five percent were high functioning autistic.

140. Mr. Wescott did not know Student before the assessment. He was responsible for assembling the multi-disciplinary report, writing all but the speech and language and executive functioning assessment sections. He started by reviewing the assessment plan and then chose comprehensive instruments for emotional and social functioning. Based on the results, he would more specifically explore areas with other tests.

141. Mr. Wescott conducted the Behavior Assessment System for Children – 2, by having Mother and Ms. Shin complete the rating scales. Mother's responses demonstrated concerns similar to her responses in 2013, with elevated scores for depression and atypicality. Ms. Shin's responses were all in the low to midrange, except for some concerns for withdrawal and depression. Mr. Wescott concluded from Mother's scores that Student was easily upset and emotional at home, with some similar concerns at school with less intensity.

142. Mr. Wescott further explored Student's possible depression by using the Children's Depression Inventory – 2, which provided early identification of depressive symptoms and the diagnosis of depression and related disorders. Mother, Ms. Shin, and

Student provided scale responses, which produced measures for negative mood, negative self-esteem, ineffectiveness, interpersonal problems, emotional issues, and functional problems.

143. Mother's responses put Student in the clinically elevated range for depression. Mother said that Student had never enjoyed school, was bored with the work, and had no one to play with. Though Student might not complain at school, Mother claimed that he talked about his dissatisfaction at home.

144. Student's responses resulted in a total score within the typical range. Student reported that he enjoyed drawing, playing video games, daydreaming, and watching television. He said he had two friends at school, adding he also spent time with other students. He enjoyed time alone, commenting that he felt his own time was important. He was confident that friends and family loved him. Ms. Shin's responses had Student in the typical range with no elevated concerns for depression.

145. Mr. Wescott administered the Multidimensional Anxiety Scale for Children – 2, assessing the presence of symptoms related to anxiety disorders, which helped in the early identification of anxiety-prone youth. Student's responses produced a score that fell within the average range for boys of his age. There were some inconsistencies in the responses and Mr. Wescott cautiously reviewed the results.

146. Mr. Wescott interviewed Student the same day that Student responded to the depression inventory and anxiety scale instruments. Student talked about his friends and school in a positive manner. Student generally did not care for sports. He tried Tai Kwon Do and quickly found it boring. He played on two soccer teams, but he rarely got a chance to play. He took swimming lessons for just a few weeks.

147. He recalled Fun Fridays, enjoying the games, and was uncertain why they stopped. When he was a "slow poke" at the end of school day, his sister would come and help him get his things ready for home. He had a lot of thoughts going through his

mind throughout the day, making him jumpy, but that he would tell himself to save it for later. Mr. Wescott viewed this as a healthy indication of self-monitoring and appropriately adjusting behavior.

148. Mr. Wescott utilized Gilliam Asperger's Disorder Scales, completed by Ms. Shin and Mother. Ms. Shin's responses indicated a low or not probable rating for Asperger's Disorder. Mother's scores showed a high probability of Asperger's Disorder.

149. Mr. Wescott detailed his observations of Student in the classroom or on the playground, on six different days in September and October 2014. He also reviewed reports by Ms. Holmes, who observed Student at lunch and recess on five different days in October 2014. Student did not have any deficits in socialization or pragmatic communication and had no characteristics consistent with ADHD, anxiety, depression, or autism.

EXECUTIVE FUNCTIONING

150. Janet Cameron evaluated Student's executive functioning. She testified at the hearing. Ms. Cameron held a bachelor of arts in cultural anthropology, a Multiple Subject Teaching Credential, a master of arts in education and a master of science in counseling, along with a pupil personnel services, Tier 2, credential in school psychology. She also held a school neuropsychology certificate and had been a diplomate of the American Board of School-Neuropsychology and a California licensed educational psychologist, since 2007. In 1996 she earned a Behavior Intervention Case Manager Certificate and has been a Nationally Certified School Psychologist since 2002.

151. Ms. Cameron had worked for District since 1996. She was a school psychologist and, since 2010, has been a special education program specialist. Her duties included assisting teachers, parents, and students with special education support and services, IEP meetings, preschool assessment clinic team, consultation and observation with Headstart, State Preschool, and Los Angeles Universal Preschool. From

2000 to 2010, she was District's co-lead psychologist. About five percent of her assessments involved autism; the percentage was higher for the assessments upon which she consults as a program specialist.

152. Ms. Cameron scored and interpreted the Behavior Rating Inventory of Executive Function. Executive functioning is a collection of processes that are responsible for guiding, directing, and managing cognitive, emotional, and behavioral functions. It is related to an individual's ability to solve novel problems. People with ADHD or autism can exhibit deficits in executive functioning.

