

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT,

OAH Case No. 2016040358

---

DOWNEY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case Nos. 2016020526 & 2016031078

DECISION

Downey Unified School District filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on February 11, 2016, naming Student; case number 2016020526. District filed a second complaint naming Student on March 21, 2016; case number 2016031078. Student filed a complaint on April 6, 2016, naming District; case number 2016040358. District's two cases and Student's case were consolidated on April 13, 2016. Student's case, case number 2016040358 was designated the primary case. Student filed an amended complaint on May 26, 2016 resetting the 45-day time line to issue a decision in the consolidated matters.

Administrative Law Judge Marian H. Tully, Office of Administrative Hearings, State

of California, heard this matter on September 13, 14, 15, and 20, 2016, in Downey, California.

Attorney Bruce Bothwell appeared on behalf of Student. Student's mother and father attended the hearing.

Attorney Karen Gilyard appeared on behalf of District. Associate counsel, Gabrielle Ortiz, and District's Program Administrator Rebekah Ruswick attended the hearing.

The Parties' request for a continuance until October 10, 2016, to file written closing arguments was granted. The Parties timely filed written closing arguments, the record was closed and the matter was submitted for decision on October 10, 2016.

## ISSUES<sup>1</sup>

### DISTRICT'S ISSUES

1. Was District's May 11, 2015 psychoeducational assessment appropriately conducted?
2. Did District's offer of placement and services developed during IEP team meetings on March 23, May 15, June 5, June 22, and September 3, 2015, offer Student a free appropriate public education in the least restrictive environment?

---

<sup>1</sup> 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.) The issues stated reflect the issues as agreed upon and restated by the ALJ on the record at the outset of the hearing. Student dismissed his claims relating to offers of occupational therapy in all the relevant IEP's. Student dismissed his claim relating to the absence of a general education teacher in the 2015 IEP's.

## STUDENT'S ISSUES

3. Did District's offer of placement and services developed during IEP team meetings on March 23, May 15, June 5, June 22, and September 3, 2015, deny Student a FAPE by failing to:

- (a) Assess Student for autism-related disorders;
- (b) Offer appropriate goals in communication, behavior, academics and social skills;
- (c) Offer appropriate specialized academic instruction to meet Student's behavioral, communicative and academic needs;
- (d) Offer appropriate speech and language therapy; and
- (e) Offer behavioral therapy for Student's maladaptive behavior and delayed social skills?

4. Did District's March 23, 2016 IEP deny Student a FAPE by failing to:

- (a) Find Student eligible for special education under the category of autism;
- (b) Offer appropriate goals in communication, behavior, academics and social skills;
- (c) Offer appropriate specialized academic instruction to meet Student's behavioral, communicative and academic needs;
- (d) Offer appropriate speech and language therapy; and
- (e) Offer behavioral therapy for Student's maladaptive behavior and delayed social skills?

## SUMMARY OF DECISION

District's May 11, 2015 psychoeducational assessment met legal standards. Student is not entitled to an independent educational evaluation at public expense. Student did not prove that District denied Student a FAPE by failing to assess Student

for autism as part of the May 11, 2015 triennial assessment. None of the District or private assessors reported behaviors, and Parents did not express concerns during the IEP meetings on March 23, May 15, June 5, June 22, and September 3, 2015, that would raise autism as a suspected disability. Student did not prove that autism might be an area of suspected disability triggering the duty to assess for autism eligibility before the end of May 2016.

District's March 23, 2015 IEP, developed over meetings on March 23, May 15, June 5, June 22, and September 3, 2015, was reasonably calculated to provide educational benefit to Student at the time it was offered. The IEP contained appropriate goals in communication, behavior, academics and social skills to address Student's needs based upon current District and private assessments, and input from Parents, Student's teachers and service providers. District offered specialized academic instruction, behavior support and speech and language therapy based upon the recommendations of assessors, Student's teachers, Parents and their advocate. The March 23, 2015 IEP, as amended, offered Student a FAPE.

District's March 23, 2016 proposed IEP was not reasonably calculated to provide educational benefit to Student at the time it was offered and did not offer Student a FAPE. The March 23, 2016 IEP did not include current baselines, did not include appropriate goals, and did not offer a program according to Student's then current needs. Instead, District offered the same IEP it offered in 2015 without any consideration of Student's then current needs in the area of specialized academic instruction, behavioral, communicative, academic, speech and language, maladaptive behavior, and social skills.

## FACTUAL FINDINGS

1. Student was 10 years old at the time of hearing. Student lived with his Parents within District boundaries at all times relevant. Student's school of residence was

Rio San Gabriel Elementary School. Student was eligible for special education under the primary category of specific learning disability and a second eligibility category of speech and language impairment.

2. Student attended Rio San Gabriel Elementary School from the beginning of the 2009-2010 school year (prekindergarten) through the end of the 2013-2014 school year (second grade). Student attended Ms. Vonnie Casalegno's primary special day class for first and second grade. In second grade, Student also attended science and social studies in Ms. Trisha Cox-Nichols' general education class. Student's second grade IEP provided placement in the primary special day class with math and science in the regular second-grade class; four 30-minute sessions of individual speech and language services per week; and one 30-minute occupational therapy consultation per month.

3. Ms. Casalegno was an experienced fully credentialed special education teacher with an autism authorization from District. Ms. Casalegno's primary special day class combined students from first, second and third grade. In addition to the teacher, the classroom consisted of 12 to 14 students, and two senior instructional aides.

4. Ms. Casalegno observed Student in her class and on the playground during lunch. Student was comfortable with his classmates. He was on task, focused in the classroom and enjoyed participating in carpet and center time. He was well behaved, eager to please and a good joke teller. His voice was high-pitched but not unusually so for a child his age. His eye contact was appropriate during instructional time. The only time Ms. Casalegno observed Student's sensitivity to sound was to a fire alarm located near the classroom. All of the other children in the classroom were also sensitive to the fire alarm. Student had no difficulty following routines and no difficulty during transitions. He occasionally pulled his hair as a form of self-soothing when he was lining up with other students. Student had one "meltdown" in which he cried because he would not get "Legos" from his Mother if he did not do well on a spelling assignment.

5. Student needed adult prompting and modeling to interact with his peers from first through second grade. He struggled with social skills during recess. He was disinterested in peers. He would walk the perimeter around the playground equipment. He did not join same-age male peers in sports on the playground until near the end of the second grade. Student showed some improvement in social skills over the two years he was in Ms. Casalegno's class. He received an award as part of the Character Counts program, a school wide program recognizing students for model characteristics on the playground and in the classroom. He also received a Mustang of the Month Award for hard work in class, good character, returning homework, and doing well over all at school. Student could read a calendar, tell time on an analog clock, identify rhyming words and word families, and compute sums up to 20. He needed extra time to complete tasks.

6. Ms. Cox-Nichols was an experienced fully credentialed general education teacher. Student attended science and social studies in Ms. Cox-Nichols' class during second grade. Ms. Cox-Nichols did not encourage students to talk to each other during class. Student communicated basic wants and needs in her class; he was well behaved; and he answered questions. Ms. Cox-Nichols did not observe Student interacting with peers in her class. She did not observe repetitive or sensory seeking behaviors that interfered with his education.

7. Mother claimed at hearing that she told Ms. Casalegno she might be seeing autistic- like characteristics at home such as fleeting eye contact, sensitivity to sound, over focusing on items, difficulty changing routines, and reluctance to join group activities. Ms. Casalegno did not observe repetitive or sensory seeking behaviors, lack of eye contact, sound sensitivity (except for the fire alarm), difficulty with transitions or difficulty with the absence of routine in the educational setting. Mother also testified that she asked Ms. Casalegno for an autism evaluation in December 2013. However, at

hearing, Ms. Casalegno recalled the conversation but recalled Mother was asking about a medical diagnosis, not requesting a District assessment. Ms. Casalegno's testimony that Mother did not request an autism evaluation in December 2013 was more credible.<sup>2</sup>

8. In January 2014, Mother consulted Christine Majors, Psy.D. Dr. Majors was a licensed psychologist in practice since 1978. Dr. Major's report stated the reason for referral was to determine Student's current level of cognitive, academic and behavioral functioning in relation to Student's difficulties in academics, social relationships and speech/language. Dr. Majors observed Student in the classroom and on the playground and interviewed Ms. Casalegno. Ten students and two aides were in the classroom during the observation. Student was well behaved and followed directions. Student transitioned easily from one activity to another. He could tell time correctly. His pencil grip was immature. His speech was difficult to understand. Student did not play or interact with other children on the playground. He walked around the perimeter of the gym-set.

9. Dr. Majors conducted formal and informal assessments. Student's level of attention was age-appropriate but he was fidgety. His eye contact was good. He responded well to positive verbal encouragement, verbal redirection, and playing games. His speech was difficult to understand although he readily answered questions when asked. Dr. Majors' report listed the behaviors Parents' reported to her. The list included self-soothing by touching hair, overreaction to touch, sometimes excessive

---

<sup>2</sup> Ms. Casalegno's testimony was consistent with notes from an IEP dated April 7, 2014 in which Mother reported that Student pulled his hair at the beginning of the year and Ms. Casalegno reported he was no longer pulling his hair. Ms. Casalegno's testimony was also consistent with Dr. Major's report, IEP meeting notes and Parent's written input attached to the June 19, 2014 IEP.

reaction to noise, sound sensitivity to flushing toilets and tactile sensitivity. Dr. Majors did not observe the behaviors Mother reported. Overall, Dr. Majors attributed possible problems with attention to overactive and impulsive behavior. She attributed Student's difficulties with peers as "most probably the result of his language problems." She concluded Student's disabilities were auditory processing disorder and speech/language impairment. Dr. Majors recommended an academic program in a one-to-one format.

10. At hearing, Mother testified that she spoke with Dr. Majors about autism. According to Mother, Dr. Majors told her Student did not have autism because he had an emotional attachment to his Parents. Student offered no evidence that Parents informed District of such a conversation, and Mother's testimony was inconsistent with Dr. Major's report. Mother's testimony was also inconsistent with the notes from the IEP team meeting on June 11, 2014 during which Dr. Majors presented report and Parents' written input dated June 19, 2014.

11. District speech pathologist Angela Ross conducted a speech and language assessment upon Parents' request in March 2014. Ms. Ross used a variety of assessment tools including clinical observation, record review, standardized testing and teacher interview. She observed Student as polite, with normal voice quality, appropriate eye contact, and conversational turn taking. Student was within average range in voice, fluency, and pragmatics. Student's expressive and receptive language skills were below average. Ms. Ross did not include any recommendations in her report.

12. District occupational therapist Susanne Smith Roley conducted an occupational therapy evaluation upon Parents' request in May 2014. Ms. Roley used a variety of assessment tools including clinical observation of gross and fine motor skills, five standardized testing instruments, record reviews, and interviews with Ms. Casalegno, Ms. Cox-Nichols and staff. Ms. Roley observed Student was alert, attentive,

cooperative, easily redirected back to task and maintained appropriate eye contact. Student demonstrated average to above average fine motor, visual motor and visual perception skills and functional motor planning and gross motor skills. Ms. Roley concluded occupational therapy was not recommended.

13. District funded a second speech and language evaluation upon Parents' request. Speech pathologist Judy M. Segal assessed Student in May 2014. The areas assessed included language semantics, syntax, and morphology; auditory language processing; pragmatics and social interaction; and speech. Ms. Segal reported Student easily separated from Mother and willingly went to the testing room. Student was initially reluctant to interact with Ms. Segal. Ms. Segal asked Mother to return for a few minutes of playtime. Ms. Segal stepped out of the room for five minutes. When she returned Mother stepped out and Student fully engaged with Ms. Segal in all aspects of the assessment. Student presented no impulsivity or oppositional behavior after rapport was established. His eye contact was adequate.

14. Student's functional communication was limited. Poor intelligibility; impaired auditory language processing; and deficits in all linguistic domains (semantics, morphology and syntax) except pragmatics significantly interfered with Student's ability to effectively and efficiently communicate with adults and peers. Ms. Segal recommended individual speech and language therapy five times a week for one hour sessions by a certified, licensed speech language pathologist. She also recommended retesting within a year. She recommended placement in an educational setting that provided one-to-one direct instruction.

15. Ms. Segal provided private speech and language services for Student beginning on June 25, 2014. She provided individual therapy four times a week through November 6, 2014. On November 10, 2014, considering his progress, she reduced his sessions to three times a week. As of December 31, 2014, Student was making excellent

progress and Ms. Segal reported Student would have age level ability within one to two years.

16. Dr. Majors and Ms. Segal recommended an auditory processing assessment. None of the information contained in Dr. Majors', Ms. Ross', Ms. Roley's or Ms. Segal's reports indicated autism as an area of suspected disability.

17. Student's IEP team met on June 11, 2014 to review the neurological, speech and language and occupational therapy assessments. The IEP team discussed Student's progress, the assessments, and the assessors' recommendations. Dr. Majors explained her assessment. The IEP team did not discuss autistic-like behaviors.<sup>3</sup> The IEP team agreed Student was eligible for special education with a primary eligibility of specific learning disorder and a secondary eligibility of speech and language impairment.

18. District offered continued placement in a special education classroom; integration in general education for math and science; individual speech/language services for 30 minutes, four times a week; occupational therapy consultation for 30 minutes, once a month; and extended school year. On June 19, 2014, Parents sent District written input to be attached to the IEP. Parents stated their disagreements as to Student's progress on goals and District's offer. Parents requested a central auditory

---

<sup>3</sup> At hearing, Mother testified that she spoke with Dr. Majors about autism. According to Mother, Dr. Majors told her Student did not have autism because he had an emotional attachment to his Parents. Student offered no evidence that Parents informed District of such a conversation, and Mother's testimony was inconsistent with Dr. Major's report, the June 11, 2014 IEP team meeting notes and Parents' written input dated June 19, 2014.

processing evaluation and an independent educational evaluation for occupational therapy. Parents did not state concerns about autistic-like behaviors or request an evaluation for autism.

19. Maria K. Abramson, Au.D., CCC-AAA, conducted an audiology assessment on September 10, 2014. The purpose of the assessment was to determine whether Student had auditory processing deficits that contributed to his speech, language and academic difficulties. Dr. Abramson described Student as having a high-pitched voice. He was not prone to cooperate unless he was familiar with the examiner. He had limited eye contact with Dr. Abramson. He occasionally lacked attention and rocked but he was easily redirected to the task. Student demonstrated significant deficits in auditory processing that would affect his academics and his ability to follow spoken language.

#### 2014-2015 SCHOOL YEAR

20. Student did not return to Rio San Gabriel Elementary School for the 2014-2015 school year. Parents placed Student in a private program at Pliha Speech and Language Center in September 2014. Pliha Center is not certified by the California Department of Education as a non-public school. The Pliha Center program provided one-to-one academic instruction and speech and language therapy for Student.

21. Barbara Pliha was the founder and director of Pliha Center. Ms. Pliha has a B.S. in Education and a General Elementary Credential; an M.S. in Education - emphasis in Reading, and a Reading Specialist Credential; an M.A. in Communicative Disorders; a Certificate of Clinical Competence; a Speech/Language Credential; a Resource Specialist Certificate and is a licensed Speech/Language Pathologist. Ms. Pliha was qualified to administer and interpret the results of standardized assessment tools in the areas of reading, communication, and speech and language.

22. Pliha Center was located in an office building in Newport Beach. A one-to-one tutor provided academic instruction in a small office at a table. Pliha Center's tutors

were college students in their last year of college, have graduated from college, or are graduate students. Pliha Center did not require tutors to have a teaching credential or any training in special education. Pliha Center trained tutors in the Lindamood Bell reading program.

23. Alana Wong was Student's tutor. Ms. Wong had a B.A. in psychology and social behavior and an M.A. in elementary education. She did not have a teaching credential, although she had completed the course work.

24. Ms. Wong began working with Student in November 2014. Student was shy at first; his voice had a higher pitch; his eye contact varied; and he needed prompting to watch a speaker's eyes and mouth when asked a question. Ms. Wong observed some repetitive behaviors during instruction. She worked with Student one-to-one for two hours, five days a week. Ms. Wong employed a behavior system that targeted correct sitting, eye contact, keeping eyes on words, staying on task and paying attention to questions. The number of tutoring hours per week increased as Student's endurance increased. Beginning in 2015, Ms. Wong worked with Student 15 hours per week. She no longer needed to use the behavior chart system. Student could not read a calendar or an analog clock in May 2015.

25. District sent a triennial assessment plan to Parents on December 19, 2014. The assessment plan included academic achievement; cognitive processing; psychomotor development and perception; language/speech communication development; motor development; social/emotional; adaptive/behavior; and sensory processing. Parents consented to the assessment plan. On January 25, 2015, Parent revoked consent to assessments for occupational therapy and speech and language. Parents declined those evaluations because District completed speech and language and occupational therapy evaluations within the past year.

26. Ms. Segal reassessed Student on February 4 and 10, 2015. She did not

note any behaviors of concern. Student's voice pitch was appropriate to age and gender. His volume was appropriate to the setting. Standardized tests showed an improvement over the scores obtained in her previous assessment. Ms. Segal recommended individual speech and language therapy three times a week, in one-hour sessions.

27. Ms. Pliha prepared an academic report dated February 17, 2015. She administered the Comprehensive Test of Phonological Processing – Second Edition; Lindamood Auditory Conceptualization Test – Third Edition; one subtest of the Woodcock – Johnson III, Tests of Achievement; Gray Oral Reading Test – 5; and three subtests of the Wide Range Achievement Test – Fourth Edition. She reported the results in raw scores, age and grade equivalents, percentile and standard score. Ms. Pliha interpreted the results to demonstrate significant progress since Student began attending Pliha Center.

#### MARCH 23, 2015 IEP TEAM MEETING

28. District opened Student's annual IEP team meeting on March 23, 2015, to satisfy the statutory timeline for Student's annual IEP review and to combine Student's annual review with Student's triennial review. The IEP team agreed to continue the IEP team meeting to May 15, 2015, so the IEP team could review the results of the triennial assessment before it developed Student's IEP.

#### 2015 TRIENNIAL ASSESSMENT

29. District conducted Student's triennial assessment in April and May 2015. The triennial assessment included a psychoeducational assessment conducted by District school psychologist Kathi Y. Thompson. Ms. Thompson was a highly qualified school psychologist with 30 years of experience. She held a B.A. in applied psychology and an M.S. in counseling with study in school psychology. She was fully credentialed in

counseling and school psychology. Ms. Thompson was also a trained Behavior Intervention Case Manager and received ongoing training in autism, behavior management, crisis intervention and attention deficit hyper activity disorder.

30. Ms. Thompson was familiar with Student. She began attending his IEP meetings in April 2014. She taught social skills in Ms. Casalegno's for the two years Student attended Ms. Casalegno's class. Ms. Thompson conducted the social skills class weekly for 40 minutes to an hour each week. Three typical peers in regular education and Student participated in the social skills class. Student was always well behaved, attentive, tried hard, and willing to join in playing games. She did not observe autistic-like behaviors when she worked with Student. Student's voice was not abnormal or unusual; he made appropriate eye contact and he did not have repetitive behaviors. Student's difficulties were in the areas of auditory processing, math, reading comprehension, speech and language and social skills. Student had difficulty answering direct questions. Ms. Thompson attributed Student's difficulties to delay in auditory processing.

31. Ms. Thompson prepared a triennial assessment report dated May 11, 2015. She used a variety of formal and informal assessment tools. She reviewed previous independent assessments by speech pathologist Ms. Segal; Dr. Majors; Dr. Abramson; Ms. Roley; Pliha Center, including the standardized testing and scores reported by Ms. Pliha; and a report from Susan Burnett, Ph.D, Parent's advocate. She reviewed Student's previous IEP's, interviewed Student and observed Student at Pliha Center. She administered standardized testing instruments and rating scales. The triennial psychoeducational assessment included all areas of cognition; visual and auditory processing; social and emotional including anxiety, depression, atypicality, and withdrawal.

32. Resource Specialist Emily Alvarez administered the following standardized

tests: the Wechsler Nonverbal Scale of Intelligence, Test of Auditory Processing Skills - Third Edition, Test of Visual Perception Skills - Third Edition, Wechsler Individual Achievement Test - Third Edition and Wide Range Assessment of Memory and Learning - Second Edition. Student's nonverbal cognitive abilities were in the average range. A severe discrepancy existed between his cognitive functioning and his achievement in the areas of basic reading, reading comprehension and fluency, written expression, math calculation, and math reasoning due to psychological processing disorders in the areas of visual and auditory processing.

33. Ms. Thompson collected information from Parents and teachers using the Behavior Assessment for Children - Second Edition and Conners Rating Scales, Third Edition. None of the raters identified clinical significance in the areas of aggression, attention problems, atypicality, withdrawal, anxiety, or adaptive skills. The only at risk rating in the Behavior Assessment was internalizing problems. The only area of significance in the Connors was in the area of peer relations.

34. Ms. Thompson and Ms. Alvarez administered all testing in English, Student's primary language. They conducted testing in conformance with testing instructions and each test was valid for the purpose for which the test was intended. Ms. Thompson and Ms. Alvarez were qualified to administer and interpret the results of the tests each administered. The assessment materials were without racial, cultural, or gender discrimination.

35. Ms. Thompson observed Student on May 5, 2015, at the Pliha Center. Pliha staff permitted her to observe Student for approximately an hour and 15 minutes. Student worked with a tutor in an office. Pliha staff required her to sit on a bench outside the room and observe Student with his tutor through the doorway. Ms. Thompson did not see any other students in the Pliha Center.

36. Student met the eligibility criteria of specific learning disability due to

deficits in auditory, visual and attention processing. Ms. Thompson found a severe discrepancy between Student's cognitive ability and his achievement in the areas of basic reading skills, reading comprehension, written expression, reading fluency, math calculations, math reasoning, listening comprehension, and oral expression. In Ms. Thompson's opinion, based on her experience with him in the classroom, the IEP's she reviewed, the IEP meetings she attended, and the results of her assessment, Student did not have autistic characteristics and did not have autistic-like behaviors that impeded his learning.

37. District adapted physical education specialist Carol Watanabe-Lee assessed Student for adapted physical education and produced a report dated February 13, 2015. Ms. Watanabe-Lee interviewed Parent, administered two standardized norm referenced assessment instruments, observed Student's behavior and collected data related to Student's skills during the assessment. Ms. Watanabe-Lee concluded that Student functioned at near age-appropriate levels in object control skills and slightly below his chronological age in gross motor skills. Ms. Watanabe-Lee did not report any autistic-like behaviors.

38. On May 14, 2015, Mother wrote to District informing District that she had received the triennial assessment. She also wanted to clarify dates to reschedule additional tests. She did not express any concerns about autism or autistic-like behaviors.

#### MAY 15, 2015 IEP TEAM MEETING

39. The IEP team met again on May 15, 2015. The meeting lasted approximately two and one half hours. All required District staff, Parents and Dr. Burnett attended. Ms. Pliha, Ms. Wong, District's legal counsel and Program Administrator Nancy Matthew also attended the meeting. Ms. Thompson and Ms. Watanabe-Lee presented their assessments. Parents did not report any concerns about autism or

autistic-like behaviors during the meeting.

40. Ms. Pliha and Ms. Wong reported Student's progress in the areas of reading, math and written language. Ms. Pliha and Ms. Wong reported Student's behaviors had ended and they had no behavior concerns. By their report, Student's reading fluency was at a 1.5 grade level and his reading comprehension was at a beginning second grade level. Student's math skills varied. Student could not read a calendar or an analog clock. He was working on skills to tell time, identify the value of coins, units of measurement and geometric shapes to develop vocabulary.

41. District speech pathologist Wendy Gabagat reported information she obtained from the 2014 speech and language assessment reports. Ms. Pliha shared her areas of concern that Student should have goals for speech and language and provided a copy of her suggested goals and objectives to District. She suggested goals for morphology, vocabulary, listening and comprehension. Ms. Gabagat agreed to revise goals and objectives.

42. Ms. Casalegno presented proposed goals for math, written language, reading and social skills. The IEP team agreed to revise Student's goals based upon the input from Parents, Dr. Burnett, Ms. Pliha, Ms. Wong, and the Pliha Center academic progress report and proposed goals.

43. Parents and Dr. Burnett asked Ms. Thompson to change two descriptors in subtests in the Test of Auditory Processing Skills - Third Edition, and Test of Visual Perception Skills - Third Edition from "below average" to "well below average." Parents and Dr. Burnett also asked Ms. Thompson to include listening comprehension and oral expression to the eligibility characteristics of specific learning disability. Ms. Thompson later revised her May 11, 2015 report to make the changes Parents and Dr. Burnett requested.

44. Parents participated fully in the meeting. They asked questions, made their

concerns known, presented a letter concerning additional academic testing, and requested goals in the area of speech and language. Dr. Burnett asked questions and made suggestions, some of which District adopted. The IEP team, including Parents and Dr. Burnett, concluded behavior was not an area of need.

45. The IEP team discussed Student's eligibility for special education and all agreed Student qualified for special education with a primary eligibility of specific learning disability and a secondary eligibility of speech and language impairment. Neither Parents nor Dr. Burnett asked the IEP team to consider autism eligibility. The IEP team agreed to reconvene the IEP meeting.

#### JUNE 5, 2015 IEP TEAM MEETING

46. The IEP team convened again on June 5, 2015. The meeting lasted three and one half hours. All of the IEP team members present at the May 15, 2015 IEP team meeting attended with the exception of Ms. Pliha and Ms. Wong from Pliha Center. In addition, speech pathologist Ms. Segal and school principal Lynn Eborra attended and occupational therapist Ms. Roley participated by telephone.

47. Ms. Casalegno presented her revised academic goals and additional goals following up on the IEP team discussion on May 15, 2015. District team members answered questions from Parents, Dr. Burnett, and Ms. Segal. District team members explained the revisions that were made and the additional goals that were developed. At Parents' request, a vocabulary goal and a math goal to address fractions and decimals were added.

48. The IEP team discussed Student's sensory processing skills. Ms. Roley and Mother reported Student demonstrated sensory processing deficits in the area of social participation and dysfunction in the areas of hearing and touch. Other concerns were inattention, task completion and self-regulation. District IEP team members offered occupational therapy services and agreed that District would consult with Ms. Roley to

develop goals and objectives. Neither Ms. Pliha nor Ms. Wong reported any concerns over Student's behavior. Ms. Segal suggested speech goals and recommended services. The IEP team agreed to revise Student's speech goals based on Ms. Segal's input. The IEP team also accepted her recommendations for the number of hours of individual speech and language services. The IEP team agreed to reconvene the IEP meeting to consider occupational therapy goals and objectives, accommodations, placements and services.

#### JUNE 22, 2015 IEP TEAM MEETING

49. The IEP team convened again on June 22, 2015, at 9:00 a.m. All required IEP team members were present. Parents informed District that Dr. Burnett could not attend due to a misunderstanding as to the date. At Parents' request, the meeting ended at 9:20 a.m. The IEP team agreed to reconvene the meeting.

#### SEPTEMBER 3, 2015 IEP TEAM MEETING

50. The IEP team met again on September 3, 2015. The meeting lasted two hours and 20 minutes. Parents, Dr. Burnett, all required District team members, District's legal counsel and Program Administrator Rebakah Ruswick attended the meeting.

51. The IEP team, including Parents and Dr. Burnett, discussed Student's behavior. Student's behavior did not impede his learning and was not an area of need. The IEP team discussed Student's progress and needs in the areas of occupational therapy, academic accommodations, reading programs, delivery of resource specialist services, social skills, and extended school year. The IEP team discussed a continuum of placement options and considered the least restrictive environment.

52. The IEP team developed Student's annual goals, with measurable short and long term objectives, to be reached by March 23, 2016. The IEP contained seven goals in the area of speech and language. The IEP team established baselines for the

speech and language goals based on the speech and language assessments and Pliha Center staff reports. Twelve goals addressed academics areas of reading, writing and math. Baselines in academics were established with reference to assessments, Parents' input and information from Ms. Pliha and Ms. Wong. The IEP team developed four goals for occupational therapy to address sensory issues based upon the May 2014 occupational therapy assessment and discussions during IEP meetings. The IEP also included a goal to address social skills to be provided in small group setting with typical peers.

53. The IEP team "brainstormed" program accommodations, modifications and supports. The 2015 IEP contained a long list covering a wide spectrum of visual supports, teaching strategies, curriculum modifications, testing and homework modifications, methods to address sensory and attention issues, use of occupational therapy "toys" and physical activity.

54. District offered placement at Rio San Gabriel Elementary School with 190 minutes per school day of specialized academic instruction and 300 minutes of intensive individual services per school day by an aid in both the general and special education settings. District offered individual speech and language services for 30 minutes, four times per week provided by District; 60 minutes per week individual speech and language services provided by a nonpublic agency; and 30 minutes per week group speech and language services to address social skills. The offer included one 45-minute session weekly of individual occupational therapy and two 30-minute sessions per month for consultation between District's occupational therapist and Student's service providers. Student would spend 61 percent of his time outside regular class, extracurricular and non-academic activities. He would spend 39 percent of his time in regular class and extra and non-academic activities. The IEP included the extended school year.

55. By letter dated October 1, 2015, Parents informed District they did not agree with District's offer. They requested placement at Pliha Learning Center; with social skills, occupational therapy, and speech and language services provided by non-public agencies. Parents sent a letter to District informing District they would fund placement at Pliha Learning Center, obtain non-public agency services and seek reimbursement from District. District sent prior written notice declining Parents' request.

#### 2015-2016 SCHOOL YEAR

56. Student continued at Pliha Center for the 2015-2016 school year. He continued to work with Ms. Pliha and Ms. Wong. Student's next annual IEP meeting was due March 23, 2016.

57. On February 16, 2016, Dr. Majors evaluated Student's academic achievement and observed Student at Pliha Center. The stated purpose for the evaluation was to determine Student's current level of academic achievement in order to assist in an appropriate school placement. Dr. Majors reported Parents' expressed concerns about Student's difficulties in: auditory and visual processing; verbalizing questions; putting his thoughts and experiences into verbal sentences, remembering rules for sounding out a word; learning and retaining mathematical concepts, and he was easily distracted by noises or interruptions.

58. Dr. Majors administered standardized tests and compared the test results with the results she obtained in April 2014 and May 2015. She concluded Student made progress in the 15 months he attended Pliha Center but continued to perform at a first or second grade level in the majority of academic areas.

59. Dr. Majors observed Student at Pliha Center. He was the only child in a small room. Student worked one-to-one at a table with Ms. Wong. The room was quiet and had no distractions. There was a behavioral point chart on the wall. The chart contained instructions to keep his eyes on the word he was reading; listen and answer

to the question asked; give correct responses; stay on task; be a serious student and be cooperative. Dr. Majors also interviewed Ms. Wong. Ms. Wong reported concerns with expressive language; slow processing; spelling and sounding out words; and difficulty returning and re-engaging to task when distracted. Student could be avoidant but was motivated by a point system during lessons. Ms. Wong did not report any concerns about repetitive behaviors, lack of eye contact, or any other autistic-like behaviors. Dr. Majors produced a written report of academic achievement updates and recommendations dated March 29, 2016. Her report did not reflect any concerns from Parents or reported by Ms. Wong relating to autism characteristics or autistic-like behavior. Dr. Majors recommended continued placement at Pliha Center.

60. On February 17, 2016, Ms. Ruswick emailed Mother proposing three dates in March for Student's annual review. On February 23, 2016, Mother responded and proposed April 5 or April 8, 2016, for the meeting. Mother explained that she picked those dates because the IEP team would need current baselines. Mother had requested a report of baselines from Student's teacher at Pliha Center. Student's teacher expected to have a report of his academic achievement ready the first week of April. Mother requested information to help her participate in the IEP process. She asked District to provide pre-or post-testing from the reading programs that were used at the time Student attended Rio San Gabriel Elementary School. She wanted to look at District's fourth and fifth grade curriculum because she believed that curriculum information would be helpful in developing appropriate goals for the upcoming IEP. Parents wanted to observe the classroom and resource specialist room at Rio San Gabriel Elementary School. Ms. Ruswick declined the proposed dates in April and informed Mother that District must hold the meeting by March 23, 2016, due to statutory timelines.

61. On February 24, 2016, Mother sent Ms. Ruswick an email. Mother informed Ms. Ruswick that the previous year, at the suggestion of District's counsel, District

opened and closed the March 23, 2015 annual IEP meeting via conference call in order to meet the deadline, and continued the IEP to a later date that accommodated everyone's schedule. Mother wanted a short continuance to obtain current information required to produce appropriate goals and that baselines would not be available from Pliha Center until the first week of April. She again requested pre-and post-testing of reading programs used with Student when he attended Rio San Gabriel Elementary School and the fourth and fifth grade curriculum for all subjects. She expressed her concern that baselines and the requested information were necessary in order to allow Parents to participate meaningfully in the IEP process.

62. On March 2, 2016, Parents requested an independent educational evaluation in the area of psychoeducation. The letter did not ask District to assess Student in the area of autism. On March 16, 2016, District wrote to Parents declining their request for an independent psychoeducational evaluation.

63. On March 16, 2016, Parents, Dr. Majors, Ms. Ruswick and the school principal visited District's proposed placement. They visited the regular education classrooms, for proposed mainstreaming in science and social studies, and the resource specialist program class, for proposed English language arts and mathematics. Each general education classroom had approximately 34 students. The resource specialist program classroom was composed of fourth and fifth grade students. The classroom had one teacher and two aides. At the beginning of the observation, seven students were in the classroom. By the end of the observation, the classroom consisted of 17 students. The teacher worked with a group of five students at a table. One of the aides worked with six students at a table. The other aide watched over six students who were working at desks. The room was relatively quiet and organized. District gave Parents curriculum maps for fourth and fifth grade.

## MARCH 23, 2016 IEP

64. The IEP team met on March 23, 2016. Parents, Dr. Burnett, Ms. Ruswick, District's director of special education Ruth Valadez, Ms. Nguyen, school psychologist Lourdes Martinez, general education teacher Samantha Rush, resource specialist program teacher Christine Kim, speech and language pathologist Robyn Applbaum, assistant principal Chris Velasco and District's counsel attended. Ms. Ruswick asked Parents if they had any concerns. Mother responded that she would have to look at baselines in order to answer the question. Ms. Ruswick reviewed Student's 2015 IEP and informed the IEP team that District had no current information pertaining to Student's baselines because he had not attended school for over a year.

65. District's resource specialist, speech and language pathologist, and occupational therapist presented proposed goals. None of them had ever worked with Student. None of the goals were supported by any baselines because Student had not attended school within District since the 2013- 2014 school year. District did not offer to reconvene in April so that the IEP team would have current information. District offered the same goals, placement, related services, and accommodations contained in the 2015 IEP. Parents did not consent to the March 23, 2016 IEP.

66. On April 12, 2016, Parents consented only to District's offer of one hour per week of individual speech and language therapy provided by a nonpublic agency under contract with District. Parents did not consent to District's contracted nonpublic agency provider.

67. Ms. Pliha and Ms. Wong administered a battery of standardized testing for academic achievement over 10 days in February and March 2016 and prepared a report dated April 1, 2016. Test results were reported in raw scores, grade and age equivalents, percentiles, and standard scores. They compared test results to previous scores in the same categories. The report concluded Student had made significant progress in

academic performance, comparing his current levels to testing data from the previous year. During testing, Student exhibited excessive neck stretching, swinging his legs, playing with his hair and breaking the lead of his pencil due to too much pressure. Ms. Wong noticed that Student's behaviors were returning and increasing between 2015 and 2016.

68. On April 4, 2016, Ms. Pliha produced a report of a speech language evaluation she conducted over three days in March and concluded on April 4, 2016. Ms. Pliha reviewed Student's previous assessments and administered a battery of standardized tests in the areas of articulation, comprehension, phonological processing, auditory processing, vocabulary, language fundamentals and problem-solving. Test results were reported in raw scores, grade and age equivalents, percentiles, and standard scores. Ms. Pliha determined Student made significant growth in speech skills, intelligibility and auditory processing. He continued to have deficits in receptive and expressive language that impacted reading accuracy, reading comprehension, writing, problem-solving and interpreting everyday activities. Ms. Pliha described Student as a friendly, well-behaved child with whom rapport was easily established. Student made excellent effort even when tests were difficult. She recommended individual speech therapy four times per week in 60-minute sessions with a licensed and certified speech/language pathologist. She also recommended group speech therapy once a week for 60 minutes to improve his social pragmatics skills.

69. Parents consulted Helena S. Johnson Ph.D. in April 2016. Dr. Johnson held a B.A. and an M.A. in psychology and a Ph.D. in clinical psychology with an emphasis on child and family. She has been a licensed psychologist in California since 2006. She has maintained a clinical practice, Autism Diagnostic and Intervention Connections, Inc., since 2007. Additionally, she has served as a psychologist/consultant for the University of California, Irvine in the treatment of autism since 2009. Since 2012, Dr. Johnson has

been a consultant to the special education department of a local school district. Dr. Johnson was a well-qualified expert in autism spectrum disorder. Her 50-page report was detailed and thorough.

70. Parents brought Student to Dr. Johnson for a comprehensive psychological evaluation because they were concerned about Student's social skills, difficulty with his interaction with peers, requiring Parents to initiate interaction for him and facilitate his conversation with peers. They were also concerned Student was behind by two grade levels in reading and writing and he continued to have speech/language, auditory processing, and sensory processing deficiencies.

71. Dr. Johnson first met Student in April 2016. She evaluated Student in April and May 2016 and produced a report dated May 23, 2016. Dr. Johnson's evaluation included an intake history by Parents' report, record and work sample reviews, observations, interviews, and formal assessment measures and methods. Dr. Johnson observed Student at Pliha Center, in his catechism class, and during her assessment. She also observed District's proposed placement at Rio San Gabriel Elementary School. Dr. Johnson interviewed Parents, Student, and Ms. Wong.

72. Dr. Johnson's intake interview with Mother included an extensive review of Student's developmental history from infancy through the date of the interview. Dr. Johnson considered Mother to be an accurate reporter. She reviewed Student's IEP records, District and private evaluations, and progress reports.

73. Dr. Johnson administered a battery of standardized tests and Parent/Teacher rating scales designed to assess autism. The results of these assessments and rating scales reflected Student's presentation at the time of the assessment and were consistent with a diagnosis of autism spectrum disorder.

74. Dr. Johnson also obtained Ms. Wong's responses to the Adaptive Behavior Assessment System III. Ms. Wong's response revealed Student avoided personal space

boundaries with Mother and would touch and smell her hair when he first came to Pliha Center. Student did not have this behavior with teachers or other students. Behaviors such as touching his own hair occurred when Student was nervous, unsure or if something new was introduced. For about a year the behaviors stopped completely. Student began to touch his hair and stretch his neck again in March 2016 when Pliha Center conducted academic and speech evaluations to assess Student's progress and obtain baseline information for his annual IEP. During that time, these behaviors became distractions causing him to forget or lose his train of thought. In May 2016, at the time Ms. Wong completed the Adaptive Behavior Assessment, Student's behaviors were frequent.

75. Dr. Johnson observed Student in the waiting room of her office and during clinical assessments. Student was atypical and odd. Student's social awareness and communication skills were low. Student's voice was high-pitched and squeaky. Student did not always respond or interact appropriately to Mother or Dr. Johnson. She observed one incidence of flapping and at the end of the assessment, he knelt on the floor and smelled the carpet repeatedly. Student intermittently leaned into or bounced off a wall. Student twirled his hair, touched or rubbed things and swayed and rocked his body. He made suckling mouth movements and noises and rolled his eyes upward. He tended to look to the side of Dr. Johnson instead of making correct eye contact.

76. Dr. Johnson observed District's proposed placement at Rio San Gabriel Elementary School on May 2, 2016, for one and one half hours. She observed Ms. Kim's combination resource class. The class had five students, one teacher and an aide. Some of the instruction was individual and some of the instruction involved smaller groups. In Dr. Johnson's opinion, the resource class was not an appropriate placement for Student because Student functioned at a higher level in math and he needed more intensive reading remediation then provided in the resource classroom. She also observed the

general education fourth and fifth grade classes. The fourth grade class had one teacher and 31 students. The fifth grade class had one teacher and 33 students. In Dr. Johnson's opinion, Student was not ready to access academic instruction in such large classrooms.

77. Dr. Johnson observed Student in his catechism class for one hour on May 4, 2016. A religious teacher taught the class, which had nine students. Student did not respond to or interact with the other children in the class, did not appropriately respond to the teacher and did not engage in class activities. Student generally followed instructions but his response and participation was very limited. He intermittently pulled and twisted his hair during the entire class. He spoke in a high-pitched voice that affected his intelligibility.

78. Dr. Johnson observed Student working with Ms. Wong at Pliha Center for one hour on May 12, 2016. Ms. Wong reported an increase in Student's repetitive behaviors of hair pulling and neck rolling that might be interfering with his academic progress. They began working on basic fundamentals in September 2014. Student made "steep" progress in the beginning; however, his progress was slower at the time of the interview. He was almost at grade level in math although he required continued support for understanding material, directions, visual support and checks for comprehension. He required modifications for math such as for the number of problems to complete. Student's reading rate skills were two years below grade level. His decoding skills were between fourth and fifth grade. Ms. Wong used visuals and strategies that were consistent with the Lindamood Bell program. Dr. Johnson observed repetitive behaviors when Ms. Wong explained and answered Student's questions. Student demonstrated unclear language, poor articulation and unusual voice quality, which impacted intelligibility.

79. Dr. Johnson concluded Student presented with autism spectrum disorder accompanied by speech and language impairment. In her opinion, Student's autism

spectrum disorder resulted in deficits in expressive oral language, vocabulary and social communication; and specific learning disorder resulting in impairment in reading (word reading, accuracy reading, fluency and comprehension); impairment in mathematics (math reasoning, fluency, subtraction and addition); and impairment in written expression (spelling accuracy, grammar and punctuation, and clarity of written expression). Her assessment and the report she prepared in May 2016 supported her diagnostic impressions. Dr. Johnson was aware of the differences between a medical diagnosis of autism and special education eligibility under the category of autistic-like behavior.

80. Dr. Johnson's opinions and recommendations were based on the entirety of the information she obtained in May 2016. Dr. Johnson concluded that Student's primary condition of autism required individual applied behavior analysis and behavioral intervention to teach and generalize social skills across environments. Intensive behavior intervention in the school setting should be implemented in the areas of social interaction, social communication, flexibility, improved learning behavior, reduced repetitive behaviors and increase independent and executive functioning. In her view, generalization of learned skills could not be expected to occur without systematic and targeted intervention in the school setting.

81. Dr. Johnson recommended Student's primary eligibility should be reflected as autism/autistic-like behaviors in his IEP. In her opinion, speech and language impairment was inherent in autism eligibility. She proposed a secondary eligibility of specific learning disability for reading, written expression and areas of math. In Dr. Johnson's opinion, Student could not benefit from small group instruction for most core academic areas and neither the resource nor regular education classrooms would provide Student with the intensive academic instruction and individualized attention that he required. Dr. Johnson recommended three hours per day of one-to-one

academic instruction, small group and general education math, and participation in regular education and lunch for increased social opportunities. Dr. Johnson also recommended a full day one-to-one aid trained in applied behavior analysis to facilitate social communication, behavior and a number of additional goals in behavior, social skills, language and academics.

82. District did not have Dr. Johnson's report, Dr. Majors' report or the reports from Pliha Center before the March 23, 2016 IEP team meeting.

#### MAY 27, 2016 IEP TEAM MEETING

83. The IEP team met on May 27, 2016, to review Dr. Johnson's assessment. Parents, Dr. Johnson, Parents' attorney, Ms. Thompson, Ms. Kim, Ms. Rush, Ms. Applbaum, Ms. Ruswick, director of special education Ruth Valadez, principal Ms. Ebor and District's attorney attended. Dr. Johnson reviewed her report, and stated her opinion for Student's eligibility under the category of autistic-like behaviors with a secondary eligibility for specific learning disability. She made recommendations as to his placement, services, goals and accommodations. The IEP team agreed to reconvene to discuss her recommendations further. The IEP team made no changes to the March 23, 2016 IEP. Neither Party offered any evidence that the IEP team reconvened before Student filed his amended complaint.

84. Parents paid Pliha Center for academic instruction at the rate of \$80.00 per hour from March 23, 2016 through May 27, 2016. District's school calendar was in evidence. Parents paid Pliha Center \$5,380.80 for speech and language and academic assessments conducted in March and April 2016. Parents paid Pliha Center for individual speech therapy at the rate of \$130 per hour from April 11, 2016 through May 27, 2016 for a total of \$2,261.00.

## LEGAL AUTHORITIES AND CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>4</sup>

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "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).)

3. In *Board of Education of the Hendrick Hudson Central School District v.*

---

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

<sup>5</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

*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, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the

request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 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].) In this consolidated matter, Student had the burden of proof on Student's issues and District had the burden of proof on District's issues.

DISTRICT'S ISSUE 1 AND STUDENT'S ISSUES 3 (A) AND 4(A): PSYCHOEDUCATIONAL ASSESSMENT AND FAILURE TO ASSESS FOR AUTISM IN 2015 OR FIND ELIGIBILITY UNDER AUTISM IN MARCH 2016 IEP

5. The only assessment in dispute is Ms. Thompson's psychoeducational assessment.<sup>6</sup> Student contends District's assessment was not appropriate because District did not conduct an assessment for autism. Student also contends that the March 2016 IEP denied Student a FAPE by failing to find Student eligible for special education under the category of autism. District contends Ms. Thompson's assessment met all legal requirements and autism was not an area of suspected disability.

Applicable Law

6. In California, a district assessing a student's eligibility for special education must use tests and other tools tailored to assessing specific areas of educational need, and must ensure that a child is assessed in all areas related to a suspected disability. (Ed. Code, § 56320, subds. (c), (f); see also, 20 U.S.C. § 1414(b)(3)(B).) A school district must

---

<sup>6</sup> The terms "assessment" and "evaluation" are synonymous. Federal statutes and regulations generally use the term "evaluation." California statutes and regulations generally use the term "assessment." This Decision uses the terms interchangeably.

conduct assessments in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

7. 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” must conduct assessments of students’ suspected disabilities. (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) The determination of what tests are required is made based on information known at the time. (*See Vasherese v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

8. Under California law autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects a child's educational performance.

Characteristics often associated with autism are repetitive activities, stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

9. A disability is “suspected,” and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. May 23, 2016, No. 14-55800) 2016 WL 2957215, pp. 11, 13.) Such notice may come in the form of concerns expressed by parents about a child’s symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child’s behavior. (*Id.* at p. 13 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].) A school district’s failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park, ex rel. Park v. Anaheim Union High School Dist., supra*, 464 F.3d at pp. 1032-1033; *Timothy O., supra*, 2016 WL 2957215 at pp. 15-17.)

#### Analysis

10. Ms. Thompson's psychoeducational assessment met all legal requirements. Ms. Thompson used a variety of formal and informal assessment tools. Her assessments included record review, observation, interviews, standardized testing, and rating scales completed by staff and Mother. Ms. Thompson administered testing in English, Student's primary language. She administered the tests she used in conformance with testing instructions and each test was valid for the purpose for which the test was intended. She was qualified to administer and interpret the results of her testing. Ms. Thompson used assessment materials without racial, cultural, or gender discrimination. Ms. Thompson was an experienced school psychologist, trained to recognize and assess autistic-like behaviors. She was also personally familiar with Student because she

worked with him on a weekly basis. In her opinion, autism was not an area of suspected disability.

11. Ms. Thompson reviewed reports from Dr. Majors, Ms. Ross, Ms. Roley, Ms. Segal and Dr. Abramson. None of them reported repetitive activities, stereotyped movements, resistance to environmental change or change in daily routines, or unusual responses to sensory experiences in the educational environment.

12. According to Student's teachers, he transitioned easily, was comfortable with classmates, maintained appropriate eye contact, followed routines and did not have sensory behaviors that interfered with his education in Ms. Casalegno's or Ms. Cox-Nichol's classrooms. Student struggled with social skills, walked the perimeter of the playground, and touched his hair in second grade. However, his social skills improved toward the end of second grade and Student's self-soothing hair pulling behavior occurred at the beginning of second grade but abated by the end of the school year.

13. District did not deny Student a FAPE by failing to assess Student for autism eligibility in 2015. Student did not prove by a preponderance of the evidence that Mother requested an autism assessment or that District was on notice that Student displayed symptoms of autism or autistic-like behaviors at any time before May 2016.

14. Dr. Johnson's testimony and opinions were not persuasive as to what District knew or should have suspected when Dr. Thompson conducted her psychoeducational assessment of Student. Dr. Johnson observed behaviors consistent with her diagnosis of autism in April and May 2016. However, the behaviors Dr. Johnson observed included a wide variety of behaviors that no assessor or District staff previously observed. These behaviors included suckling mouth noises and movements, smelling the carpet, bouncing his body against walls, rolling his eyes up, and one instance of hand flapping. Similarly, the assessment tools and rating scales Dr. Johnson administered focused on autism and were based on Student's then current presentation.

None of that information was available to the IEP team before District received Dr. Johnson's assessment.

15. Student did not prove District denied Student a FAPE by failing to find him eligible for special education under the category of autism at any time before Dr. Johnson's assessment. The IEP team did not have Dr. Johnson's report before the March 23, 2016 meeting. Within a few days of receiving the report, District convened an IEP meeting to review the report on May 27, 2016, when Dr. Johnson presented her report. The IEP team agreed to reconvene the meeting to consider Dr. Johnson's recommendations for eligibility, goals, placement and related services. There was no evidence the IEP team reconvened to act on Dr. Johnson's recommendations at any time before Student filed his amended complaint.

16. In conclusion, District's May 11, 2015 psychoeducational assessment was appropriate, such that Student is not entitled to an IEE. District did not deny Student a FAPE in the 2015 IEP by failing to assess Student for autism-related disorders or in the 2016 IEP by failing to find Student eligible under that category.

#### DISTRICT'S ISSUE 2 AND STUDENT'S ISSUE 3(B) THROUGH (E): 2015 IEP

17. District contends the March 23, May 15, June 5, June 22, and September 3, 2015 IEP meetings resulted in an offer of FAPE (collectively "2015 IEP"). Student contends the 2015 IEP did not offer appropriate goals in communication, behavior, academics and social skills. Student also contends the 2015 IEP did not provide specialized academic instruction, appropriate speech and language therapy and did not offer behavioral therapy to address behavior and social skills. District argues the 2015 IEP was appropriate and offered Student a FAPE in the least restrictive environment.

#### Applicable Law

18. When a school district seeks to demonstrate that it offered a FAPE, the

legal analysis consists of two parts. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) A procedural violation results in the denial of a FAPE if it 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. (20 U.S.C. § 1415(f)(3)(E)(ii); see *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,1484, superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

19. An IEP is a written document for each child with a disability that includes: 1) a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and 2) a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20

U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code § 56345, subd. (a)(7).) The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) & (i).)

20. An IEP is developed by an IEP team. The IEP team must include: 1) one or both of the student's parents or their representative, 2) a regular education teacher if a student is, or may be, participating in the regular education environment, 3) a special education teacher, and 4) a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).)

21. If a child's behavior interferes with her learning or the learning of others, the IDEA requires the IEP team, in developing the IEP, to "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

22. 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(a) Ed. Code, § 56500.4.) Parents cannot meaningfully collaborate with the IEP team without valid reliable information about their child's disability.

23. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56342.)

24. School districts, as part of a special education local plan area, must have available a continuum of program options to meet the needs of individuals with exceptional needs for special education and related services as required by the IDEA and related federal regulations. (34 C.F.R. § 300.115; Ed. Code, § 56360.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; non-public, non-sectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication in the home, hospitals or institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.)

25. The Ninth Circuit follows a four-part test on the question of whether a placement is in the least restrictive environment. The four factors are: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the child will have on the teacher and children in the regular

class; and 4) the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R., supra*, 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. 19 No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with ADHD and Tourette's Syndrome].) Whether education in the regular classroom, with supplemental aids and services, can be achieved satisfactorily is an individualized, fact-specific inquiry. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048.) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at pp. 1048-1050.)

26. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

27. The methodology used to implement an IEP is left to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, 458 U.S. at p. 208; *Adams v. State of Oregon, supra*, 195 F.2d 1141, 1149; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Comm.* (1st Cir. 2004) 361 F.3d 80,

84.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Gregory K. v. Longview School Dist.*, *supra*, 811 F.2d at 1314.) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley*, *supra*, 458 U.S. 176, 208.) *Rowley* requires a school district to provide a disabled child with access to education; it does not mean that the school district is required to guarantee successful results. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301, *Rowley*, *supra*, 458 U.S. at p. 200.)

28. If a parent refuses services in an IEP that was consented to in the past, or the school district determines that the refused services are required to provide a FAPE, the school district shall file a request for a due process hearing. (Ed. Code, § 56346, subds. (d) & (f).) When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley*, *supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

#### Analysis

29. The 2015 IEP met procedural requirements. District demonstrated the 2015 IEP included a statement of Student's levels of performance and how Student's specific learning disability and speech and language impairment affected his participation and progress in the general education curriculum. The 2015 IEP was developed based upon current information from recent assessments and input from all members of the IEP team including Parents and Dr. Burnett. The IEP team met on May 15, June 5, and September 3, 2015. The required members of the IEP team attended each meeting. Parents and their advocates had valid reliable information, participated and collaborated with the other members of the IEP team. Each meeting lasted more than two hours during which the team considered Student's strengths, Parents' concerns, the results of

the most recent assessments, and Student's academic and functional needs. The 2015 IEP included start dates, frequency, location and duration of special education and related services.

30. The only procedural requirement challenged by Student was whether the 2015 goals were appropriate. The IDEA does not require a particular number of goals nor does it require goals for every particular manifestation of the Student's disability. Parents, Dr. Burnett, and District discussed goals and modified proposed goals at the May 15, June 5, and September 3, 2015 meetings. District modified some proposed goals and added a goal at Parents' and Dr. Burnett's request. The goals addressed the areas of communication, behavior, academics and social skills. The 2015 IEP included seven goals to address speech and language, 12 goals to address academics, four goals in the area of occupational therapy and a social skills goal. The goals were appropriate, based upon what the IEP team knew at the time, to address Student's needs in the areas of communication, behavior, academics and social skills.

31. The 2015 IEP was reasonably calculated to provide Student educational benefit in light of what District knew at the time the 2015 IEP was offered. As the result of then current assessments by District and private assessors and five IEP team meetings, District increased the level of related services from the levels implemented in second grade and added additional support and services. District offered Student 30 minutes of individual speech and language four times a week by District. District added 60 minutes per week of individual speech and language services from a non-public agency and 30 minutes per week group speech and language services to address social skills. The level of individual speech and language services was consistent with Ms. Segal's recommendations based upon her February 2015 reassessment. District increased Student's previous level of 30 minutes of occupational therapy consultation per month to one 45-minute session of individual occupational therapy per week and

two 30-minute sessions of consultation between District's occupational therapist and Student's service providers per month.

32. The increased level of specialized academic instruction and the addition of one to one support were reasonably calculated to address Student's academic needs. The increased level of individual speech/language therapy and the addition of group speech and language therapy was reasonably calculated to address Student's deficits in communication and social skills, and his need for speech and language therapy. District considered Dr. Majors' and Ms. Segal's recommended placement, and Parents' preferred placement, in a one to one environment such as Pliha Center. Pliha Center was not the least restrictive environment because Student had no access to typical peers at Pliha Center. To address Student's need for one to one support, District offered 300 minutes of intensive individual services per school day by an aide in both the general and special education settings, thus increasing the level of intensive individual support while providing Student the opportunity to participate in general education with access to typical peers. Accordingly, District's offer was reasonably calculated to provide educational benefit for Student in the least restrictive environment.

#### STUDENT'S ISSUE 4(B) THROUGH (E): MARCH 23, 2016 IEP

33. Student contends the March 23, 2016 IEP denied Student a FAPE because the IEP did not offer (b) appropriate goals in communication, behavior, academics and social skills; (c) appropriate specialized academic instruction,(d) appropriate speech and language therapy; and (e) behavior therapy to address Student's maladaptive behaviors. District argues the 2016 IEP was appropriate and offered Student a FAPE in the least restrictive environment.

#### Applicable Law

34. The legal authorities in paragraphs 19 through 26 are incorporated by

reference into the analysis of this issue.

35. A school district is required to use those assessment tools necessary to gather relevant functional and developmental information about the child to assist in determining the content of the child's IEP. (34 C.F.R. § 300.304(b)(1)(ii).) The failure to obtain critical assessment information about a student "renders[s] the accomplishment of the IDEA's goals -- and the achievement of a FAPE -- impossible." (*N.B. v. Hellgate Elementary School Dist. supra*, 541 F.3d 1202, 1210 quoting *Amanda J. v. Clark County School Dist. supra*, 267 F.3d 877, 894.) On May 23, 2016, the Ninth Circuit reaffirmed *Hellgate* and *Amanda J.* in *Timothy O. v. Paso Robles Unified School District* on facts similar to those presented in this case. (9th Cir. May 23, 2016) \_\_ Fed.3d \_\_ [D.C. No. 2:12-cv-06385-JGB-JEM] .)

#### Analysis

36. The weight of the evidence demonstrated that the March 23, 2016 IEP was not reasonably calculated to provide Student educational benefit in light of what District knew at the time the IEP was offered. District notified Parents Student's annual IEP review was due on March 23, 2016. District understood that the meeting could be opened and continued in order to meet statutory requirements because District followed that procedure in 2015. District knew it did not have sufficient information to determine Student's present levels of performance and could not establish baselines in order to prepare informed goals and objectives. District was aware that academic performance and baseline information would be available from Pliha Center the first week of April. Mother suggested that District open the meeting on March 23, 2016 and continue the meeting to a convenient date after the information was available. Mother also informed District she needed current information and baselines in order for Parents to participate meaningfully in the IEP process.

37. Parents' request to open the IEP timely on March 23, 2016 and continue it

for a short period of time to obtain updated information and the progress reports from Pliha Center would have allowed the entire IEP team to develop an IEP reasonably calculated to provide educational benefit to meet Student's needs. Pliha Center's April 1, 2016 report compared current testing results with the results from February 17, 2015, using the same instruments and reporting raw scores, grade and age equivalents, and percentile scores. This data would have informed the entire IEP team of Student's level of academic achievement, his strengths and his areas of need. Pliha Center's reports included relevant functional and developmental information. Data from Ms. Pliha's standardized testing should have been considered by District staff in determining the appropriate content of the 2016 IEP even though District was not required to accept Pliha Center's recommendations.

38. Parents informed District during the March 23, 2016 IEP meeting that they could not express their concerns because they did not have current information as to Student's baselines. District proceeded with the meeting. The IEP team did not discuss Student's strengths and areas of need. District staff proposed goals. The staff members who proposed goals on March 23, 2016 were not familiar with Student and did not have any information as to Student's current abilities.

39. Student had continuing needs in the areas of communication, behavior, academics and social skills. Student's needs in those areas changed between September 3, 2015, the last time Student's IEP team met, and March 23, 2016. Student made progress in some areas, his behavior changed, some of his needs increased and he had regressed in some areas. Yet District offered essentially the same IEP it offered in 2015. Accordingly, the March 23, 2016 IEP was not reasonably calculated to provide educational benefit to Student and denied Student a FAPE.

## REMEDIES

1. Student prevailed on Issue 4 (b) through (e) which entitles him to remedies

on those claims.

#### Applicable Law

2. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Education* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a denial of a FAPE, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra*, 471 U.S. at p. 374.)

3. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d at p. 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. Dist. of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524.)

4. Parents may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369- 370 [reimbursement for unilateral placement may be awarded under the IDEA where the district’s proposed placement does not provide a FAPE].) The private school placement need not meet the state education standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, pp. 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had

substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress].)

#### Analysis

5. Neither party offered evidence that the IEP team met after it agreed to reconvene after May 27, 2016, to consider eligibility, placement and the recommendations in Dr. Johnson's report. Neither party offered evidence that the IEP team discussed Dr. Majors' report and the reports from Pliha Center at or after the March 23, 2016 IEP meeting. District is required to offer an IEP for the 2017-2018 school year that meets legal requirements. In order to meet legal requirements, District must have current information in order to develop an appropriate IEP. Accordingly, Student is entitled to an order requiring District to hold an IEP team meeting within 60 days of this Decision. District shall invite Ms. Pliha, Dr. Majors and Dr. Johnson to attend in person or by conference call, unless District and Parents excuse their attendance. District shall pay Ms. Pliha, Dr. Majors and Dr. Johnson for their attendance at their customary rate, for no more than three hours. Student's request for placement in the regular education environment for physical education and lunch shall be addressed at the IEP team meeting.

6. The evidence does not support Parents' claim for reimbursement for private education services including transportation; and speech and language therapy from July 31, 2015, the end date of the previous settlement agreement,<sup>7</sup> through March

---

<sup>7</sup> The Parties stipulated at hearing that Student's claims through March 16, 2015 were released and District agreed to reimburse Parents for certain compensatory services through July 31, 2015 according to the terms of a settlement agreement in a previous matter.

23, 2016. The 2015 IEP met all legal requirements. District's liability arose on March 23, 2016. District's 2016 IEP offer was not reasonably calculated to provide educational benefit to Student.

7. Student established that he made progress in academic achievement and speech and language with the educational instruction and speech and language services provided by Pliha Center. Under these circumstances and given that the March 23, 2016 IEP did not offer Student a FAPE, District shall reimburse Parents for academic instruction provided by Pliha Center at the rate of \$80.00 per hour from March 23, 2016, through May 27, 2016, for all days District's schools were in session according to the paid invoices and school calendar in evidence. In addition, District shall reimburse Parents the following educational expenses: \$5,380.80 for speech and language and academic assessments conducted by Pliha Center in March and April 2016; individual speech therapy provided by Pliha Center at the rate of \$130 per hour from April 11, 2016 through May 27, 2016 for a total of \$2,261.00.

8. In addition, as compensatory education based on the particular facts in this case, District shall reimburse Parents for services provided by Pliha Center, and transportation from home to Pliha Center, upon proof of attendance, payment and mileage, from May 27, 2016, through the end of the regular 2016-2017 school year. District is not required to reimburse Parents for any day District schools are not in session. Based upon the school calendar admitted into evidence and the time it will take to reconvene the IEP team to develop an appropriate IEP for the 2017- 2018 school year it is not equitable or practicable to remove Student from his current placement or transition Student to another placement before the end of the 2016-2017 school year.

## ORDER

1. Within 60 calendar days of this Decision, District shall hold an IEP team meeting. The IEP team meeting shall be conducted in such a way as to meet all legal

requirements.

2. District shall invite Ms. Pliha, Dr. Majors and Dr. Johnson to the IEP meeting. District shall make reasonable efforts to schedule the meeting at a time when they are able to participate personally or by conference call. District shall fund the attendance of Ms. Pliha, Dr. Majors and Dr. Johnson at their customary rate, not to exceed three hours. The Parties may agree to excuse the attendance of Ms. Pliha, Dr. Majors or Dr. Johnson.

3. Within 60 days of the date of this decision, District shall reimburse Parents for academic instruction provided by Pliha Center at the rate of \$80.00 per hour from March 23, 2016, through May 27, 2016, for all days District's schools were in session according to the paid invoices and school calendar in evidence.

4. Within 60 days of the date of this decision, District shall reimburse Parents for speech and language and academic assessments conducted by Pliha Center in March and April 2016 in the amount of \$5,380.80 and individual speech therapy provided by Pliha Center at the rate of \$130 per hour from April 11, 2016 through May 27, 2016 for a total of \$2,261.00.

5. Upon proof of payment and proof of attendance, District shall reimburse Parents for the cost of services provided by Pliha Center from May 27, 2016, through the end of District's regular 2016-2017 school year. District is not required to reimburse Parents for any days District schools are not in session. In addition, upon receipt of documentation, District shall reimburse Student for mileage, at the federal rate, for two round trips per day between Student's home and Pliha Center from May 27, 2016, through the end of the regular 2016-2017 school year, excluding days District schools are not in session.

6. Student's remaining requests for relief are denied.

## PREVAILING PARTY

Pursuant to 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. In accordance with that section, the following finding is made: District prevailed on District's Issues 1 and 2 and Student's Issues 3 (a) through (e) and 4(a). Student prevailed on Student's Issue 4(b) through (e).

## RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision in accordance with Education Code section 56505, subdivision (k).

Dated: November 15, 2016

*/s/*

---

MARIAN H. TULLY

Administrative Law Judge

Office of Administrative Hearings