

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PALO ALTO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010524

DECISION

Palo Alto Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on January 14, 2015, naming Student.

B. Andrea Miles, Administrative Law Judge, heard this matter on February 18, 2015, in Palo Alto, California.

Palo Alto was represented by Lenore Silverman, Attorney at Law. Holly Wade, Palo Alto's representative, was present during the hearing.

No one appeared on behalf of Student. Student's parents were aware of the hearing, but elected not to participate.

At the close of the hearing, a brief continuance was granted to permit written closing briefs and the record remained open until the close of business on February 20, 2015. Palo Alto timely submitted its closing brief. The record was closed and the matter was submitted for decision on February 20, 2015.

ISSUE

Is Student no longer eligible for special education as a student with a speech or language impairment?¹

SUMMARY OF DECISION

This decision holds that Palo Alto met its burden of proving that Student is no longer eligible for special education services under the category of speech and language impairment, and as a result, Palo Alto may exit Student from special education over Parents' objection.

FACTUAL FINDINGS

JURISDICTION

1. Student is a four-year-old girl who has resided within the geographical boundaries of Palo Alto Unified School District at all relevant times with her mother and father. Student qualified for special education under the category of speech and language impairment on October 9, 2013.

BACKGROUND INFORMATION

2. Student's medical history includes a diagnosis of the genetic disorder Trisomy X. Children with Trisomy X may have certain physical characteristics and are at increased risk of having speech and language disorders, learning disabilities, Attention Deficit Hyperactivity Disorder, executive dysfunction, anxiety disorders, social difficulties, and other mental health impairments. Due to Trisomy X, Student has a malocclusion, a misalignment of her jaw, which makes production of certain sounds difficult for her.

¹ The issue has been rephrased for the purpose of clarity.

3. In 2012, before Student was two-years-old, a private speech and language pathologist, Mayra Cramer, diagnosed Student with childhood apraxia of speech. Childhood apraxia of speech is a motor speech disorder in which a child's brain has difficulty planning the movement of the child's lips, jaw, and tongue. In essence, a child with apraxia of speech knows what he or she wants to say, but the child's brain has difficulty coordinating the muscle movements necessary to say the intended words. The record is unclear as to whether Student received therapy from a private speech and language therapist to address apraxia.

4. Prior to the beginning of the 2013-2014 school year, Trina Gogarty², a speech and language pathologist with Palo Alto Unified School District, conducted a speech and language assessment of Student as part of her initial assessment for special education. At the time of the assessment, Student had not yet turned three years old. Based on her assessment of Student, Ms. Gogarty determined Student had an articulation disorder.

STUDENT'S 2013-2014 SCHOOL YEAR PLACEMENT AND GOALS

5. Palo Alto held Student's initial IEP team meeting on October 9, 2013, to discuss the results of Student's initial assessments and to determine whether Student was eligible for special education. Student was found eligible for special education under the category of speech and language impairment. The IEP team based their eligibility determination on Student's articulation disorder. At the meeting, Parents

² Ms. Gogarty received her master of science in Speech Pathology from Columbia University in January 1978. Ms. Gogarty holds a California Speech and Language Pathology License and she has been providing speech and language services and assessment for nearly 30 years.

expressed their belief that Student also had an expressive language disorder. However, Ms. Gogarty's assessment data did not support this conclusion.

6. At the meeting, the IEP team documented Student's present levels of performance in the area of speech and developed four annual goals for Student. The first three goals focused on improving Student's articulation. The IEP team added the fourth goal to address Parents' concerns regarding Student's expressive language skills. In order to help Student meet her speech and language goals, the IEP offered Student two hours a week of speech and language therapy. Parents consented to the IEP in full.

7. During the 2013-2014 school year, Student attended preschool at Palo Alto's Greendell School. Throughout the school year, Student received speech and language therapy with Ms. Gogarty, four times a week for 30 minutes. Generally, Father would drop off and pick up Student from therapy. This situation allowed Ms. Gogarty to keep Parents informed constantly of Student's progress in therapy.

8. In addition to receiving speech and language therapy through Palo Alto, Student also received speech and language therapy through two private speech and language therapists. Student attended speech and language therapy two times a week with Shamin Haldankar and one time a week with Mayra Cramer. The time period during which the private speech and language therapy occurred and the length of the therapy sessions remains unknown.

9. Prior to the beginning of the 2014-2015 school year, Ms. Gogarty recommended that Student be reassessed because she had made "great progress" during the past academic year and a reassessment would assist the IEP team at the next IEP team meeting. Additionally, Student had reached an age permitting the administration of additional standardized speech and language tests. Father signed the assessment plan on August 26, 2014.