153. Mother's ratings indicated more dysfunction, than those of Ms. Shin. Both raters fell within the acceptable range on the inconsistency scale. Mother, however, scored in the "elevated" range on the negativity scale; Ms. Shin was acceptable. Mother's ratings for Student's executive functioning were to be cautiously interpreted, since they may be overly negative.

154 Ms. Cameron opined that the two scales differed because the environmental demands at home differed from those at school. Ms. Cameron concluded that Student possessed the executive functioning necessary for academic and life functioning, but potentially not to the same degree in all settings. Executive functioning was not an area of concern at school.

155. Ms. Cameron observed Student in class for 40 minutes. She chose the end of the day, when Student reportedly struggled with organization. Student completed a writing assignment, retrieved his assignment book at the same time as other students, copied the homework assignments from the board, and appropriately joked and laughed while conversing with the boy near him. When Ms. Shin asked for everyone's attention, Student stopped talking. He gathered his materials for the end of the day, while listening to remaining instructions. Student was a very typical third grade student.

156. She also reviewed the multi-disciplinary report upon its completion. Her

executive functioning assessment was consistent with the report and classroom observations.

MULTI-DISCIPLINARY REPORT SUMMARY AND CONCLUSION

157. Mr. Wescott summarized the report's findings, applying them to the various eligibilities' criteria. He reviewed the statutory definition of other health impairment because of ADHD. The assessments and many observations confirmed that Student did not exhibit impairment that severely affected his educational performance of developmentally appropriate activities that require orienting, focusing, or maintaining attention. Student did not meet any of the eligibility criteria. Mr. Wescott analyzed the emotional disturbance criteria and found that Student did not meet the criteria for serious emotional disturbance. Mr. Wescott concluded that Student did not meet criteria for specific learning disability. Student had no severe discrepancy.

158. Mr. Wescott acknowledged Dr. Meyer's Asperger's Disorder diagnosis and Dr. Mancillas' very recent autism spectrum disorder diagnosis. However, for eligibility under the category of autism, behaviors must significantly affect verbal and nonverbal communication and social interaction, generally evident before the age of three, and adversely affect educational performance. Student did not exhibit any of these behaviors in the school setting. Mr. Wescott found that Student was not eligible because of autism.

Occupational Therapy Assessment

159. Leslie Grayson conducted an occupational therapy assessment of Student. She held a California occupational therapist license and was certified by the National Board for Certification in Occupational Therapy, and a bachelor of science in occupational therapy. She worked for Gallagher Pediatric Therapy since 1998 and was an occupational therapist supervisor. Ms. Grayson was qualified by her education,

credentials, training and experience to assess and evaluate Student. District contracted with Gallagher for the occupational therapy assessment.

160. Ms. Grayson interviewed Mother who said Student had problems with short term memory, coordination, sensory issues, and interacting with other kids. Ms. Shin saw not significant problem; Student's desk was often messy but he was able to access his materials when need. If he became upset, his mood quickly recovered.

161. Ms. Grayson observed Student during recess. He sat at a bench outside the classroom with classmates, which was reportedly typical. Student talked back and forth with classmates as he drew in his notebook. Recess ended and Student lined up with classmates, speaking to another boy. Student took his class seat and was immediately on task. He participated in class, raising his hand. Student had no difficulty transitioning from class and accompanying Ms. Grayson for testing. Student was friendly and cooperative, making good effort in the requested tasks. He was purposeful and goal-directed; if he became a little "silly," he was easily redirected to task. Assessing Student was a pleasure for Ms. Grayson.

162. Ms. Grayson administered the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, which measured Student's fine motor and gross motor control skills over four composite areas. Student was above average in fine motor precision and fine manual control, while average in fine motor integration and manual dexterity. She gave the Beery-Buktenica Development Test of Visual-Motor Integration, which measured the extent that Student could integrate his visual and motor abilities. Student scored above average on the full format motor proficiency test and was in the high range in visual perception and motor coordination.

163. Mother completed the Sensory Profile questionnaire, which assisted in measuring a child's sensory processing abilities and their effect on functional performance in daily life. Out of 23 ratings, Mother rated Student typical in only four.

Ms. Shin completed the Sensory Profile School Companion questionnaire, which measured a child's sensory processing in the classroom and school environment. Ms. Grayson found Student to have no sensory problem in the classroom.

164. She evaluated Student's neuromuscular system relative to gross and fine motor movements. Student was within normal or functional limits for joint range, muscle tone, strength, trunk control and endurance. Ms. Grayson found Student functional in gross motor coordination, fine motor coordination, visual motor skills, and daily living skills.

