

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015110163

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on October 30, 2015, naming Sacramento City Unified School District. Sacramento City's initial motion to continue the due process hearing was granted on December 8, 2015.

Administrative Law Judge Dena Coggins heard this matter in Sacramento, California, on February 23, March 1–March 3, March 8, and March 11, 2016.

Attorney Allison Hyatt represented Student at the hearing. Parents attended each day of hearing. Student was not present.

Attorney Sarah Garcia represented Sacramento City at the hearing. Becky Bryant, Sacramento City's Director of Special Education and Special Education Local Plan Area, attended each day of hearing.

At the conclusion of the hearing, the matter was continued to March 28, 2016, to afford the parties an opportunity to submit written closing briefs. The record closed with the parties' timely submission of closing briefs and the matter was submitted for

decision.

## ISSUES<sup>1</sup>

1. Did Sacramento City deny Student a free appropriate public education by failing to find Student eligible for special education and related services under the eligibility category of specific learning disability in connection with the Student Study Team meeting held on December 18, 2013?

2. During the 2014-2015 and 2015-2016 school years, beginning with the June 13, 2014 individualized education program, did Sacramento City deny Student a FAPE by failing to identify or describe the specific reading methodology to be used with Student on his IEP?

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<sup>1</sup> On the first day of hearing, Student withdrew two issues, Issue 2 and Issue 3 as they appeared in the Order Following Prehearing Conference, dated February 17, 2016. The withdrawn issues were whether Sacramento City denied Student a free appropriate public education from June 13, 2014, until October 6, 2014, by failing to include measurable goals in Student's June 13, 2014 IEP, and whether Sacramento City denied Student a FAPE during the 2015-2016 school year by failing to offer an Orton-Gillingham based reading methodology. Student amended Issue 2 above, on the first day of hearing, by removing the 2013-2014 school year as part of his claim, and adding the 2015-2016 school year. Also, Student amended Issue 3 above, on the first day of hearing, by removing the 2013-2014 school year as part of his claim. On the third day of hearing, Student moved to amend the issues again. Student's untimely motion was denied. The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

3. During the 2014-2015 and 2015-2016 school years, beginning with the June 13, 2014 IEP through the date of hearing, did Sacramento City deny Student a FAPE by failing to:

- a. implement the assistive technology recommendations in the June 2014 assistive technology evaluation; and
- b. offer a one-to-one aide?

## SUMMARY OF DECISION

Student did not establish that Sacramento City procedurally denied him a free appropriate public education by failing to find him eligible for special education and related services under the eligibility category of specific learning disability in connection with the Student Study Team meeting on December 18, 2013. A Student Study Team meeting is not the proper forum to make special education eligibility determinations. Even assuming it was the proper forum, Sacramento City did not have enough recent information about Student to find him eligible for special education under SLD at the time of the Student Study Team meeting. Also, the evidence did not establish Sacramento City committed a procedural violation resulting in a denial of FAPE by failing to identify or describe the specific reading methodology to be used with Student on his IEP's during the 2014-2015 and 2015-2016 school years, beginning with the June 13, 2014 IEP. Student did not prove that such specificity was necessary to enable him to receive an appropriate education. Student also failed to establish that he was substantively denied a FAPE during the 2014-2015 and 2015-2016 school years, beginning with the June 13, 2014 IEP through the date of hearing, by Sacramento City's failure to offer him a one-to-one aide, and the evidence did not show that Sacramento City failed to implement the assistive technology recommendations that were necessary for Student to receive a FAPE. Therefore, Student's claims for relief are denied.

## FACTUAL FINDINGS

### BACKGROUND AND JURISDICTION

1. Student is an 11-year-old African American boy who has resided with his Parents within the geographical boundaries of Sacramento City at all relevant times. Student was initially found eligible for special education and related services under the primary category of other health impairment. As will be discussed more fully below, Student was also subsequently found eligible for special education and related services under the categories of SLD and autism.

### PARENTS' LACK OF CONSENT TO MAY 8, 2012 INITIAL IEP

2. Student attended Bergamo Montessori, a private school in Sacramento, from preschool through second grade. While at Bergamo, Student received his education in a general education setting. Student was diagnosed with attention deficit/hyperactivity disorder at age seven. During Student's first grade year, Parents requested Sacramento City conduct an evaluation of Student to determine if he had a learning disability. Parents' request was based upon their concerns that Student was struggling in spelling, reading, speech, and math, despite Student's teachers' efforts to address Student's difficulties.

3. Parents testified at hearing. Parent 1's answers to the questions posed at hearing and Parent 1's demeanor while testifying showed Parent 1 to be generally credible in her testimony. And while Parent 1 had some difficulty remembering the dates of certain events that occurred during the relevant time period, Parent 1 appeared genuine and honest in her responses at hearing. Parent 2 recalled detailed information and dates of relevant events that occurred during the period at issue. The extent of Parent 2's capacity to perceive, recollect, and communicate about the matter about which she testified was good. Parent 2 also appeared generally credible during her

testimony.

4. Sandra Natale, a Sacramento City school psychologist, conducted a psychoeducational evaluation of Student in April 2012. During the evaluation, Parents informed Ms. Natale that Student had been recently diagnosed with ADHD by his medical provider, and was taking medication to help alleviate those symptoms. Student was taking the medication on school mornings, with medication breaks on weekends and school vacations. While taking the medication, Student did not eat well and lacked emotion.

5. To complete the psychoeducational evaluation, Ms. Natale relied upon parent and teacher interviews, testing observation, the Cognitive Assessment System, Wide Range Assessment of Memory and Learning – Second Edition, Comprehensive Test of Phonological Processing, Beery-Buktenica Development Test of Visual-Motor Integration, Fifth Edition, and Test of Visual Perceptual Skills.

6. Student was not administered a test of intellectual functioning. Instead, Student was administered tests of cognitive processing.<sup>2</sup> On the Cognitive Assessment System, which is made up four components (planning, simultaneous, attention and successive) to assess human cognitive processing, Student scored in the average range

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<sup>2</sup> In the Ninth Circuit opinion of *Larry P. v. Riles* (9th Cir. 1984) 793 F.2d 969, the court enjoined California schools from using standardized intelligence tests for the purpose of identifying African-American students for special education and services. The underlying rationale behind the prohibition was based on a disproportionate number of African American students being found eligible for special education services under the eligibility category of mental retardation, now known as intellectual disability, based on intelligence testing. Here, Student was administered tests of cognitive processing; its use has been authorized by the California Department of Education.

on all components except attention and concentration. Student scored in the borderline range in terms of his ability to maintain attention and concentration.

7. Neda Khoi, Sacramento City resource specialist, administered the Woodcock Johnson III Normative Update Tests of Achievement to determine Student's level of academic achievement. When compared to others at his grade level, Student's standard scores were low average in math calculation skills and brief mathematics. Student's broad mathematics and math reasoning scores were in the low range. His standard scores were very low in broad reading, basic reading skills, reading comprehension, brief reading, broad written language, written expression, and brief writing. Ms. Khoi found no significant strengths or weaknesses among the scores for a selected set of Student's achievement areas.

8. On May 8, 2012, Sacramento City convened an IEP Team meeting. The attending IEP Team members included Jacki Glasper, program specialist; Ms. Khoi; a school psychologist; Student's teacher at Bergamo; one of Student's future teachers at Bergamo; a speech therapist; and Parents. The IEP Team found Student eligible for special education under the primary category of OHI because Student's ADHD was impacting his access and progress in the general education curriculum. But the IEP did not find Student eligible for special education and related services under the eligibility category of SLD.

9. At all relevant times, Sacramento City applied the severe discrepancy model for purposes of determining whether a student is eligible for special education and related services under the SLD eligibility category. The assessment did not show a severe discrepancy existed for Student in May 2012, even though he did have a processing disorder in the basic psychological process of attention.<sup>3</sup>

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<sup>3</sup> In rare cases, Sacramento City uses the Response to Intervention model to determine SLD eligibility; however, Sacramento City did not use the RTI method to

10. Dr. Lela Catherine Christo testified on behalf of Student at hearing. In October 2015, Parents hired Dr. Christo to prepare a report about dyslexia and educational supports she believed were appropriate for Student. Her report will be described more fully below.

11. Dr. Christo has been a licensed educational psychologist since 1995. She has a bachelor's degree in economics, a master's degree in counseling and school psychology, and a Ph.D. in education: psychological studies. Dr. Christo has a pupil personnel services credential in school psychology. Dr. Christo is a recently retired professor from California State University, Sacramento, where she taught cognitive development, academic interventions, assessment practicums, introduction to school psychology, and human development and learning since 1992. She has worked as a licensed educational psychologist providing assessments and consultation to school districts primarily regarding reading programs for students. She has given numerous presentations on assessments in the area of reading and learning disabilities, reading interventions, and dyslexia. Dr. Christo is experienced and well qualified to provide the opinions contained in her report relating to assessments, dyslexia and educational supports.

12. Dr. Christo questioned the validity of Sacramento City's comparison of Student's standard scores on the Woodcock Johnson III Normative Update Tests of Achievement and the cognitive assessment for purposes of finding a discrepancy. The norms on the Woodcock Johnson III were based on grade norms and the cognitive norms were based on age. According to Dr. Christo, the assessor(s) should generally use the same norm group if looking for a discrepancy between cognitive ability and

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access Student for SLD. Mr. Dopkins indicated that RTI was used for Student at some point, but further testimony made it clear that this was a misstatement.

academic achievement. Student did not establish how the use of different norms affected the determination of eligibility under SLD or how the use of different norms would have established eligibility.

13. Dr. Christo also expressed concern about the Woodcock Johnson III norms being based on grade 2.7 (second grade, seventh month), because Student was in first grade at the time, which would make the scores appear very low. Dr. Christo's opinion, however, supports Sacramento City's position that a severe discrepancy did not exist between Student's cognitive ability and academic achievement, because if Student's achievement scores were higher than shown on the Woodcock Johnson III test results, the discrepancy between his academic achievement and cognitive ability would have been smaller than Sacramento City believed at the time it found Student did not have a severe discrepancy. While Dr. Christo opined that Student could have been eligible for SLD using a strengths and weaknesses eligibility model, Sacramento City was not required to use that model to determine eligibility under SLD. As discussed above, at all relevant times, Sacramento City used a severe discrepancy model for purposes of determining eligibility under SLD. Sacramento City's use of the severe discrepancy model to determine whether Student met the criteria for SLD was appropriate.

14. The May 8, 2012 IEP included annual goals and objectives in the area of reading fluency and reading comprehension. Sacramento City's offer of FAPE included specialized academic instruction for 30 minutes four times per week, totaling 120 minutes per week. Specialized academic instruction is individual and/or small group intervention unique to a student's needs used to address a student's deficit areas or used to teach certain social or behavioral skills. Sacramento City also offered Student supplementary aids, services, and other supports, including simplifying instructions, providing written and visual aids, frequent repetition, and frequent checks for understanding. Parents, however, never consented to the May 8, 2012 IEP, and Student



remained at Bergamo through the 2012-2013 school year, Student's second grade year even though they continued to be concerned about Student's ability to read.<sup>4</sup>

#### LINDAMOOD BELL READING INTERVENTION – FEBRUARY 2013 TO JULY 2013

15. Student began receiving reading intervention from Lindamood-Bell between February 2013 and July 2013 for approximately 180 hours – two hours a day, Monday through Friday. Emily Jayne, the Lindamood-Bell center director in Sacramento, where Student attended, testified at hearing. Ms. Jayne has been employed with Lindamood-Bell since 1997. She has a bachelor's degree in speech pathology with a minor in child development.