2014 SPEECH AND LANGUAGE ASSESSMENT OF STUDENT

10. During late August 2014 and early September 2014, Ms. Gogarty assessed Student in the area of speech and language. Ms. Gogarty was qualified and authorized to perform the speech and language assessment. Ms. Gogarty has primarily worked with preschoolers throughout her career as a speech and language pathologist. Ms. Gogarty also holds a multiple subject teaching credential. She taught primary age students for over 10 years in special education settings. Ms. Gogarty conducted a thorough speech and language assessment of Student using both formal and informal testing, using age appropriate measures.

11. Ms. Gogarty administered the Kaufman Speech Praxis Test for Children to Student. The Kaufman is a standardized test that assists in the diagnosing of childhood apraxia of speech. In the Oral Movement Level of the test, Ms. Gogarty noted that there was an asymmetry of Student's smile and lingual elevation, but that they did not affect Student's intelligibility. Student scored in the 26th percentile on the Oral Movement Level. On the Complex Phonemic Syllabic Level portion of the test, Student scored in the 40th percentile. Student was able to produce complex consonants and maintain them in both initial and final context. On the Spontaneous Length and Complexity portion of the Kaufman, Student scored in the 33rd percentile with 90 percent of Student's speech being intelligible to an unfamiliar listener, exceeding expectations for a typical four-year-old child.

12. Ms. Gogarty also utilized the Goldman-Fristoe 2 Test of Articulation during her assessment. The Goldman-Fristoe, a standardized test, evaluates a student's ability to produce all speech sounds in all positions and contexts of each sound found in the English language. Student's malocclusion made it difficult for Student to produce the sounds for the letters "f" and "v" in the manner in which a typical person would produce those sounds. However, Student has adapted the movement of her mouth so that she

can intelligibly make the sounds for "f" and "v." Taking into account Student's adaption for producing the "f" and "v" sounds, Student scored in the 31st percentile on the Goldman-Fristoe.

13. During the Goldman-Fristoe, Student substituted the sounds of certain letters or letter combinations with the sounds of other letters or letter combinations. However, those particular sound substitutions are considered developmentally appropriate for a four year old. Student was able to produce the range of consonant and vowel sounds expected for a child her age and she was able to maintain articulation of those sounds across multiple syllables.

14. When diagnosing childhood apraxia of speech, a clinician looks for inconsistent speech sound errors as evidence of a motor planning deficit. Student's errors on the Goldman-Fristoe were not inconsistent, but instead consistent and predictable. Student's scores on both the Kaufman and the Goldman-Fristoe fail to support Student's prior diagnosis of childhood apraxia of speech.

15. Based on her informal observations, Ms. Gogarty found Student's vocal quality, resonance, and pitch to be within normal limits. She observed Student to speak at a low volume until she became more familiar with her listener. That behavior is not uncommon for children of Student's age. Ms. Gogarty also judged Student's fluency of speech to be age appropriate.

16. During the assessment, Ms. Gogarty administered the Comprehensive Assessment of Spoken Language to Student. The Spoken Language Assessment is a standardized oral language test for students three to 21 years of age. This test measures the Student's processes of comprehension, expression, and retrieval in the categories of Semantics (knowledge and use of words), Syntactics (knowledge and use of grammar), Supra-linguistics (comprehension of complex language), and Pragmatics (awareness of the appropriateness of language in certain situations and ability to modify language

according to various situations). These skills are necessary for a student to succeed in an academic setting. Student scored between the 61st percentile and the 99.8th percentile on each of the Comprehensive Assessment's subtests. Student's composite score was 121, placing Student in the 92nd percentile for her age. Student's composite score indicates Student to be in the above average range for a child her age.

17. Student's results on the Spoken Language Assessment demonstrated her progress with her receptive language skills. When Palo Alto first assessed Student, she exhibited receptive language skills that were in the average range, whereas, when Palo Alto assessed Student a second time, she exhibited strong receptive language skills in informal testing and formal testing.

18. Upon first learning of Student's diagnosis of childhood apraxia of speech, Ms. Gogarty, who had extensive experience in identifying and remediating apraxia of speech, believed Student's diagnosis may be inaccurate. She was concerned because Student was not yet two when she was diagnosed and childhood apraxia of speech can be difficult to diagnose in a child of such a young age. Additionally, Ms. Gogarty's initial assessment of Student was not consistent with a diagnosis of apraxia of speech. After working with Student for two hours a week throughout the 2013-2014 school year, Ms. Gogarty did not observe Student exhibiting the clinical indicators of apraxia. Her 2014 speech assessment again showed that Student did not have childhood apraxia of speech.

19. Ms. Gogarty determined, and the evidence in hearing showed, that based upon formal assessments, informal assessments, and observations, Student's oral motor and articulation skills were not delayed to the extent that they adversely affected Student's academic performance. Additionally, Ms. Gogarty found Student's receptive, expressive, and pragmatic language skills exceeded the mean for Student's age. Based on her assessment and observations, Ms. Gogarty determined that Student no longer

met the eligibility requirements for special education under the category of speech and language impairment.

20. Ms. Gogarty based her opinion regarding Student's eligibility in part on her observations of Student. Ms. Gogarty worked on-site at Greendale, which allowed her the opportunity to observe Student not only during speech and language therapy sessions, but also around campus. Once a month, Ms. Gogarty observed Student in the classroom so that she could watch Student interacting with her peers and teacher. Ms. Gogarty even brought other staff members into Student's speech and language therapy sessions so that she could observe Student interacting with unfamiliar listeners. Based on her knowledge of Student and her extensive experience working directly Student, Ms. Gogarty's testimony is found credible and her opinion accorded great weight.

21. Although, Ms. Gogarty used the term "academic performance" and not "educational performance" when providing her opinion that Student no longer was qualified for special education, it was clear from her testimony, and the evidence presented, that Ms. Gogarty interpreted the term "academic progress" more broadly. The evidence showed that Student's social and emotional needs, school behavior, and socialization, as well as Student's academic performance were not adversely affected.

THE OCTOBER 22, 2014, IEP TEAM MEETING

22. Palo Alto held an annual IEP team meeting on October 22, 2014. At the October 22, 2014, IEP team meeting, the IEP team discussed Student's assessment data, areas of need, present levels of performance, annual goals, services, placement, and eligibility. The IEP team utilized Ms. Gogarty's speech and language assessment to determine Student's present levels of performance and to determine whether Student continued to be eligible for special education services. Student met or exceeded all four of the goals identified in the previous year's IEP.

23. Ms. Gogarty provided the IEP team, which included parents, with an informal pre-academic functional skills analysis of Student. Ms. Gogarty found Student to be well equipped for her future school years, displaying good print awareness, possessing excellent narrative skills, and a phonemic awareness. The Student's preschool teacher for the 2013-2014 school year indicated that Student was able to access fully the educational opportunities in the general education preschool classroom.

24. Kerith Bates, school psychologist, had the opportunity to observe Student throughout the 2013-2014 school year. Ms. Bates observed Student in class because she wanted to make sure that Student's speech and language difficulties did not negatively impair her socially. At the beginning of the school year, she found Student difficult to understand, but as the school year progressed, she found Student's speech became intelligible. Throughout the school year, Student's level of socialization improved. By the end of the 2013-2014 school year, Student's socialization was in the average range for a child her age.

25. Ms. Keplinger's testimony supports the findings from Ms. Gogarty's assessment. Ms. Keplinger, principal of Greendell, regularly observed Student around the Greendell campus. Ms. Keplinger has worked in the area of early childhood development for over 40 years. Initially upon Student's entry to Greendell, Ms. Keplinger struggled to understand everything Student said. However, over the 2013-2014 school year, she observed Student's articulation improve. At the October 22, 2014, IEP team meeting, Ms. Keplinger agreed with the Palo Alto members of the IEP team that Student was no longer eligible for special education.

26. Parents presented a copy of a private speech and language assessment they had obtained from Shamin Haldankar, a California certified speech and language pathologist. The IEP team reviewed and considered Ms. Haldankar's assessment during the IEP team meeting. Ultimately, Palo Alto's members of the IEP team determined that

Student was no longer eligible for special education under the category of speech and language impairment, and as such, Student should be exited from special education. Parents strongly disagreed with that finding and refused to sign the IEP.

INDEPENDENT SPEECH AND LANGUAGE ASSESSMENT

27. Ms. Haldankar conducted her assessment of Student in late September 2014 and late October 2014. Ms. Haldankar's assessment espoused the position that Student should continue receiving individualized therapy services two to three times a week with a focus on improving Student's expressive language and motor speech skills, with an emphasis on improving Student's ability to use of pragmatic language skills. However, her report did not address the specific eligibility requirements for special education and did not address educational impact. Ms. Haldankar did not testify in support of her findings at the hearing.

28. Ms. Haldankar's assessment placed Student in the "low average range" for her overall language performance with receptive and expressive language skills in the "above average range." Ms. Haldankar's assessment indicated Student exhibited pragmatic language deficits and apraxia of speech. However, at no point in her assessment did Ms. Haldankar indicate that Student's difficulty using spoken language adversely affected her educational performance.

29. Ms. Haldankar only provided generalized observations and third party observations to support her finding that continued therapy was necessary to improve Student's pragmatic language skills. The report indicates that Student requires significant prompts to engage and initiate a conversation with peers. This observation contradicts Ms. Gogarty's observations of Student's ability to interact and initiate conversations with peers. Ms. Gogarty found that although Student can be shy, Student engages with her peers in class. Ms. Gogarty's assessment did not find Student to have a deficit with her pragmatic language skills. Ms. Gogarty's findings are far more

compelling than those of Ms. Haldankar, as the method and means by which Ms. Haldankar formed her opinion regarding Student's pragmatic language skills remains unclear.

30. Ms. Haldankar's opinion that Student exhibited apraxia of speech directly contradicts Ms. Gogarty's opinion that Student does not exhibit apraxia of speech. The full basis for Ms. Haldankar's opinion remains uncertain. In her report, Ms. Haldankar expressed a concern over Student's ability to produce non-speech and speech movements in correct sequential order. However, Ms. Gogarty's experience with Student and the assessment's results showed Student to possess that ability. Additionally, Student's test scores support Ms. Gogarty's opinion. During Ms. Gogarty's assessment of Student, Student scored in the 88th percentile on the Pragmatic Judgment subtest of the Comprehensive Assessment. During the hearing, Ms. Gogarty even described an incident during which Student demonstrated that ability at a meeting between Ms. Gogarty and Father. Thus, the evidence supports the finding that Student does not exhibit apraxia of speech.

31. Ms. Gogarty reviewed and considered Ms. Haldankar's assessment prior to presenting her own findings at the IEP team meeting. Ms. Haldankar's assessment did not change Ms. Gogarty's opinion that Student no longer met the eligibility requirements for special education under the category of speech and language.

32. At the hearing, Ms. Gogarty credibly and consistently testified in support of her assessment of Student. She opined that Student was no longer eligible for special education services under the category of speech and language impairment. Ms. Gogarty explained the reasons for the discrepancies between the findings from her assessment and the findings from Ms. Haldankar's assessment. One of the reasons being that the requirements for special education eligibility under the category of speech and

language impairment are different than those used in determining whether Student would benefit from private speech and language therapy.

33. At the beginning of the 2013-2014 school year, Student had an articulation disorder which significantly interfered with her ability to communicate and met the special education eligibility requirements under the category of speech and language impairment. However, the evidence presented by Palo Alto shows that Student no longer has difficulty using spoken language to such an extent that it adversely affects her educational performance.

STUDENT'S CURRENT PLACEMENT AND SERVICES

34. On October 30, 2014, Kerith Bates sent Parents a letter clarifying Palo Alto's position that Student was no longer eligible for special education services. Parents did not respond to the letter.

35. Since the beginning of the 2014-2015 school year, Student has been receiving two hours a week of speech and language services through Palo Alto. Student continued to receive those services after the IEP team's finding of ineligibility, as those services constitute the stay put placement for Student.

36. The determination of ineligibility continues to be accurate in light of Student's current speech and language abilities. Witnesses' testimony supports this conclusion. By way of example, in early February 2015, Ms. Keplinger participated in a pretend tea party as part of Student's therapy. During the pretend tea party, Ms. Keplinger found that Student's language was appropriate and that she could understand every word Student spoke. She also noted that Student's play skills were right on target for her age.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁴ et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for

³ Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

⁴ All subsequent references to the Code of Federal Regulations are to the 2006 version.

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. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 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).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Palo Alto has the burden of proof.

ISSUE: WHETHER STUDENT IS NO LONGER ELIGIBLE FOR SPECIAL EDUCATION AS STUDENT WITH A SPEECH OR LANGUAGE IMPAIRMENT?

5. Palo Alto contends that Student is no longer eligible for special education under the category of speech and language impairment, as Student's oral motor and articulation skills are not delayed to the degree that they adversely affect her educational performance. Additionally, Palo Alto argues it should be allowed to exit Student from special education over Parent's objection.

6. Parents were not present at the hearing to argue their position regarding Student's eligibility. However, Parents' contention that Student continues to be eligible for special education under the category of speech and language impairment is evident by their refusal to sign the October 2014 IEP.

SPECIAL EDUCATION ELIGIBILITY

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

8. California Code of Regulations, title 5, section 3030 includes a list of conditions that may qualify a child as an individual with exceptional needs and thereby entitle the child to special education if required by the degree of the child’s impairment. Thus, there are many students who have varying levels of deficits, areas of need, and disabilities, who do not qualify for special education because they do not fall within one of the narrow categories specified by law. Additionally, even if a student’s deficit, need, or disability falls within one of the categories, a student may still not qualify for special education because student’s instruction or services could be provided with modification of the regular school program.

STUDENT'S ELIGIBILITY UNDER THE CATEGORY OF SPEECH AND LANGUAGE IMPAIRMENT

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

- (a) Articulation disorder: the child displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention;
- (b) Abnormal voice: a child has an abnormal voice, which is characterized by persistent, defective voice quality, pitch, or loudness;
- (c) Fluency Disorders: a child has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener; and
- (d) Language Disorder: the pupil has an expressive or receptive language disorder, in pertinent part, when he or she scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level, on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics.

(Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

10. Originally, Student's IEP team determined Student was eligible for special education under the category of speech and language impairment solely on the basis that she exhibited an articulation disorder, which adversely affected her educational performance. During the 2013-2014 school year, Student's articulation improved and

her oral motor and articulation skills progressed to the point that Student's speech is now 90 percent intelligible to an unfamiliar listener. Although Student's malocclusion has caused Student to continue having difficulty pronouncing certain sounds, Student has developed appropriate alternate methods for producing those sounds, which do not affect her intelligibility. Therefore, the totality of the evidence indicates that Student no longer displays a reduced intelligibility or an inability to use the speech mechanism, which significantly interferes with communication and attracts adverse attention. Accordingly, Student no longer meets the criteria of California Code of Regulations, title 5, section 3030, subsection (b)(11) for an articulation disorder.

11. Even though Student's IEP team originally only found her eligible for special education because she exhibited an articulation disorder, for the purposes of this decision it is still necessary to analyze whether Student meets the criteria for having an abnormal voice, fluency disorder, or language disorder under California Code of Regulations, title 5, section 3030, subsection (b)(11).

12. Student does not meet the criteria set forth in the next two categories of speech and language impairments, abnormal voice and fluency disorder. The evidence showed that Student's fluency of speech is age appropriate, and her vocal quality, resonance, and pitch are within normal limits. Although, Student tended to speak at a low volume until she became more familiar with her listener, that behavior is not uncommon for children of Student's age and does not meet the criteria for abnormal voice.

13. During the 2013 IEP team meeting, Parents expressed a concern that Student had an expressive language need. Although, Palo Alto's 2013 assessment did not find Student to have an expressive language disorder, the IEP team added an expressive language goal to Student's 2013 IEP in order to address Parent's concerns. By the end of the 2013-2014 school year, Student met or exceeded her expressive

language goal. Both Palo Alto's and Ms. Haldankar's speech and language assessments found Student's expressive language skills and receptive language skills to be above average. Thus, Student does not have an expressive or receptive language disorder.

14. Further, during the course of the hearing, no evidence was received which showed Student to have scored at least 1.5 standard deviations below the mean, or below the 7th percentile, for her chronological age on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. To the contrary, Student scored between the 61st percentile and the 99.8th percentile on each of the Spoken Language Assessment's subtests. The subtests measured the Student's processes of comprehension, expression, and retrieval in the categories of Semantics, Syntactics, Supra-linguistics, and Pragmatics. Although the private speech and language assessment provided by Parents indicated that Student exhibited some level of impairment of her pragmatic language skills, no standardized test results or supporting testimony were provided to support that conclusion. To the contrary, Palo Alto's assessment showed Student to have scored in the 88th percentile in the area of Pragmatic Judgment, thus supporting Palo Alto's contention that Student did not have a deficit in the area of Pragmatics.

15. In *County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467, the Court specified that "educational benefit", as referenced in Education Code section 5633, is not limited to academic needs, but instead includes the social and emotional needs that affect academic progress, school behavior, and socialization.

16. Palo Alto established that even though Student may still exhibit some speech and language deficits, her speech and language deficits do not adversely affect her educational performance. Therefore, Student does not meet any of the criteria set forth in California Code of Regulations, title 5, section 3030, subsection (b)(11).

Accordingly, Student is not eligible for special education services under the category of speech and language impairment.

ORDER

1. Student is no longer eligible for special education services under the category of speech and language impairment.
2. Palo Alto may exit Student from special education.

PREVAILING PARTY

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

RIGHT TO APPEAL

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

DATED: March 2, 2015

/s/

B. ANDREA MILES

Administrative Law Judge

Office of Administrative Hearings