165. For sensory processing, Student: did not inappropriately seek or avoid vestibular movement (e.g. spinning, flipping); did not have any proprioceptive (i.e., awareness of body in space) processing dysfunction; and did not seek out or avoid tactile input, though he might have a decreased understanding of personal space issues. He demonstrated appropriate motor planning and movement execution.

166. Student had intact neuromuscular abilities and foundational skills for motor development. Student demonstrated adequate sensory processing and daily living skills for his educational setting. Ms. Grayson did not recommend occupational therapy because Student was able to participate in his educational environment.

Physical Therapy Assessment

167. Karen Hwang conducted Student's physical therapy assessment. She was a licensed physical therapist and was qualified to assess and evaluate Student. She was employed by Gallagher, with whom District contracted. Ms. Hwang examined Student's musculoskeletal (range of motion, muscle length and strength, postural alignment) and neuromuscular (muscle tone, reflexes, and motor control) characteristics to determine if he had any impairment that affected movement. Her assessment tools included structured and unstructured clinical observations, therapeutic handling, functional assessment, classroom staff interview, record review, and the administration of select

standardized subtests.

168. Ms. Hwang determined that Student presented with adequate range of motion, muscle strength, motor control, and balance to perform the functional skills that were needed for him to access his educational program. Student demonstrated adequate safety and independence in the educational setting. Physical therapy was not warranted.

October 31, 2014 IEP

169. On October 31, 2014, District timely convened an IEP team meeting. Attending were Mother, Father, attorney Gross for Student, Ms. Holmes, special education coordinator Deidre Hurst, special education teacher T. Nakagawa, Ms. Shin, Ms. Cameron, Ms. Grayson, Ms. Hwang, attorney Silva for District, Ms. Minassi-Dugan, and Ms. Moon. Dr. Mancillas participated by phone. Dr. Mancillas had a 20-minute time constraint, so he presented his assessment report and answered some questions.

170. District's assessors presented their reports, answering Parents' and their attorney's questions. The team reviewed and discussed eligibility for: speech or language impairment; orthopedic impairment; other health impairment (ADHD); emotional disturbance; specific learning disability; and autism. The District team members affirmed the findings and recommendations of the District assessments that Student did not meet the criteria for any of the eligibilities. Parents disagreed. Mother signed the IEP, to indicate only that they participated.

STUDENT'S EXPERT, SUSAN HOLLAR

171. Student retained Susan Hollar, a speech and language pathologist, to assess Student and testify at hearing. Ms. Hollar held a bachelor of science degree in music and a master of science in communicative disorders and sciences. She had a pediatric private practice since 2001, treating children with communication disorders.

She assessed Student, producing a report dated April 26, 2015, about six months after the October 2014 IEP and more than five months after the Student's complaint was filed. Student's counsel did not provide District with Ms. Hollar's report until after the second day of hearing, in May 2015.

172. Ms. Hollar's testimony was limited to expressing an expert opinion about District's speech and language assessments relevant to Student's desired autism eligibility. Student was not asserting that he should have been found eligible because of speech or language impairment.

173. Ms. Hollar stated that Student should have been separately assessed in speech and language for the 2013 assessment. She believed Student's auditory processing skills and comprehension indicated a need for a speech and language assessment, substantially relying upon Mother's scale responses and Ms. Hollar's own recent observation.

174. Ms. Hollar criticized Ms. Moon's assessment because it did not probe Student's pragmatic language. Ms. Hollar said that Ms. Moon should have observed Student with his peer group, commenting that most pathologists do not come across high functioning autistic children. She stated that District's speech and language assessment should have gone into components that should be explored with high functioning autistic children. Ms. Hollar claimed Ms. Moon did not test Student's "functional discourse" or further explore auditory comprehension.

175. Her criticism of Ms. Moon's observations was that they were inaccurate. Ms. Hollar claimed to have observed and found multiple deficits in Student's pragmatic language. These observations were made six months after those of Ms. Moon.

176. Ms. Cameron accompanied Ms. Hollar on the one day Ms. Hollar observed Student; she did not see what Ms. Hollar reported to have observed. The class was discussing a book. Student was one who knew the answers, had a better handle on the

vocabulary, and demonstrated a broader range of knowledge and experience. The whole class yelled out Student's name when the teacher asked who was a good drawer. Outside, Student ate a snack and drew in his sketchbook at the table. He stopped drawing and willingly talked to people.

177. Ms. Hollar's report listed two different ages for Student; she did not know which was correct, though a child's age was a consideration in the administered instruments. Ms. Hollar acknowledged that her report improperly interchangeably used the terms "standard scores" and "scaled scores." She reported that Student scored "low" on a test, when the score was actually in the average range per the publisher's protocols. Ms. Hollar concluded that Student had obsessive-compulsive tendencies, which was outside her area of expertise.

178. Ms. Hollar never gave an expert opinion that Student would have met autism eligibility criteria if he received a separate speech and language assessment in October 2013 or an assessment more in line with her suggestions in October 2014. She concluded in her report that Student was entitled to special education service because of speech or language impairment, without referring to or explaining the eligibility criteria.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it.

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

(20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁵ 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 free appropriate public education (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 individualized education program (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 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.

⁵ All subsequent references to the Code of Federal Regulations are to the 2006 version.

§§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).))

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.* (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. (*Id.* at p. 951, 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) & (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).) 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); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student carries the burden of persuasion.

ISSUE 1: CHILD FIND

5. Student contends that District violated its child find duty by failing to identify Student as a student with a disability which required special education assessment, from November 2012 through October 2013. Student asserts Mother informed District that Student was diagnosed with autism and that Student exhibited disruptive behaviors, distractibility, disorganization, and frustration, while struggling with debilitating social deficits. District contends that Student was excelling in his first grade class academically and socially. He participated in class, had friends, communicated with peers and adults, and generally enjoyed school. Upon Mother's request, District held a study team meeting and addressed Mother's concerns regarding Student's disorganization and socialization by typical general education interventions. For the reasons set forth below, Student did not demonstrate by a preponderance of the evidence that District violated its child-find obligations by not assessing Student before October 2013.

6. School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities

residing within their boundaries who may be in need of special education and related services.⁶ (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56171, 56300 et seq.) This ongoing duty to seek and serve children with disabilities is referred to as “child find.” California law specifically incorporates child find in Education Code section 56301. (Ed. Code, § 56301, subds. (a) & (b).) “The purpose of the child-find evaluation is to provide access to special education.” (*Fitzgerald v. Camdenton R-III School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.)

7. A school district’s child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (*Department of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

8. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that District knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education*. (3rd Cir. 1993) 993 F.2d 1031, 1041 .) A pupil shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code § 56303.)

⁶ Student did not contend, and did not offer any evidence, that District failed to inform parents and community of special education services and child find policies.

9. Violations of child find are procedural violations of the IDEA and the Education Code. (*Cari Rae S., supra*, 158 F.Supp. 2d 1190 at p.1196.) A procedural violation results in liability for denial of a FAPE only 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; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*.)

10. Here, the evidence demonstrated that Student was prospering in the 2012-2013 school year. His first grade teacher Ms. Mattson had no concerns regarding Student's social skills. He was happy and talkative. Like other first graders, he could be silly or distracting, but he would quickly return to task when prompted. Student got along with classmates, had reciprocal conversations with students and adults, was not easily distracted, and was not sensitive to sound or loud noises. He could be disorganized with his materials and at his desk, but this was not unusual for a first grader. Mother asserted Student disliked school, had no friends, perseverated on one topic, was depressed, did not make eye contact, struggled with transitions, and would not complete his work. Student did not provide convincing evidence that these behaviors occurred at school.

11. Ms. Minassi-Dugan's testimony was credible and persuasive. She was trained to identify children in need of assessment and had special education students in her class, including those with autism. Ms. Minassi-Dugan's observations of Student as a kindergartener were consistent with Ms. Mattson. Further, Ms. Minassi-Dugan did not receive a response to intervention universal questionnaire from Ms. Mattson for first grade, which further verified Ms. Mattson's testimony.

12. Student contends that District should have assessed because Dr. Meyers diagnosed Asperger's Disorder. Though Mother claimed to have given the report to a

District secretary, she was unable to say when; further, District did not have the report until the following school year. Finally, if District had the report, the MESA team would have discussed the report during their meeting; they did not. Therefore, District did not receive and could not consider Dr. Meyers' report.

13. Further, even if available to District, Dr. Meyers' report was not definitive regarding Student's autistic-like characteristics because his diagnosis was almost entirely based on the history and scales provided by Mother. The Child Behavior Checklist noted that Mother was reporting more problems than would be typical. Such concerns were not apparent when Student was tested. On the standardized instrument (Conners'), Student's scores were all non-clinical. The ink blot testing concluded Student was more likely than his same-age peers to demonstrate generally adaptive interpersonal behavior most of the time. Therefore, Mother's input was the determinative diagnostic factor.

14. Dr. Meyers gave Mother a teacher behavior checklist for Ms. Mattson and Ms. Mattson completed the form and returned it to Mother. Mother never gave Ms. Mattson's teacher form to Dr. Meyers. If Dr. Meyers had received and scored Ms. Mattson's checklist, he would have found that Ms. Mattson rated Student within the normal range in all areas; nothing was in the borderline or clinical range. Dr. Meyers had no information that verified Mother's viewpoint, especially since he did not observe Student at school, on the playground, or with another child.

15. District's child find obligation is measured by what District knew, or reasonably should have known, at the time. District personnel did not observe serious behaviors or social pragmatic deficits. District convened a MESA meeting on February 2, 2013, to discuss Mother's concerns. The team, including Mother, agreed on various general education supports and strategies. Ms. Mattson and staff would observe Student on the playground to monitor his social/emotional behavior. To keep Student from being bored after completing his regular work, Ms. Mattson would continue to

provide more challenging work in a “harder work” folder. Also, the family would update the school on the social skills Student’s therapist was working.

16. Ms. Mattson thereafter made additional efforts to watch Student on the playground. He talked and played with other students. She observed no autistic-like characteristics. Student excelled academically. He completed all his regular assignments. On the end-of-the-year report card, Student had grades of “proficient” or “exceeding expectations” in almost every academic category.

17. Student has not demonstrated by a preponderance of the evidence that District failed to meet its child find duties. District personnel did not witness the behaviors to which Mother referred; they saw a child who was happy, engaged, social, and successful. District responded to Mother’s concerns in an appropriate manner. District did not have knowledge of, or reason to suspect, a disability that special education services may be needed to address.

18. Even if Student had successfully born his burden of proof, a “child find” failure is a procedural violation, which results in liability if the violation caused a denial of FAPE. Here, as discussed below, Student did not prove that he was eligible for special education and, as such, Student was not entitled to a FAPE. Therefore, a procedural violation could not have caused a denial of FAPE.

19. Student did not meet his burden of proof as to Issue 1.

ISSUE 2: ELIGIBILITY

20. Student contends that District denied him a FAPE by failing to find him eligible for special education as a child with autism or autistic like behaviors. Student cites to various private assessments with diagnoses of autism, as well as Student’s alleged serious and debilitating socialization deficits. Student generally contends that District’s assessments and IEP meetings ignored evidence of Student’s behavior and social pragmatic struggles, discounting Mother’s input. District asserts that it has twice

comprehensively evaluated Student for special education, utilizing numerous assessments and multiple observations by qualified assessors, most of whom were previously unacquainted with Student. The assessments were properly and fully reviewed at IEP meetings. Mother signed the October 2013 IEP, which found Student not to be eligible. At the October 2014 IEP meeting, all District team members agreed that Student was not eligible.

21. For purposes of evaluating a child for special education eligibility, the district must ensure that “the child is assessed in all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child’s needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

22. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessment materials must be used for purposes for which they are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii)); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).)

23. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the

assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3) [tests of intellectual or emotional functioning must be administered by a credentialed school psychologist], 56322 [assessment shall be conducted by persons competent to perform the assessment, as determined by the school district, county office, or special education local plan area]; 56324 [a psychological assessment shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed].) Persons knowledgeable of the student's disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

24. If the evaluation procedures required by law are met, the selection of particular testing or evaluation instruments is at the discretion of the school district. Once selected, the instrument must be administered in accordance with the instructions provided by the producer, including use of composite scores if called for by the instructions. (Off. of Special Education Programs (OSEP) interpretative letter *Letter to Anonymous* (September 17, 1993), 20 IDELR 542; cited approvingly in OAH case *Manteca Unified School Dist.* (December 13, 2011) 111 LRP 7785.) The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 and 56329.)

25. A school district's failure to conduct appropriate assessment or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

26. A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.) A pupil shall not "be determined to be an individual with exceptional needs" if they do not meet the eligibility criteria under federal and California law. (Ed. Code, § 56329, subd. (a)(2).) The law defines an individual

with exceptional needs as one who, because of a disability, “requires instruction and services which cannot be provided with modification of the regular school program” in order to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subd. (b).) Thus, “a child is not considered a ‘child with a disability’ if it is determined that a child only needs a ‘related service’ and not special education.” (*W.H. v. Clovis Unified School District* (E.D. Cal. 2009) 2009 WL 1605356, at p. 21 (*Clovis*), citing 34 C.F.R. § 300.8(a)(2)(i) (2006).)

27. In *Hood v. Encinitas Union School District* (9th Cir. 2007) 486 F.3d 1099, 1107-1108, 1110 (*Hood*), the Ninth Circuit found that a child may have a qualifying disability, yet not be found eligible for special education, because the child’s needs can be met with modification of the general education classroom. In *Hood*, the due process hearing officer and the reviewing court looked to the child’s above-average success in the classroom as shown by the child’s grades and the testimony of teachers as evidence that the child’s needs could be met in a general education classroom without specialized education and related services. (*Ibid.*) “By definition, the IDEA only applies to children with disabilities *who require special education and related services*. 20 U.S.C. § 1401(3)(B) (emphasis added).” (*Clovis*, at p. 7.)

28. California Code of Regulations, title 5, section 3030, subdivision (b)(1),⁷ describes the criteria for determining whether a child qualifies for special education under the category of autism:

Autism means a developmental disability significantly
affecting verbal *and* nonverbal communication *and* social

⁷ The state regulations for autism eligibility were refreshed to match the federal language (34 C.F.R. § 300.8(c)(1)(i)), effective July 1, 2014.

interaction, generally evident before age three, and adversely affecting a child's educational performance. 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. (Emphasis added.)

29. The tests and other evaluation materials used by District in assessing Student were selected and administered so as not to be racially or culturally biased, given for the specific purpose for which the standardized test was validated, and comported with the publishers' protocols in administration, scoring, and reporting.

October 11, 2013 IEP

30. Student contends that District did not comprehensively assess Student for the October 11, 2013 IEP team meeting, by not properly administering assessment instruments and by failing to conduct assessments for speech and language and occupational therapy. In so doing, Student claims District ignored the diagnoses of Dr. Meyers, Dr. Anaya, and Dr. Frey, and did not properly consider Mother's concerns. District contends that Ms. Fujishige was qualified to assess Student and properly chose the appropriate instruments for assessment. She and Ms. Ly administered, scored, and interpreted the results according to governing protocols. District considered the private assessors' reports but determined that the behaviors referred to in the reports did not occur within the educational environment nor adversely affect Student's educational performance; special education or related services was therefore unnecessary. For the reasons set forth below, Student did not demonstrate by a preponderance of the evidence that District improperly assessed Student and denied him a FAPE by finding

him ineligible for special education at the October 2013 IEP.

31. Ms. Fujishige was not the Mesa Robles school psychologist and never knew Student or his teacher before the assessments. She had two master degrees, in 1995 for school counseling and in 1996 for school psychology, with credentials in both disciplines. She had worked 19 years for District, in elementary, middle and high school campuses. She possessed extensive experience in assessing children and conducted more than 1000 assessments of children with autism; 10 percent were high functioning autistic. Ms. Fujishige was qualified by her education, credentialing, and experience to assess and evaluate Student, including choosing and administering the appropriate assessment instruments. Similarly, Ms. Ly was qualified to administer and score the Woodcock-Johnson achievement test and evaluate Student's academic functioning.

32. Mother requested assessment for emotional disturbance, autism and multiple disabilities. Ms. Fujishige expanded the assessment parameters to include specific learning disability, demonstrating District's desire to thoroughly examine Student in all areas of suspected disability.

33. Student offered no convincing evidence that a speech and language assessment or occupational therapy assessment would have changed the IEP team's finding. Ms. Fujishige utilized multiple standardized, norm-referenced, age-appropriate instruments, many of which included testing of Student's communication and motor development. For example, Student's verbal comprehension on the Wechsler intelligence scale was average, visual-motor integration on the Beery visual motor test was average, and auditory processing test was average. Parent and teacher rated functional communication to be average on the behavior assessment scales. On the Vineland scales, Parent rated Student's communication as high average and Ms. Johnson had low average.

34. Ms. Fujishige persuasively testified that Student's presentation and profile

did not require such assessments and that the standardized instruments and observations were adequate. The psychoeducational assessment met statutory standards and was legally appropriate. District's psychoeducational assessment was sufficiently comprehensive to identify Student's needs for special education.

35. Student argues that the three private assessments, which diagnosed Student with Asperger's Disorder or autism, required District to find Student eligible. However, a child must meet eligibility criteria under both state and federal law to be a child with exceptional needs. (Ed. Code, § 56329(a)(2).) To be eligible for special education, a child with exceptional needs must require, because of a disability, instruction and service which cannot be provided with modification of the regular school program. (Ed. Code, § 56026(b); *Clovis, supra*; also see, *Hood, supra*.) An autism diagnosis is not in itself sufficient for special education eligibility. Additionally, private assessments must be thorough and well-reasoned, soundly supported by recognized assessment instruments and reliable information. Here, the three assessments did not reasonably support a finding of autism eligibility.

36. Dr. Meyers' report and diagnosis of Asperger's Disorder was primarily based on Mother's anecdotal history and scale responses; he did not observe Student in school or with other children. Therefore, his diagnosis of Asperger's Disorder was not based on a comprehensive assessment and is unpersuasive as to Student's educational needs.

37. Dr. Anaya does not make a diagnosis in her June 2013 report but, instead, evaluated Student's cognitive abilities and academic performance, which she found to be superior. Dr. Anaya had been Student's personal therapist for about six months and had a unique, therapeutic relationship with Student. Consequently, her professional opinion regarding Student's needs was insightful and persuasive. Dr. Anaya believed that Student was bored in the classroom. Dr. Anaya recommended that Student be

advanced to a higher grade where he could be intellectually challenged and academically stimulated, improving his mood, overall outlook, and self-esteem. She makes no mention of special education services.

38. From his direct testing and observation of Student, Dr. Frey found Student did not have autistic like features and, by and large, did not have autism. Relying on Mother's responses to the Gilliam, Asperger's Syndrome, and Vineland scales, Dr. Frey found a "suggestion" of Asperger's Disorder. Student did not meet the diagnostic criteria for full syndrome autism, under DSM-IV. Dr. Frey's conclusion was primarily based upon Mother's anecdotal history and scale responses. He did not observe Student at school or with other children. His report is not definitive or persuasive regarding Student's educational needs.

39. Mother's statements and scale responses described behaviors that were not observed in the school setting, except by Ms. Johnson. Ms. Johnson's testimony proved to be unreliable and was often directly contradicted by unimpeachable evidence, such as her claims that the school psychologist Mr. Ordonez observed Student for the assessment after Thanksgiving, when it was Ms. Fujishige who observed for an IEP in October. Ms. Johnson claimed that she had to hound the District to get them to assess Student, when in fact an assessment plan was in place 11 days after school started. She further asserted she made continuing efforts to get Student some support, when Ms. Minassi-Dugan had instituted Tier 2 interventions. Ms. Johnson's testimony generally dismissed the efforts of the District's psychologist, school counselor, and administration to support Student. Ms. Johnson testified Student would not have been academically successful except for her efforts in second grade, though Student academically excelled in first grade with no supports. Her scale responses were generally in the clinically significant range; some were to be interpreted with caution. Ms. Johnson's listing of Student's autistic like characteristics in the school setting was not seen by any other

teacher, psychologist, assessor, or staff member. Statistically, she reports more children to be at-risk than all other second grade teachers combined. Ms. Johnson's testimony was unpersuasive.

40. Based on the information possessed by the IEP team at the October 11, 2013 IEP meeting, Student has failed to meet his burden of demonstrating that District denied Student a FAPE by not finding him eligible for special education. The District considered the three private assessments, Parents' input, teacher reports and assessors' observations in the school environment. Student was academically and socially proficient during the time frame in dispute. He maintained average to above average grades in each subject area, maintained friendships, routinely engaged in reciprocal conversations with peers and adults, and playfully interacted with peers. He was not disruptive, did not tantrum, presented a typical affect, was cooperative, and had no overt delays.

41. Although some testing indicated that Student could possibly be on the autistic spectrum, Student presented no area of disability for which special education and related services were required. Student affirmatively responded to the Tier 2 interventions for the remainder of Student's second grade. Ms. Minassi-Dugan's implementation of "Fun Fridays" at the beginning of third grade affirmed that Student reciprocally played with his classmates. His final second grade report card demonstrated Student's academic success with no need for special education support.

42. Student did not meet his burden by a preponderance of the evidence that District denied Student a FAPE by failing to find him eligible at the October 2013 IEP team meeting.

October 31, 2014 IEP

43. Student contends that District did not comprehensively assess Student for the October 31, 2014 IEP team meeting, especially in the area of speech and language.

Student claims District ignored the diagnoses of the private assessors, including Dr. Mancillas, and did not properly consider Mother's concerns in finding Student not eligible because of autism. District contends that Dr. Wescott and the assessment team were qualified to assess Student and properly chose the appropriate instruments for assessment. District's assessors administered, scored, and interpreted the results according to governing protocols. District considered Dr. Mancillas' report, but found his findings and recommendations unpersuasive. The behaviors described by Mother did not occur within the educational environment or did not adversely affect Student's educational performance; special education or related services were unnecessary. For the reasons set forth below, Student did not demonstrate by a preponderance of the evidence that District improperly assessed Student and denied him a FAPE by finding him ineligible for special education at the October 31 2014 IEP.

44. Mr. Wescott was the lead school psychologist for the multidisciplinary report and was qualified by his education, credentialing, and experience to assess and evaluate Student's behavior and social/emotional development, including choosing and administering the appropriate assessment instruments. Ms. Cameron has been a school psychologist for almost 20 years, with a certificate in school neuropsychology, and was qualified by her education, credentialing, and experience to assess and evaluate Student's executive functioning. Ms. Grayson was a licensed occupational therapist, with the training and experience that qualified her to conduct the occupational therapy assessment. Ms. Hwang was a licensed physical therapist, qualified to conduct Student's physical therapy evaluation. Student did not provide convincing or persuasive evidence that any of the assessments were not legally sufficient or failed to comprehensively evaluate Student in all areas of suspected disability.

45. Student offered no convincing evidence that District's speech and language assessment was not comprehensive or legally inappropriate. Ms. Moon is a

degreed, credentialed, licensed, experienced and knowledgeable pathologist, who was qualified to assess and evaluate Student, using standardized instruments, formal and informal clinical scrutiny, and school observations. Her report was thorough, finding that Student's verbal communication scores on all formal speech and language instruments to be in the average or above average range, including his pragmatic language. Student's skills were most likely higher than reported because Student's communication capability was superior to some of the instrument's ability to measure.

46. Ms. Moon meticulously documented observations of Student during informal exchanges, formal testing, the classroom, at lunch, and on the playground, over nine different days. Student was very expressive, initiating many conversations, and reciprocating whenever approached by others. He did not persevere on any subject, quickly changing topics in multiple conversations. He never stuttered. Student used higher language skills and concepts; he maintained appropriate eye contact with his peers and school staff. During testing, Student was very friendly and cooperative, readily establishing rapport and easily answering informal questions. He maintained a good demeanor and pleasantly participated in casual conversation between tests.

47. In criticizing the District speech and language assessments, Ms. Hollar did not give an expert opinion that Student would have met the criteria for eligibility for autism if the speech and language assessment had been different or more thorough. Her comment that Ms. Moon should have observed Student with his peer group seemingly ignored Ms. Moon's extensive observations. Ms. Hollar's observational accuracy was disputed, her written report contained errors in technical language and accurate instrument reporting, she offered a professional opinion beyond her area of expertise, and she recommended an eligibility of speech or language impairment, without reference to the legally required criteria. Her testimony was unpersuasive and given little weight.

48. Similar to 2013, Mother's statements and scale responses described behaviors that were not observed in the school setting or ascribed significance to behaviors that the evidence did not confirm. For example, Mother cited Student's presence at the playground table during breaks and recess as emblematic of Student's isolation, friendlessness, loneliness, and inability to get his work done. The evidence does not support this view.

49. Student's working at the table on class assignments and homework was typical of other students. He was often with classmates, talking back and forth.

50. Student normally sat at the table to draw, sometimes read, even if not working on an assignment. However, the evidence demonstrated this was not because Student was friendless or unsociable. Student liked to draw; he was good at drawing; his classmates admired his drawing. Mr. Wescott, Ms. Holmes, Ms. Shin, Ms. Moon, and Ms. Cameron all observed Student welcoming and speaking to other pupils who came over to the table, talking about his drawings and other topics, having reciprocal exchanges, sometimes laughing or kidding. Student did not like sports. The evidence strongly suggested that Student chose to stay at the table and draw, a talent which garnered him positive recognition, as opposed to going to the field, being bored and feeling inadequate.

51. In addition to the three private assessments considered in the October 2013 IEP, Student asserts that Dr. Mancillas' assessment, report, and recommendations warrant a finding of autism eligibility. However, Dr. Mancillas said his autism diagnosis was "swayed" by Mother's presentation of history and current status. Dr. Mancillas' diagnosis of ADHD is primarily based on Parents' scales; no standardized tests showed ADHD likely. His autism diagnosis relates only to Student's socialization deficits; yet he never observed Student with other children or at school. Further, his testimony referred to diagnostic indicators that were not referenced in his written report. Dr. Mancillas'

testimony was not persuasive as to Student's educational needs or special education eligibility.

52. Based on the information possessed by the IEP team at the October 31, 2014 IEP meeting, Student has failed to meet his burden of demonstrating that District denied Student a FAPE by not finding him eligible for special education. The District considered the three private assessments and Parents' input. The District also took into account teacher reports and assessors' observations in the school environment. Student was academically and socially proficient during the time frame in dispute. He maintained average to above average grades in each subject area, maintained friendships, routinely engaged in reciprocal conversations with peers and adults, and playfully interacted with peers. He was not disruptive, did not tantrum, presented a typical affect, was cooperative, and had no overt delays.

53. Although some testing indicated that Student could possibly be on the autistic spectrum, Student presented no area of disability for which special education and related services were required. Student affirmatively responded to the Tier 2 interventions for the remainder of Student's second grade. Ms. Minassi-Dugan's implementation of "Fun Fridays" at the beginning of third grade affirmed that Student reciprocally played with his classmates. His final second grade report card and third grade progress report demonstrated Student's academic success without the need of special education support.

54. Student presented no area of disability for which special education and related services were required. Therefore, Student did not meet his burden by a preponderance of the evidence that District denied Student a FAPE by finding he did not meet the autism eligibility criteria at the October 2014 IEP.

ORDER

Student's requests for relief are denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

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

DATED: July 3, 2015.

_____/s/_____
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearing