

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

HEALDSBURG UNIFIED SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016051024

DECISION

Healdsburg Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on May 23, 2016, naming Student. The matter was continued for good cause on June 1, 2016 and again on June 20, 2016.

Administrative Law Judge Cheryl Carlson heard this matter in Healdsburg, California, on July 26, 2016.

Carl D. Corbin, Attorney at Law, represented Healdsburg Unified School District. Diane Conger, Healdsburg's Director of Special Education, attended the hearing on Healdsburg's behalf. Father represented himself and Student. Student was not present at the hearing.

On July 26, 2016, after the parties made oral closing arguments, the record was closed and the matter was submitted for decision.

## ISSUES<sup>1</sup>

May Healdsburg exit Student from special education and related services under the category of speech and language impairment because he is no longer eligible?

## SUMMARY OF DECISION

This decision holds that Student no longer meets the eligibility requirements for special education in the category of speech or language impairment, and may be exited from special education and related services under that category.

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<sup>1</sup> The issue has been reframed 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 Sch. Dist.* (9<sup>th</sup> Cir.2010) 626 F.3d 431, 442-443.) Although the issue in this case as framed by Healdsburg asks that Student be exited globally from special education; the evidence established that Student has only been found eligible for special education under the category of speech or language impairment. Healdsburg presented some written reports at the hearing which stated that Student did not meet the eligibility criteria for a specific learning disorder; however, neither party presented evidence regarding a potential specific learning disability at the hearing. Therefore, no findings of fact or conclusions of law will be drawn in this decision regarding eligibility categories other than speech or language impairment. This decision addresses the more narrow issue of whether Healdsburg may exit Student from special education and related services because he is no longer eligible under the category of a speech or language impairment, and if so, whether he can be exited from special education and related services.

## FACTUAL FINDINGS

### JURISDICTION

1. Student is a ten-year-old male who currently resides with his Parents within the geographical boundaries of Healdsburg. Student was initially found eligible for special education under the category of speech or language impairment on October 19, 2011, when he was four years old. Student attended school in the Clovis Unified School District for the 2014-2015 school year. Student moved to the Healdsburg Unified School District at the beginning of the 2015-2016 school year. At the time Student left the Clovis school district, he was receiving speech and language services for articulation and intelligibility issues.

### THE CLOVIS SPEECH AND LANGUAGE ASSESSMENT – SEPTEMBER 2014

2. On September 23, 2014, Clovis convened Student's annual IEP team meeting during which they reviewed his triennial assessments, including his speech and language assessment. At that time, Student's disability affected his involvement and progress in the general curriculum because his articulation delays interfered with his communication skills with others, and possibly impacted his academic functioning. Parents were concerned about how well others understood him and about Student's frustration when others did not understand him.

3. The Clovis report established that Student's overall speech production was in the average range as measured by a standardized articulation test, but his intelligibility to an unfamiliar listener was a relative weakness at only 85 percent. Specifically, during a conversational sample, Student produced sound substitutions such as w/r, kw/kr, and tr/str.

4. Within the classroom setting, Student produced clear speech, but he sometimes made errors in his spelling and written language. In regards to language

skills, Student contributed relevant comments during class discussions, volunteered to answer questions during instructional activities, followed oral directions of varying lengths, understood new information quickly, asked questions when he did not understand information or directions, and demonstrated age appropriate communication skills when he interacted with peers. Student could sometimes answer questions involving inference prediction or comparison, and could express his ideas in a logical sequence. The assessor recommended that Student continue to receive speech and language services in order to facilitate further growth in his overall intelligibility. The Clovis IEP team prepared goals for Student's areas of need in articulation and intelligibility and offered 120 minutes per month of individual speech and language services.

5. The evidence established that by September 2014, Student had articulation and intelligibility deficits. However, he did not use an abnormal voice, did not have a fluency disorder, or an expressive or receptive language disorder indicative of a speech or language impairment in any other area.

#### Clovis Speech and Language Progress Reports

6. The January 29, 2015 progress report established that Student's ability to produce sounds in sentences had increased overall. He was able to produce the r sound correctly at the beginning of words 95 percent of the time, although he would occasionally slip on an initial r sound if an "L" sound was in the word with the r such as in roller. His r blends in sentences had increased to 100 percent accuracy although his str blend was 85 percent accurate. The March 29, 2015 progress report established that student's initial r sound and r blends had increased to 100 percent accuracy. His str blend had increased to 90 percent accuracy. While reading aloud, Student maintained the production of initial r blends with 100 percent accuracy and r and str blends with 90 percent accuracy. The speech and language pathologist trained Student to monitor his

own speech as he conversed with others.

7. The evidence established that by March 2015, Student had made significant progress in resolving his articulation and intelligibility deficits but needed to monitor his clarity when producing the r sound in blends or when in a sentence that also contained an l or w sound.

#### HEALDSBURG RECOMMENDATION TO EXIT STUDENT FROM SPEECH AND LANGUAGE SERVICES

8. After Student transferred to Healdsburg for the 2015-2016 school year, he met individually with the Healdsburg speech and language pathologist, Maureen Rauch, on September 4, 2015. She noticed a slight distortion of the r sound on two words; however, she found Student's speech was 100 percent intelligible. Student also met with Ms. Rauch on September 9 and 14, 2016 in a small group. His speech was completely free of any sound errors. Student's general education teacher, Elvira Uresti Regan confirmed that she had not heard any sound errors in Student's speech since the school year began.

9. Student had never attended school in Healdsburg before the 2015-2016 school year. The annual IEP team meeting was held September 15, 2015 as Student was beginning third grade. Student's teacher reported that he acclimated well to the classroom, was functioning at grade level in all academic areas, and that he was an active participant in the classroom. The IEP document also referred to the Clovis IEP triennial assessment findings which stated Student demonstrated age appropriate language skills in vocabulary, sentence structure, and conversation.

10. The Healdsburg members of Student's IEP team determined that Student was no longer eligible for continued special education services because he no longer met the criteria for a communication disorder, and did not have an articulation delay which adversely affected his educational performance. They suggested Student could

continue to practice the r sound within the general education setting and at home. The school IEP team members therefore recommended that Student be exited from special education. His prior goals were met as of September 15, 2015.

11. Student's Parents did not agree with the findings and recommendation. Parents reported that there were times when Student's speech was not clear and that his family did not always understand him which caused Student frustration. This was not observed at school, so the school IEP team members suggested home practice to help carry-over correct speech production outside of the academic setting. This could consist of Student reading aloud or conversing with a family member for five minutes per day, after the family member gave one reminder to say all sounds, including r correctly. Parents reported that Student had been receiving individual speech services at his last school because he had been teased by other students. The IEP school team told the Parents to inform the school if this happened at Healdsburg.

12. The IEP team agreed to continue the meeting so that Diane Conger, the Director of Special Education, could attend a follow up IEP team meeting.<sup>2</sup> Instead of scheduling another IEP team meeting, Ms. Conger met with Parents on September 24, 2016. At the meeting Parents again objected to Healdsburg's request to exit Student from special education. Therefore, on September 24, 2015, Ms. Conger sent Parents a

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<sup>2</sup> Ms. Conger received a bachelor of arts degree in liberal studies in 2000, a multiple subjects teaching credential in 2005, and a masters of arts degree in special education in 2012. She became board certified as a behavior analyst in 2013. Ms. Conger began working for Healdsburg as a special education and reading intervention teacher in 2006. She worked as the interim principal, special education teacher and behavior specialist between 2010 and 2012. Ms. Conger has been the director of special education and behavior specialist for Healdsburg since 2012.

prior written notice denying Parent's request for continued speech services for Student. The letter referred to Student's standardized assessments, information provided at the IEP meeting, progress on goals, input from the general education teacher, and informal assessments and probes with the student and input from the parents. In her letter Ms. Conger also stated that the day before, on September 23, 2015, she had spoken and read with Student for approximately 25 minutes. During that time, Ms. Conger did not hear any articulation errors, and Student was 100 percent intelligible in an informal, unfamiliar setting.

13. When Ms. Conger met with Student on September 23, 2015, she did so outside the scope of an assessment plan. Ms. Conger is not a speech therapist and was not authorized to conduct any assessments of Student. Therefore no weight is given to Ms. Conger's testimony regarding Student's articulation abilities or regarding any results she may have obtained from this unauthorized "assessment".

14. On November 4, 2015, Healdsburg filed a mediation only request with OAH. The mediation resulted in an agreement wherein Student would receive a speech and language assessment to be conducted by a licensed speech and language pathologist from the Windsor Unified School District.

#### SPEECH AND LANGUAGE ASSESSMENT - MARCH 18, 2016

15. The parties selected Elizabeth Watson to conduct the articulation assessment to determine whether Student continued to have a speech or language impairment. Ms. Watson was qualified to conduct the speech and language assessment. She obtained her bachelor of science degree in speech and language pathology in 1980, and a master of science in speech and language pathology in 1982. Ms. Watson worked as a speech and language pathologist in the state of Nebraska and in Los Angeles County between 1982 and 1992. She moved to Northern California in 1992. Since then, Ms. Watson has worked in the preschool speech and language programs for the

Bellevue School District, the Sonoma County Office of Education and the North County Consortium where she is currently working. Ms. Watson has performed approximately 5,000 speech and language assessments in her career.

16. Ms. Watson assessed Student's articulation ability. As part of her assessment, Ms. Watson reviewed Student's triennial speech and language assessment report conducted in September 2014 while he was in Clovis. Based on the Clovis report, Ms. Watson concluded that at that time, Student had age appropriate articulation skills when saying single words, but that he misarticulated the r sound in conversations which made him difficult to understand at times. His receptive and expressive vocabulary skills were within the average range. Student's use of sentence structures and grammar, as well as his pragmatic language abilities, were age appropriate. Ms. Watson's conclusions were supported by the evidence. Her conclusions are accepted as an accurate determination of Student's articulation and speech and language abilities.

17. Ms. Watson administered the Goldman Fristoe 3 Test of Articulation known as the GFTA3 to Student. This test examines the use of speech sounds in all word positions at both the single word level and within sentences. The test results include a standard score and a percentile rank to compare Student's abilities and scores to the abilities and scores of other children his age. Standard scores within the 85 to 115 range are within the average range of abilities. Percentiles falling within 16 to 84 percent are within the average range, and 50 is the median. The results of Student's "sounds in words" test showed Student had no errors in his raw score; he had a 108 standard score, and he was in the 70th percentile. His "sounds in sentences during a story retell" test showed no errors in his raw score; a standard score of 111, and the 78th percentile. Ms. Watson established that Student's intelligibility during this task was good (the highest rating).

18. Ms. Watson concluded that Student's ability to articulate sounds within

words and within sentences was age appropriate. Student correctly articulated all speech sounds during the administration of this test. He read two, lengthy fourth-grade level reading passages aloud. Student articulated all words within both passages correctly. He stumbled upon a few multi-syllable words within the passages but was able to self-correct these words. He was able to summarize what he read and answered questions appropriately about what he read. Student also correctly articulated his words within his conversational speech. Ms. Watson easily understood Student in all contexts.

19. Ms. Watson asked Student to rate himself as a speaker in different situations. She asked him to rate himself as a "good speaker" (easily says words, feels comfortable speaking), and on a "not good" basis (difficulty pronouncing words clearly, feeling comfortable speaking). Student felt he was a "good" speaker at home and at recess with his friends. He was "not good" at speaking during class. When questioned further, Student stated he was not concerned about how he pronounced his words as he could easily say the words, but was reluctant at times to speak in front of the class when everyone was paying attention to him. Student told Ms. Watson that he was preparing a report on ecosystems that he would soon share with the class and was very excited about the project. Student really liked school because he enjoyed being around his friends. He described himself as a good student who received good grades.

20. Ms. Watson conducted an "Informal Language Sample" test with Student. She judged Student's speech intelligibility as good. She easily understood him in all contexts. The length and complexity of his utterances were well within age appropriate limits. Student used both simple and complex sentence structures to communicate. Ms. Watson judged his vocal quality as appropriate for his gender and age. His fluency skills were also well within normal limits.

21. Ms. Watson interviewed Student's Healdsburg speech therapist and his general education teacher, and reviewed Student's health history as part of her

assessment. She also noted the results of a hearing evaluation completed in February 2016 which revealed a moderate to severe hearing loss in Student's right ear. A CAT scan at that time revealed a pearl sized growth in Student's middle ear that Student's physician speculated might be related to scar tissue from a previous surgery. Ms. Watson did not have a copy of the audiogram at the time she wrote her report. However, Ms. Watson concluded that if Student did have a hearing loss, it did not affect his speech.

22. Ms. Watson described Student as a willing and motivated participant in the evaluation process. He was very verbal and readily responded to Ms. Watson's requests and participated in conversations. Student was initially shy, but soon warmed up to the evaluation process. Ms. Watson believed the data obtained was a representative sampling of Student's speech and language skills. Ms. Watson concluded that Student's scores were outside the speech and language eligibility window as his test scores were above the seventh percentile, and not 1.5 standard deviations below the mean in two or more subtests on the GFTA3. Ms. Watson concluded that based upon the results of her evaluation, teacher reports, current therapist reports and Ms. Watson's observations, Student was no longer eligible to receive speech and language therapy services. His articulation skills were age appropriate at the time of her evaluation. Student's speech was easily understood in all contexts. She recommended that Student be dismissed from a speech and language therapy program with his objectives met.

23. Ms. Watson's testimony at the hearing was consistent with the conclusions she made in her report. She assessed Student in his remaining area of suspected speech and language impairment due to his articulation disorder. Ms. Watson credibly explained the formal GFTA3 she gave Student, the areas the test covered, and Student's performance on the test. Ms. Watson also incorporated the results of the Clovis assessor

who found that Student's receptive and expressive vocabulary skills were within the average range. Ms. Watson's report was knowledgeable, clear, and was not contradicted. Her testimony regarding Student's ineligibility for speech and language services is given great weight.

#### Parents' Claim of Bias In Ms. Watson's Assessment Process

24. Parents objected to Ms. Watson's speech and language assessment on the ground that Ms. Watson spoke with the Healdsburg speech and language therapist while she was preparing her report. Father claimed this made Ms. Watson's report biased. He also believed that her conversation with the Healdsburg therapist violated the November 2015 mediation agreement. The parties did not introduce the mediation agreement into evidence; however, the November 17, 2015 IEP amendment did not include any limitations on the assessment prohibiting Ms. Watson from speaking with Student's current speech and language pathologist. The amendment merely stated that a speech assessment would be performed by the Windsor Unified School District. Father signed this amendment. Therefore Father's claim that Ms. Watson was prohibited from speaking to Student's current therapist is not supported by the weight of the evidence. The evidence established that the November 17, 2015 IEP amendment did not limit Ms. Watson's ability to speak with Student's speech and language therapist from Healdsburg.

25. Parents' objection to the speech and language assessment on the ground that Ms. Watson spoke with the Healdsburg speech and language pathologist, Ms. Rauch, is also not persuasive on other grounds. Ms. Watson established that her practice required her to obtain relevant information from the people currently working with Student, and that the Healdsburg speech and language pathologist had the most detailed information regarding Student's speech sound production during the 2015-2016 school year. When Ms. Watson conducts a speech and language assessment, the

standard of care requires her to obtain the child's background information from the child's current speech and language pathologist. Not to do so would render the report incomplete. Student offered no other evidence to substantiate his claim of bias. The evidence established that Ms. Watson's report was not biased.

26. The evidence further established that Student did not have an articulation disorder that significantly impaired his ability to communicate with others. The results of Student's most recent evaluations, information from Student's teacher, including grades, test scores, attendance and participation in the classroom setting established that Student did not have difficulty communicating with his general education teacher or with his classmates. Student met his articulation IEP goal. Student did not have significant deficits in his expressive, receptive and pragmatic language abilities. Therefore, Ms. Watson appropriately concluded that Student no longer qualified for special education services under the category of speech or language impairment.

#### DISCUSSION OF ASSESSMENTS - APRIL 22, 2016 IEP MEETING

27. The IEP team met to determine Student's eligibility for special education, to discuss whether he met eligibility criteria for a speech and language impairment and to determine whether to exit him from special education. The team also discussed Student's recent right ear hearing deficit and the possibility it might be related to a growth inside Student's middle ear. A CAT scan had been completed in February and Student had undergone further testing. Neither Father nor Healdsburg contended that Student's hearing deficit was causing a speech impairment. The IEP team had received an audiogram and forwarded it to a deaf and hard of hearing specialist; however the parties did not submit the findings of the specialist into evidence. During the IEP team meeting, Mother mentioned Student had a tendency to be too loud. The Healdsburg team members thought this might be attributable to his hearing loss. Student's classroom teacher did not think Student had any difficulties communicating with

students in the classroom. There was no evidence that Student's hearing deficit and his reported louder speech formed a basis for eligibility under speech and language impairment.

28. Ms. Watson summarized the results of her speech and language articulation testing at the April 2016 IEP meeting. She explained she was able to understand everything Student said. During the informal language sample testing, Student stumbled on some multi-syllable words but was able to correct himself. Ms. Watson concluded Student's stumbling was the result of a decoding error and not an articulation error. Father did not agree that it might be typical for a fourth grade student to feel uncomfortable speaking in front of the class. Instead, Father believed that Student was self-conscious about correcting himself in front of his peers and he did not want his peers to laugh at him. Father was concerned that Healdsburg was exiting Student too soon from speech and language services.

29. Despite Father's concerns, Ms. Uresti-Regan, Student's teacher established that Student did not stand out as a child who had any language issues at all in class. She only heard him say something incorrectly once when he stated "Iwene" instead of "Irene." Student self-corrected with his teacher's prompt. The teacher described him as a good student, average in class and happy. His behavior was good.

30. The school IEP team members found that Student did not meet eligibility criteria for a speech and language impairment. Student's Parents continued to object to the speech and language assessment based on their belief that the report was not conducted as agreed upon in the November 2015 mediation and that it was biased. Parents did not disagree with the findings in the report as much as "the way the assessment was conducted." At the hearing, Father did not present any evidence that Student had an articulation disorder or other speech and language impairment that made him eligible for speech and language services.

31. On April 27, 2016, Ms. Conger sent a letter to Parents in which she informed them that Healdsburg would be filing a request for a due process hearing. This action was based on the school IEP team's determination that Student did not meet any eligibility criteria for special education services because he did not have a disability at that time and did not demonstrate any academic impact that would require special education services.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>3</sup>

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C.

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<sup>3</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>4</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

§ 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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

definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

#### BURDEN OF PROOF

5. In this case Healdsburg filed the request for due process hearing; therefore it had the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 46 U.S. 49, 62 [163 L.Ed.2d 387].)

## SPEECH AND LANGUAGE ASSESSMENTS

6. No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).) Assessments must be conducted by individuals who are both “knowledgeable of [the student’s] disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).)

7. Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student’s primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56320, subd. (a).) An assessor must produce a written report of each assessment that includes whether the student may need special education and related services, and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

8. Healdsburg contends that the speech and language assessments conducted by Clovis and Ms. Watson showed Student no longer qualified for special education speech services. As a result, Healdsburg contends Student should be exited from special education. Student contends that Ms. Watson’s assessment should not be relied upon because it was not legally compliant. He claims that the independent speech and language assessor became biased when she spoke with the Healdsburg speech and language therapist while the assessor was preparing her report.

9. Ms. Watson was qualified and trained to conduct the speech and language assessment, and to administer the test instruments. She administered standardized speech and language instruments which were appropriate to measure Student’s

articulation ability. These instruments were valid and reliable. Ms. Watson also interviewed Student's speech and language pathologist at Healdsburg, reviewed reports from Student's current teacher and prepared a written report. All of the tests given by Ms. Watson were validated and were appropriate for the purpose used. None of the tests were racially, culturally or sexually discriminatory, nor were they administered in a manner that was racially, culturally or sexually discriminatory. All of the tests were administered in English which is Student's primary language.

10. Student contends that the results of Ms. Watson's speech and language assessment immediately became compromised as soon as she spoke to Ms. Rauch, the Healdsburg speech and language therapist. This contention was not supported by testimony, evidence, or legal authority. Ms. Watson established that the standard of care in her industry required her to contact Student's current speech and language therapist to obtain the most detailed information regarding Student's speech sound production during the 2015-2016 school year. As a result, the evidence established Ms. Watson's assessment was not biased simply because she spoke with the Healdsburg speech and language therapist during her assessment. Ms. Watson's speech and language assessment complied with legal requirements and appropriately assessed Student in all areas of suspected disability. Therefore, Ms. Watson's speech and language assessment conducted in March 2016 was legally compliant and the assessment contained an accurate description and evaluation of Student's speech and language abilities.

#### ELIGIBILITY UNDER SPEECH AND LANGUAGE IMPAIRMENT

11. Under Education Code section 56333, a pupil shall be assessed as having a language or speech disorder which makes him or her eligible for special education and related services when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services. In order to be

eligible for special education and related services, difficulty in understanding or using spoken language shall be assessed by a language, speech, and hearing specialist who determines that such difficulty results from any of the following disorders:

- (a) Articulation disorders, such that the pupil's production of speech significantly interferes with communication and attracts adverse attention;
- (b) Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate;
- (c) Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener;
- (d) Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the pupil's language performance level is found to be significantly below the language performance level of his or her peers;
- (e) Hearing loss which results in a language or speech disorder and significantly affects educational performance.

12. The California Code of Regulations state that a pupil has a language or speech disorder as defined in Education Code section 56333, and it is determined that the pupil's disorder meets one or more of the following criteria:

(A) Articulation disorder.

1. The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.

2. A pupil does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

(B) Abnormal Voice. A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.

(C) Fluency Disorders. A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.

(D) Language Disorder. The pupil has an expressive or receptive language disorder when he or she meets one of the following criteria:

1. The pupil scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or

2. The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subdivision (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of 50 utterances. . . . (5 C.C.R. § 3030, subd. (b)(11).)

13. Student's Clovis IEP team determined Student was eligible for special education under the category of speech and language impairment because of an articulation disorder that adversely affected his educational performance. However, even though Student initially had a speech or language impairment due to an articulation

disorder, it is still necessary to analyze whether Student meets the criteria for having an abnormal voice, fluency disorder, or language disorder. (California Code of Regulations, title 5, section 3030, subsection (b)(11)).

14. At the time Ms. Watson conducted her assessment to determine whether Student had a speech or language impairment in March 2016, Student obtained standard scores of 108 and 111 and, in the 70th and 78th percentile on the GFTA3.<sup>5</sup> His intelligibility was good. Ms. Watson also established that Student had appropriate utterance length during a spontaneous speech/language sample, and he used a variety of nouns, verbs, adjectives, pronouns and verb tenses. Student was able to convey his thoughts, make statements, and ask questions appropriate to the conversation. Student's fluency of speech was age appropriate, and his vocal quality, resonance, and pitch were within normal limits. His potential hearing deficit did not affect his speech and language abilities. Student did not have difficulty with expressive or receptive language and his language performance was not significantly below that of his peers. He did not have significant deficits in his expressive, receptive and pragmatic language abilities.

15. Student's articulation, expressive and receptive, and pragmatic language abilities were age appropriate based on Ms. Watson's assessments and the observations of Student's teacher. By March 2016, Student did not have an abnormal voice, fluency disorder or language disorder. The assessment results established that Student did not fall below the seventh percentile or score 1.5 standard deviations below the mean on two or more subtests that would indicate a language disorder. He had met his IEP

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<sup>5</sup> Standard scores within the 85 to 115 range are within the average range of abilities. Percentiles falling within 16 to 84 are within the average range with 50 being the median.

articulation goal. The results of Student's most recent evaluations, information from Student's teacher, including grades, test scores, attendance and participation in the classroom setting established that Student did not have difficulty communicating with his general education teacher or with his classmates. Therefore Healdsburg met its burden of proof that Student no longer meets the eligibility requirements for qualifying in the category of speech or language impairment.

#### EXITING STUDENT FROM SPECIAL EDUCATION

16. As part of any reevaluation of a student to determine whether the child continues to have a disability, the IEP team and other qualified professionals must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. On the basis of that review, and input from the child's parents, the IEP team must identify what additional data, if any, are needed to determine whether the child continues to need special education and related services. (Ed. Code, § 56381, subds. (b)(1), (2)(A) & (C); (h); 34 C.F.R., §§ 300.305.)

17. The reevaluation of Student's disability under the category of speech or language impairment revealed Student no longer meets the eligibility requirements for a speech or language impairment. The IEP team met April 22, 2016 and considered all relevant evaluations of Student, and considered the classroom information about Student from his teachers, the speech and language pathologists, and Parents' observations and concerns. The IEP team correctly determined no additional data was needed to determine that Student no longer needed special education and related services. Since Student no longer qualifies for speech and language services pursuant to a speech or language impairment, Healdsburg may exit Student from special education services.

## ORDER

1. Student is no longer eligible for special education services under the category of speech or language impairment.
2. Healdsburg may exit Student from special education and related services under this category.

## 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, Healdsburg was the prevailing party on all issues presented.

## 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: August 26, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
CHERYL CARLSON  
Administrative Law Judge  
Office of Administrative Hearings