16. The center where Ms. Jayne works provides one-on-one support, and occasionally small group instruction, for students with varying levels of academic performance. Lindamood-Bell provides reading intervention programs, which have been research validated for students who struggle with learning difficulties, including students with dyslexia. While receiving instruction at the Lindamood-Bell center, Student received Lindamood-Bell's reading intervention program entitled Seeing Stars. The Seeing Stars program is a reading intervention program that develops the process of decoding, recognizing sight words, reading and spelling, that systematically takes students through the development of sound-symbol relationships with an orthographic

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<sup>4</sup> Although Student asserted in his request for due process hearing and closing brief that Parents declined to sign the IEP because they disagreed with the academic assessment, the evidence showed that Parents did not consent to the May 8, 2012 IEP because they believed Student would be better served at Bergamo. Student did not contest the IEP Team's finding that he did not meet the criteria for speech/language impairment, so the Language and Speech Evaluation Report is not discussed in this Decision.

component. Student also received approximately 20 hours of Lindamood Bell's Visualizing and Verbalizing program to address his ability to follow oral directions, vocabulary challenges, and work on comprehension skills in addition to the 160 hours in the Seeing Stars program.

17. In February 2013, staff at Lindamood-Bell administered tests to determine Student's levels in reading and math. Student was tested in many areas, including vocabulary, word opposites, decoding nonsense words, oral reading, word reading, paragraph reading, spelling, and math computation. In July 2013, Student was again assessed by Lindamood-Bell to determine his progress in those same areas during his time there. Between February 2013 and July 2013, Student's standard scores in all areas generally increased with the exception of vocabulary, which did not involve reading.<sup>5</sup> It does not appear from the evidence that Student shared a copy of his Lindamood-Bell assessments with Sacramento City at any time relevant to the issues presented here.

#### STUDENT'S TRANSITION TO ALICE BIRNEY, A WALDORF-INSPIRED PUBLIC SCHOOL

18. In September 2013, Student's third grade year, Parents enrolled him at Alice Birney. Alice Birney is a Sacramento City public school inspired by the Waldorf method of instruction. Student was not assigned to Alice Birney by Sacramento City. Parents enrolled Student at Alice Birney by choice. Because Parents never consented to

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<sup>5</sup> Student was reassessed by Lindamood-Bell on February 10, 2014. Student performed better than his July 3, 2013 standard scores in the area of vocabulary and word opposites, which did not require reading. However, on all of the other tests, Student's standard scores, on tests providing standard scores, decreased in comparison with his standard scores obtained after receiving reading intervention with Lindamood-Bell. Overall, Student was unable to retain the skills he learned during the time he received reading intervention at Lindamood-Bell.

the May 8, 2012 IEP, Sacramento City did not implement the May 8, 2012 IEP when Student began at Alice Birney. Therefore, Student began Alice Birney as a general education student.

19. Alice Birney serves kindergarten through eighth grade students using a Waldorf-inspired methodology and curriculum. Alice Birney teachers utilize an inclusive and holistic approach to teaching students. Students generally stay with the same teacher throughout their educational career at Alice Birney, in hopes of providing students with an opportunity to build deep relationships with their teachers.

20. Waldorf teachers at Alice Birney facilitate students' learning by focusing on child development. The curriculum at Alice Birney is multisensory and provides auditory and visual cues with active movement in all aspects of the curriculum. Alice Birney teachers use an experiential approach — children experience the subject matter through different modalities. Paramount to a Waldorf-inspired education at Alice Birney are specialty classes, such as music, dance, gardening, cooking, expressive movement, and hand-work for all students.

21. Chandra Vanderklay, Student's classroom teacher throughout his enrollment at Alice Birney, testified at hearing. Ms. Vanderklay has been a teacher at Alice Birney for five years, and has been a teacher for Sacramento City since 2004. Before her employment at Sacramento City, Ms. Vanderklay taught for two years. She has a bachelor's degree in Spanish and academic studies of religion with an emphasis in education. She has a master's degree in teaching, a California teaching credential, and a Waldorf teacher certification. The Waldorf teaching certificate prepared her to become a teacher of the Waldorf methodology. Ms. Vanderklay was well versed in her understanding of a Waldorf education and has a deep understanding of Student's academic and social strengths and challenges. Often during the hearing, she became emotional when discussing Student's development while in her classroom. Ms.

Vanderklay was credible and her testimony was given great weight.

22. Ms. Vanderklay described a Waldorf education as emphasizing an understanding of the developmental stages and needs of a child. Waldorf is intentionally multi-sensory and addresses a child's development in thinking, feeling, and motivation. Ms. Vanderklay teaches in a way that addresses the needs of her students at each developmental stage. Teaching using a Waldorf method is premised on the belief that children need to be ready, developmentally, before the teacher provides an instruction. Much of what Ms. Vanderklay does in her classroom is an attempt to build that readiness through academics, art, movement, rhythm, song, eurhythm, verse, dance, hand-work, communal development with the class community, physical labor, and cooking.

23. Ms. Vanderklay observed Student the first few weeks of school and noticed Student had difficulty in the area of reading. She observed Student separate words in his writing and often blend words together. Student could decode, but decoding was a struggle and took a long time. Ms. Vanderklay discussed her concerns with Parents at a parent/teacher conference in November 2013. Parent 2 testified she requested Student be reassessed during the parent/teacher conference. Parent 2's testimony was unpersuasive and lacked credibility. Parents had previously made written requests for assessment of Student on February 10, 2012 and March 13, 2012, which were approved by Sacramento City prior to the May 8, 2012 IEP meeting. As will be discussed more fully below, Parents also made a written request that Student be reassessed on March 15, 2014, which was also approved by Sacramento City. Parents were well aware of the process to request an assessment. Parent 2's testimony that she orally requested an assessment of Student at the parent-teacher conference was inconsistent with Parents' pattern and practice of making formal written requests for assessment, and given no weight.

## DECEMBER 18, 2013 STUDENT STUDY TEAM MEETING

24. On December 18, 2013, Parents; Ms. Vanderklay; Mechelle Horning, principal at Alice Birney; and Douglas Dopkins, resource specialist teacher, attended a Student Study Team meeting following the first parent/teacher conference. A Student Study Team meeting is a general education meeting called to address parent and/or teacher concerns regarding a student's academic performance and/or behavior. As discussed above, because Parents had never consented to any IEP, in part or whole, Student was considered a general education Student.

25. Ms. Horning, principal of Alice Birney at all relevant times, testified at hearing. Ms. Horning has a bachelor's degree in child development, master's degree in curriculum and instruction with an emphasis in Waldorf education. She has an administrative credential, multiple subject teaching credential, and Gifted and Talented Education certification. She has worked in public education for approximately 18 years, all of that time she worked for Sacramento City except for a few years when she worked as a consultant for an education consulting firm. Ms. Horning has worked at Alice Birney for eight years.

26. Mr. Dopkins testified at hearing. Mr. Dopkins is a resource specialist at Alice Birney, and has been in his current position since September 2013. He has been a resource specialist for 12 years, and has been employed by Sacramento City since 2004. He has a bachelor's degree in English and a master's degree in special education. Mr. Dopkins received a reading certificate from University of California, Davis in 2009 and has an education specialist instruction credential, mild/moderate, which allows him to teach students with mild to moderate disabilities. His reading certificate authorizes Mr. Dopkins to administer reading assessments, provide student instruction responsive to those assessments, develop, implement and adapt reading instruction, and assist teachers with respect to the prevention and intervention of reading difficulties. Mr.

Dopkins was credible during his testimony. He did not speculate in his responses to questions posed and he was knowledgeable about Student, Student's academic abilities, and about the program he uses to teach Student in the resource room.

27. The group discussed Parents' and Ms. Vanderklay's observations of Student and a concern about his reading abilities. The team identified reading and comprehension as areas of difficulty for Student. As a result of the Student Study Team meeting, Student was informally enrolled in a reading group taught by Mr. Dopkins, a general education intervention which was intended to give Student extra support in the area of reading. Student's involvement in the reading group would allow Mr. Dopkins to observe, assess, and work with Student in reading. Other general interventions and accommodations agreed upon by the Student Study Team meeting attendees included continuing to assess Student in reading fluency and working on sight words. The Student Study Team meeting attendees did not refer Student for reassessment as a result of the issues raised by Parents and Ms. Vanderklay. Parent 1 testified that Parents orally requested assessment of Student for special education at the meeting. No other meeting attendee testified that such a request was made at the meeting. Parent 1's testimony about a request for assessment at the meeting is not credible and given no weight for the same reasons discussed above regarding Parent 2's oral request for assessment at the parent/teacher conference. And because Parents had never consented to Student's eligibility for special education, no IEP team meeting was held.<sup>6</sup>

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<sup>6</sup> 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).). In Student's closing brief, he asserts he was denied a FAPE by Sacramento City's failure to assess him when assessment requests were purportedly made by Parents at the Student Study Team meeting. Student did not raise the failing to assess issue in his request for due process hearing, and cannot raise it now.

28. The meeting attendees discussed Student's ADHD medication and how the medication suppressed Student's appetite, and how his lack of eating was affecting his learning. As will be discussed more fully below, Parents requested a one-to-one aide for Student. This was due, in part, to concerns about Student's lack of food intake and hydration during the school day.

#### MAY AND JUNE 2014 ASSESSMENTS OF STUDENT

29. On March 15, 2014, Parents sent a letter to Becky Bryant, Sacramento City's Director of Special Education and SELPA, and Ms. Horning requesting a complete evaluation and assessment of Student for special education services. Sacramento City agreed to assess Student.

30. A psychoeducational evaluation was conducted by Joanna Abbott, a Sacramento City school psychologist. Ms. Abbott evaluated Student on May 27 and June 4, 2014. Ms. Abbott observed Student at school on three separate occasions. Ms. Abbott cautioned that although the results of the evaluation should be considered valid estimates of Student's current functioning, there might be significant underestimates of his overall potential in light of his difficulty at times with attention.

31. Ms. Abbott administered the Vineland Adaptive Behavior Scales – Second Edition, the Wide Range Assessment of Memory and Learning – Second Edition, and the Naglieri Nonverbal Ability Test to determine Student's current cognitive functioning ranges. Ms. Abbott, aware that Student was identified as an African American student, conducted an alternative evaluation of Student's cognitive abilities instead of administering an intelligence quotient test. Ms. Abbott's best estimate of Student's cognitive functioning ranged from the upper end of the low average range in nonverbal reasoning to the very low range in attention and concentration. At the time of the evaluation, Ms. Vanderklay reported to Ms. Abbott that Student had difficulty in reading simple stories aloud, writing simple correspondence, such as notes, and writing papers

or essays at least one page in length. Ms. Vanderklay also reported Student was unable to read and understand material of at least second grade level.

32. Ms. Abbott administered the Comprehensive Test of Phonological Processes to assess Student's ability to process small bits of linguistic information. Student had great difficulty deleting sounds to form words, performing better than only two percent of students his age. Student did very well in the area of blending, beginning with compound words then moving on to blending smaller parts of longer words, performing better than 75 percent of students his age. Student performed in the low average range in the area of rapid naming, the ability to process small bits of linguistic information automatically, smoothly and quickly. Student performed better than 12 percent of students his age on this measure.

33. Student scored in the high average range on the copy phase of the Bender Gestalt Test – to assess Student's visual-motor integration. He demonstrated average ability on an assessment administered to explore whether a processing disorder in visual perception might occur. Student met the eligibility criteria for a finding of ADHD-Inattentive Type under the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision criteria based on reports from Ms. Vanderklay and Parents.

34. Mr. Dopkins administered the Woodcock-Johnson III Normative Tests of Achievement on May 29, 2014. When compared to others at his grade level, Student's standard score in math reasoning was in the low average range. Student's standard scores in basic reading skills, broad mathematics, and brief mathematics was in the low range, and his standard scores in broad reading, reading comprehension, brief reading, math calculation skills, and written expression were in the very low range. In comparing the results of Mr. Dopkins's assessment with the results of her own assessments, Ms. Abbott found severe discrepancies between Student's ability and his achievement in reading comprehension and written expression. She found that he was within one



standard error of measurement of a severe discrepancy between his ability and his achievement in math calculation. These results, coupled with Ms. Vanderklay's reports that Student had reading, spelling, and math difficulties, difficulty keeping up in class, was receiving failing grades in school,<sup>7</sup> and sometimes had poor handwriting or printing, led Ms. Abbott to conclude Student met the eligibility criteria for consideration for special education as a student with a processing disorder in attention, and a severe discrepancy between his ability and his achievement in reading comprehension, written expression and math calculation.

35. In addition, Ms. Abbott concluded that Student met the eligibility criteria for consideration for special education under the eligibility criteria of OHI, as a student with ADHD, which seriously impacted his educational progress.

#### JUNE 6, 2014 ASSISTIVE TECHNOLOGY EVALUATION REPORT

36. On March 15, 2014, Parents requested an assistive technology evaluation of Student based on their belief that Student could benefit from assistive technology. Kathryn Brown conducted an assistive technology evaluation of Student and prepared an evaluation report on June 6, 2014. Ms. Brown is currently a special education

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<sup>7</sup> Student's report card for the 2013-2014 school year did not contain letter grades. Rather, Sacramento City provided academic performance levels on Student's report card. Scores could range between advanced, basic, below basic, far below basic, and proficient. Student's reading performance levels improved from below basic at the beginning and middle of the school year, to basic by the end of the school year in fluency, vocabulary development, and reading comprehension. The same was true for writing applications and written and oral language conventions. The evidence did not establish that Student's report card was discussed at the Student Study Team meeting on December 18, 2013.

supervisor for Sacramento City. At the time she prepared the evaluation report, Ms. Brown was a teacher on special assignment conducting assistive technology evaluations. She has an assistive technology assistance certificate from California State University, Northridge. Ms. Brown has a bachelor's degree in English and a master's degree in applied school leadership. Ms. Brown has an educational specialist teaching credential. She was qualified to conduct Student's assistive technology evaluation.

37. Ms. Brown observed Student in his third grade classroom in connection with the evaluation. Ms. Brown observed that Student was not able to keep up with his peers in copying a math problem from the board onto a chalkboard table.

38. In her report, Ms. Brown opined that Student would benefit from a device that is motivating, easy to use, and portable. She indicated that Student could use an iPad to move through various educational environments and the iPad could be used at his table/desk. Ms. Brown reported that the iPad would allow Student the flexibility to use iPad applications to meet his reading, mathematics, executive functioning, and writing needs. In addition to the iPad recommendation, Ms. Brown recommended that Student be provided with accessories and applications for the iPad, which included applications for mathematics, prewriting, critical thinking, organization, an e-reader with text to speech and visual tracking with ability to change fonts. Ms. Brown recommended a synced recorder and note taker and a reserve of funds for additional application purchases as deemed necessary by the IEP Team. Visual and audio schedules and a photo-based scanner application were recommended by Ms. Brown. Ms. Brown also recommended direct training for Parents and Sacramento City staff on the operation and maintenance of the equipment. Ms. Brown indicated in her report that the final determination of services was the responsibility of the IEP Team. Her report was provided to assist the IEP Team in determining whether Student needed assistive technology.

39. Based on her recommendations, Ms. Brown suggested specific accommodations for Student. Ms. Brown suggested removing the requirement for Student to copy work from the board or orally from his teacher, instead providing all work to Student on paper or another medium for him to show his work. Also, she recommended visual prompts to help Student recognize the area to use to complete his math problems and providing project subjects to Student in advance to allow time to gather reading materials Student could access electronically when available. In addition, Ms. Brown recommended allowing Student to make pictures of board notes, text, worksheets with an iPad for future reference, allowing Student the ability to record lessons, teacher instructions, and messages to his family for later use, and allowing alternate methods of measuring his understanding of the curriculum being taught. Lastly, she recommended verbal and visual cues to support task completion, use of visual calendar, models and repetition, chunking new information, reducing his workload, using audio recording, word prediction, and visual supports including visual schedule, graphic organizers, and premade copies of presentations and notes.

40. Although Ms. Brown made these recommendations, she recognized that there were ways to support Student and meet his needs without the use of assistive technology. Given Ms. Brown's educational experience, she was qualified to make such a finding.

41. Sacramento City provided accommodations, both through the general education Waldorf curriculum and as provided in Student's IEP's, to meet Student's needs that would have been addressed with the use of the recommended electronic devices. Student was able to access the curriculum through numerous modalities through the use of music, dance, storytelling, handwork, and cooking. These modalities provided Student an experiential way to learn the curriculum without the need for an iPad. Student received his lessons through the use of stories read or told aloud by Ms.

Vanderklay or the class read together as part of the Waldorf methodology provided to all students. This addressed Student's need for an e-reader in the classroom. And when Student needed assistance with writing his work, Ms. Vanderklay acted as a scribe and he was able to dictate to her, eliminating the need for a synced recorder and note taker device. This was explicitly provided in Student's October 15, 2015 IEP, although Ms. Vanderklay provided this accommodation prior to that time. All of Student's IEP's during the relevant period also provided for use of outlines and organizers and reducing copying from the board to address Student's needs underlying the recommendation for a synced recorder, note taker device, and photo-based scanner application. Student received visual schedules of his day in class, visual calendars, and visual aids, as provided in his June 13, 2014, October 6, 2014, and October 15, 2015 IEP's, and Parents received communication from Ms. Vanderklay about Student's lessons and homework, all to address the same needs underlying the recommendation for visual schedule planner and photo-based scanner applications for an iPad. Parents, at times and currently, disagree that Student does not require the assistive technology recommendations provided by Ms. Brown that call for an electronic device.

#### JUNE 13, 2014 IEP

42. The IEP Team met again on June 13, 2014, the day after the 2013-2014 school year ended. Parents; Ms. Bryant; Narda Beckman, program specialist; Mr. Dopkins; Kathryn Delaney, speech and language therapist; Ms. Abbott; Ms. Vanderklay; Ms. Horning; and Ms. Brown attended the meeting.

43. The purpose of the IEP meeting was to review the recently completed assessments of Student. The team discussed the results of the assessments and received input from all IEP Team members, including Parents. Parents expressed concerns about Student's abilities in reading, writing, math, following directions, completing assignments, following the trajectory of the class, and accessing the curriculum. There

was discussion about Student's ability to read words and about recent assessments by Ms. Vanderklay that showed Student was able to decode short vowel, long vowel, consonant patterns, and vowel patterns, but he was not able to read multi-syllabic words. Student could write on topic, but had difficulty with writing conventions, such as blending words together when writing and putting periods at the end of every line.

44. The IEP Team discussed the need for Student to consume more food during the day. Parents explained that Student's appetite and hydration were affected by his ADHD medication, but told the IEP Team that Student's psychiatrist was not concerned, as Student had maintained adequate weight and growth while on his medication.

45. Ms. Brown reviewed her assessment and recommendations at the IEP meeting. The IEP Team, including Parents, deferred further discussion of Ms. Brown's recommendations to the next IEP meeting, so as to have a full discussion regarding how Student's assistive technology needs could be met using alternate accommodations that worked in harmony with the Waldorf method of instruction.

46. The IEP Team found Student eligible for special education and related services under the primary category of OHI. The IEP Team found Student eligible under a secondary eligibility category of SLD based upon a severe discrepancy between his intellectual ability and achievement in mathematics calculation, reading comprehension, and written expression. The discrepancy was found to be directly related to a processing disorder in auditory processing and attention based upon the results of Ms. Abbott's psychoeducational evaluation, results from the WJ-III administered by Mr. Dopkins and reports from Parents and Ms. Vanderklay.

47. During the meeting, Mr. Dopkins explained in detail exactly what he was working on with Student in the resource room. He told the IEP Team that Student had been working in his reading group on reading skills. Specifically, Student was working

on breaking words up and putting words together, blending words, writing words, decoding, and sound and spelling patterns. Student was participating in the reading group three times per week for 30 minutes sessions beginning the first week of February 2014.

48. The June 13, 2014 IEP included annual goals and objectives in the areas of reading, comprehension, mathematics, writing, pragmatic, and receptive language. In addition, Sacramento City offered specialized academic instruction for 30 minutes per session, nine times per week, totaling 270 minutes weekly for group pull out services in the area of reading, comprehension, math calculation, and writing by a resource specialist.<sup>8</sup> Student was to continue his placement at Alice Birney in the general education classroom at all other times during the school day.

49. In the June 13, 2014 IEP, Sacramento City's offer of FAPE included aids, services, accommodations/modifications and supports for Student, many of which Ms. Brown recommended in her report, including reducing workload, verbal and visual cues to support task completion, providing project subjects in advance to allow Student time to gather reading materials, extending time for task completion, providing written and visual aids, chunking work, use of visual calendar, frequent repetition, providing alternate means of demonstrating understanding of curriculum being taught, and using outlines and organizers. Ms. Vanderklay credibly testified that she implemented all of these program modifications, accommodations and supports once Parents consented to the June 13, 2014 IEP in September 2014. Ms. Vanderklay credibly explained exactly how

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<sup>8</sup> Sacramento City's offer of FAPE also included language and speech services, which are not at issue here. Parents rejected the ESY services offered by Sacramento City during the IEP meeting. Parents decided that they preferred Student attend Lindamood-Bell instead.

she modified Student's program and the supports she provided to Student pursuant to his IEP. Additionally, Student was permitted to dictate stories to Ms. Vanderklay or a classmate to support his physical writing difficulties. She never felt Student needed an additional adult aide in the classroom to support him.

50. Parents briefly raised the possibility of a one-to-one aide for Student to help with transitions and prompting Student to eat and drink during the school day, but an aide was not provided by Sacramento City. Sacramento City offered an assessment plan to assess Student for autism spectrum disorder, occupational therapy, and a paraprofessional support assessment<sup>9</sup> after discussing the recent assessments and listening to input from the IEP Team.

51. Parents did not consent to the June 13, 2014 IEP until September 2, 2014, the first day of Student's fourth grade year. By letter to Ms. Bryant and Ms. Horning, dated September 2, 2014, Parents consented to the June 13, 2014 IEP with exception. The June 13, 2014 IEP was signed by Parents on September 4, 2014. Parents' relevant exceptions to the June 13, 2014 IEP included a request that Sacramento City include a description of the intervention to be implemented to support Student's academic goals<sup>10</sup>, a one-to-one aide to assist Student and Ms. Vanderklay with implementing and integrating the services and accommodations into the mainstream classroom, and to implement all accommodations listed in Ms. Brown's assistive technology report that did

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<sup>9</sup> This assessment was to determine if Student required a one-to-one aide. For purposes of this Decision, the terms paraprofessional support and one-to-one aide are used synonymously.

<sup>10</sup> Parents also requested that additional goals be provided in language arts and math; however, Student's goals are not at issue here, so this Decision does not address Parents' specific requests relating to goals.

not expressly require Student to operate electronic technology in the classroom. Further, Parents requested Ms. Vanderklay or a paraprofessional record video, audio, or pictorial prompts to assist Student with retention of lessons and assignments, help Student maintain a visual planner, so Parents could reinforce the school day lessons and help Student organize his work assignments and work product, enroll Student in Bookshare, and permit Student to conduct research and assignments with the assistance of voice-to-text and text-to-voice software.

52. In the same letter, Parent disclosed that Student had been diagnosed as a child with autism spectrum disorder and ADHD on August 21, 2014 by the Kaiser Permanente Autism Spectrum Disorders Center. The Kaiser diagnosis report, completed by the clinical neuropsychologist that examined Student, provided some reading interventions that might be helpful to Student, but did not indicate that the IEP Team needed to detail the reading methodology used for Student in his IEP and did not recommend a specific intervention program.

#### STUDENT'S NEED FOR 1-TO-1 AIDE SUPPORT

53. In response to Parents' request for one-to-one aide, Sacramento City provided Parents with a paraprofessional support assessment questionnaire about Student, which Parents completed and dated September 16, 2014. Ms. Horning and Ms. Vanderklay also responded to questions on a separate paraprofessional support assessment questionnaire. At the time they provided the responses to the questionnaire, Ms. Horning and Ms. Vanderklay did not believe Student needed paraprofessional support. Kathleen Augusta, full inclusion specialist for Sacramento City, was to conduct the paraprofessional support assessment. The paraprofessional support assessment was never completed.

54. Ms. Horning did not believe Student needed one-to-one aide support in the classroom because Student did not have behavioral concerns that needed extra



monitoring, and, if he needed assistance or help with completing an assignment, Ms. Vanderklay or peers could assist him. When Ms. Horning observed Student in the classroom, he was engaged in the activities with the other children and his work was adapted and/or modified to meet his needs. Ms. Horning had an added concern that having a one-to-one aide would not have been beneficial to Student because he was learning important social and emotional skills that may have been hindered with aide support. Ms. Horning's testimony was well informed and credible based on her frequent interactions with Student's teachers and her observations and communication with Student, and participation in Student's IEP meetings.

55. Ms. Beckman testified at hearing. She agreed that Student did not need a one-to-one aide in the classroom because he was receiving scribing support from Ms. Vanderklay in the classroom. Ms. Beckman testified at hearing. Ms. Beckman has been a program specialist for Alice Birney students for four years. Her role is to act as a facilitator at IEP meetings and to interface with families and teachers to help design IEP's for students in the District. She has a bachelor's degree in special education and has been working in special education for 34 years. She has a multiple subject teaching credential and a credential for teaching severely handicapped students. Her opinion that Student did not require a one-to-one aide was well supported by discussions at IEP meetings about the supports provided to Student by Ms. Vanderklay as well as by her educational and professional experience in special education.

56. Similarly, Ms. Bryant also believed Student did not need the support of a one-to-one aide during the relevant period based on discussions in the IEP meetings about Student's needs and the supports provided to Student in class. Ms. Bryant testified at hearing. She has been the Director of Special Education and the SELPA since July 2010. She was the Director of Special Education, exclusively, between 2002 and 2010. She has a bachelor's degree in liberal studies and a master's degree in special

education. In addition, she has a multiple subject teaching credential, a teaching credential to teach students with moderate to severe disabilities, and a professional tier administrative services credential. Ms. Bryant has worked in special education for 35 years. Ms. Bryant's opinion was supported by the evidence, her educational and professional experience as well as her participation in Student's IEP meetings.

57. Ms. Vanderklay acknowledged that Student needed help writing things down, but testified that he did not require a one-to-one aide to assist him in writing or organization because he was already provided support in the classroom. She believed a one-to-one aide would interrupt the process needed for Student to gain an increased capacity to complete his work independently.

58. Parents believed Student needed a one-to-one aide to assist him and Ms. Vanderklay with implementing and integrating the services provided in his IEP's. Parents also believed a one-to-one aide was necessary to aid in school to home communication about Student's homework and class lessons, to act as a reader or scribe in the classroom for Student, and to ensure Student was eating and drinking appropriately throughout the day. Parents' belief that Student required a one-to-one aide was not persuasive. The overwhelming evidence established that the services and accommodations provided in Student's IEP's were implemented without the need for a one-to-one aid. Ms. Vanderklay provided Parents sufficient information about Student's day through school to home communication, and, even though Parents were quite concerned about Student's appetite and hydration while taking his ADHD medication, Student's psychiatrist did not share in this concern. In an independent psychoeducational evaluation prepared by Jennifer Grimes, Ph.D., in the fall 2015, discussed below, she opined that Student may do better if he were allowed to dictate written assignments rather than writing them out. On this point, Ms. Vanderklay was able to provide dictation services to Student. Student did not establish a need for a one-

to-one aid during the relevant time period.

59. Jennifer Grimes, Ph.D., a licensed educational psychologist, conducted an independent psychoeducational evaluation of Student in August and September 2015 to investigate the reasons for his academic discrepancies and to provide the IEP Team with additional information regarding his unique educational needs. Dr. Grimes has a bachelor's degree in human development with a minor in education and a master's degree in school psychology. She has a Ph.D. in educational psychology with an emphasis in neuropsychology. She received a pupil personnel services credential and has been deemed a subject matter expert by the California Board of Behavioral Sciences. She has been in private practice as a licensed educational psychologist since 1996. Prior to that, she was a school psychologist for seven years. She has completed approximately 20 independent educational evaluations.

#### FALL 2014 IEP MEETINGS

60. At the start of the 2014-2015 school year, Student's fourth grade year, Student began receiving 270 weekly minutes of specialized academic instruction in the area of reading, comprehension, math calculation, and writing pursuant to the June 13, 2014 IEP. The reading program at Alice Birney delivered in the resource room is taught in conformity with the Waldorf methodology, which means it is taught in a systematic, sequential manner, but permits flexibility in the methodology used to teach reading. The reading program is designed to respond to students' needs and to teach the whole child using multisensory instruction. Mr. Dopkins stressed the importance of using methodologies from multiple sources to meet Student's needs as Student's readiness and interest in reading instruction varied on most days. Ms. Vanderklay found Student's readiness for instruction to be inconsistent as well.

61. At the start of the 2014-2015 school year, Sacramento City convened a two-part IEP meeting on September 24 and October 6, 2014. Parents, Ms. Bryant, Ms.

Horning, Ms. Vanderklay, Mr. Dopkins, Ms. Abbott, and Ms. Beckman attended the September 24, 2014 meeting along with Katherine Delaney, speech and language therapist; Ted Wattenberg, technology specialist; Kathleen Augusta, full inclusion specialist; and Toby Frank, school nurse.

62. The purpose of the meeting was to review Student's program and additional assessments completed since the June 13, 2014 IEP. The IEP Team discussed how, in general, special education is delivered within the Waldorf methodology. Ms. Abbott reviewed her psychoeducational evaluation and Parents shared the Kaiser report diagnosing Student with autism and ADHD.

63. The IEP Team discussed Parents' concern about Student's food and beverage intake during the school day, a recent diagnosis of autism by Kaiser, and communication between school and home regarding Student's school day. Although the IEP Team did not find that Student's lack of appetite was affecting his ability to access the curriculum, the IEP Team discussed supports that would be put in place to encourage Student to eat and drink throughout the school day. The IEP Team determined Student would self-report regarding his caloric intake, and Mr. Dopkins would create the document Student would use for that purpose.

64. At the meeting, Parents stated they no longer felt Student needed additional adult support, and rescinded their request for a paraprofessional support assessment. Also, Parents told the IEP Team that they did not believe Student needed an iPad, but Parents explained they wanted a recording or picture of class lessons so Parents could go over the lesson with Student at home to reinforce the school curriculum.

65. In reviewing Student's present levels of performance, Ms. Vanderklay discussed Student's newly acquired ability to decode multisyllabic words. Mr. Dopkins agreed to meet with Parents regarding the methodology being used for Student for

reading and math in the resource room. Mr. Dopkins and Ms. Horning met with Parents immediately after the IEP meeting for approximately 30 minutes to discuss exactly how Mr. Dopkins provided specialized reading instruction to Student. Mr. Dopkins' explanations were detailed and he answered all of Parents questions thoroughly and completely.<sup>11</sup> Mr. Dopkins explained similarities between his way of teaching students and the method used by Lindamood-Bell. Mr. Dopkins invited Parents to observe his instruction of Student, and Parent 2 subsequently observed Student in the resource room on three occasions. Mr. Dopkins presented Student's recent reading assessment scores to Parents, which showed Student was making progress in his reading ability.

66. After the September 24, 2014 IEP meeting, Parents confirmed the rescission of their request for a one-to-one aid by letter to Ms. Bryant and Ms. Horning, dated September 30, 2014. The IEP Team agreed to reconvene the IEP meeting on October 6, 2014. Parents, Ms. Bryant, Ms. Horning, Ms. Vanderklay, Mr. Dopkins, Ms. Delaney, Ms. Beckman, and Mr. Wattenberg attended the October 6, 2016 meeting. During the meeting, the IEP Team spent a considerable amount of time discussing the methodologies and strategies used by Ms. Vanderklay and Mr. Dopkins to instruct Student in reading.

67. Ms. Brown was not at the meeting to review her assistive technology report, but Mr. Wattenberg reviewed her recommendations. Parents told the IEP Team they did not need to address Ms. Brown's recommendation for an iPad, based on their belief that the iPad would not work in concert with the Waldorf methodology. At that time, Parents did not believe Student needed iPad support in the classroom. Parents

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<sup>11</sup> Although the testimonies provided at hearing provided minimal detail of what was discussed at this meeting, Student introduced a recording of the entire meeting into evidence.

also suggested the IEP Team discontinue the review of the assistive technology report, as they felt Student was receiving the supports he needed embedded in his lessons. Parents acknowledged that Student was doing well with copying tasks at that time. Parents indicated they would revisit the topic later if it became apparent that Student needed additional supports.

68. The IEP Team discussed Student's use of a visual schedule. Student had a daily schedule and a schedule of specialty classes available to him in the classroom. Ms. Vanderklay provided a monthly calendar to Parents that outlined class lessons, activities and academic goals. In response to Parents' interest in receiving communication to allow them to support and reinforce Student's school day, Ms. Vanderklay stressed the importance of allowing Student to take a break from his lessons while at home.

69. Ms. Vanderklay did not believe Student needed an iPad to access his curriculum at any time relevant time, and she did not believe it would be helpful for Student to have an iPad in the classroom because she believed it would become more of a distraction than an aid. She believed that her support within the classroom provided Student with the support he needed without the need for assistive technology.<sup>12</sup>

70. Ms. Beckman did not believe Student needed additional assistive technology supports because Student was receiving sufficient supports from Ms. Vanderklay to address his difficulties in writing and reading. Ms. Beckman did not believe Student required an electronic assistive technology device to access his education during the relevant period because Student was making educational progress at school and she believed it would have interfered with his learning. She believed the strategies and supports already in place were appropriate for Student, such that he did

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<sup>12</sup> Student was provided with a timer and calculator in class; however, the evidence did not establish that Student needed those devices to access his education.

not require additional assistive technology supports.

71. Based on her participation in Student's IEP process during the relevant period, Ms. Bryant did not believe Student required the use of an electronic device to access the curriculum during the relevant period because Student's needs could be met using the supports already provided in Student's IEP. Ms. Horning's position was that the Waldorf method does not incorporate electronic devices until sixth grade and were not needed before that time.

72. The IEP Team found Student eligible for special education and related services under the primary category of autism and secondary category of SLD. Student qualified for SLD based upon a severe discrepancy between his intellectual ability and areas of achievement in mathematics calculation, reading comprehension, and written expression, along with processing disorders in the areas of auditory processing and attention. The IEP contained annual goals and objectives in reading, comprehension, mathematics, writing, pragmatic language, receptive language, and phonemic awareness.

73. In the October 6, 2014 IEP, Sacramento City continued to offer Student specialized academic instruction in the form of resource pull out services for reading, comprehension, math calculation, and writing services in a group setting for 30 minutes per session nine times per week for a total of 270 minutes weekly. Also, Sacramento City offered to provide Student with supplementary aids, services and other supports, which included, simplifying instructions; providing written and visual aids; frequent repetition; preferred seating; frequent breaks as needed; frequent checks for understanding; monitoring Student's attending skills; providing breaks if necessary; extending time for task completion, gaining Student's attention prior to delivery of information; using outlines and organizers; having Student repeat directions; chunking work as needed; visual prompts and visual schedule; using main lesson book format to create support for

executive functioning; reducing copying from board; providing project subjects in advance to allow time to gather reading materials; providing alternate means of demonstrating understanding of curriculum being taught; verbal and visual cues to support task completion; and using a visual calendar.

74. Beginning in November 2014, Parents discontinued Student's ADHD medication, in part because of the resulting side effects, which included appetite suppression and mood swings. Informal supports were put in place to address concerns regarding Student's caloric intake before he discontinued his medication, including class cooking in fourth grade, the option for Student to go to Ms. Horning's office to get a snack, and frequent checks by Ms. Vanderklay to see if Student had eaten during the day. However, at no time did any member of the IEP Team, besides Parents, believe such supports were necessary for Student to receive a FAPE. Student regained his appetite after discontinuing the medication.

75. Parents did not consent to the October 6, 2014 IEP until the end of Student's fourth grade year, nearly eight months later. Until Parents consented to the October 6, 2014, Sacramento City correctly continued to implement the June 13, 2014 IEP. By letter to Ms. Bryant and Ms. Horning, dated June 2, 2015, Parents gave their consent to the October 6, 2014 IEP, with exception. Parents' relevant exceptions to the October 6, 2014 IEP included a request that the offer of FAPE provide detail about the description or nature of the specific intervention to be used to achieve Student's academic goals and the evidence upon which it was based, and provide a part-time one-to-one aide to assist Student and Ms. Vanderklay with implementing and integrating services and accommodations into the mainstream classroom and to enhance the instruction and implementation of the adaptive technology accommodations. Ms. Vanderklay implemented all of the program modifications, accommodations and supports once Parents consented to the October 6, 2014.



76. Although Parents rescinded their request for a one-to-one aide for Student on September 30, 2014, they renewed their request based on their belief that the “alternative strategies and accommodations” were not being implemented. It is not clear from the evidence exactly what strategies and accommodations Parents were referring to in their letter. Parents reiterated their request that all accommodations listed in Ms. Brown’s assistive technology report that did not expressly require Student to operate electronic technology be implemented in the classroom, along with the same assistive technology requests made in Parents’ prior letter with some minor changes.

77. Parents attached a letter from Billur Moghaddam, M.D., The Permanente Medical Group, Inc., Genetics, dated September 18, 2014. Although Dr. Moghaddam states in his letter that research indicates specific evidence-based interventions are necessary for a student with disabilities similar to Student to receive educational benefit, it is unclear from the letter what research Dr. Moghaddam was referring to in expressing his opinion. It is also unclear from the letter what, if any, recommendations Dr. Moghaddam was making specifically for Student. However, the issue of whether Student required an evidence-based intervention is not at issue in this Decision. The only issue is whether the IEP was required to specifically describe the reading interventions used with Student. Dr. Moghaddam did not testify at hearing, it is unknown what experience he has regarding specific reading strategies, or regarding educational programs at all. Therefore, his letter is given no weight.

78. Likewise, a April 4, 2015 letter from Meghan Davignon, M.D., Developmental Pediatrics, Kaiser Roseville Medical Center, attached to Parents’ June 2, 2015 letter, provided general recommendations of interventions for reading disorders, but did not state that Sacramento City needed to identify or describe the specific reading methodology to be used with Student on his IEP. Dr. Davignon did not testify at hearing, and it is unknown what experience she has regarding intervention for reading

disorders. Accordingly, no weight is given to this letter as well.

#### JUNE 3, 2015 IEP MEETING

79. The IEP Team convened a three-part IEP meeting culminating in the October 15, 2015 IEP. The three meetings occurred on June 3, October 9, and October 15, 2015.

80. Parents, Ms. Bryant, Ms. Vanderklay, Mr. Dopkins, Ms. Beckman, Ms. Brown, Ms. Delaney, and Mr. Wattenberg attended the June 3, 2015 IEP meeting. The IEP Team revisited Ms. Brown's assistive technology recommendations. Parents suggested Student use technology outside the classroom that would complement the learning within the classroom. The IEP Team discussed the Waldorf methodology of no technology in the classroom, and only reviewed the technology assessment as it related to low tech or non-technology recommendations. Sacramento City offered to fund an independent psychoeducational evaluation at public expense in the form of psychoeducational and academic testing of Student because Parents and IEP Team members were in disagreement regarding Student's progress and the methodology being used for Student in the resource room. Parents accepted the offer.

81. Parents continued to express concern about wanting more school communication so that they could support Student at home. The meeting was tabled, and the IEP Team agreed to reconvene in the upcoming school year.

#### GRIMES INDEPENDENT PSYCHOEDUCATIONAL EVALUATION

82. Dr. Grimes testified at hearing. Dr. Grimes is qualified to assess Student and render the opinions contained in her report based on her educational and professional experiences set forth above.

83. Dr. Grimes diagnosed Student with dyslexia, dyscalculia, and ADHD. Dyslexia is characterized by difficulties with accurate and/or fluent word recognition and

by poor spelling and decoding abilities. The difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge. Dyscalculia is characterized by difficulties with active writing and producing written language.

84. While Dr. Grimes recommended Student have direct reading and writing instruction to further develop his skills, as well as to support his progress in school courses, along with individualized, one-on-one intervention services to promote his reading and writing skills, she did not conclude in her report that the specific reading methodology to be used with Student needed to be identified or described for Student to receive a FAPE. Her report did not establish that a specific reading methodology needed to be described in Student's IEP to receive a FAPE.

#### MR. DOPKINS OCTOBER 7, 2015 REPORT

85. Mr. Dopkins prepared a report for Parents, dated October 7, 2015, providing Student's scores on reading assessments between February 2014 and May 2015, and detailing the strategies used by resource teachers at Alice Birney. The report provided a sample of a reading lesson, and explained that reading instruction is provided in a multi-sensory, multi-modality, sequential manner with individualized support based on the student's assessed needs. Students are given the opportunity to read stories and poems at their measured reading levels, instructed and tested on their comprehension skills, and given spelling exercises.

86. Mr. Dopkins' report detailed Student's work with resource aide Lynette Weaver on mathematics and writing in resource teacher Megan Borchers's class. Student worked with Ms. Borchers on completing his work from Ms. Vanderklay's class, including

copying work into his main lesson book.

#### DR. LELA CATHERINE CHRISTO'S OCTOBER 12, 2015 REPORT

87. As discussed above, Dr. Christo prepared a report, dated October 12, 2015, wherein she suggested reading interventions for Student. The report was discussed at the October 15, 2015 IEP meeting. Dr. Christo testified that for Student to continue making progress in his program, it is not necessary for a specific methodology to be specified in Student's IEP. Dr. Christo testified that once a student qualifies for special education, the student's program is based on the student's needs more than his disability identification, so it is more important to look at services provided to the student as opposed to his eligibility category. She went on to say once a student is identified as needing specialized instruction, the student has access to the full array of services depending on what the student's needs are, regardless of his eligibility category. Dr. Christo was hired by Student and was called by Student as a witness. Her testimony that it was not necessary to include a specific reading methodology for Student in his IEP is given great weight.

#### OCTOBER 2015 IEP MEETINGS

88. On October 9, 2015, Sacramento City convened an IEP meeting. Parents, Ms. Bryant, Ms. Horning, Ms. Vanderklay, Ms. Beckman, Ms. Borchers, Mr. Dopkins, Ms. Delaney, Mr. Wattenberg, Ms. Brown, and Dr. Grimes were in attendance. Student's attorney, Allison Hyatt, and Sacramento City's attorney, Sarah Garcia, also attended the meeting.

89. Dr. Grimes reviewed her report with the IEP Team. Student had an increased ability to copy from the board, which he was not able to do independently at the beginning of the school year. Parents expressed concern about Student's ability to communicate with them about what he learned throughout the day and about his

homework assignments. The IEP Team agreed to reconvene an IEP meeting on October 15, 2015, as the time allotted for the meeting had expired.

90. Student's IEP team reconvened on October 15, 2015. Parents, Ms. Bryant, Ms. Horning, Ms. Vanderklay Ms. Beckman, Ms. Borchers, Mr. Wattenberg, Ms. Brown, Mr. Dopkins, Ms. Hyatt, and Ms. Garcia attended the meeting. The IEP Team found Student eligible for special education under the primary category of SLD and under a secondary category of OHI.

91. The offer of FAPE, as contained in the October 15, 2015, included, in relevant part, specialized academic instruction for 30 minutes nine times per week, totaling 270 minutes weekly, in small group and individual instruction in the area of reading, comprehension, math, and writing. The specialized instruction was to be provided as push-in and pull-out instruction.

92. Sacramento City agreed to provide the following supplementary aids, services, and supports to Student: simplify instructions; provide written aids; visual aids; prompts and scheduling; frequent repetition; preferred seating; frequent breaks as needed; frequent checks for understanding; monitor Student's attending skills; extend time for task completion; gain Student's attention prior to delivery of information; use outlines and organizers; have Student repeat directions; chunk work as needed; use main lesson book format to create support for executive functioning; provide scribe when necessary, with teacher and Student to discuss and determine when scribe is needed; reduce copying from board; provide project subjects in advance to allow time to gather reading materials; provide alternate means of demonstrating understanding of curriculum being taught; verbal and visual cues to support task completion; and use of visual calendar. Ms. Vanderklay credibly testified that she implemented all of these program modifications, accommodations and supports once Parents consented to the October 15, 2015 IEP with exception in January 2016. Until Parents consented to the

October 15, 2015 IEP, Sacramento City continued to implement the October 6, 2014 IEP.

93. Parents partially consented to the October 15, 2015 IEP in a letter to Ms. Bryant and Ms. Horning, dated January 11, 2016. Parents consented to the annual goals contained in the October 15, 2015 IEP. In their letter, Parents stated that the offer of FAPE was inadequate because it failed to specify what individualized, evidence-based intervention and accommodations Student would receive to address his dyslexia and dyscalculia. Further, Parents stated that the plan was neither individualized nor appropriate because it failed to describe the methodology, services, and accommodations to be provided to Student to ensure that he could progress in the general education curriculum and achieve the statewide grade level standards, among other concerns.

94. As to the supplementary aids, services, and other supports offered by Sacramento City, in their letter, Parents requested Student be provided either an aide and/or other services such as speech-to-text technology to enable him to perform written class work and memorialize teacher lessons, presentations, instructions and other expectations; implement a regular school-to-home communication system to ensure Parents are apprised of reading and project plans in advance to facilitate early access to subject matter material; and provide an example of the visual calendar being used with Student. Parents requested Student be provided with photographic or audio recording of key lessons, images and other instructional materials presented in the main classroom, to assist Student's memory and executive functioning. Sacramento City's reply, if any, is not in evidence. As discussed above, Sacramento City provided sufficient accommodations and aids in the classroom to address Student's needs. Student did not establish that the additional supports requested by Parents were necessary for him to receive a FAPE.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [163 L.Ed.2d 387].)

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA.<sup>13</sup>

2. Jurisdiction over this matter arises 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.; 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; (2) to ensure that the rights of children with disabilities and their parents are protected; and (3) to assist States, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities. (20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. 300.1; <sup>14</sup> Ed. Code, § 56000, subd. (a).)

3. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meets state educational standards, and conforms to the child's IEP. (20 U.S.C. § 1401(9)(A)-(D); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability at no cost to parents. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code,

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<sup>13</sup> Unless otherwise indicated, the legal citations in this Introduction are incorporated by reference into the analysis of each issue decided below.

<sup>14</sup> All references to the Code of Federal Regulations are to the 2006 version.

§ 56031, subd. (a).) “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].)

4. 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* 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. 206-207.) *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.) The Ninth Circuit Court of Appeals 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, 950-951 (*Mercer Island*) [finding that 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. 951, fn. 10.)

5. States must establish and maintain certain procedural safeguards to ensure each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student’s educational program.



(*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 [superseded in part by statute on other grounds by 20 U.S.C. § 1414(d)(1)(B)].) In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, 458 U.S. at pp. 205-206.) A procedural error does not automatically require a finding that a FAPE was denied. (*W.G. v. Target Range, supra*, 960 F.2d at p.1484.) A procedural violation results in a denial of a FAPE only if the violation impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subds. (f)(2) & (j).)

6. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP Team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP Team has participated in the IEP process in a meaningful way].)

ISSUE 1: SACRAMENTO CITY DID NOT DENY STUDENT A FAPE BY FAILING TO FIND HIM ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER THE

ELIGIBILITY CATEGORY OF SLD AT THE DECEMBER 18, 2013 STUDENT STUDY TEAM MEETING.

7. Student contends Sacramento City committed a procedural violation resulting in denial of a FAPE by failing to find him eligible for special education and related services under the eligibility category of SLD in connection with the Student Study Team meeting held on December 18, 2013. Sacramento City maintains that it did not commit a procedural violation because Student was not eligible for special education under SLD based on the information available to Sacramento City at that time, all of Student's needs would have been addressed if Parents consented to the May 8, 2012 IEP, Student received reading intervention as a result of the Student Study Team meeting, and the Student Study Team meeting was not the appropriate forum to determine eligibility.

8. Under the IDEA, only 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," as defined in Section 1401(3)(A) of Title 20 of the United States Code, 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).)

9. 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. A student may be eligible for special education under the category of specific learning disability if he has a disorder in one or more of the basic psychological processes involved in understanding or in using language, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. (20 U.S.C. § 1401(30); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) (The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C. §1401(30)(B); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

10. A school district shall determine that a child has a specific learning disability using one of two methods: the severe discrepancy method, or the response to intervention method.<sup>15</sup> (20 U.S.C. § 1414(b)(6); 34 C.F.R. § 300.307; 34 C.F.R. § 300.309(a)(1)-(2); Ed Code, § 56337, subds. (b)-(c).) The severe discrepancy method requires that a student has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B).) In California, a severe discrepancy is defined as 1.5 standard deviations (22.5 points or more difference),

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<sup>15</sup> Neither the parties nor the evidence suggested that response to intervention was at issue in this case; therefore, RTI will not be addressed in this Decision.

adjusted for the standard error of measurement, between intellectual ability test score and academic achievement test score. (Ed. Code, § 56337, subd. (b); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B)(1).)

11. 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. (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, subdivisions (a) and (b). This duty extends to all children “suspected” of having a qualifying disability, not just to the children ultimately determined to be disabled. (34 C.F.R. §§ 300.8, 300.111(c)(1); *N.G. v. Dist. of Columbia* (D.D.C. 2008) 556 F.Supp.2d 11, 25 (N.G.).)

12. A parent or a public agency may refer a student for assessment by written request for assessment to determine if a child is a child with a disability.<sup>16</sup> (34 C.F.R. § 300.301.) A school district’s duty to assess a student’s eligibility for special education and related services is triggered by a parent’s request for special education. (Cal. Code Regs., tit. 5, § 3021(a).) If the parent’s request is verbal, the district must offer to assist the parent in preparing a written request. (*Ibid.*) However, a school district’s child find duty is not dependent on any request by the parent for special education testing or services. (Ed. Code, § 56300; *Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) A school district’s child find duty is triggered when it has reason to suspect a child has a disability, and reason to suspect the child may need special education services to

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<sup>16</sup> The term “assessment,” as used in the California Education Code, has the same meaning as the term “evaluation” in the IDEA. (Ed. Code § 56302.5.)

address that disability. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.) The federal district court for the Northern District of California recently held, "the state has reason to suspect that a child may have a disability where: (1) there is a suspicion that a student has an impairment that is affecting the student's educational performance; or (2) a parent requests special education services or an assessment of eligibility for special education services." (*Simmons v. Pittsburg Unified School Dist.* (N.D.Cal. 2014) 2014 WL 2738214 at p. 6.) Determining whether a school district had reason to suspect a child may have a disability "must be evaluated in light of the information the district knew or had reason to know, at the time relevant time, not in hindsight." (*Ibid.*)

13. While a school district has an obligation to conduct an assessment of a general education student suspected of needing special education and related services, a student "shall be referred for special education *only* after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code § 56303, emphasis added.) The IDEA acknowledges that "[g]reater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities." (20 U.S.C. § 1400(c)(12)(A).) The IDEA further acknowledges that "African-American children are identified as having mental retardation and emotional disturbance at greater rates than their White counterparts." (*Id.* at § 1400(c)(12)(C).)

14. Sacramento City was required to obtain informed consent from Parents before the initial provision of special education and related services to Student. (See 34 C.F.R. § 300.300(b).) When Parents did not consent to the initial provision of special education and related services provided in the May 8, 2012 IEP, Sacramento City was not permitted to use the mediation or the due process procedures in order to obtain an agreement or a ruling that the services could be provided to Student. (See 34 C.F.R. §

300.300(b)(3).) Because Parents never consented to the May 8, 2012 IEP, Student was appropriately considered a general education student at the time he enrolled in Alice Birney in September 2013.

15. Parents contend that Student should have been found eligible for special education and related services under the eligibility category of SLD in connection with the Student Study Team meeting held on December 18, 2013. A Student Study Team meeting is a general education meeting called to address parent and teacher concerns regarding a student's academic performance and behavior. The Student Study Team meeting is not the proper forum to make special education eligibility determinations. (See 20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. §§ 300.305(a)(1)–(2), 300.306(a)(1).)

16. Even assuming the Student Study Team meeting was the proper forum for Sacramento City to determine Student's eligibility for special education, Sacramento City did not deny Student a FAPE by failing to find him eligible for special education under SLD in connection with the Student Study Team meeting. As a general education student, Sacramento City was obligated to consider whether Student's difficulties in reading could be addressed by general education resources and interventions before assessing Student for special education. Sacramento City acted reasonably when it convened a Student Study Team meeting on December 18, 2013, which was only a few months after Student began school at Alice Birney, once Sacramento City became aware Student was having difficulties in reading in Ms. Vanderklay's class. By the time of the Student Study Team meeting, Ms. Vanderklay had only had a limited amount of time to observe Student in the general education setting. Sacramento City was aware that Parents and Ms. Vanderklay were concerned about Student's reading abilities, as this was discussed at the Student Study Team meeting. Also, Sacramento City was aware that Student had been previously assessed and found eligible for special education and related services under the category of OHI in May 2012, even if individual members of

the Student Study Team meeting may not have been personally aware of those assessments. However, the assessments supporting the OHI eligibility determination were not recent, as they had been conducted while Student was in first grade — two school years earlier. Sacramento City simply did not have enough recent information about Student to cause the District to suspect he had a specific learning disability that was affecting his educational performance at the time of the Student Study Team meeting. And Student did not establish he met the eligibility category of SLD at the time of the Student Study Team meeting.

17. In connection with the Student Study Team meeting, Sacramento City established several general education interventions and accommodations, including allowing Student to attend an informal reading group taught by Mr. Dopkins three times per week for 30 minutes each session. In attempting to address Student's needs by initially using general education interventions and accommodations, Sacramento City acted consistent with the spirit of the IDEA in making an effort to prevent the intensification of problems connected with mislabeling minority children with disabilities. Sacramento City acted reasonably in light of the information known to the District at the time of the Student Study Team meeting, and did not deny Student a FAPE by failing to find him eligible for special education and related services under the eligibility category of SLD in connection with the Student Study Team meeting.

18. Parents unpersuasively testified that they orally requested Student be assessed for special education and related services at the parent-teacher conference in November 2013 and during the Student Study Team meeting. Parents were well aware of the procedures necessary to request assessment of Student. Indeed, Parents made written requests for assessment on February 10, 2012 and March 13, 2012, which were approved and provided by Sacramento City. On March 15, 2014, Parents made another written request to assess Student, which was approved and provided by Sacramento

City. Not one Student Study Team member testified Parents made assessment requests at the meeting. To the extent that Student is attempting to argue that Sacramento City violated its child find duties by failing to assess Student in connection with Parents' oral requests for assessment, that claim is not at issue for purposes of this Decision, and, if it were, Student has not established that such a violation occurred or that a request for assessment at the Student Study Team meeting would have made him eligible under SLD at the time of the meeting.

19. Even if an argument could be made that Student continued to be eligible for special education at the time of the Student Study Team meeting based on the eligibility determination in the May 8, 2012 IEP, Sacramento City's failure to add SLD as an additional basis for special education eligibility did not procedurally deny Student a FAPE. In order for a child to be eligible for special education in California, the child must have a disability as defined by state and federal law. (34 C.F.R. § 300.8(a); Ed. Code, § 56026, subds. (a)-(b).) However, nothing in the IDEA requires children to be classified by their disabilities. (20 U.S.C. § 1412 (a)(3)(B).) As long as a child remains eligible for special education and related services, the IDEA does not require the child to be placed in the most accurate disability category. (20 U.S.C. § 1412 (a)(3)(B) ("Nothing in this title [20 USCS §§ 1400 et seq.] requires that children be classified by their disabilities so long as each child who has a disability ... and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under [the IDEA].").) The IDEA "does not give a student the legal right to a proper disability classification." (*Weissburg v. Lancaster School Dist.* (9<sup>th</sup> Cir. 2010) 591 F.3d 1255, 1259; see also *Heather S. v. State of Wis.* (7<sup>th</sup> Cir. 1997) 125 F.3d 1045, 1055 ["The IDEA charges the school with developing an appropriate education, not with coming up with a proper label with which to describe [the student's] multiple disabilities."].)

20. On May 8, 2012, Sacramento City convened an IEP Team meeting. The IEP



Team found Student eligible for special education under the primary category of OHI because Student's diagnosed ADHD was impacting his access and progress in the general curriculum. The IEP Team did not find Student eligible for special education under SLD because Student did not have a severe discrepancy between his ability and academic achievement at the time he was assessed.

21. Assuming Student continued to remain eligible for special education at the time of the Student Study Team meeting based on the May 2012 eligibility finding, he was entitled to an IEP that met all of his disability-related needs, whether those needs would separately qualify him for eligibility or not. Indeed, Student's expert, Dr. Christo, agreed to this fact in her testimony. The IDEA and related laws do not entitle Student to eligibility under any particular category. Sacramento City's failure to find Student eligible for special education under SLD at the time of the December 18, 2013 Student Study Team meeting, by itself, did not violate special education law, even if that determination was incorrect at the time. Student was already entitled to a FAPE after being found eligible for special education, no matter what eligibility category qualified him for special education.

22. Had Parents consented to the implementation of the May 8, 2012 IEP, Sacramento City would have provided Student with special education to address his reading fluency and reading comprehension needs in the form of group specialized academic instruction four times per week for a total of 120 weekly minutes. Student would have also received simplified instructions, written and visual aids, frequent repetition, preferred seating, frequent breaks as needed, positive reinforcement, and frequent checks for understanding. The evidence did not establish that the FAPE offer provided in the May 8, 2012 IEP would not have met his needs at the time of the December 18, 2013 Student Study Team meeting

23. For all these reasons, Sacramento City did not commit a procedural

violation resulting in a denial of FAPE by failing to find Student eligible for special education and related services under the eligibility category of SLD in connection with the Student Study Team meeting held on December 18, 2013.

ISSUE 2: SACRAMENTO CITY DID NOT DENY STUDENT A FAPE DURING THE 2014-2015 AND 2015-2016 SCHOOL YEAR, BEGINNING WITH THE JUNE 13, 2014 IEP, BY FAILING TO IDENTIFY OR DESCRIBE THE SPECIFIC READING METHODOLOGY TO BE USED WITH STUDENT ON HIS IEP.

24. Student's issue is whether Sacramento City committed a procedural violation by not specifying the methodology to be used in Student's IEP during the relevant period. Sacramento City contends there is no requirement that Sacramento City identify or describe the specific reading methodology to be used with Student on his IEP.

25. 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 to the child to advance him in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

26. An IEP is developed, reviewed, and revised in an IEP meeting. (34 C.F.R. 300.320(a).) The IEP must include, among other items, a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child. (34 C.F.R. 300.320(a)(4).) The IEP must also contain the projected date for the beginning of the services and modifications, the anticipated frequency, location, and duration of those

services and modifications. (34 C.F.R. 300.320(a)(7).)

27. The IDEA does not require that the IEP identify the specific methodology that a school district will use for a student. The Education Department stated “[t]here is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies.” (*Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed.Reg. 46665 (August 14, 2006).) On this point, the Education Department went on to say that it is the Education Department’s longstanding position that an IEP Team decides whether to include instructional methodologies in a child’s IEP. (*Ibid.* [However, “[i]f an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.”].) The methodology used to implement an IEP is left up to the school district’s discretion so long as it meets a student’s needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Adams v. State of Or.* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*); *Pitchford v. Salem-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *Lt. ex rel. T.B. v. Warwick School Com.* (1st Cir. 2004) 361 F.3d 80, 84.)

28. The Ninth Circuit, in *Mercer Island, supra*, 592 F.3d at page 952, reiterated its position in *Adams* that a district is not necessarily required to disclose its methodologies. (See also *S.M. v. Hawai’i Dept. of Education* (2011 D. Hawaii) 808 F.Supp.2d 1269 [affirming the determination in *Mercer Island*. that methodologies to address a student’s needs do not have to be specified in the IEP].) In *Mercer Island*, the court found that it is not necessary for a school district to specify a methodology for each student with an IEP if specificity is not necessary to enable the student to receive an appropriate education. (*Mercer Island, supra*, 592 F.3d at p. 952.) In finding that the district had not committed a procedural violation of the Act by failing to specify the teaching methodologies it intended to use, the court stated, “We accord deference to

the District's determination and the ALJ's finding that J.L.'s teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective." (*Ibid.*)

29. In this case, for the 2014-2015 and 2015-2015 school years, each of Student's IEP's provided the projected date the services and modifications were to begin, the anticipated frequency, location, and duration of those services and modifications. Those same IEP's included a statement of the special education and related services and supplementary aids and services to be provided to Student. However, none of the IEP's identified or described the specific reading methodology to be provided to Student during the relevant time period.

30. Student's contention that Sacramento City procedurally denied him a FAPE by failing to identify or describe the specific reading methodology to be used with him in his IEP's is not supported in law or fact. State and federal law do not require Sacramento City to include specific instructional methodologies absent a showing that specificity is necessary to enable Student to receive an appropriate education. Student did not make that showing.

31. At the IEP meetings, during the relevant period, much discussion occurred about Student's inconsistent and varied readiness and interest in instruction each day. Based on those discussions, substantial evidence established Student's teachers needed flexibility in providing various teaching methodologies and strategies to be effective in providing instruction to Student, both in the general education classroom and while Student received specialized academic instruction. The evidence did not establish that it was necessary for Sacramento City to identify or describe the specific methodology to be used by Student in his IEP. Student's own witness, Dr. Christo, testified that it was not necessary for the methodology to be specified in his IEP for Student to make progress. Instead, the evidence established that it was essential that Student's teachers have the

flexibility to use different teaching methodologies and strategies on any given day for Student to access his education.

32. Parents were not in the dark about the methodology being used by Ms. Vanderklay and in the resource room. The IEP Team met on six occasions between June 2014 and October 2015. The IEP Team extensively discussed the types of methodology used by Mr. Dopkins during Student's specialized academic instruction in reading in the resource room. During the relevant IEP meetings, the IEP Team discussed the methodology used in the general education classroom at Alice Birney. Parents were provided with a written report from Mr. Dopkins about the methodology used in the resource room and the research to support those methodologies. Parents met with Mr. Dopkins and Ms. Horning immediately after an IEP meeting to ask additional questions and receive additional information about the methodology used to teach Student to read and the methodology used for all students in the general education classroom. Parents even observed Student in the resource room on three separate occasions.

33. However, even assuming Sacramento City's failure to identify or describe the specific reading methodology to be used with Student on the relevant IEP's was a procedural violation, the procedural violation did not result in a denial of FAPE. As discussed above, a procedural violation results in a denial of a FAPE only if the violation impedes the child's right to a FAPE; significantly impedes Parents' opportunity to participate in the decision-making process, or causes a deprivation of educational benefits.

34. Here, the evidence did not establish that failing to identify or describe the specific reading methodology on Student's IEP impeded his right to a FAPE or deprived him of educational benefit. There was no evidence to show that identifying or describing the specific reading methodology to be used with Student on his IEP would have changed the educational approach used by Student's teachers or the services provided

to Student by Sacramento City. The evidence established Student received specialized academic instruction at all times Sacramento City was required to provide such instruction. While Parents, and to some extent Parents' experts, do not agree that the specific reading methodology provided to Student was beneficial for Student, that belief is not sufficient to establish that the failure to identify or describe the specific reading methodology impeded Student's right to a FAPE or caused deprivation of educational benefits.

35. Additionally, the evidence established Parents had substantial opportunity to participate in the decision-making process in developing Student's IEP's. Parents were afforded an opportunity to participate in IEP meetings with respect to the identification, evaluation, and educational placement of Student and the provision of FAPE to Student, as evidenced by Parents' regular attendance and active involvement at every IEP meeting during the relevant period. Parents expressed their disagreement with the IEP Team's conclusions orally and in writing, and requested revisions to Student's IEP's on multiple occasions, evidencing their participation in the decision-making process. At the IEP meetings, convened during the relevant period, the IEP Team thoroughly considered and discussed all of Parents' concerns. Accordingly, even if Sacramento City committed a procedural violation by failing to identify or describe the specific reading methodology to be used with Student on the IEP's at issue, that procedural violation did not result in a denial of FAPE.

36. Student cites *Evans v. Rhinebeck Central School Dist.* (S.D.N.Y. 1996) 930 F.Supp. 83, to support his position that without specifying an appropriate reading intervention methodology, Student's IEP's for the 2014-2015 and 2015-2016 school years were not reasonably calculated to provide him with educational benefit. Student's Issue Two, however, is not whether the reading intervention provided by Sacramento City was appropriate or reasonably calculated to provide educational benefit to Student.

Rather, the issue is a procedural one — whether Sacramento City denied Student a FAPE by failing to identify or describe the specific reading methodology to be used with Student on his IEP. In *Evans*, the substantive issue raised by Student was whether the program proposed by the school district was reasonably calculated to provide Student with educational benefit. *Evans* is not dispositive in this case, because the issue raised by Student is a procedural issue.

37. Parents' frustration seems to be that Sacramento City was not providing a methodology during Student's specialized academic instruction that was evidence-based, and Parents believe the reading methodology provided in the resource room was not the best program for Student. If that is the case, Sacramento City's failure to identify or describe the specific reading methodology to be used with Student on his IEP would not quell Parents' concerns. While Student originally put at issue whether Sacramento City substantively denied Student at FAPE by failing to offer an Orton-Gillingham based reading methodology, that issue was withdrawn by Student on the first day of hearing, and is not being decided here.

**ISSUE 3A: SACRAMENTO CITY DID NOT DENY STUDENT A FAPE DURING THE 2014-2015 AND 2015-2016 SCHOOL YEAR BY FAILING TO IMPLEMENT THE ASSISTIVE TECHNOLOGY RECOMMENDATIONS IN THE JUNE 2014 ASSISTIVE TECHNOLOGY EVALUATION.**

38. Student contends that Sacramento City failed to implement the assistive technology recommendations in Ms. Brown's June 2014 assistive technology evaluation.<sup>17</sup> Sacramento City contends that the District implemented the assistive

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<sup>17</sup> Student also attempts to raise an issue in his closing brief that Sacramento City predetermined it would not offer or ever implement certain accommodations or assistive technology services. As Student never raised predetermination as an issue for hearing, it will not be addressed in this Decision. The Issues section above, details the

technology recommendations that Student needed to receive a FAPE.

39. An assistive technology device is any item, piece of equipment, or product system used to increase, maintain, or improve the functional capabilities of a child with a disability. (34 C.F.R. § 300.3.) Assistive technology service is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. (34 C.F.R. § 300.6.) In developing a child's IEP, the IEP Team must consider whether the child needs assistive technology devices and services. (34 C.F.R. § 300.324(a)(2)(v).) A school district must ensure that assistive technology devices and/or services are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. (34 C.F.R. § 300.105(a)(1)-(3).)

40. Sacramento City is obligated to provide Student with the special education and related services as listed in his IEP. (See 34 CFR § 300.323(c)(1)-(2).) A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.)

41. In March 2014, Parents requested Student receive an assessment to determine Student's need for assistive technology, accommodations, and/or other specific tools and strategies. Sacramento City agreed, and Ms. Brown completed an Assistive Technology Evaluation Report on June 6, 2014. In her report, Ms. Brown opined that Student would benefit from a device that is motivating, easy to use and portable, such as an iPad with applications to meet Student's needs in reading, mathematics, executive functioning, and the writing process. Ms. Brown provided additional

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four issues to be decided in this Decision.



recommendations for Student, including other electronic devices. Also, Ms. Brown provided suggested accommodations based on those recommendations. Ms. Brown indicated in her report that the final determinations of services were the responsibility of the IEP Team, and her report was provided to assist the IEP Team in making its determination regarding assistive technology for Student.

42. Ms. Brown reviewed her assessment and recommendations at the IEP meeting on June 13, 2014. The IEP Team deferred further discussion of Ms. Brown's recommendations to the next IEP meeting on September 24, 2014, so as to have a full discussion regarding how Student's assistive technology needs could be met using interventions that would work in harmony with the Waldorf method of instruction.

43. The IEP Team convened IEP meetings on September 24 and October 6, 2014. The IEP Team discussed how, in general, special education is delivered within the Waldorf model. At the meeting, Parents suggested that the team discontinue the discussion of assistive technology, including the use of an iPad, because they felt that Student was receiving the supports he needed at school and believed that an iPad would not work in concert with the Waldorf method.

44. The June 13, 2014 IEP was Student's operative IEP from September 4, 2014, the second day of the start of the 2014-2015 school year, through June 1, 2015, seven school days before the end of the 2014-2015 school year. Beginning June 2, 2015, through the time of hearing, the October 6, 2014 was Student's operative IEP. Parents never consented to the offer of FAPE provided in the October 15, 2015 IEP. All three IEP's must be analyzed to determine whether Student was denied a FAPE during the 2014-2015 and 2015-2016 school years based on Student's claim that Sacramento City failed to implement the assistive technology recommendations in Ms. Brown's June 2014 assistive technology evaluation.

45. In the June 13, 2014 IEP, Student was to receive many of the aids, services,

accommodations/modifications or supports that were recommended in Ms. Brown's report, including a reduced workload, verbal and visual cues to support task completion, project subjects provided to Student in advance to allow time Student time to gather reading materials, extended time for task completion, written and visual aids, chunking work, use of visual calendar, frequent repetition, alternate means of demonstrating understanding of curriculum being taught, and use of outlines and organizers. Parents never raised a concern that the supplementary aids, services, and other supports provided in the June 13, 2014 IEP were not being implemented during their discussions at subsequent IEP meetings during the 2014-2015 school year. In fact, at the October 6, 2014 IEP meeting, Parents suggested that the team discontinue the discussion of assistive technology as they felt that Student was receiving the supports that he needed in the classroom. Student did not establish that the program modifications, accommodations and supports were not being implemented during the school year.

46. The October 6, 2014 IEP contained the same supplementary aids, services, and supports offered in the June 13, 2014. Student did not establish that these aids, services, accommodations/modifications and supports were not implemented once Parents consented to the IEP on June 2, 2015. Ms. Vanderklay credibly testified that all of these services were provided for Student during the 2015-2016 school year up to the time of hearing, and Student did not provide sufficient evidence to rebut her assertions. Although in their June 2, 2015 letter Parents alluded to the fact that accommodations were not being consistently applied, Parents' testimony and Student's closing brief suggest that the accommodations Parents were referring to were not part of the IEP. Accordingly, Student did not establish that the District failed to implement the assistive technology recommendations provided by Ms. Brown that were contained in Student's IEP's for the 2014-2015 school year.<sup>18</sup>

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<sup>18</sup> Student's October 15, 2015 IEP is not discussed here, because Parents never

47. It was clear from the evidence, however, that Sacramento City did not incorporate all of Ms. Brown's recommendations into the June 13, 2014, October 6, 2014, and October 15, 2015 IEP's. Most notably, none of Ms. Brown's recommendations for electronic devices, such as an iPad, e-reader with text-to-speech and visual tracking, text-to-speech read back device, synced recorder and note taker, and iPad applications were provided to Student.<sup>19</sup> Ms. Horning testified that the Waldorf method does not incorporate the use of electronic devices into the classroom during the fourth grade year, and Sacramento City witnesses were clearly opposed to the use of electronic devices at Alice Birney for younger students. However, Sacramento City provides no legal authority to support the position that receiving special education at a public Waldorf school chosen by Parents prohibits the use of an electronic device for a special education student requiring its use. Put another way, Sacramento City is required to provide a program to Student to meet his unique needs, regardless of whether the program provided to Student is consistent with the Waldorf methodology being used at the school.

48. Nonetheless, Student did not demonstrate the failure of Sacramento City to include some of Ms. Brown's recommendations in Student's IEP's for the 2014-2015 school year denied him a FAPE. Ms. Vanderklay testified that Student received sufficient support in her classroom to address Student's needs that would be addressed with the use of the electronic devices recommended by Ms. Brown. Ms. Bryant and Ms. Beckman agreed with Ms. Vanderklay that alternative accommodations could be provided in lieu

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consented to the implementation of the services, accommodations and modifications provided therein.

<sup>19</sup> Student was never provided with any electronic devices in the classroom other than a calculator and timer.

of electronic devices to support Student in the classroom. Ms. Brown also recognized that there were other ways to provide supports to meet Student's needs without the use of assistive technology accommodations. Parents agreed that Student did not appear to need support through the use of an iPad at the October 6, 2014 IEP meeting. In Parents' June 2, 2015 letter that provided Parents' exceptions to the October 6, 2014 offer of FAPE, Parents stated they were not requesting Ms. Brown's recommendations that required Student to operate electronic technology in the classroom. Student did not establish that during the 2014-2015 school year, the assistive technology recommendations in Ms. Brown's report that were not already provided in Student's IEP were required for him to access his education and make progress towards his goals.

49. Sacramento City provided accommodations, both through the general education Waldorf curriculum and as provided in Student's IEP's, to meet Student's needs that would have been addressed through the use of assistive technology. Student was able to access the curriculum through numerous modalities through the use of music, dance, storytelling, handwork, and cooking. These modalities provided Student an experiential way to learn the curriculum without the need for an iPad. Student received his lessons through the use of stories read or told aloud by Ms. Vanderklay or the class read text together as part of the Waldorf methodology provided to all students. This addressed Student's need for an e-reader in the classroom. And when Student needed assistance with writing his work, Ms. Vanderklay acted as a scribe and he was able to dictate to her, eliminating the need for a synced recorder and note taker device. This was explicitly provided in Student's October 15, 2015 IEP, although Ms. Vanderklay provided this accommodation prior to this time. All of Student's IEP's during the relevant period also provided for use of outlines and organizers and reducing copying from the board to address Student's needs underlying the recommendation for a synced recorder, note taker device, and photo-based scanner application. Student

received visual schedules of his day in class, visual calendars, and visual aids, as provided in his June 13, 2014, October 6, 2014, and October 15, 2015 IEP's, and Parents received communication from Ms. Vanderklay about Student's lessons and homework, all to address the same needs underlying the recommendation for visual schedule planner and photo-based scanner applications for an iPad.

50. Similar to the IEP's operative during the 2014-2015 school year, the October 6, 2014 and October 15, 2015 IEP's did not incorporate all of Ms. Brown's recommendations into the October 6, 2014 and October 15, 2015 IEP's. None of Ms. Brown's recommendations for electronic devices, such as an iPad, e-reader with text-to-speech and visual tracking, text-to-speech read back device, synced recorder and note taker, and mathematics applications were provided to Student. Although Parents did request that the IEP Team implement all accommodations in Ms. Brown's report that did not expressly require Student to operate electronic technology in the classroom and permit Student to conduct research and complete assignments with the assistance of voice-to-text and text-to-voice software and word prediction applications so that he may benefit from his fifth grade education, Student did not demonstrate that any failure of Sacramento City to include those recommendations in Student's IEP's for the 2015-2016 school year resulted in a denial of FAPE. Ms. Vanderklay credibly testified that Student was being supported in the classroom through his IEP without the need for additional supports as recommended by Ms. Brown. Student did not establish that during the 2015-2016 school year, up to the time of hearing, Student needed any of the recommendations that were not already provided in his IEP's to access his education.

51. Overall, the IEP Team considered Ms. Brown's assistive technology evaluation, and discussed Student's assistive technology needs at all of the IEP meetings at issue. The evidence did not establish that Student's needs were not being appropriately addressed by the program modifications and accommodations provided

in his IEP's.

ISSUE 3B: SACRAMENTO CITY DID NOT DENY STUDENT A FAPE DURING THE 2014-2015 AND 2015-2016 SCHOOL YEAR BY FAILING TO OFFER STUDENT A ONE-TO-ONE AIDE.

52. Student contends that Sacramento City's failure to provide a one-to-one aide during the 2014-2015 and 2015-2016 school years, beginning with the June 13, 2014 IEP, resulted in a denial of FAPE to Student. Sacramento City contends Student did not require a one-to-one aide to access his education.

53. A school district's offer of special education services constitutes a FAPE if the offer is designated to meet the student's unique needs, comports with the student's IEP, and is reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams, supra*, 195 F.3d 1141 at p. 1149 [*citing Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041].)

54. The IDEA requires that qualified personnel provide special education and related services. (34 C.F.R. § 300.156(a).) The IDEA defines the term "qualified personnel" as personnel who are appropriately and adequately prepared and trained, and who possess the content knowledge and skills to serve children with disabilities. (*Id.* at (a)-(c).) Paraprofessionals may assist in the provision of special education and related services if they are "appropriately trained and supervised, in accordance with State law, regulation, or written policy . . . ." (*Id.*; 20 U.S.C. § 1412(a)(14)(B)(iii).) A paraprofessional means an "educational aide, instructional aide, special education aide, special education assistant, teacher associate, teacher assistant, teacher aide, pupil service aide, library aide, child development aide, child development assistant, and physical education aide."

(Ed. Code, § 44392, subd. (e).)

55. Parents requested a one-to-one aide for Student in their letter to Ms. Bryant and Ms. Horning, dated June 13, 2014. Parents' request for an aide was to assist Student and Ms. Vanderklay in implementing and integrating the services and accommodations in the June 13, 2014 IEP into the general education classroom. Sacramento City provided Parents with a paraprofessional support assessment questionnaire about Student, and Ms. Horning and Ms. Vanderklay also provided responses to a separate paraprofessional support assessment questionnaire in or around September 2014. At that time, and all times relevant to this issue, Ms. Vanderklay did not believe Student required a one-to-one aide to access his education. Ms. Horning, Ms. Bryant, and Ms. Beckman agreed that Student did not need a one-to-one aide to meet his needs. During the September 24, 2014 IEP meeting, Parents held the same belief, and told the IEP Team they no longer believed Student needed additional adult support, and revoked their request for an adult assistant assessment. Parents followed up with a letter to Ms. Bryant and Ms. Horning, dated September 30, 2014, confirming the rescission of their request for an assessment for additional adult support for Student. The evidence did not establish that Student needed a one-to-one aide to access his education at that time.

56. At the end of the 2014-2015 school year, Parents renewed their request for a one-to-one aide for Student based on their belief that the alternative strategies and accommodations discussed with school staff were not being applied or implemented. Based on the statements in Parents' letter, it appears Parents wanted an aide to increase communication and coordination between school and home, which Parents believed would enhance Student's "success." Parents further explained at subsequent IEP meetings and at hearing that their request for a one-to-one aide was to allow communication with Parents about Student's homework and lessons, to act as a reader

or scribe in the classroom, when necessary, and to ensure Student was eating and drinking appropriately throughout the day.

57. The IEP Team discussed Parents' concerns and request for an aide at Student's IEP meetings during the relevant period. The evidence established Student was receiving support throughout the day from his teachers when needed. Although Parents renewed their request for a one-to-one aide for the 2015-2016 school year, the evidence established that the supports provided by Ms. Vanderklay throughout the day were sufficient to support Student in his educational tasks, which does not support the need for a one-to-one aide. Each IEP for the 2014-2015 and 2015-2016 school years provided for the use of outlines and organizers, reducing copying from the board, and using Student's main lesson book format to create support for executive functioning, all of which were accommodations that would eliminate the need for a scribe. Moreover, Student did not establish that the school to home communication about his homework and lessons was insufficient. Ms. Vanderklay provided Parents sufficient information about Student's day. However, even if the school to home communication was not sufficient to apprise Parents of Student's lessons and homework each day, the evidence did not establish that the level of communication Parents were seeking about Student's school day was necessary for Student to receive a FAPE.

58. Student's lack of appetite was directly connected to the side effects of his ADHD medication. Since Student discontinued his medication in November 2014, his need to eat and drink more during the school day was no longer an issue. While Student was still on his ADHD medication, during the 2014-2015 school year, several accommodations were provided by Ms. Vanderklay to ensure Student was eating and drinking throughout the day. Notably, even though Parents were quite concerned about Student's weight, Student's psychiatrist did not share in this concern. Student did not establish that the medication's effect on his appetite affected his ability to access the



curriculum requiring the need for a one-to-one at any time.

59. Overall, the evidence did not establish Student was unable to receive educational benefit without a one-to-one aid. As a result, Student was not denied a FAPE during the 2014-2015 and 2015-2016 school years, beginning with the June 13, 2014 IEP through the date of hearing, by Sacramento City's failure to offer Student a one-to-one aide.

## ORDER

Student's requests for relief are denied.

## PREVAILING PARTY

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

## 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: April 27, 2016

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/s/

DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings