

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2017010013

v.

ALHAMBRA UNIFIED SCHOOL DISTRICT,

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ALHAMBRA UNIFIED SCHOOL DISTRICT,

OAH Case No. 2016090921

v.

PARENT ON BEHALF OF STUDENT.

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DECISION

Alhambra Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on September 22, 2016, naming Student. On December 29, 2016, Student filed a due process hearing request with OAH naming District. The matters were consolidated and also continued on January 6, 2017, for good cause. Student's case was designated the primary case, and the filing of the Student's Complaint governed the timelines.

Administrative Law Judge Elsa H. Jones heard this matter in Alhambra, California, on May 9 through May 11, 2017, and on May 16, 2017. Student was represented by Hiromi Parks and Adriana F. Nusbickel, Attorneys at Law, who appeared on all days of hearing. Student's mother appeared on all hearing days. A Cantonese interpreter was present on all hearing days to interpret the proceedings for Mother.

District was represented by Sharon Watt, Attorney at Law, who appeared on all hearing days. Patricia Mahony, District's Secondary Special Education Director, and Michele Yamarone, District's Elementary Special Education Director, appeared on all hearing days.

Sworn testimony and documentary evidence were received at the hearing. A continuance was granted until June 12, 2017, for the parties to file written closing arguments. The parties timely filed their written closing arguments on June 12, 2017, at which time the record was closed and the matter was submitted for decision.

## ISSUES

1. Student's Issues<sup>1</sup>
  - A. Did District unreasonably delay in responding to Parent's requests on May 31, 2016, and June 20, 2016, for an independent psycho educational evaluation?
  - B. Did District deny Student a free appropriate public education during the 2016-2017 school year by imposing different provider qualifications for independent educational evaluations on Parent's preferred independent

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<sup>1</sup> At the time of hearing, Student withdrew his issue 1A, and District withdrew its issue 2B as set forth in the May 3, 2017 prehearing conference order in this matter. These issues concerned the appropriateness of District's psycho educational assessment. The parties agreed that these issues were moot, as District had agreed to provide Student an independent psycho educational assessment at public expense. Consequently, Student's and District's remaining issues have been renumbered from the manner in which they were numbered in the PHC Order. Additionally, the date of the first session of the triennial IEP (March 7, 2016) did not appear in the PHC Order, and has been added to the issue statement above.

- assessor than it did on other independent assessors, thereby significantly impeding Parent's opportunity to meaningfully participate in the decision-making process regarding the provision of a FAPE to Student?
- C. Did District's spring 2016 speech and language assessment and March 4, 2016, assessment report appropriately evaluate Student in all areas of suspected disability and meet all relevant statutory requirements?
  - D. Did District's spring 2016 occupational therapy assessment and March 4, 2016, assessment report appropriately evaluate Student in all areas of suspected disability and meet all relevant statutory requirements?
  - E. Did District deny Student a FAPE during the 2016-2017 school year by offering an inappropriate placement in Student's September 2016 amended individualized education program?
2. District's Issues
- A. Did District's Moderately Developmentally Delayed Program, along with the annual goals offered in the IEP of March 7, 2016, as amended by the IEP of April 27, 2016, and the related services and accommodations offered in the amended IEP of September 9, 2016, offer Student a FAPE in the least restrictive environment?
  - B. Was District's spring 2016 speech and language assessment appropriate, such that Student is not entitled to an independent speech and language evaluation at public expense?
  - C. Was District's spring 2016 occupational therapy assessment appropriate, such that Student is not entitled to an independent occupational therapy evaluation at public expense?

## SUMMARY OF DECISION

Student is a 15-year-old boy who has been eligible for special education in the categories of autism and intellectual disability. District conducted triennial assessments in early 2016, and convened a triennial IEP meeting thereafter. The psycho educational assessment results, including the academic assessment, confirmed Student's eligibility categories of autism and intellectual disability; the speech and language assessment results confirmed that Student continued to require speech and language services; and the occupational therapy assessment resulted in a recommendation that Student did not require occupational therapy services to access the curriculum. District's offer of a FAPE at the triennial IEP included placement in a specialized moderate developmentally disabled program at Alhambra High. This Specialized Non-Diploma Track Program at Alhambra High has a functional academic curriculum which leads to a certificate of completion, and is generally the type of program that students who were in a mild-moderate special day class for autism in elementary school, such as Student was, transition into for high school. District continued to offer speech and language services.

In this consolidated matter, the parties contest whether District's speech and language and occupational therapy assessments were appropriate, as well as whether District responded to Student's request for an independent psycho educational assessment in a timely and appropriate manner. The parties also contest whether District's March 2016 triennial IEP, as amended, offered Student a FAPE in the least restrictive environment.

This Decision finds that District's speech and language and occupational therapy assessments were appropriate, and that District responded appropriately and in a timely manner to Student's request for an independent psycho educational assessment. This Decision also finds that District's triennial IEP offered Student a FAPE in the least restrictive environment.

## FINDINGS OF FACT

### BACKGROUND AND JURISDICTION

1. Student is a pleasant 15-year-old boy, who, as of the time of the hearing, was completing ninth grade in a mild-moderate special day class program at San Gabriel High School, located in District. Student has resided in District with Mother at all relevant times, and, since kindergarten, has been eligible for special education and related services. Student puts forth serious effort in his classes. As of April 3, 2014, Student's IEP designated his primary eligibility as intellectual disability and his secondary disability as autism. These eligibilities were later reversed. At his March 16, 2015 annual IEP team meeting, when Student was 12 years old and in seventh grade, the team designated Student's primary eligibility as autism and his secondary disability as intellectual disability, and those eligibilities remained unchanged as of the time of hearing.

2. The March 16, 2015 IEP team placed Student full time in a special day class designed for children with autism at William Northrup Elementary School located in District. Parents consented to that placement, and that was Student's last agreed upon and implemented placement as of the time of hearing. Student continued to attend the autism special day class at Northrup Elementary during the 2015-2016 school year, when he was in eighth grade. The parties deemed his ninth grade placement in the San Gabriel Valley High Special Day Class Diploma Track Program as a stay put placement.

3. Student's program at San Gabriel Valley High had a grade-level curriculum and followed common core standards. Student and his classmates were on a diploma track, but sometimes higher-performing non-diploma track students were enrolled in the program.

4. When Student enrolled in District, Mother requested that all correspondence be in English. All of Student's IEP's until the IEP's held during the 2016-

2017 school year were conducted in English, without the presence of an interpreter. All of Mother's communications with District that were in evidence were in English.

#### PREVIOUS RELEVANT DISPUTES

5. The parties have had several disputes over the years that bear on the issues in this case. For example, at Student's April 3, 2014 triennial IEP team meeting, when Student was 11 years old and in sixth grade, District members of the team agreed that Student be exited from occupational therapy. Parents disputed his exit from those services, and therefore he has received stay put occupational therapy services through the time of the hearing. Additionally, the parties have had an ongoing dispute regarding Student's use of an iPad with Touch Chat for communication. The device was recommended as a result of an augmentative and alternative communication assessment Parents requested and which District facilitated. The IEP team reviewed the assessment at an IEP team meeting on November 2, 2015, and the team agreed to a trial of the device. District convened an IEP team meeting on February 1, 2016, to review Student's trial of the device. At that time, District members of the IEP team determined that Student did not require an augmentative alternative communication device with a communication application to access his educational program to receive educational benefit from his program, or to make progress toward his goals. Parents disagreed. As is discussed below, the triennial IEP at issue here does not provide for use of the iPad for communication, or for the use of any other augmentative and alternative communication device.

#### TRIENNIAL ASSESSMENTS

6. District conducted triennial assessments of Student in the early part of 2016, when Student was 13 years old and in eighth grade. Leland Myrick, District's school psychologist, conducted a triennial psycho educational assessment, which was

not offered into evidence. The triennial academic assessment, speech and language assessment, occupational therapy assessment, and health assessment were received into evidence.

#### Academic Assessment

7. Natalie Elias, Student's special education teacher at Northrup Elementary assessed Student's academic achievement in March 2016, and wrote a report dated March 7, 2016. She administered the Kaufman Test of Educational Achievement--Third Edition on March 3, 2016. Student was cooperative and friendly during the assessment. He obtained a standard score of 64 on the Reading Composite, which was in the low range, and a standard score of 66 on the Math Composite, also in the low range. He obtained a standard score of 48 on the Written Language Composite, which placed him in the very low range.

8. Ms. Elias's report described Student's strengths and areas of need on the subtests in reading, math, and writing. On the Letter and Word Recognition subtest, which measured word recognition for high frequency words of increasing difficulty, Student did well with high frequency words, and was reading them at the fourth to sixth grade level. He had some areas of need in using incorrect vowel sounds when reading. On the Reading Comprehension subtest, which measured Student's ability to answer both literal and inferential questions based on a short passage, Student's area of strength was his reading comprehension, which was at a second grade level. He could read a given text of two to three sentences and answer both literal and inferential questions. He also knew to refer back to the text after reading a given question to obtain the information to answer the question. However, as the text lengthened to more than three sentences, Student struggled with answering "who," "what" and "where" types of questions. He would refer back to the text to find a possible answer, but was

unable to locate the answer and so would just read directly from the text, which would not always provide information relevant to the question.

9. Student's strength was in blending on the Phonological Awareness subtest, a test for children lower than his grade range that measured his ability to hear, isolate, and manipulate sounds.<sup>2</sup> The other sections of the subtest were challenging for him. Student had difficulty identifying words that did not rhyme, and identifying words that did. He also had difficulty with sound matching, and was only able to provide three out of 10 intended new words when a sound was deleted from the original word. He could perform this task in the classroom, when visuals were provided, but visuals were not permitted in the standardized testing situation. Student was able to decode simple nonsense words on the Nonsense Word Decoding subtest, which measured Student's ability to use phonetic knowledge to sound out nonsense words. He had difficulty with nonsense words that looked similar to familiar words, and with multisyllabic words.

10. In math, Ms. Elias reported Student's strengths and weaknesses on two subtests. On the Math Computation subtest, which measured Student's ability to perform the four basic operations, fractions, linear equations, and other calculations, Student was able to add and subtract single and 2-digit numbers. He could multiply a 3-digit number by a 1-digit number, and do simple division. He had difficulty with regrouping and with solving for a variable, and had difficulty with problems that were displayed horizontally. On the Math Concepts and Applications subtest, which measured Student's ability to provide verbal explanations and/or solutions for mathematics

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<sup>2</sup> Ms. Elias did not testify at hearing. She did not report a score for this subtest, likely because Student was beyond the K-6th grade level for the test. She also did not report a score for the nonsense word decoding, but there was no apparent reason for not doing so.

reasoning and problem solving, Student was able to answer questions at a fourth to fifth grade level. He could order numbers from least to greatest, and could read a calendar, identify a date, and say what day the date was. He was also able to identify the correct time unit for a task. Student struggled with word problems where inferences were needed to solve the problems, such as a problem that involved the price of three identical items, and a picture showed the price for only one of the items. He also needed more work on the concepts of measuring units that would be appropriate for a given item or idea. Student had difficulty understanding word problems.

11. In the area of written language, Ms. Elias also reported Student's strengths and weaknesses on two subtests. The Spelling subtest was Student's stronger area. He was able to spell common sight words. He had difficulty with words that were in the past tense that had a change of vowel, or ended in "-ed." On the Written Expression subtest, which measured Student's ability to respond in writing to specific prompts using correct syntax, grammar, punctuation, and capitalization, Student struggled when tested at the third to fifth grade reading level. Based on his reading comprehension level of second grade, Ms. Elias tested him at the first to second grade level in written expression. Student was able to follow simple directions. When he wrote about retelling a story, his sentence information and structure was lacking, but he was able to consistently demonstrate that sentences started with a capital letter and ended with some form of punctuation. Student struggled with writing accurate sentences in response to prompts. Many of his sentences were not complete sentences, were grammatically incorrect, or were unclear because words were missing or added. Student struggled with combining two sentences into one. When he wrote about retelling a story, he produced 61 words, but only one good sentence. He did not reread his sentences to make sure they made sense.

12. The assessment tools were valid for the purpose for which they were used. The testing was an accurate representation of Student's ability and a valid assessment of current levels of achievement. Ms. Elias was qualified to administer the tests, and the assessments were determined to generate test scores that were consistent, dependable, and reliable measures of academic performance.

13. In terms of classroom performance, Student was a pleasure to have in class. He was quiet and ready to work. Occasionally he needed redirection, but he needed prompting more than redirection. He learned best when visuals accompanied the text. On the California English Language Development test, given on September 30, 2015, Student scores were all at the Beginning level in listening, speaking, reading, and writing. He obtained class grades of A's in Reading, Math, and English Language Development, a B in Science, and a C in Social Studies.

#### Speech and Language Assessment

14. Sophie Sung, a District speech and language pathologist, conducted a triennial speech and language assessment of Student in early 2016, and wrote a report of her assessment dated March 4, 2016. Ms. Sung testified at hearing. She obtained her bachelor of arts degree in liberal studies from the University of California, Riverside, and her master of science degree in speech and language pathology from Loma Linda University. She is a California licensed speech and language therapist. She holds a clear credential as a speech and language pathologist, and a certificate of clinical competence from the American Speech-Language-Hearing Association. Ms. Sung has been a speech and language therapist for six years, and has been employed by the District in that capacity since August 2015. She served as Student's speech and language therapist throughout the 2015-2016 school year, when he was in eighth grade. She provided both his individual and group speech therapy.

15. Ms. Sung noted that Cantonese was spoken in the home, but that Student's primary language was English, and that all instruction was presented in English. She verified Student's language not only by observation and records review, but also by using the services of a Cantonese interpreter to attempt to assess Student informally in Cantonese in the areas of answering basic questions, expressive vocabulary and following directions. For all questions asked in Cantonese, Student responded incorrectly, and in English. When presented with stimuli in Cantonese, Student expressed everything in English. He was not successful following directions when stimuli were presented in Cantonese, although some of the trials were successful when presented to him in English. Therefore, testing in Cantonese was discontinued, and the assessment proceeded in English.

16. Ms. Sung performed a records review, and looked at Student's goals and progress. She considered Mother's concerns regarding Student's use of the iPad, based on what Mother said as documented in IEP notes during the 2015-2016 school year, and a few telephone conversations she had during that time with Mother about the iPad and its application software. She did not discuss specific concerns with Mother about Student's speech abilities during those telephone conversations.

17. Student was alert, calm, and cooperative, and appeared to be motivated by a Sesame Street magnetic toy board with characters. He was given breaks after 30 to 40 minute increments of testing, and sometimes he would ask if he could go back to class.

18. In the area of articulation, Student was intelligible to all listeners. He produced some phonemes consistent with speakers of Asian languages, such as Cantonese. His oral facial musculature had adequate symmetry, strength, range of motion, and agility in connected speech. His speech was fluent. His vocal quality, resonance, pitch, tone, and amplitude were within normal limits for his age and gender.

19. Ms. Sung assessed Student's understanding of vocabulary by administering the Receptive One Word Picture Vocabulary Test, and she assessed Student's expressive vocabulary by administering the Expressive One Word Picture Vocabulary Test. Student's scores on each of these standardized measures were in the below average range and reflected severe deficits in vocabulary in both receptive and expressive language.

20. Ms. Sung assessed Student's receptive and expressive language skills, including semantics, morphology, syntax, pragmatics, memory, and classroom language skills, by administering the Clinical Evaluation of Language Fundamentals, 5th Edition. Student's receptive, expressive, and pragmatic scores on this standardized measure were below average. His receptive and expressive scores on this measure were consistent with his scores on the Receptive and Expressive One Word Picture Vocabulary Tests. He showed weakness in all areas, particularly for recalling sentences. She administered the informal Pragmatics Profile, which provides information as to what a child lacks within a set of skills. The results reflected Student had difficulty with telling and understanding jokes, giving and asking for the time of events, giving or asking for reasons and causes, offering help to others, asking others to stop or change their actions, accepting apologies, and knowing how someone was feeling based on nonverbal cues. He had a flat affect.

21. Ms. Sung administered the Test of Language Development-Intermediate: Fourth Edition to evaluate Student's auditory comprehension, linguistic organization, and speaking. Student's scores on this standardized measure reflected that his organizing, speaking, grammar, semantics, and spoken language skills were very poor, and his listening skills were poor.

22. Ms. Sung administered the Comprehensive Assessment of Spoken Language, which evaluates comprehension, expression, and retrieval across four

language categories. The lexical/semantic category assesses knowledge and use of words and word families; the syntactic category assesses knowledge and use of grammar and sentence structure; the supra linguistic category measures comprehension of complex language; and the pragmatic category measures awareness of the appropriateness of language in relation to the situation in which it is used and the ability to modify language to the situation. Ms. Sung administered portions of the test informally, with modifications such as repetition or breaking down of instructions, and gave the trials designed for students younger than Student's chronological age. Thus the test results were not standardized. Ms. Sung commented that it was appropriate to use this measure as an informal measure, since she was administering more than two standardized tests, and an appropriate speech and language assessment required two standardized tests and an informal measure. Student's weakest areas included making inferences, understanding ambiguous sentences, and non-literal language. His overall performance was poor, even with the supports she provided and using the trials for younger children. His performance was consistent with the results he obtained in the standardized instruments showing he had weaknesses in these areas.

23. Ms. Sung took a speech sample. She asked "wh" questions, and showed him pictures. Student could respond to questions with expressively correct sentences, with some difficulty in pinpointing semantically correct responses without visual cues or choices. He responded appropriately to the environment. Student was able to answer basic questions regarding pictures in 1-word to 2-word responses, and sometimes used 5-word phrases. He could use correct semantics when answering questions when given choices and prompts, with correct use of pronouns and vocabulary. He would use the text for reference for information and vocabulary. He was able to respond in turn-taking conversation. He had difficulty with more abstract things, and needed some redirection

back to the material to pay attention to what was in the pictures. In her opinion, he displayed a language deficit when describing the pictures.

24. Ms. Sung administered the Test of Pragmatic Language, 2nd Edition, which measures how well a student is able to socially achieve a purpose using language, including how well a student interprets body language, and what is occurring in a social scenario. Student performed poorly. Student performed in the less than one percentile range on this standardized measure, which could be attributed to difficulty with processing receptive language, as well as difficulty understanding hypothetical situations.

25. Ms. Sung observed Student for a total of 90 minutes in different settings, including lunch, recess, and during math. She noticed that he sat with his peers at lunch, and was very aware of his environment. He followed suggestions and instructions from the aide. He ran directly to the play structure with his classmates at recess. He did not appear to interact with them, but was content standing beside them. During class, he quietly finished a quiz, but did not work assiduously at an assignment. Student required some redirection from the aide, he asked for help, and he conversed with the other adults. Ms. Sung observed him reading books, playing a game, and writing a letter. He asked for help making a paper airplane.

26. Ms. Sung considered existing evaluation data, information and evaluations provided by Parent, current classroom-based assessments, and observations by teacher to determine whether Student had a speech or language deficit which may be contributing to Student's educational need. She ruled out environmental, cultural/linguistic, or economic disadvantage in determining eligibility. The testing evaluation materials and procedures were selected and administered so as not to be racially or culturally discriminatory. The tests and other evaluation materials were valid and reliable for the specific purpose for which they were used. Ms. Sung was trained to

administer them, and she did so in conformance with the instructions provided by their producers, except as noted in her report. Student's eligibility was not due to lack of instruction in reading, math, or limited English proficiency. The tests were provided and administered in the language and form most likely to yield accurate information as to what Student knew and could do academically, developmentally, and functionally.

27. Ms. Sung concluded that Student qualified for speech and language services due to low pragmatics, and low receptive and expressive language skills. He scored at least 1.5 standard deviations below the mean, or below the 7th percentile in semantics, morphology/syntax, and pragmatics. She recommended that Student receive speech and language services. She did not specify any level of services in her report. Student produced no specific, credible evidence to contradict Ms. Sung's assessment, report, or conclusions.

#### Occupational Therapy Assessment

28. Danielle Callahan, a District occupational therapist, conducted a triennial occupational therapy assessment of Student on February 23 and 24, 2016. She wrote a report of the assessment on March 4, 2016, and testified at hearing. She received a bachelor's degree in occupational science, and a master's degree in occupational therapy from the College of St. Catherine in St. Paul, Minnesota. She is licensed to practice occupational therapy in California. She has been an occupational therapist for 10 years, and has been employed by District as an occupational therapist for two years. She has provided occupational therapy services to Student for the past two years.

29. Based on a conversation with Mother, Ms. Callahan noted that Parent concerns were writing quality, specifically sizing and line placement. There were no teacher concerns relevant to occupational therapy. Student did not independently request help in class. She listed the accommodations in Student's IEP dated March 16, 2015, which was Student's last agreed upon and implemented IEP as to placement. Her

report included a statement that the Educational Framework for Child Success, an educational model, was used as a guide through the assessment process, and was considered best practice.

30. Ms. Callahan's assessment consisted of an interview with Student's teacher, Ms. Elias, classroom observations, review of work samples, clinical observations, records review, and standardized assessments. Ms. Callahan did not check the box on the report to show that she had performed a parent interview, but her failure to do so was an oversight, as she spoke to Mother as part of the assessment.<sup>3</sup>

31. Ms. Callahan selected and administered tests, assessment materials, and procedures so they were not racially, culturally, or sexually discriminatory. Tests were validated for the specific purpose for which they were used. Ms. Callahan, who was trained to administer the test instruments, did so in accordance with the instructions of the test producer, except as noted in the assessment report. She selected and administered the tests to best ensure that when they were administered to Student they produced results that accurately reflected what the instruments purported to measure.

32. The assessment results were not primarily affected by environmental, cultural, or economic factors. Student was cooperative and the results were a valid indicator of Student's performance. The assessment was administered in English in a manner that ensured the results reflected Student's ability, rather than his English

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<sup>3</sup> Mother testified that she did not converse with Ms. Callahan regarding the occupational therapy assessment, but Ms. Callahan's testimony was more persuasive than Mother's on this point. Ms. Callahan is a competent and qualified occupational therapist, and she clearly and intelligently explained her assessment and the procedures she followed. Her testimony regarding her assessment procedure was more persuasive than Mother's.

language skills. Student's school records reflected that Student's native language was Cantonese, but Student had demonstrated proficiency in English such that Ms. Callahan did not believe that an interpreter was necessary. She also consulted with Student's teacher, who taught Student in English, and who agreed that an interpreter was not necessary. The assessment instruments were provided and administered in a language and form most likely to yield accurate information, based on Ms. Callahan's knowledge.

33. Her formal assessment of Student occurred over two separate days, in a separate classroom at Northrup Elementary. Ms. Callahan observed Student for a total of 60 minutes over three days. These observations were conducted in the classroom, playground, during transition to lunch, and at the testing room. The campus grounds at Northrup Elementary consisted of asphalt, concrete, grass, and spongy walking surfaces.

34. Ms. Callahan assessed Student's seating, positioning, and performance of physical activities. Student demonstrated functional trunk control, strength, endurance, and range of motion to participate in typical activities in the school setting. He could climb up and down steps appropriately, with and without holding on the railing. He could access the playground structure with adequate strength, endurance, and bilateral hand coordination. Student was able to navigate through a self-selected obstacle course on the playground. He climbed steps and ladders, slid down the slides, and climbed up the rock wall. Student consistently demonstrated adequate postural control when seated and climbing and he used age-appropriate walking and running gait patterns.

35. Ms. Callahan assessed Student's visual skills for academic performance and school participation. Student could accurately reproduce basic and complex shapes. He could stabilize his head while tracking objects with his eyes only. His eyes appeared to move in unison as he focused on objects moving across his field of vision. He navigated through the test site, across the playground, and within his classroom, without involuntarily bumping into other children or equipment.

36. Ms. Callahan assessed Student's ability to manipulate and manage classroom materials. He consistently demonstrated right-handed dominance to perform fine motor tasks and used a mature tripod grasp pattern to manipulate his pencil. He could pick up small objects such as beans, beads, and plastic chips using a neat pincer grasp. He could fold paper, turn the pages of a book, and pick up and hold crayons. He demonstrated adequate wrist rotation when pulling apart the raputty and manipulating moon sand.

37. Ms. Callahan evaluated Student's sensory and motor skills for fine motor tasks and written communication. Student could imitate basic and complex lines and shapes. Her review of work samples showed Student could produce legible written work in class. During the assessment, Student used proper spacing, placement on the line, and letter formation when copying/writing letters that were well-proportioned, of even size and shape, and vertically aligned. His abilities to write, cut, and color were all within normal limits for his chronological age and grade.

38. Ms. Callahan assessed Student's fine motor and visual motor skills for written communication using three standardized assessments: the Beery-Buktenica Developmental Test of Visual Motor Integration; the Evaluation Tool of Children's Handwriting; and the Bruininks-Oseretsky Test of Motor Proficiency.

39. The Visual Motor Integration test examines a child's hand-eye coordination, by requiring the child to copy horizontal/vertical/angled lines, simple and more complex shapes, and forms combined from two shapes. Student was able to fully participate in the tasks of this test, following standardized protocols for administration with minimal prompts from Ms. Callahan. Student scored in the below average range on the Visual-Motor Integration subtest, within the low range on the Visual Perception subtest, and within the average range on the Motor Coordination subtest of this assessment. He did not perform as well as one would have predicted, given his practical

abilities with fine motor skills (e.g., writing, cutting, and coloring). He could reproduce basic shapes and lines, but could not reproduce more complex figures. He struggled to understand directions. In Ms. Callahan's opinion, while Student's scores on the Visual-Motor Integration and Visual Perception subtests suggested limitations in those areas, based on clinical observations and current functional abilities, Student demonstrated age and grade-appropriate visual motor skills. These skills were sufficient to meet the daily demands of the fine motor tasks in his current educational setting.

40. Ms. Callahan was unable to find a writing-specific assessment normed for Student's age, either in District's inventory or on the market. Therefore, she administered the Handwriting Evaluation Tool for observational purposes. This instrument was designed to evaluate manuscript and/or cursive handwriting skills of children in grades one through six who are having difficulty with written communication. The assessment was designed to evaluate the legibility and speed of a child's handwriting in writing tasks as compared to those skills typically required of students in the classroom at the same relative age and grade level. She acknowledged that Student exceeded the age limits for which this test was normed, which invalidated the scoring process for this test, and therefore she did not obtain or record any scores. However, due to the writing-specific nature of this assessment, Ms. Callahan determined that valuable information pertaining to Student's practical application of writing skills could be gained from observing the quality of his writing performance when completing the testing tasks. She therefore reported the quality of his performance relative to his fine motor skills development. Student was able to participate in this assessment measure following standard protocols for administration with the exception of the sentence copying sections in which Student corrected the sentences contextually, writing the corrected sentences instead of copying them directly. When writing, he was independently able to remain within a two-lined boundary and demonstrated an ability

to place letters/numbers/words consistently on the line providing sufficient spacing to support legibility. When writing and copying, Student adequately differentiated letter sizing between upper and lower case letters. Student demonstrated adequate in-hand manipulation of writing tools after demonstration, and consistent positioning of his paper and pencil.

41. Ms. Callahan administered the fine motor portion of the Test of Motor Proficiency to further assess Student's written communication and fine motor skills. The fine motor portion consists of two subtest areas: Fine Motor Precision and Fine Motor Integration. The Fine Motor Precision subtest consists of activities that require precise control of finger and hand movement, such as drawing, folding, or cutting within a specified boundary. The Fine Motor Integration subtest required Student to reproduce drawings of various geometric shapes. The composite score of both subtests is recorded as Fine Manual Control. A composite score of both subtests yield a Fine Manual Control score. Student was able to participate fully in the testing tasks following standardized protocols for administration, with the exception of the folding task. He did not crease paper along the lines, rather, he turned the paper over and folded it without the visual aide of the line to guide him, which compromised his score for that task and decreased his overall scores for the subtest. Student scored within the below average range on the Fine Motor Precision subtest and within the average range on the Fine Motor Integration subtest. He obtained an overall score for Fine Manual Control that fell well within the average range.

42. Ms. Callahan assessed Student's sensory and motor skills for participation in school activities. Student demonstrated adequate motor planning skills during the assessment. He could navigate independently on and around the play structure with and without other students present. He could climb ladders, ascend steps, and balance on one foot in a coordinated manner independently. Student consistently and

independently demonstrated adequate bilateral coordination when stabilizing with his non-dominant hand while performing fine motor tasks, climbing on the play structure, and manipulating theraputty.

43. Ms. Callahan assessed Student's sensory modulation and discrimination. Sensory modulation is the ability to regulate sensory input to maintain an optimal level of arousal to participate in the environment. It includes the ability to alter the state of alertness and react to environmental changes to initiate, attend, share, anticipate, delay gratification of needs, and participate in goal-directed activities. It also includes skills and abilities such as attention to task, transitioning between different activities, following instructions, safety awareness, and initiating and sustaining purposeful play. Student readily separated from his classmates and teacher to work with the evaluator in this area. He required minimal verbal cues and prompts to remain focused and on-task to complete the assessment tasks. Student's teacher reported that Student could timely complete classroom assignments. During assessment, Student was able to easily transition between tasks without demonstrating agitation or distraction. He had no difficulty transitioning from gross to fine motor activities or from fine to gross motor. In the classroom, she observed he remained seated in his chair without fidgeting during instruction and while completing independent seat work.

44. Ms. Callahan evaluated Student's sensory systems in the areas of tactile processing, vestibular processing, and proprioceptive processing. In the area of tactile processing, Student demonstrated adequate tolerance for tactile media such as dry rice/beans, moon sand, and theraputty. He appropriately tolerated both firm and light unexpected touch during assessment. She did not observe Student engage in sensory-seeking behaviors for this type of input.

45. In the area of vestibular processing, Student demonstrated no difficulty tolerating movement-based activities on the playground. He enjoyed sliding down the

slides, swinging, spinning on the dizzy disc, and running on the playground. When it was time to end a vestibular activity, he was easily directed away from the task to a new activity without protesting or becoming upset. He could appropriately and independently dismount equipment safely. She did not observe Student engage in sensory-seeking behaviors seeking this type of input.

46. Ms. Callahan completed her analysis of Student's sensory systems by evaluating Student's proprioceptive processing, which refers to the reception in muscles and joints regarding body position. Student demonstrated adequate tolerance for proprioceptive input. He could navigate across the basketball court during recess without bumping into equipment or students. He demonstrated adequate bilateral coordination when climbing up the ladder and rock wall, pumping the swings, and when participating in fine motor tasks. He pulled apart the theraputty without demonstrating aversion. She did not observe Student engage in sensory seeking behaviors for this type of input.

47. Ms. Callahan concluded that Student was able to access his current educational setting by navigating the playground and classroom settings. He could adequately process tactile, movement, visual, auditory and proprioceptive input for learning. He demonstrated adequate fine motor control and performance in the school setting. Student could perform all activities in his elementary school and high school environments. She reported that he had no areas of need in the area of occupational therapy services. Student's assessment results, which included evaluation of relevant functional, development, and academic information, demonstrated that he did not require occupational therapy services to assist him to benefit from his specially designed instruction. Student presented no specific, credible evidence that challenged Ms. Callahan's assessment, report, or conclusions.

## TRIENNIAL IEP TEAM MEETINGS OF MARCH 7, 2016/APRIL 27, 2016

48. District convened a triennial IEP team meeting on March 7, 2016, to discuss the results of the triennial assessments. The IEP team included an administrator, Mother, Leland Myrick (school psychologist), Ms. Elias; Ms. Sung, the District nurse; Ms. Callahan, and a general education teacher. Mother permitted the general education teacher to leave the meeting early.

49. Mother's and Student's native language was Cantonese. The team did not check the box for interpreter on the IEP form, and no interpreter was present at the meeting. The Parents Rights and Procedural Safeguards document was offered to Parent in English. At hearing, Mother stated that she did not know that she could request an interpreter for IEP team meetings, and that much of her correspondence in evidence was written in English with the assistance of parent groups to which she belonged. She also expressed that she did not understand what was going on at IEP team meetings, or the meaning of the documents she signed. IEP meeting notices and other documents in evidence, however, notified parents that interpretation and translation services were available during the IEP process. Mother had received these documents, but there was no evidence that Mother had ever requested these language services from District at the time of this IEP meeting.<sup>4</sup>

50. The team noted that Student was friendly, happy, and polite. He showed concern for others. He preferred to work alone, but, when directed, was willing to

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<sup>4</sup> Student's Complaint in this matter did not raise any language or comprehension issues pertaining to Parents, therefore, this Decision will not address any language issues Mother might have had in communicating with District. (Ed. Code, §56502, subd. (i).) Mother may present any such issues in a subsequent due process complaint. (Ed. Code, § 56509.)

participate in a group or with a partner. Mother was concerned about Student's academic ability, in particular his reading comprehension and social skills. She was also especially concerned about his communication skills.

51. The team reviewed Student's scores on the California English Language Development Test. Student scored at the beginning level in listening, speaking, reading, and writing.

52. The team discussed Student's progress on his goals from his March 16, 2015 annual IEP. He had four academic goals. He met two of them and had made good progress on the other two. He met the goal of writing a single or multi-paragraph response to writing prompt. He also met a math goal involving calculating and receiving exact change when he "paid" for an item in a hypothetical situation. He made good progress on an English language arts goal requiring him to cite textual evidence to support analysis of text, as well as inferences drawn from the text. He was staying on task with a given topic. He also made good progress on the math goal to interpret and compute quotients of fractions and to solve word problems involving fractions. Student had met one out of three of his speech goals, and made progress on the other two speech goals. He met the goal of attending to direct instruction or group discussion without making off-topic comments. He made progress on the goal to appropriately maintain a topic of conversation with adults and peers using question/response and turn-taking techniques, but he tended to always share the same information about shopping. He also made progress on the goal to answer literal or inferential questions after listening to a short story at his reading level. He struggled with the part of the goal that called for answering abstract/inferential questions.

53. Student had only one occupational therapy goal, which involved spacing, placement, and alignment of writing. He met the goal.

54. Ms. Sung reviewed Student's triennial speech and language assessment. She suggested goals and recommended services based on the assessment results, Student's progress, and discussions with the IEP team.

55. The team discussed implementing Student's use of Touch Chat HD, an iPad communication application, but determined that Student more frequently initiated communication verbally rather than using the app. School staff had reminded Student to use the app, but he preferred communicating verbally without it. When redirected to use the app, he did not use the picture cues for communicating; rather, he typed using the keyboard part of the app. Therefore the IEP did not include use of the iPad for communication.

56. In occupational therapy, Student demonstrated consistent proficiency in writing skills development. He wrote using proper spacing, placement on the line, and letter formation with consistent and appropriate sizing of letters independently when completing classroom assignments. He used a mature grasp pattern when performing fine motor tasks and performed such tasks at an age and grade appropriate level. He met his visual-motor skills goal. The occupational therapist recommended exiting Student from occupational therapy. Mother was concerned with Student not maintaining a straight line while writing. The team suggested that Student write on lined paper as an additional accommodation.

57. In the social/emotional behavioral area, Ms. Elias reported Student was able to stay on a given task. He might need prompting for understanding what was expected on a given task, but he did not need redirection to stay on task. In the vocational area, Ms. Elias reported Student had difficulty asking for help. In the adaptive/daily living skills area, Ms. Elias reported Student could follow a schedule, and he transitioned smoothly from one task to another. He had difficulty with new/different

events that occurred out of the norm, such as field trips and assemblies, but he did not have a tantrum in those situations; he just needed reassurance.

58. Mr. Myrick summarized the results of Student's triennial psycho educational assessment, which he conducted. Mr. Myrick has been employed by the District as a school psychologist for two years. He works at both Northrup Elementary and Alhambra High. He holds a bachelor's degree in English from the University of Missouri, St. Louis. He received his master's degree in counseling from California State University, Los Angeles, with a certificate for school psychologist. He holds a pupil personnel school psychologist credential. Prior to becoming a school psychologist, he worked as a general education teacher for approximately 15 years in another school district, where he taught first through sixth grades.

59. Mr. Myrick's psycho educational report reflected that Student demonstrated autism due to deficits in verbal and nonverbal communication, impaired social development, engagement in repetitive activities, and resistance to change. Student's overall intellectual functioning was in the very low range, as demonstrated by his standard score of 67 on the Kaufman. Student's general intellectual functioning was significantly sub average. His overall adaptive skills were rated as low by his teacher and as moderately low by Mother. His weakest areas in adaptive skills were in communication, and his strongest were in coping skills. Student's social skills were rated higher at school than at home. Overall, Student demonstrated significant deficits in adaptive behavior. Student's results on the psycho educational assessment suggested Student presented with a mild intellectual disability. Consequently, it would be difficult for Student to access and make progress in the general education curriculum. At hearing, Mr. Myrick expressed his opinion that Student's eligibilities of autism and intellectual disability were appropriate. Student met the criteria for both of those, and had done so for two previous triennial assessments. With respect to autism, Student

demonstrated all of the criteria stated above, especially difficulty with language and communication. With respect to intellectual disability, over time Student demonstrated significantly sub-average general intellectual functioning and deficits in adaptive skills. Mr. Myrick also believed that designating Student's secondary eligibility as intellectual disability offered a better understanding of Student's needs as to his cognitive and adaptive skills, and the evidence demonstrated this belief was correct.

60. The school nurse reported on her health evaluation. Student passed his vision and hearing screenings. His body mass index was elevated, and therefore he may have health problems related to weight. The nurse suggested Student keep active in sports and other types of energetic activities. He was otherwise in good health, rarely visited the health office, and he had perfect school attendance.

61. The team determined Student had the following areas of need: academics; speech and language; occupational therapy (writing); functional academics; and vocational (life skills).

62. The team developed goals with corresponding short-term objectives in all areas of need. The reading/key ideas and details goal (labelled SDC 1) provided that, given a reading selection at Student's instructional level, Student would summarize the reading by stating the theme or central idea, and state three or more examples of the development of the theme using specific details. The baseline for this goal reflected that Student was working on "wh" questions to build on comprehension skills. Student continued to struggle with "what/why/how" types of questions. Student was not always able to answer questions by referring back to text and visuals; he was more successful when the teacher explained the questions and pictures. He also did better with multiple choice questions relating to a given text. To build on comprehension skills, his work included focusing on one-to-three sentence texts to increase his skills with "wh"

questions, using application software on the classroom iPad, and other visuals and activities.

63. Student's writing goal (labelled SDC 2) required Student to write paragraph(s) to examine and convey ideas, concepts, and information, including three or more of the following elements: introduce a topic when provided with three possible choices of topic; develop the topic with three or more relevant facts; provide text evidence when appropriate; and provide a concluding statement that supported the information presented. The baseline for this goal stated Student was reading at a first grade level for comprehension. He worked well on teacher led-writing. On independent writing he was aware that a sentence began with a capital and ended with punctuation. He could write simple sentences, but had difficulty with tenses and ordering his words correctly. He had difficulty grouping information into paragraphs, and did not always indent paragraphs.

64. The mathematics/number and quantities goal (SDC 3) consisted of choosing the appropriate operation and interpreting units to solve problems. The baseline for this goal was Student could compute single step math problems, and could add, subtract, multiply and divide single to single digits, and two or three digits to one or two-digit numbers. He struggled with regrouping, and he used the wrong operation when working quickly.

65. The mathematics/mathematical practices goal (SDC 4) provided that Student would solve word problems involving situations that arose in everyday life and at the workplace, such as making/receiving change, changing measurement units, etc. Mother suggested that this goal be based on situations involving everyday life, and the other members of the team adopted Mother's suggestion. The baseline for this goal said Student did well with simple computation with single and some multi-digit numbers. He struggled with comprehending word problems.

66. The functional academic/expressive vocabulary goal (SDC 5) required Student to describe events, pictures and objects. The baseline for the goal was Student could compose simple written or spoken sentences, but they were not always grammatically correct. He preferred to express himself in a couple of words, and would expand when prompted. He had difficulty expanding his ideas or answers independently.

67. The vocational domain/express wants, needs, and need for information goal (SDC 6) required Student to demonstrate the ability to request help from appropriate individuals in the school environment. The baseline for the goal was Student's tendency not to ask for help or for something he needed.

68. The IEP included three speech and language goals. One goal, which was directed at pragmatics, involved engaging in a four-to-five turn verbal exchange with peers and adults in a structured setting, with varied responses, and initiating questions across a variety of different topics with minimal cues. The baseline for the goal was Student could hold basic conversations with learned responses and answers in a structured setting in three or four exchanges.

69. A second speech and language goal was directed at receptive language and required Student to answer who, what, where, when, and why questions regarding pertinent plot points that required basic inferencing after listening to a short story at his reading level. The baseline for the goal was Student's ability to answer concrete visual questions and make concrete predictions.

70. A third speech and language goal involved expressive language, and required Student to demonstrate correct use of syntax and simple grammar for 5-7 word sentences with descriptors. The baseline for the goal was Student's ability to speak simple three to four word phrases and sentences. Originally, the goal was proposed for 4-6 word sentences, but Mother suggested 5-7 word sentences, and the rest of the

team agreed. The baseline for all three of the speech and language goals mentioned that Student had used iPad application software applications from a previous IEP to supplement materials Student used in working on his goals.<sup>5</sup>At hearing, Ms. Sung asserted, without contradiction, that these speech and language goals were appropriate for Student.

71. The IEP team developed accommodations, including use of lined paper for all written work, long-term assignments done incrementally, use of verbal encouragement and prompting, providing step-by-step directions, visual aids, preferential seating, check for understanding, and allow open book/open note tests. Staff would collaborate with service providers and receive training.

72. The team decided Student would take the California Alternative Performance Assessment, because Student needed more prompting, visuals, and proctoring, and he had scored far below basic in previous state testing. Student would also take the California English Language Development Test with accommodations.

73. The team considered placement options consisting of special education classes with part-time integration for academics in a general education classroom; special education classes with integration into non-academic and/or extracurricular activities in general education classrooms or settings; and full-time special education classes in a public school. District offered as a FAPE until the end of Student's eighth grade year: 1,444 minutes per week of specialized academic instruction in the autism special day class; 90 minutes per week of speech and language per month;<sup>6</sup>and special

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<sup>5</sup> During an IEP team meeting held on April 22, 2015, the team agreed to include use of iPad application information in the baselines for Student's goals.

<sup>6</sup> The IEP service table reflected that Student would receive 165 minutes per month of speech and language services during the remainder of his eighth grade year,

education summer school for transitioning into the high school mild/moderate developmentally disabled program setting.

74. District offered the following as a FAPE, beginning with Student's ninth grade year:1,100 minutes per week in the Specialized Non-Diploma Track Program at Alhambra High School (plus one elective and physical education, for 275 minutes per week each);165 minutes per month of speech and language, and special education summer school. The placement was offered at Alhambra High, instead of San Gabriel Valley High, which was Student's home school, because San Gabriel Valley High did not have the Specialized Non-Diploma Track Program. The FAPE offer also included 120 minutes per year of occupational therapy, commencing on March 7, 2016, and ending on March 7, 2017, on a stay put basis. Student would be on a certificate of completion track. Mother disagreed with the placement offer, and wanted Student to be on the diploma track.

75. The team discussed Student's transition to high school. District members of the team believed that the Specialized Non-Diploma Track Program at Alhambra High would be the least restrictive environment for Student. To support his transition to high school, student would attend the high school orientation, visit Alhambra High, and participate in other activities regarding promotion to high school.

76. The Specialized Non-Diploma Track Program at Alhambra High is a special day class program that offers a functional academic curriculum to students with mild to moderate developmental disabilities. It serves students with IEP eligibilities of autism, intellectual disability, or both, as well as students with other eligibilities, such as specific

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but Ms. Sung asserted that this was a typographical error, and that the IEP notes correctly stated that Student would receive 90 minutes per week of speech and language services during his eighth grade year.

learning disability. District often places pupils such as Student, who were in an autism special day class in elementary school, in this type of program in high school. It provides a six-period day, as does a typical high school program. Four periods of the day consist of functional academic instruction in math, reading, science, and career/life skills. Two periods of the day consist of general education classes, usually electives, but for ninth and tenth grade students one such period must be physical education. The program is housed in three classrooms, with 12 to 14 students in each one, and two to four adults, depending on the students' needs. Students are grouped according to their abilities.

77. The curriculum in the Specialized Non-Diploma Track Program at Alhambra High could be modified and tailored to each student's needs and abilities. The curriculum also offers community-based instruction, which involves students going off campus approximately one time per week to learn adaptive life skills, such as shopping, purchasing food, and riding public transportation. Pupils who stay in this non-diploma track program will receive services until age 22 from District. In practical terms, this meant that Student would receive a certificate of completion after obtaining all of his high school credits, and then would continue to District's adult transition program until he was age 22. The adult transition program focused on job skills, functional academics and community based integration, and prepared students for adulthood.

78. The team determined that Student did not require assistive technology devices or services. His behavior impeded his learning or that of others, due to his challenges with attention, social interaction, communication, and atypical behaviors. These behaviors would be addressed by the school/classroom management system, and IEP behavioral/functional goals and objectives.

79. Mother was concerned that Student would not receive a diploma if he were in the Specialized Non-Diploma Track Program at Alhambra High. Mother was concerned that Student would not be able to get a job after high school if he did not

have a diploma. Mother agreed to Student attending Alhambra High, but she did not want him to be in the Specialized Non-Diploma Track Program there. Rather, she wanted him to be in the Special Day Class Diploma Track Program there, instead of the Special Day Class Diploma Track program at San Gabriel Valley High, which was Student's home school.

80. District members of the team suggested that Mother observe the Specialized Non-Diploma Track Program at Alhambra High, but Mother refused at that time.

81. District convened a continuance of the IEP team meeting on April 27, 2016. The IEP team consisted of District Administrator, Ms. Yamarone; Mr. Myrick; Ms. Elias; two Regional Center representatives; Ms. Sung; and Mother. Mother waived, in writing, the attendance of the general education teacher and the occupational therapist at the meeting. The team reviewed the events of the previous meeting. Mother requested that intellectual disability be removed as a secondary disability category. Mother discussed Student's ability to learn, and the functional skills that he displayed at home. In view of his functional skills, she was surprised that District wanted to place him in a functional class. She also criticized the rating scales she filled out for the psycho educational assessment because some of the items on them were not relevant. Mr. Myrick explained that Mother's ratings on those items did not affect Student's score, because they did not apply to Student. Mother envisioned Student obtaining a full-time job, and did not believe he could do so if he only had a non-diploma track functional curriculum. At hearing, Mother elaborated on her hopes for Student's future, that he would be educated, obtain a job, become independent, and live autonomously.

82. Mr. Myrick discussed the proposed placement in the Specialized Non-Diploma Track Program at Alhambra High. District academic members of the team agreed that Student would not be successful in a diploma track program. Ms. Yamarone

explained what a diploma track program in a special day class would look like. The team discussed the differences between the Specialized Non-Diploma Track Program at Alhambra High, and the Special Day Class Diploma Track Program. Mother was interested in whether a student in a special day class would be able to have a one-to-one aide, and she was advised that it would depend on the student's needs. However, an aide would not be used to complete a student's class work; rather, the aide would be for redirection and to help a student that could do grade-level work.

83. At hearing, Mr. Myrick further discussed his opinion that placement in the Specialized Non-Diploma Track Program at Alhambra High was appropriate for Student. He believed that Student would benefit from a functional academic program, as his reading, math, and adaptive skills were well below grade level. All of those deficits could be addressed by the functional academic curriculum of the Specialized Non-Diploma Track Program at Alhambra High. The curriculum could be specifically modified for Student, unlike the diploma track curriculum in the faster-paced San Gabriel Valley High Special Day Class Diploma Track Program, and Mr. Myrick believed that Student would be able to succeed in the Specialized Non-Diploma Track Program at Alhambra High.

84. Prior to this IEP team meeting, Mother had visited classes in the Specialized Non-Diploma Track Program at Alhambra High. She was concerned that in one class a student did not know how to read, and Student knew how to read. She was advised that students were grouped by skill level. At hearing, Mother expressed that she wanted her son to have peers so that he and the peers could learn from each other. She did not consider the Specialized Non-Diploma Track Program at Alhambra High to provide that type of environment. She was also concerned about some of the students' classroom behaviors she witnessed during her visit, such as students talking to each other and not paying attention.

85. The team discussed the benefits of a certificate of completion program, including that Student would have the opportunity to obtain services from District through age 22. The team also discussed various features of the Specialized Non-Diploma Track Program at Alhambra High. Student would attend two general education classes (physical education and an elective), and visit various places in the community to learn how to shop, buy food, use public transportation and the like. He would attend classes appropriate to his ability level. The Regional Center representative shared Mother's concern that Student have more of an academic experience, and have the opportunity to attend college and have a full time job. At hearing, Mother also explained that Student received training in functional community activities through participating in a Regional Center class. She did not believe he needed further training in that area. District explained that Student would not be in a totally functional skills classroom, but rather the Specialized Non-Diploma Track Program at Alhambra High involved a combination of academic and functional skills. Student would take academic classes, which would not be at grade level, but at his individual learning level. The team believed that Student's level of ability would match that of the Specialized Non-Diploma Track Program at Alhambra High. Mother preferred Student to attend the San Gabriel Valley High Special Day Class Diploma Track program, and not the Specialized Non-Diploma Track Program at Alhambra High. Ms. Yamarone explained that District did not agree with her.

86. The team then considered the issue of Student's secondary disability. Mr. Myrick explained that it was appropriate to list both disabilities, because Student had deficits that were part of each of the eligibility categories. Mother believed that having the secondary eligibility of intellectual disability on Student's IEP meant that Student could not learn. The team explained that Student was able to learn, and that

including the secondary eligibility would assist in understanding Student's abilities and his current learning status.

87. Ms. Yamarone discussed Mother's options and informal and formal dispute resolution processes if she continued to disagree. Mother wanted to think about her options, and agreed to call Ms. Yamarone the following day as to whether she wished to participate in alternative dispute resolution. Mother did not call Ms. Yamarone to discuss alternative dispute resolution.

88. The Regional Center representative asked the speech and language pathologist about Student's communication abilities and deficits. The speech and language pathologist briefly discussed Student's verbal abilities.

89. On the same day of the IEP team meeting, Parents submitted a note to be attached to the IEP stating that they disagreed with the secondary eligibility category of intellectual disability. Parents did not sign consent to the triennial IEP, and continued to dispute placement at all relevant times. However, by letter of November 1, 2016, Parents consented to the implementation of all goals contained in the triennial March 2016 IEP, except for SDC 4, as well as all accommodations, transportation, and the special education summer school offered in that IEP. The letter also agreed to the speech and language services in the September 2016 amended IEP, which is discussed below, and reiterated that they did not consent to District's exiting their son from occupational therapy services. The letter confirmed that San Gabriel Valley High Special Day Class Diploma Track Program was Student's stay put placement.

#### MOTHER'S REQUEST FOR INDEPENDENT PSYCHO EDUCATIONAL AND SPEECH AND LANGUAGE EVALUATIONS

90. After the April 27, 2016 IEP team meeting, Mother wrote Ms. Yamarone a letter dated May 2, 2016, in which she requested District provide prior written notice "in accordance with IDEA regulations" regarding District's denial of Mother's request to

place student in a special day class program, and denial of Mother's request for a one-to-one instructional aide. By letter dated May 24, 2016, Ms. Yamarone sent Mother a prior written notice letter, summarizing the events at the March 7, 2016, and April 27, 2016 IEP meetings, and addressing District's decisions as to Student's placement and Student's need for a one-to-one instructional aide. Ms. Yamarone offered a District assessment to determine whether Student needed a one-to-one aide, and her letter enclosed an assessment plan for that assessment. The letter also advised that the last partially-agreed-upon IEP was dated March 16, 2015, at which time Mother agreed to eligibility, goals, and placement, and later agreed to related services by way of an amendment dated May 19, 2015. Ms. Yamarone advised that the March 16, 2015 and the May 19, 2015 amendment IEP's would be implemented pending the parties' disagreement, as those were the last agreed upon and implemented IEP's. Ms. Yamarone's letter stated that those IEP's included 1,546 minutes per week of specialized academic instruction, 60 minutes of speech and language services in a group setting, 30 minutes of speech and language provided individually and in the group setting to increase iPad use; and occupational therapy for 120 minutes yearly provided individually.

91. Ms. Yamarone's letter also advised Mother to enroll Student at San Gabriel Valley High, where he would be placed in the Special Day Class Diploma Track Program for ninth grade. The letter further explained that, Student would attend San Gabriel Valley High for the Special Day Class Diploma Track Program because San Gabriel Valley High was Student's home school.

92. Mother never signed and returned the assessment plan for the one-to-one aide. On May 31, 2016, Mother wrote to Ms. Mahony, requesting an independent psycho educational evaluation, and requesting that Dr. Ann Simun perform the assessment. The letter provided Dr. Simun's contact information, and identified her as a

clinical neuropsychologist. Mother stated that she believed District's psycho educational assessment failed to assess in all areas of suspected disability, failed to utilize pertinent available information, and used testing mechanisms which reflected Student's disability rather than appropriately assessing his ability. The letter also requested a nonpublic school placement for Student for the 2016-2017 school year. Mother expressed her belief that Student had not made appropriate progress in any of his areas of need in his current environment for the past two years, and that a more restrictive placement was needed. Mother asked District to respond within one week.

#### STUDENT'S ATTENDANCE AT SUMMER SCHOOL AT SAN GABRIEL VALLEY HIGH

93. Student attended special education summer school at San Gabriel Valley High, where he would transition to the Special Day Class Diploma Track Program. Mother had only been given instructions about summer school at the last minute, and on the first day of summer school, and for a few days thereafter, Student had difficulty traversing the campus and finding his classroom and his bus. These circumstances caused District to assign Student a safety aide, who assisted Student after he transitioned to the Diploma Track Program at the beginning of the 2016-2017 school year.

94. Summer school consisted of math and English enrichment classes. The classes were grade-level, ninth grade standards special day classes. Student struggled with them. Charis Luu was Student's math teacher for special education summer school during summer 2016. Ms. Luu received her bachelor's degree in English literature from California State University, Fullerton, and her M.Ed. from the University of Phoenix. She holds a single subject English credential from the University of Phoenix, and a special education credential from the University of California, Los Angeles. She also holds a Verification of Public Service Settings certificate in math. She has been a teacher for 11

years, four of them as a general education teacher and seven years as a special education math teacher. Ms. Luu testified at hearing.

95. In summer school, Student could add and subtract integers, with approximately 40 percent accuracy. He could multiply and divide integers, but would only be 50 percent correct as whether the result was a positive or a negative number. He could not solve one-step or two step equations; graph a line, or learn mean, media, or mode. He obtained a grade of "F." Mother demonstrated for Ms. Luu how she helped Student with his homework. Student would attempt the homework, and Mother would correct him at almost every step, as they worked through each step of each math problem.

96. Kirsten Marroquin was Student's English teacher in summer school. Ms. Marroquin testified at hearing. She holds a bachelor's degree from Arizona State University. Ms. Marroquin also holds an M.Ed. with an emphasis in special education. She has a certificate for school and guidance counseling, a secondary education credential for English, and an educational specialist credential/autism authorization. She has been a teacher since 2004, and employed by District for five years as a special education teacher. She works as a special education teacher at San Gabriel Valley High, and she has served as the Department Chair for Special Education for the past two years.

97. Ms. Marroquin taught Student in a basic English skills class during summer school in 2016. Mother wanted to sit with him in class and help him, but Ms. Marroquin told Mother that would be against school policy. He received a D in the class, and the grade rubric was based more on effort than correct results. Student did not complete the same assignments as the other children in class; he was not able to follow the curriculum as the other students did.

## JUNE 20, 2016 IEP TEAM MEETING

98. On June 20, 2016, District convened an IEP team meeting to address Parent concerns as expressed in her May 31, 2016 correspondence, including her request that Student attend a nonpublic school. The IEP team included Mother, Ms. Yamarone, Ms. Mahony, a special education teacher, a general education teacher, the school psychologist, Ms. Callahan, Ms. Sung, and two representatives from the Regional Center to support Mother. Parent Rights and Safeguards were given to Mother in English. She did not have any questions.

99. Ms. Luu explained that Student was in her standard special day class math enrichment class for special education summer school. He could only add two-digit numbers about 50 percent of the time. He could complete about 15 percent of what students on the California Alternative Performance Assessment track could do. He could circle numbers on a number line, but he could not count money. He could not add or subtract negative integers. He could not copy notes from the screen. He struggled to understand social cues in the classroom. He had frequent vocal outbursts. She could not understand his pronunciation. He struggled to understand abstract concepts. Ms. Luu stated that she was concerned that Student was not accessing his curriculum. He was not at the same level of math as the other students in class. He struggled to understand grouping. He struggled even when the aide was helping him. Mother stated that Student had learned subtraction and addition for several years and was not taught the skills that he was working on in summer school.

100. Mother stated that Student had never before attended San Gabriel High, and Mother was denied a tour of the school. Mother did not believe Student belonged at San Gabriel Valley High. She wanted him to attend the Special Day Class Diploma Track Program at Alhambra High instead of the San Gabriel Valley High Special Day Class Diploma Track Program.

101. The team discussed Student's intellectual disability category, which was included in the triennial IEP of March 7, 2016, as Student's secondary eligibility. Mother expressed her disagreement with the category, because it was not discussed as part of any assessment in Student's earlier years. District members of the team discussed that the recent triennial assessment results showed Student met the criteria for autism and intellectual disability eligibilities. Also, Student had been assessed in 2011 and was found to be eligible for special education as a student with autism and intellectual disability.

102. The speech therapist explained Student's goals and his progress. His goals were functional goals, such as being able to describe events, pictures, and objects. Ms. Mahony did not believe that these goals were appropriate for students on the diploma track.

103. Student was reading at the second grade level. Mother stated that she did not agree with Student's current goals, and she believed that District had failed to instruct Student. The team discussed Mother's request for nonpublic school, and the differences between private school and nonpublic school.

104. Mother requested an independent psycho educational evaluation and a nonpublic school placement. She disagreed with the alternative curriculum. District denied the request for a nonpublic school placement, and felt that Student's needs could be met in the Specialized Non-Diploma Track Program at Alhambra High. Mother criticized the psycho educational assessment because Student was a visual learner, and District did not assess in that area. Mother did not believe that there were any other areas of disability to be assessed, but she expressed concern that the assessor did not use a variety of tools.

105. Mother reiterated that she wanted Student to attend a Special Day Class Diploma Track Program at Alhambra High pending the independent assessments,

instead of the San Gabriel Valley High Special Day Class Diploma Track Program. Because San Gabriel Valley High was Student's home school, District members of the team advised Mother that her request that Student attend another high school's Special Day Class Diploma Track Program would be a permit issue, and outside of the IEP team's purview.

106. District's offer of a FAPE remained the Specialized Non-Diploma Track Program at Alhambra High for 1100minutes weekly, and speech and language services for 165 minutes monthly.

#### MOTHER'S REQUESTS FOR INDEPENDENT ASSESSMENTS AND QUALIFICATIONS OF ASSESSORS

107. On July 6, 2016, Ms. Yamarone wrote to Mother, advising her that District agreed to fund an independent psycho educational assessment. However, Ms. Yamarone's letter stated that Mother's choice of Dr. Simun as the assessor was not approved, as Dr. Simun performed neuropsychological assessments, and the District was not agreeing to such an assessment. Ms. Yamarone attached a copy of the guidelines of the West San Gabriel Valley Special Education Local Plan Area for independent evaluations, and a list of qualified school psychologists that could perform the assessment.<sup>7</sup> The letter advised Mother to find an assessor and contact Ms. Yamarone so that an assessment plan could be generated and a release signed.

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<sup>7</sup> Karen Conway, Ph.D. was one of the school psychologists included on the list Ms. Yamarone sent to Mother. Ms. Yamarone included her on the list because District had contracted with Dr. Conway, of Studio City, in June 2016 to perform an independent psycho educational assessment as part of a settlement agreement. As is further discussed below, at hearing Student contended that Dr. Conway was not a credentialed school psychologist because she did not appear on a May 2, 2017, printout of the

108. The independent evaluation guidelines of the Local Plan Area that Ms. Yamarone enclosed with her letter provided a list of assessments and the qualifications the assessor was required to possess. The list of assessments did not include a specific category for psycho educational assessments, but it specified that a cognitive assessment was to be performed by a school psychologist, and that assessments in the areas of social/emotional/behavioral, adaptive behavior, and auditory and visual processing assessments were also to be performed by school psychologists (or by other specifically listed qualified personnel.) Mother never requested any explanation from District regarding the qualifications required for independent psycho educational assessors.

109. Mother did not respond to Ms. Yamarone's letter. Therefore, on July 22, 2016, Ms. Yamarone sent a letter to Mother that, among other things, requested Mother to advise Ms. Yamarone as to which assessor she had selected so that the assessment process could begin.

110. By letter dated July 26, 2016, Mother replied to Ms. Yamarone, with additional requests. Mother noted that she had previously disagreed with Student's secondary eligibility of intellectual disability and requested that it be re-evaluated. She also requested an independent evaluation for speech, as Student had not met his speech goals for a number of years and the 2016 IEP reduced his speech services. In the next paragraph of the letter, Mother requested Karen Conway ". . . as an evaluator. If Dr. Conway doesn't provide the IEE for additional requests above, an alternate evaluator

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California Commission on Teacher Credentialing website The website, however, did not list all credentialed school psychologists, such as those school psychologists who had a lifetime credential. No party called any witness from the California Commission on Teacher Credentialing to testify regarding the specific workings of the website.

must be reconsidered.” Mother also requested Student continue to use the iPad apps in high school. She reiterated her disagreement with placing Student on the alternate curriculum, and her belief that Student required a nonpublic school. However, she was willing to “submit to Dr. Conway’s IEE report to determine these issues, as well as the appropriateness of the [intellectual disability] classification for [Student].” She also disagreed with Student’s IEP goals and objectives. While the independent assessment was pending, she requested that Student remain on the general educational curriculum and that he have one-to-one aide support.

111. On August 30, 2016, Mother again wrote to Ms. Yamarone. Mother wrote that she had issues regarding the list of qualified school psychologists that Ms. Yamarone had provided, because it was the parent, not District, who had the right to select the evaluator to conduct an independent evaluation. Further, District must allow parents the opportunity to select an evaluator who was not on the list but who met the criteria set by the public agency. Mother enclosed a letter from the federal Office of Special Education Programs in support of her position.

112. Mother’s letter further explained that she would not feel comfortable choosing an evaluator from Ms. Yamarone’s list, because she questioned whether such an evaluator would be truly independent. Therefore, Mother had verified that Dr. Simun performed psycho educational assessments. Mother enclosed documentation with her letter that described Dr. Simun’s services and stated she performed such assessments. Mother again requested that Dr. Simun be approved to perform the independent assessment. The letter did not mention Dr. Conway.

#### SEPTEMBER 9, 2016 AMENDMENT IEP

113. Student commenced attending the special day class program at San Gabriel Valley High in August 2016, when the new school year started. District convened an IEP team meeting on September 9, 2016, to discuss Student’s progress in the

program. The IEP team consisted of Parents; a school psychologist; Ms. Marroquin; Sabina Miller, (Student's speech and language pathologist); a general education teacher; San Gabriel High's principal and assistant principal; a counselor; Ms. Mahony (District's Director of Secondary Special Education); Ms. Callahan; an attorney for District; and attorneys for Parents.<sup>8</sup>Parents were given a copy of Parental Rights and Safeguards in both English and Chinese, and a Chinese translator translated all parts of the IEP into Chinese for Parents. As was mentioned above, this was the first IEP team meeting in evidence at which Parents requested or received language interpretation/translation services.

114. Staff working with Student discussed his progress. The general education teacher taught Student beginning guitar. However, he was not physically able to appropriately do what was needed to place his fingers on the chords. He also struggled with guitar chords and reading and understanding music, and he was not grasping or comprehending the material. He was not able to play the chords. Student behaved well, and followed the class routine well. He enjoyed the environment, but the class was very challenging for him.

115. Student had four special day classes. He was in an integrated Math 1 class, biology, and a double period of English. In biology class, students were assigned to read an article for about 10 minutes, and then fill out a worksheet about the article. Student wrote his name instead of the title of the article. He copied words and sentences from the article rather than answering the questions. In a scientific method lab, Student copied what the teacher had written on the model of the assignment instead of writing

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<sup>8</sup> Student's counsel advised District by letter dated August 31, 2016, to Ms. Mahony that they had been retained to represent Student with respect to special education matters.

his own observations and work, even when prompted to do so. In math, Student struggled with adding positive and negative numbers.

116. Student had taken English in special education summer school. A class assignment was to write article reviews. He instead wrote about his day, every day, and the content was essentially the same. Mother explained that she had Student write about his day every day at home. During his current English class, students were expected to provide detail on an article they read, and write a conclusion about the article. Student did not demonstrate that he could do that. He copied words to his paper, but his writing did not relate to the article. He would be given a writing prompt and would write a sentence partially responding to the prompt, but then he went off-track and wrote what he had done for the day, and then he wrote about cartoon characters. He had an instructional aide sitting next to him, and the teacher would also prompt him to get on task or to move to the next assignment. The class received modeling for every activity, with the teacher doing the assignment first, and then the students were expected to do a portion of the assignment on their own. Student's available grades at the time of the IEP team meeting were an A in physical education, an A in integrated Math 1, an A in one hour of English, and an F in the second hour of English.

117. Student followed the classroom routine well and could take notes well. He could redirect himself when he lost attention. The school psychologist had asked Student in class to read an assignment and answer questions. Student was not able to do this independently, and he was also not able to do this when the school psychologist read him the questions orally.

118. Ms. Miller reported on Student's progress in speech and language. Ms. Miller has been a speech language pathologist since 2014. She holds a bachelor's degree in art history, a master's degree in speech and language pathology, and an M.Ed.

She is licensed as a speech and language pathologist by the State of California, and holds a certificate of clinical competence from the American Speech-Language-Hearing Association. She reported that Student was able to maintain a back and forth conversation with specific, straightforward questions. It was more challenging for him to respond to open-ended questions, because he might respond with off-topic comments involving a cartoon character, a movie, or an activity he had done. If prompted, he could ask a question. Student was able to answer literal questions better than inferential questions. The speech language pathologist was not using an iPad with Student. The special education director stated Student did not have assistive technology/augmentative alternative communication in his IEP.

119. The team restated Student's eligibility categories and District's placement offer. At the triennial IEP team meeting on March 7, 2016, District had recommended placement in the Specialized Non-Diploma Track Program at Alhambra High. The team also noted that Student's seventh grade IEP was being implemented because Parents had not consented to any subsequent IEP.

120. Parents asked that Student have a one-to-one aide at San Gabriel Valley High. Student did not display any maladaptive behaviors, but the team was concerned about Student navigating safely around campus, and offered a temporary safety aide to address those concerns. However, the aide was not a component of the FAPE offer.

121. The team discussed Student's request for an independent psycho educational evaluation, and that Student's proposed assessor did not meet District criteria.

122. The offer of FAPE included placement in the Specialized Non-Diploma Track Program at Alhambra High, with 1,100 minute weekly of specialized academic instruction. Two classes would be in general education. Student's speech and language services were increased, and he would receive 90 minutes weekly of speech and

language, divided into 30 minutes individual and 60 minutes of group, just as he had in eighth grade. At hearing, Ms. Miller stated that this level of speech and language services was appropriate. District also offered special education summer school.

123. On September 16, 2016, Ms. Yamarone wrote Parents a letter in response to Mother's letters. The letter was intended as prior written notice, and specifically stated it was not to be construed as an admission of liability on District's part. The letter summarized issues raised by Parents with respect to their requests for independent speech and language and psycho educational assessments; their disagreement with Student's goals and objectives and placement; their request for non-public school placement, and that Student be permitted to use the iPad for communication purposes while in high school.

124. With respect to the independent psycho educational assessment, Ms. Yamarone's letter noted that District agreed to the independent assessment but did not agree to the assessor. Ms. Yamarone specified that the Local Plan Area guidelines, which she had previously sent to Mother, required that a credentialed school psychologist interpret cognitive and social emotional evaluations. Dr. Simun did not have a current, valid school psychologist credential, and District had sent Mother a list of independent evaluators with the required credential. Ms. Yamarone also noted that Mother's letter of July 26, 2016, requested that Dr. Conway perform an independent evaluation, but she was a credentialed school psychologist, not a speech pathologist. Dr. Conway was qualified to perform a psycho educational assessment, but she was not qualified to perform a speech and language assessment. (This reference demonstrated that Ms. Yamarone had misunderstood Mother's July 26, 2016 letter, which was ambiguous as to which assessment Mother was requesting Dr. Conway complete. Ms. Yamarone mistakenly believed that Mother's reference to Dr. Conway constituted a request Dr. Conway to perform the independent speech and language assessment.) As

Ms. Yamarone's letter further noted, Mother's letter of August 30, 2016 confirmed that Mother wanted Dr. Simun to perform the psycho educational assessment.

125. After summarizing the issues, Ms. Yamarone's letter denied the request for an independent speech and language assessment. The letter noted that District had initially agreed to fund the independent psycho educational assessment, but District would no longer agree, as Parents had selected an assessor who did not meet District criteria. The letter asserted that the District assessments in these areas were appropriate. The letter also denied Parents' request for non-public school placement and Student's use of the iPad in high school for communication. The letter also stated that, if Parents did not withdraw their requests, District was obligated to, and would, file a due process complaint to defend its assessments, and its offer of a FAPE and placement in the March 2016 IEP and its amendments. The letter also advised Parents that they could obtain independent evaluations at their own expense, and the IEP team would consider the reports. On September 22, 2016, before Mother responded to this letter, District filed its request for due process hearing in this matter.

126. Several months later, by letter dated February 6, 2017, Ms. Mahony advised Mother that District would agree to fund an independent psychological assessment, but that District would not agree to Dr. Simun as the assessor, as she performed neuropsychological assessments and did not meet the credential requirements to perform a psycho educational assessment. Ms. Mahony enclosed with the letter another copy of the Local Plan Area guidelines for independent assessments, and a list of qualified assessors.

127. By letter dated March 9, 2017, Student's counsel wrote Ms. Mahony a letter that explained that Dr. Simun performed psycho educational assessments, and enclosed documentation showing that Dr. Simun had received a pupil personnel services credential (a school psychologist credential), on February 14, 2017. Thereafter,

by letter to Parents dated March 15, 2017, Ms. Mahony advised that District would fund the independent psycho educational assessment by Dr. Simun, and enclosed paperwork for Parents to sign and return. Parents promptly sent the signed documentation to District on March 16, 2017. District's process of contracting with Dr. Simun was delayed when District learned that Dr. Simun did not have the required insurance, but by April 25, 2017, District had contracted with Dr. Simun and the assessment was proceeding.

#### STUDENT'S ATTENDANCE IN THE SPECIAL DAY CLASS PROGRAM AT SAN GABRIEL VALLEY HIGH

128. Student's San Gabriel Valley High Diploma Track Program primarily consisted of students who were on a diploma track, but the program could also include non-diploma track students. The classes were taught by special education teachers, with the assistance of one or two classroom aides. Student attended these classes with his safety aide, who was present with him at all times while he was on campus. His aide also assisted him in the classroom, such as by prompting him to start or complete a task. The classes used standard grade-level textbooks that included the common core curriculum. Any modifications the teachers made to the curriculum (such as not teaching more difficult material) were applied to the entire class. It would have been inappropriate for the teachers to modify the curriculum individually for Student, since the class was a diploma track class.

129. Several of Student's teachers in the San Gabriel Valley High Special Day Class Diploma Track Program testified at hearing. They each testified consistently about Student's abilities and their testimony established Student's educational needs and strengths. He could copy from the board, he could decode what he read, he participated in class, and he always attempted to complete his assignments. He was well-behaved, but regularly needed prompting to start a task and to continue working on it. The amount of prompting varied between classes. Student was not able to understand any

of the information in his textbooks, or most of the information he was taught. He could perform some concrete tasks, but even some concrete tasks were not sufficiently concrete for him to perform. Student could not understand abstract material or concepts. Due to his low level of comprehension, he could not state the theme or idea of what he read, or answer questions about material he read. He could not write an on-topic response to a writing assignment in any of his classes. Rather, he would constantly write about his daily schedule, or where he went shopping, or about video games and cartoon characters he liked.

130. The testimony and opinions of Student's teachers as to his ability, his performance at school, and the appropriateness of his school placement were credible. Each of them was an experienced special education teacher, and they had hands-on, day-to-day practical knowledge about Student and his classmates at school.

131. Student's English teacher in the San Gabriel Valley High Special Day Class Diploma Track program was Kandra Pierce. Ms. Pierce testified at hearing. She has been a special education teacher for approximately 21 years, and employed as a special education teacher for 19 of those years at San Gabriel Valley High, usually in special day classes. She received her bachelor's degree from California Polytechnic University, Pomona in urban regional planning. She holds a mild/moderate special education teaching credential and a moderate/severe special education teaching credential. She also holds a pupil personnel services credential in counseling.

132. Ms. Pierce taught English to Student for two periods a day. She gave points for participation and when he was on-task and did work, as opposed to grading based on mastery of the material. Further, the class was covered by a generously-grading substitute for about a month. As a result of these circumstances, Student's grade in her class was a C in one class and a D in the other class for the first semester. However, his grasp of the material was tenuous. For example, even if other students had

already defined a word in class, he could not define it. He could state the title of a reading selection, but sometimes he would call it by the name of the author, and he could not understand the selection or answer questions about it. He could not state what would come next in a story. He would copy the questions for an assignment rather than answering the questions. His homework was always well-done, but it was not reflective of, and was a more sophisticated product, than the work he did in class. He was one of the lowest performing students she has had. His abilities were more like those of a non-diploma track student, and she has had non-diploma track students who performed at a higher level than he did. In her opinion the Specialized Non-Diploma Track program at Alhambra High would be better for Student, because it was more tailored to the needs of the individual student. The texts would not be common core texts, and they could be tailored for his level so that he could understand them.

133. Ms. Pierce worked with Student on Goals SDC 1 (reading) SDC 2 (writing) and SDC 6 (request help) in his March 7, 2016 IEP. He has not met any of them. With respect to Goal SDC 6, he requested to use the computer or go to the restroom, but he did not ask for help. She believed that the goals were appropriate goals for her class, and they were challenging for him, but he might have been able to meet them. Ms. Pierce's testimony, which was uncontradicted, established that Student could not access the curriculum in her class because it was beyond his abilities.

134. Ms. Pierce commented that Student's perseverative writing about his class schedule and videos he has seen could be a manifestation of his autism. She added that it could also be a function of habit, as writing about his day was something he did at home.

135. Ms. Luu, who was Student's math teacher for special education summer school during summer 2016, was also Student's math teacher in the San Gabriel Valley High Special Day Class Diploma Track Program. Student could not do exploratory proofs

without intensive support. He could not understand the purpose of the proofs. He completed his homework, and what he learned was heavily based on homework. Ms. Luu's grading system was effort-based. If a student attempted the problem, the student would receive one-half credit, and the student would receive additional credit if he continued to work the problem. On a test, she would give half-credit for each attempt at a test question.

136. Ms. Luu implemented the Goal SDC 3 in the March 7, 2016 IEP, which required Student to choose the appropriate operation and interpret units to solve a one-to-three step problem. She believed that it was an appropriate goal for Student. Student could not meet the goal without prompting, even though the goal did not prescribe prompts. Student could not perform equations at first, but, as of the time of hearing, he could perform a one-step equation. He only understood concrete concepts, and could do very concrete one-step-problems, and occasionally a two-step problem. He could not do anything more complex. Student could not synthesize information and apply it.

137. Ms. Luu also thought that Goal SDC 4, which Parents did not agree to implement, was an appropriate goal for Student. It would assist him in choosing the correct operation and learning to solve word problems.

138. At the time of the hearing, Student could graph a function, and could solve for "x" in a function. He could not answer a question or solve a word problem about a function he graphed. He could solve a one-step equation with addition or subtraction, but not generally with multiplication or division. He could plug a number into a formula, but he could not answer a question regarding arithmetical or geometrical sequences. He could identify points, line, planes, angles, segments, and could recognize angle pair relationships. When given information, he could not set up a problem and solve for "x." He could copy mean, median, and mode, but could not

answer questions about them or understand them when the data was skewed. He was unable to point to where the data was on the page. He did not understand the concept that angles related to a circle. He did not understand the concept of fractions. He received a first semester grade of B and at the time of hearing he still had a B. His grade was a result of his effort. He copied every note, attempted every problem, and completed and turned in all homework. His homework was correct and well-done. However, he could only perform in class about 20-25 percent of the skills that his homework required. Mother spent an hour every night working with him on every step and every single problem, and Ms. Luu believed that was a very inappropriate amount of help for a high school diploma track student. Student could not reproduce the math completed in his homework in class; he had so much assistance with the homework that he had not mastered the material himself.

139. Ms. Luu acknowledged that Student was not the only student in her class who had difficulty accessing the class textbook. She thinks he has made academic progress in her class, as he has obtained basic skills, but she was concerned that he would not be successful in 10th grade special day class math. She believed that he should not be a diploma track student. He struggled to get from place to place, without adult assistance. He was not able to get lunch on his own. He struggled to understand basic social skills and she had never witnessed Student say more than once sentence in a conversation. The Specialized Non-Diploma Track Program at Alhambra High would be individually tailored to his needs, and the extra four years of the adult program he would receive thereafter would benefit him. Ms. Luu's uncontradicted testimony established that Student could not access the curriculum in her class because it was beyond his abilities.

140. Ms. Marroquin, who was Student's English teacher in his special education summer school during summer 2016, was Student's biology teacher in the San Gabriel

Valley High Special Day Class Diploma Track Program. He could pay attention, but she was not sure if he could follow the lessons. His class work was not always correct. He did not score high on assessments. All of the tests were open book/open notes. He could not answer the questions correctly. She would let him re-retake the tests, but he scored no better. She would also give him a second chance to do assignments correctly, but he still could not do them correctly. She described how she engineered class assignments that required the students to answer questions by occasionally tying the questions into questions that were expressly marked in the textbook with an icon. Student could identify where the question was on the page, and could write the first portion of an answer, with the help of an aide, but could not finish the answer. She would ask questions to check for understanding, as one of his IEP accommodations required, but he could not always provide answers to the questions in class. Sometimes he could identify the topic. Student did not understand any of the material at the level taught. He could identify a picture of an animal.

141. Ms. Marroquin implemented Goal SDC 1 as part of his “do now” in-class assignments, and she continually asked “wh” questions. She also addressed Goal SDC 5 (expressive vocabulary), because her class required Student to view and describe visuals. She implemented Goal SDC 6, which required Student to ask for help. She considered SDC 6 an appropriate goal for Student as well as an appropriate goal to implement in her class.

142. Student received an F in Ms. Marroquin’s class for the first semester. She graded on a traditional scale, which was not the scale described in the class syllabus, and his grade reflected his abilities. She weighted class work and class activities heavier than homework or lab. At the time of hearing, Student had not made much progress. He could follow more of a routine now, but he still struggled with assessments.

143. In Ms. Marroquin's opinion, her class was not an appropriate class for Student, and he should not be on a diploma track. He was more similar to a non-diploma track student. Based on work samples, assessments, ability to communicate, and navigate the campus independently, Ms. Marroquin believed that the Specialized Non-Diploma Track Program at Alhambra High was an appropriate program for Student.

## LEGAL CONCLUSIONS

### INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA<sup>9</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.;<sup>10</sup> 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, independent living and higher education; 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.)

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<sup>9</sup> Unless otherwise indicated, the legal citations in the Introduction are incorporated by reference in the analysis of each issue decided below.

<sup>10</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

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

3. In *Board of Education of the Hendricks Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 Sect. 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, the *Rowley* court decided that the FAPE requirement of the IDEA was met when a child received access to an education that was reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200,203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was

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

4. The Supreme Court recently decided the case of *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_ [137 S. Ct. 988] (*Endrew F.*) and clarified the *Rowley* standard. *Endrew F.* provides that an IEP must be reasonably calculated to enable “progress appropriate in light of the child’s circumstances.” (137 S.Ct. at 999.) The Court recognized that this required crafting an IEP that required a prospective judgment, and that judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Ibid.*) Additionally, the Court stated, “for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, ‘be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’ ” (*Id.* at 999 [citing *Rowley, supra*, 458 U.S. at 203-204].)

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

evidence].) In this consolidated case, Student is a petitioning party and has the burden of persuasion as to his issues, and District is also a petitioning party and has the burden of persuasion as to its issues.

#### STUDENT'S ISSUE 1A: DISTRICT UNREASONABLY DELAYED IN RESPONDING TO MOTHER'S REQUEST FOR THE PSYCHOEDUCATIONAL IEE

6. Student contends that District unreasonably delayed in responding to Student's request for an independent psycho educational assessment. Student also contends that District filed its complaint to defend its psycho educational assessment both too late and too soon. District contends that it acted appropriately, and that any delay in District's agreement to have Dr. Simun perform the assessment was due to Dr. Simun's failure to have a valid school psychologist credential.

#### Independent Assessment

7. The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an independent evaluation of a child at public expense. (20 U.S.C. §1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent may request an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, §56329, subd. (b).) When a parent requests an independent evaluation at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the independent evaluation at public expense, unless the school district demonstrates at a due process hearing that the evaluation obtained by the parent does not meet its criteria. (34 C.F.R. §300.502(b)(2); Ed. Code, § 56329, subd. (c).) The school district may inquire as to the reason why the parent disagrees with the independent evaluation, but

the school district may not require the parent to provide an explanation, and may not unreasonably delay in either providing the independent evaluation at public expense or in filing its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).)

8. Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations. (34 C.F.R. § 300.502 (a)(2).) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (34 C.F.R. § 300.502(e)(1).) A public agency may not impose any conditions or timelines other than the criteria described in 34 C.F.R. § 300.502(e)(1) related to obtaining an independent educational evaluation at public expense. (34 C.F.R. § 300.502(e)(2).)

9. Whether the length of time that has passed before a district initiates a due process hearing or provides the independent evaluation at public expense constitutes "unnecessary delay" is a question of fact, based upon the circumstances of the particular case. (*J.P. v. Ripon Unified School District* (E.D. Cal. April 14, 2009, No. 2:07-cv-02084) 2009 WL 1034993) (*Ripon*). For example, in *Ripon* the court determined that the school district's due process request filed more than two months after the request for an independent evaluation was timely, as the parties were communicating regarding the request for the independent evaluation in the interim, and did not come to an impasse on the issue until fewer than three weeks before the school district's filing. In contrast, in the case of *Pajaro Valley Unified School District v. J.S.* (N.D. Cal. Dec. 15, 2006, C06-0380 PVT) 2006 WL 3734289) (*Pajaro Valley*), the school district did not file its due process

complaint to defend its assessment until approximately 11 weeks after Student's request for an independent assessment. Then, at hearing, the school district offered no explanation as to why it delayed for 11 weeks in filing its complaint, or why that delay was "necessary." The court found that the school district's "unexplained and unnecessary delay in filing for a due process hearing waived its right to contest Student's request for an independent evaluation at public expense, and by itself warranted entry of judgment in favor of Student and [parent]."

10. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) (*Target Range*.) Citing *Rowley, supra*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but determined that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Target Range, supra*, at 1484.) This principle was subsequently codified in the IDEA and Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).) The failure to comply with procedures for assessments is a procedural violation. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2005) 464 F.3d 1025, 1031.)

#### Analysis

11. The parties' positions on this issue are imprecise. The issue, under the facts of this case, encompasses not only whether District timely responded to Mother's request for an independent psycho educational assessment, but also whether, after

Parents continued to request an assessor who did not meet District criteria, District timely withdrew its agreement to fund the independent assessment and filed its complaint to defend its assessment. District did not unnecessarily or unreasonably delay in responding to Mother's request for an independent psycho educational assessment. Additionally, it did not unnecessarily or unreasonably delay in withdrawing its agreement to the independent assessment and then filing its complaint to defend its assessment.

12. Mother first requested the assessment by letter of May 31, 2016, and she requested that Dr. Simun perform the assessment. She also requested a nonpublic school placement. Within three weeks of the date of Mother's letter, on June 20, 2016, District convened an IEP team meeting at which the team discussed Mother's requests for an independent assessment and for a non public school placement, as well as other parental concerns. By letter dated July 6, 2016, approximately two weeks after the June 20 IEP meeting, and a little more than a month after Mother's initial letter, Ms. Yamarone advised her that District would agree to the psycho educational assessment at public expense, and also advised that District would not agree to Dr. Simun as the assessor because Dr. Simun only performed neuropsychological assessments and not psycho educational assessments. Ms. Yamarone's mistaken belief about the type of assessments Dr. Simun performed was based on her previous experience with Dr. Simun. In accordance with 34 Code of Federal Regulations part 300.502(b)(4), Ms. Yamarone's letter provided Mother with a list of assessors who could perform the psycho educational assessment, as well as the Local Plan Area's criteria for assessors. Mother did not respond to Ms. Yamarone's letter.

13. Therefore, Ms. Yamarone, on her own accord, wrote a follow-up letter to Mother on July 22, 2016, requesting again that Mother provide the name of an assessor so that the assessment could begin. By letter dated July 26, 2016, Mother responded to

Ms. Yamarone. The letter had multiple topics, in that it mentioned Mother's disagreement with Student's intellectual disability eligibility and requested District to reevaluate that eligibility, referred to Dr. Karen Conway, requested a speech and language assessment, requested Student continue to use the iPad apps in high school, reiterated Mother's disagreement with placing Student on the alternate curriculum, and renewed Mother's request for a nonpublic school. The letter confused Ms. Yamarone, as she believed that Mother was requesting Dr. Conway as an assessor for the speech and language assessment. Ms. Yamarone did not repond to this letter. On August 30, 2016, Mother wrote to Ms. Yamarone, requesting that Dr. Simun perform the psycho educational assessment, and provided documentation that Dr. Simun performed such assessments. The letter did not refer to Dr. Conway at all.

14. District convened an IEP meeting on September 9, 2016, which was attended by Parents as well as Student's counsel, at which Parents' request for an independent psycho educational assessment was again discussed. District advised that Dr. Simun did not meet District criteria. Subsequently, on September 16, 2016, Ms. Yamarone provided prior written notice to Parents, which advised, among other things, that Dr. Simun did not have a current school psychologist's credential. Since District and Parents were unable to agree upon Dr. Simun as an assessor, Ms. Yamarone's letter advised that it was withdrawing its offer of an independent psycho educational assessment at District expense, and that District would be filing for due process to defend the psycho educational assessment, among other matters. On September 22, 2016, District filed its complaint to, among other things, defend its psycho educational assessments.

15. The evidence reflected that District considered Parents' May 31, 2016, letter requesting an independent psycho educational assessment in a timely fashion by convening an IEP meeting on June 20 to discuss the matter. By letter of July 6, 2016,

shortly after the IEP team meeting and a little more than one month after Mother's initial request for an independent psycho educational assessment, District agreed to provide the assessment. Then the parties spent the remainder of the summer engaged in correspondence regarding Mother's choice of an assessor and the need for the assessor to meet District criteria. Some delay was caused by Ms. Yamarone's misunderstanding as to the types of assessments Dr. Simun performed, and some delay was caused by Mother's failure to timely respond to Ms. Yamarone's initial letter of July 6, 2016. The matter was discussed at another IEP meeting, on September 9, 2016 when District stated that Dr. Simun did not meet agency criteria. Subsequently, on September 16, 2016, District wrote to Parents to advise again that Dr. Simun did not meet agency criteria. Therefore, District was withdrawing its approval of an independent psycho educational assessment. District then filed its complaint on September 22, 2016 to defend its assessment.

16. Pursuant to the guidance of *Ripon, supra*, this was not an unreasonable length of time in view of the circumstances. Here, District agreed to pay for an independent assessment by letter of July 6, 2016, within approximately six weeks of Parents' request, which was well within even the *Pajaro* timeline. Thereafter, the parties spent summer 2016, including two IEP meetings, trying to resolve the issue of Dr. Simun's qualifications for the assessment, along with a variety of other issues. The process was complicated by several misunderstandings of and between the parties regarding the type of assessment Dr. Simun provided, the relevance of Dr. Conway, and the requirement that the assessor chosen by Parents be a credentialed school psychologist. However, the evidence reflected that District did not ignore Student's request, and the evidence was undisputed that, at no time during this period did Dr. Simun meet District criteria. District's prior written notice letter of September 16, 2016, signaled its recognition that Student would not be selecting an assessor other than Dr.

Simun, and therefore District could no longer agree to the psycho educational assessment. Six days after that letter, District filed its complaint to defend its psycho educational assessment. It is noteworthy that Student contends District did not give Mother enough time to respond to Ms. Yamarone's letter of September 16, 2016, before filing its complaint. It is inconsistent of Student to contend that District unreasonably delayed in filing its complaint to defend its assessment, and yet also did not give Parents enough time to respond to its prior written notice which notified Parents that District intended to file such a complaint.

17. Under the totality of the circumstances, District did not unduly delay in responding to Student's request for an independent assessment, in denying the assessment at public expense after recognizing that Parents continued to request an assessor who did not meet District criteria, or in filing its complaint after denying the assessment.

#### STUDENT'S ISSUE 1B: DISTRICT IMPOSED DIFFERENT QUALIFICATIONS ON STUDENT'S CHOICE OF ASSESSOR

18. Student contends that because District had previously approved Dr. Karen Conway to perform an independent psycho educational education for another student, when Dr. Conway was not a credentialed school psychologist, District deprived Mother of her ability to participate in Student's educational program by refusing her request to have Dr. Simun perform Student's psycho educational IEE. District contends that Student's claim is a discrimination claim, and OAH has no jurisdiction over it.

19. Legal Conclusions 1-5 and 7-8 are incorporated herein by this reference.

20. Student is incorrect that District imposed different standards on Mother's choice of assessor. Student did not establish that Dr. Conway was not properly credentialed. The only evidence that Student presented that Dr. Conway was not properly credentialed was a print-out of an internet page from the California

Commission on Teacher Credentialing website which only listed an individual named Karen Dianne Conway of Riverside as having a credential. This individual was not the Dr. Karen Conway at issue here. However, the evidence established that the listing of credentialed professionals on the California Teacher Credentialing website is not complete. For example, it does not list those individuals who have lifetime credentials, and there may be other exceptions as well. Since there was no testimony from anyone from the California Commission on Teacher Credentialing, or anyone else in charge of the website, there was no evidence as to what those other exceptions might be. However, Student presented no evidence as to whether Dr. Conway possessed a lifetime credential, in which case she would not be listed on the website. Further, the website printout of May 2017 received into evidence did not constitute evidence as to whether Dr. Conway possessed a credential in June 2016, when District contracted with Dr. Conway. In short, Student did not meet his burden of demonstrating that Dr. Karen B. Conway of Studio City did not have a proper credential in July 2016 when District contracted for her services as an independent psycho educational assessor.<sup>11</sup>

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<sup>11</sup> In his closing brief, Student also contends that the requirement that an independent psychoeducational evaluation be performed by a credentialed school psychologist is an impermissible restriction on the rights of parents to obtain independent psycho educational evaluations. This issue was not raised in Student's complaint, and was not designated as an issue for hearing in this matter. Further, the requirement of a credentialed school psychologist, which tracks Education Code section 56324, was imposed on District by the Special Education Local Plan Area. Additionally, it is unclear that OAH has subject matter jurisdiction over this issue. Consequently, this issue will not be resolved by this Decision. (Ed. Code, §56502, subd. (i).) Nothing in this Decision forecloses Student from pursuing this issue through another due process complaint, pursuant to Education Code section 56509, or prevents District from raising

## STUDENT'S ISSUE 1C AND DISTRICT'S ISSUE 2B: DISTRICT'S SPEECH AND LANGUAGE ASSESSMENT

21. Student contends that District's speech and language assessment was inappropriate because Ms. Sung failed to seek Parent's input as part of the assessment, and thereby failed to identify Student's educational needs, including why Student made little progress in his speech goals. Further, Ms. Sung failed to assess Student's use of an iPad. As a result of the assessment, Ms. Sung concluded that Student's speech services should be inappropriately decreased. District contends that Ms. Sung obtained Parent's input, and the assessment was appropriately conducted.

### Assessments

22. An assessment of a student who is receiving special education and related services must occur at least once every three years unless the parent and the school district agree that such a reevaluation is unnecessary. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a)(2).) The same basic requirements as for an initial assessment apply to re-assessments such as the three-year (triennial) assessment. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303; Ed. Code, § 56381, subd. (e).) Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) The pupil must be assessed in all areas related to his or her suspected disability and no single procedure may be used as the sole criterion for determining whether the pupil has a disability or whether the pupil's educational program is appropriate. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code, § 56320, subds. (e) & (f).) The assessment must be

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any defenses it may have to any such complaint, including that OAH lacks subject matter jurisdiction over the issue.

sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306.)

23. The school district must provide notice to the parents of a child with a disability, in accordance with 34 Code of Federal Regulations part 300.503, which describes any evaluation procedure the agency proposes to conduct. (34 C.F.R. § 300.304.) The district must obtain informed parental consent prior to conducting an assessment or reassessment of a child with a disability. (34 C.F.R. § 300.300.) Parental consent pursuant to the IDEA requires that the parent has been fully informed of all information relevant to the evaluation, the parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom. (34 C.F.R. § 300.9.)

24. The general law pertaining to assessments provides that as part of a reevaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including evaluations and information provided by the parents of the child, and teacher and related service providers' observations. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. §300.305(a)(1); Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the school district must identify any additional information that is needed by the IEP team to determine whether the child continues to have a disability, the educational needs of the child, the present level of academic achievement and related developmental needs of the student, and to decide whether modifications or additions to the child's special education program are needed to enable student to meet his IEP goals. (20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. §300.305(a)(2); Ed. Code, § 56381, subd. (b)(2).) The school district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2);Ed. Code, § 56381, subd. (c).)

25. Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).) Assessments must be conducted by individuals who are both “knowledgeable of the student’s disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student’s primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).)

26. In conducting the assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining whether the student is a child with a disability, and the content of the IEP. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).)

27. Assessments must be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d); 34 C.F.R. § 300.304(c)(3).)

28. The assessor must prepare a written report that includes: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) the need for specialized services, materials, and equipment for pupils with low incidence disabilities. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting required after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

29. The IEP team shall meet to review an initial formal assessment, and may meet to review any subsequent formal assessment. The team shall also meet upon the request of a parent to review, develop, or revise the IEP. (Ed. Code, § 56343, subd. (a), (c).)

#### Analysis

30. As an initial matter, neither party produced any evidence as to whether Parents consented to Ms. Sung's speech and language assessment. Since the appropriateness of the assessment is alleged as a separate issue herein by both parties, and since Student did not object to the appropriateness of the assessment on the grounds of lack of consent, it may be inferred that Parents provided consent to Ms. Sung's assessment.

31. Ms. Sung's speech and language assessment conducted on behalf of District met all legal requirements for assessments. Student did not offer any testimony of any qualified witness or any other credible evidence to criticize the assessment or to support Student's contention that the assessment was inappropriate. Ms. Sung was qualified to conduct the assessment. She took care to administer the assessments in

English, which was the language Student understood. Her assessment instruments were appropriate to administer to Student; they were selected so as not to be discriminatory; and she administered them in accordance with the test instructions. She used assessment instruments that were valid and reliable. Ms. Sung used a variety of assessment measures, including standardized tests; language sampling; observations of Student in class, at lunch, and at recess; observations of Student's communication interactions; information provided to her by Mother during IEP's and previous telephone conversations; as well as information provided to her by Student's teacher. She reviewed existing evaluation data. Ms. Sung assessed Student in all areas of suspected disability within the speech and language realm. She prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's observed behaviors and their relationship to his academic and social functioning, described Student's strengths and weaknesses, and discussed whether Student needed special education and related services. Parents were provided with a copy of Ms. Sung's report prior to its presentation at the March 7, 2016 IEP team meeting.

32. Student's contention that the assessment did not meet all requirements because Ms. Sung did not interview Parents for the assessment, and thereby did not identify all of Student's needs is unmeritorious. First, Student cites no authority that an actual parental interview is required as part of the assessment process. The Education Code and the IDEA only require parental input. In this regard, Ms. Sung was not a stranger to Student or Mother. Ms. Sung was Student's speech and language therapist during the 2015-2016 school year, the year in which she performed the assessment. She had several telephone conversations with Mother then, and attended Student's IEP meetings when Mother expressed her concerns. Her assessment report referenced Mother's input, in particular Mother's concern with Student's communication and his use of the iPad.

33. Secondly, Ms. Sung's assessment found that Student had needs in expressive and receptive language as well as in pragmatics. Student did not provide evidence of any speech and language need of Student that Ms. Sung's assessment did not identify. Further, there is no requirement that Ms. Sung ascertain why Student was not making progress on his goals. Rather, as described above, the assessor must ascertain what modifications or additions to a child's programs are necessary so that the child can meet his goals. In fact, at the time of the triennial IEP in March 2016, Student had met one of his three speech goals and had made progress on the other two.

34. Student's contention that Ms. Sung did not assess Student with respect to his iPad use was also unmeritorious. Ms. Sung conducted a speech and language assessment, not an assistive technology or alternative/augmentative communication assessment. Student had a previous assistive technology assessment in 2015 with respect to his use of the iPad for communication purposes. There was no evidence that Parents filed a due process complaint to challenge that assessment, or the ultimate determination of the IEP team after that assessment that Student did not demonstrate a need to use the iPad for communication in the classroom. Student presented no expert testimony that Student needed to use an iPad in the classroom for communication, any evidence that the failure of Student to use an iPad for communication was related to his progress on his speech goals, or any evidence that Ms. Sung would have been an appropriate assessor to explore Student's use of an iPad for communication. Consequently, Ms. Sung's assessment was not deficient on this ground.

35. District's speech and language assessment was appropriate, and Student is not entitled to an independent speech and language assessment at public expense.

## STUDENT'S ISSUE 1D AND DISTRICT'S ISSUE 2C: DISTRICT'S OCCUPATIONAL THERAPY ASSESSMENT

36. Student contends that District's occupational therapy assessment and report were inappropriate. Specifically, Student contends that Ms. Callahan did not assess Student in all areas of suspected disability because Ms. Callahan did not administer an age-appropriate writing assessment. Further, Student contends that Ms. Callahan's inability to state whether an age-appropriate assessment existed demonstrates District did not sufficiently research whether there was such an assessment. District contends that the occupational therapy assessment and report were appropriate, and that the writing assessment Ms. Callahan administered provided information regarding Student's skills, even if Ms. Callahan did not score the assessment.

37. Legal Conclusions 1-5 and 7-8 are incorporated by this reference.

### Analysis

38. As was discussed above with respect to Ms. Sung's speech and language assessment, neither party produced specific evidence regarding whether Parents consented to Ms. Callahan's occupational therapy assessment. For the reasons described above, it is inferred that Parents consented to the assessment.

39. Ms. Callahan's occupational therapy assessment conducted on behalf of District met all legal requirements for assessments. Student did not offer any testimony of any qualified witness or any other credible evidence to criticize the assessment or to support Student's contention that the assessment was inappropriate. Ms. Callahan was qualified to conduct the assessment. She used a variety of assessment measures, including standardized tests, observations of Student, records review, and interviews with Mother and Student's teacher. She conducted the assessment in English, which she

determined was Student's dominant language after investigating the issue. Her assessment was based on best practices for assessments in her field.

40. Ms. Callahan assessed Student in all areas of suspected disability, including performance of physical activities in the school setting, visual skills, and ability to manipulate classroom materials, sensory and motor skills, sensory systems, and fine motor and visual motor skills. Ms. Callahan prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's observed behaviors and their relationship to his academic functioning, described Student's strengths and weaknesses, and discussed whether Student required related services in the area of occupational therapy. Parents were provided a copy of the report prior to its presentation at the March 7, 2016 IEP team meeting.

41. Ms. Callahan explained in the report and at hearing that she administered the Handwriting Evaluation Tool, which was not normed for Student's age, for observational purposes only. She did not obtain or record any scores, but the Handwriting Tool enabled her to observe Student's performance of writing tasks. She observed that he was able to write legibly on a line, with proper spacing, adequate differentiation of capital and lower case letters, and adequate manipulation and positioning of writing materials. Student offered no evidence to demonstrate that Dr. Callahan's use of the Handwriting Tool in this manner was improper. Further, Student's contention that Ms. Callahan's inability to find any standardized handwriting assessment normed for Student's age level demonstrated a deficiency on the part of the District is analytically flawed. Student presented no evidence that such an assessment existed ever or at all. It is illogical to blame Ms. Callahan or District for not administering an assessment that may not even exist.

42. District's occupational therapy assessment was appropriate, and Student is not entitled to an independent occupational therapy assessment at public expense.

STUDENT'S ISSUE 1E AND DISTRICT'S ISSUE 2A: OFFER OF FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT IN DISTRICT'S IEP OF MARCH 7, 2016, AS AMENDED

43. Student contends that, since the triennial IEP of March 7, 2016, as amended, was based on the District's psycho educational assessment, and since whether that assessment was appropriate was not litigated, District's offer of placement in the Specialized Non-Diploma Track Program at Alhambra High is unsupported. Student also contends that District's offer of placement in this program was not the least restrictive environment, based upon the factors in *Sacramento Unified School Dist. v. Holland*(9th Cir. 1994)14 F.3d. 1398, 1404. (*Rachel H.*)Student further contends that the offer of placement in this program was inappropriate because the goals in Student's triennial IEP were only appropriate for the San Gabriel Valley High Special Day Class Diploma Track Program that he attended, and not for the Specialized Non-Diploma Track Program at Alhambra High. Therefore, placement in the Specialized Non-Diploma Track Program at Alhambra High would not be in accordance with Student's IEP. Finally, Student contends that the triennial IEP failed to offer goals and services, including a behavior plan, to address Student's inattentive behaviors, or to address his perseverative behavior in writing on a preferred topic.

44. District contends that the issue of providing an independent psycho educational assessment was moot in view of District's offer to provide one, but that District's psycho educational assessment was still relevant, as it helped to determine Student's present levels of performance in the triennial IEP, as amended. District contends that Student's assessments and school performance showed low academic levels, poor comprehension, and low adaptive skills. District contends that the services and goals offered in the triennial IEP, as amended, were appropriate. District further contends that the offered placement in the Specialized Non-Diploma Track Program at

Alhambra High was appropriate. Applying the *Rachel H.* factors, the triennial IEP and its amendments offered Student a FAPE in the least restrictive environment.

#### Offers of a FAPE

45. 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.) 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. (*Ibid.*)

46. For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school 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 enable progress appropriate in light of the child's circumstances. (*Andrew F., supra*, 137 S. Ct. at 999; *Rowley, supra*, 458 U.S. at 209.) To meet the level of educational benefit contemplated by *Rowley*, and the IDEA, the school district's program must result in more than minimal academic advancement. (*Andrew F., supra*, 137 S. Ct. at 999; *Amanda J. v. Clark County School Dist., et al.* (9th Cir. 1996) 267 F.3d 877, 890.) Furthermore, educational benefit in a particular program is measured by the degree to which Student is making progress on the goals set forth in the IEP. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.)

#### Least Restrictive Environment

47. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with

disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a).) The Ninth Circuit applies a four-part test to measure whether a placement is in the least restrictive environment when the choice of environment involves a general education classroom: (1) the academic benefits available to the disabled student in a general education classroom, supplemented with appropriate aids and services, as compared with the academic benefits of a special education classroom; (2) the non-academic benefits of interaction with children who are not disabled; (3) the effect of the disabled student's presence on the teacher and other children in the classroom; and (4) the cost of mainstreaming the disabled student in a general education classroom. (*Rachel H. supra*, 14 F.3d 1398, 1403.)

48. If the IEP team determines 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. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.) The continuum of program options includes, but is not limited to, regular education, resource specialist programs, designated instruction and services, special classes, nonpublic, nonsectarian schools, state special schools, specially designed instruction in settings other than classrooms, itinerant instruction in settings other than classrooms, and instruction using telecommunication instruction in the home or instruction in hospitals or institutions.(Ed. Code, § 56361.)

49. In selecting the least restrictive environment, the IEP team should consider any potential harmful effect on the child or on the quality of services that the child needs.(34 C.F.R. §300.116(d).)The child should be educated in the school the child would

attend if the child were not disabled, unless the IEP otherwise requires. (34 C.F.R. §300.116(c).) A placement must foster maximum interaction between disabled students and their nondisabled peers “in a manner that is appropriate to the needs of both.” (Ed. Code, § 56000, subd. (b).) Mainstreaming is not required in every case. (*Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1056.) However, to the maximum extent appropriate, special education students should have opportunities to interact with general education peers.

(Ed. Code, § 56040.1.)

50. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) “An IEP is a snapshot, not a retrospective.” (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Ed.* (3rd Cir. 1993) 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

#### Analysis

51. As an initial matter, neither party contended that District should have placed Student in a general education class rather than a special day class. Therefore, the *Rachel H.* factors are not applicable. Rather, the question to be addressed is the appropriate placement on the continuum of placement options, focusing on District’s offer of placement. (*Daniel R.R., v. State Board of Ed., supra*, 874 F. 2d at p. 1050; Ed. Code, § 56361.)

52. The triennial IEP of March 7, 2016 offered goals in the following areas of need: academics (reading, math, writing; expression/vocabulary), and speech and language; and life skills. The March 7, 2016 IEP also offered services in the area of speech and language, at a higher level for the completion of Student’s eighth grade year at Northrup Elementary (90 minutes per week) than the level for Student’s ninth

grade year in high school (165 minutes per month). The team agreed on accommodations for the state assessments Student would take. The goals, accommodations, services and placement were not changed as a result of the amendment IEP of April 27, 2016. The September 2016 IEP only amended the March 2016 offer by increasing the offer of speech and language services to 90 minutes per week.

53. District met its burden of demonstrating that the triennial IEP addressed all of Student's needs. There was no evidence that Student had additional needs that the IEP did not address. District also met its burden of demonstrating that the academic and vocational goals in the triennial IEP were appropriate for Student. Student's ninth grade special day class English, math, and biology teachers all affirmed that the goals were appropriate for him, and that they implemented them, to the extent that Parents had agreed to them, and as applicable to the subject matter they taught. Student's contention that the placement did not comport with his IEP because the goals were appropriate for the San Gabriel Valley High Special Day Diploma Track Program, which was not the placement offered in the IEP is non-meritorious. There was no evidence that the goals were not also appropriate for the Specialized Non-Diploma Track Program at Alhambra High. The goals did not require a specific classroom placement; they were individually tailored to Student's needs, which he carried with him wherever he went. The reading goal specifically referred to texts at Student's instructional level; the writing goal encompassed writing paragraphs, the math goal that Ms. Luu implemented involved solving problems using the appropriate operation and interpreting units. The other math goal provided that Student would solve word problems involving situations that occurred in everyday life. The vocabulary goal was to practice Student's verbal expression, and the vocational goal was designed to promote Student's ability to ask for help. Each of these goals could be incorporated into Student's classroom, whether it was

in the San Gabriel Valley High Special Day Class Diploma Track Program, or the Specialized Non-Diploma Track Program at Alhambra High.

54. District also met its burden of demonstrating that the speech and language goals and services were appropriate. Student offered no evidence that he required an additional level of speech services, or different goals. Ms. Sung, the speech and language assessor, participated in developing Student's speech and language goals, and she deemed them appropriate. Ms. Miller, Student's current speech and language teacher, affirmed that 90 minutes per week of speech and language services was sufficient.

55. The team did not offer occupational therapy services. Ms. Callahan's testimony that Student did not require occupational therapy services was uncontradicted. In the amendment IEP of September 2016, Student's guitar teacher stated that Student did not understand music theory, and was physically unable to play guitar chords. In his Complaint, Student theorized that he was unable to play guitar chords because of a lack of fine motor skills or deficiencies in visual motor integration. However, at hearing Student presented no specific evidence as to why he was unable to master playing guitar chords, or that he required occupational therapy services to learn to play guitar chords. Student did not call any occupational therapist as a witness, nor he did call his guitar teacher as a witness. There could be a variety of reasons unrelated to Student's fine motor skills as to why Student was unable to physically play guitar chords, especially in light of his guitar teacher's comments in the September 2016 IEP that Student struggled with reading and understanding music.

56. Student's contention that the IEP should have offered a behavior assessment, behavior goals, and services to address Student's inattention and his perseveration on writing on preferred topics is unmeritorious. Student did not present specific evidence that these issues were behavior issues, such that they were an area of

need for Student, and nobody raised them as behavior issues in any of the subject IEP's. In her academic assessment, Ms. Elias, Student's eighth grade teacher at Northrup Elementary, specified that Student did not require redirection so much as prompting. Student's current teachers remarked how well-behaved Student was in class. They described Student as requiring prompting, as opposed to redirection. They did not testify that Student had any issues with inattention that affected his education. Similarly, Student did not demonstrate that his persistence in writing off-topic was a behavior issue. At hearing, Ms. Pierce, Student's English teacher, was the only witness who commented that Student's perseverative writing about his class schedule and videos he has seen could be a manifestation of his autism. Her equivocal comment is insufficient to support that Student's inability to write on-topic was a behavior issue such that District should have reasonably suspected that Student required a behavior assessment and needed behavior services. This is especially so because there was no evidence that Student exhibited perseverating behaviors in any other respects that affected his education or his ability to access the curriculum.

57. Student's contention that, since the appropriateness of the triennial psycho educational assessment was not litigated, District cannot prove that the FAPE offer in the triennial IEP, and, in particular the placement offer, were appropriate is also unmeritorious. Mr. Myrick's psycho educational assessment report was not entered into evidence. However, he summarized his report at the March 7, 2016, session of the triennial IEP team meeting, and he testified to it at hearing. Further, Ms. Elias's report of the results of the academic portion of the psycho educational assessment was admitted into evidence. Student did not present any evidence to contradict any aspect of these assessments. Therefore, there was sufficient evidence of the data in the psycho educational assessment so as to determine whether District's placement offer and offer of FAPE at issue in this action were appropriate.

58. With respect to placement, the evidence demonstrated that District considered the continuum of placements in selecting placement in the Specialized Non-Diploma Track Program at Alhambra High. Mr. Myrick, District's school psychologist, was very familiar with the Alhambra program as well as with Student. Student's reading and math skills were far below grade level, and he had deficits in adaptive skills. All of those deficits could be addressed by the functional academic curriculum of the Specialized Non-Diploma Track Program at Alhambra High. The curriculum could be specifically modified for Student, unlike the diploma track curriculum in the faster-paced San Gabriel Valley High Special Day Class Diploma Track Program., and Mr. Myrick believed that Student would be able to succeed in the Specialized Non-Diploma Track Program at Alhambra High. He would have the opportunity to take mainstream elective courses, including physical education. Further, Student would have the benefit of District's adult programs after high school until he was 22.

59. All of Student's ninth grade teachers who testified affirmed that Student had difficulty comprehending the material they taught in the San Gabriel Valley High Special Day Class Diploma Track Program, that he could not understand the textbooks that they used in class, that he could not understand classroom assignments, and that he could not satisfactorily perform in-class assignments or tests. Student tried very hard, and he attempted to do the work, but he was unable to perform in class at the level of the other students and at the level of the material. Ms. Luu felt that Student's math skills improved in her class, but she agreed with Student's other teachers that the special day class program and the diploma track curriculum were not appropriate for him. Rather, Student's teachers believed that the appropriate placement for him was in the Specialized Non-Diploma Track Program at Alhambra High.

60. Under all of these circumstances, Student did not meet his burden of demonstrating that District's offer of placement in the Specialized Non-Diploma Track Program at Alhambra High was an inappropriate placement.

61. District met its burden of demonstrating that the triennial IEP of March 7, 2016, as amended by the IEP's of April 27, 2016, and September 9, 2016, offered Student a FAPE in the least restrictive environment. The IEP, as amended, was developed according to law. It included present levels of performance in Student's areas of need. It set measurable annual goals, with short term objectives, in these areas of need. It offered appropriate services in the area of speech and language. The speech and language services offered in the IEP, as amended, were at the same level as Student had had in the past, and at which he had made progress. The evidence also reflected that the offer of placement in the Specialized Non-Diploma Track Program at Alhambra High was an appropriate placement for Student, and was the least restrictive environment in which he could make progress. District's offer, as amended, was designed to meet Student's unique needs, comported with Student's IEP, and was reasonably calculated to enable Student to make appropriate progress in light of his circumstances.

## ORDER

1. All of the relief sought by Student is denied.
2. District's assessments in the areas of speech and language and occupational therapy are appropriate so that District is not obligated to fund any independent evaluations in these areas.
3. The IEP of March 7, 2016, as amended by the IEP's of April 27, 2016, and September 9, 2016, offers Student a FAPE in the least restrictive environment.
4. District may implement the IEP of March 7, 2016, as amended by the IEP's of April 27, 2016, and September 9, 2016, notwithstanding parental objections. District

may also exit Student from occupational therapy services, notwithstanding parental objections.

## PREVAILING PARTY

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

## RIGHT TO APPEAL

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

DATED: July 24, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
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ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings