

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016060728

DECISION

Parent on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on June 9, 2016, naming Los Angeles Unified School District. OAH continued the matter for good cause on July 29, 2016.

Administrative Law Judge Marian H. Tully, Office of Administrative Hearings, State of California, heard this matter on September 6, and 7, 2016 and May 2, 3, and 11, 2017, in Van Nuys, California.<sup>1</sup> OAH provided a Spanish language interpreter for all proceedings.

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<sup>1</sup> On September 7, 2016, the second day of hearing, Mother requested a continuance because the due process hearing would not conclude before Student turned 18 on September 9, 2016. Because Student lacked the capacity to represent himself or to authorize anyone to represent him, Mother requested a continuance so she could file a petition for Letters of Conservatorship. On March 27, 2017, after several subsequent continuances to enable Mother to accomplish this, Mother filed a copy of a Los Angeles Superior Court minute order dated March 22, 2017 in which the Superior

Parent represented Student. Student was present each day of hearing.

Attorney Patrick Balucan represented District. District Specialist Anait Sinian attended the hearing on September 6 and 7, 2016. District Specialist Patrick Johnson attended the hearing on May 2, 2017. District Specialist Patricia Tamez-Simplico attended the hearing on May 3, 2017.

The hearing concluded and the matter submitted for decision on May 11, 2017.

## ISSUES<sup>2</sup>

1. Did District deny Student a free appropriate public education by failing to (a) timely complete a triennial psycho educational evaluation of Student and (b) develop an appropriate transition plan for Student?

2. Did District deny Student a FAPE by failing to provide (a) an appropriate placement for Student; (b) an academic tutor; (c) appropriate services to address Student's needs in the area of social skills; occupational therapy; speech and language; and English language development; and (d) to prepare Student to take the California English Language Development Test; California High School Exit Exam; PSAT and SAT standardized tests for college admission; California Standardized Test for English Language Arts and Mathematics and required exams by universities?

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Court appointed Mother as Limited Conservator, including the power to make educational decisions, for Student. The due process hearing proceeded on May 2, 2017.

<sup>2</sup> The issues stated are rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues so long as the ALJ does not change the substance of the issues. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

## SUMMARY OF DECISION

District failed to conduct a triennial assessment<sup>3</sup> at any time after February 2010. The failure to conduct a triennial assessment deprived Student of educational benefit and impeded Mother's participation in the development of the IEP's District offered on March 12, 2015 and February 25, 2016.

The March 12, 2015 IEP included a transition plan. The transition plan failed to meet legal standards. The March 12, 2015 IEP including the transition plan, considered as a whole was not reasonably calculated to enable Student to make progress appropriate in light of his circumstances because the IEP team did not have current vital information that would be provided by a triennial psycho educational evaluation.

The February 25, 2016 IEP included a transition plan. The February 25, 2016 transition plan also failed to meet legal standards. The February 25, 2016 IEP provided for a substantial change in Student's placement while, at the same time, eliminating direct services in occupational therapy and language and speech services and without any support, modifications, or accommodations for the transition. The February 25, 2016 IEP including the transition plan, considered as a whole was not reasonably calculated to enable Student to make progress appropriate in light of his circumstances because the IEP team continued to lack current vital information to help the IEP team, including Mother, to develop an appropriate IEP and post-secondary transition to an appropriate placement. Student prevailed on Issue 1(a) and (b) and Issue 2(a) and (c).

Mother did not meet her burden of proof as to Issues 2(b) and (d).

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<sup>3</sup> The term assessment under California law has the same meaning as the term "evaluation" in the IDEA, as provided in Section 1414 of Title 20 of the United States Code. (Ed. Code, § 56302.5.)

## FACTUAL FINDINGS

1. Student was 17 years old, in 12th grade, when Mother filed the complaint. Student lived with Mother within District boundaries at all relevant times.

2. Student was initially determined eligible for special education at the age of four on February 12, 2002. Student's disability was severe autism. Student's most recent triennial assessment was in February 2010, when Student was 11 years old and attending sixth grade in elementary school. Student's next triennial assessments would be due in February 2013 and February 2016.

### MARCH 12, 2015 ANNUAL IEP

3. Student's 2015 annual IEP was scheduled for March 12, 2015. Student was attending 11th grade in Natalie Smith's special education class at Lanterman High School, Special Education Center. Student's severe autism impaired his abilities in functional reading, functional writing, and functional math, communication, speech and language, sensory adaptation, social skills and English language development. Student participated in District's alternate curriculum. District designed the alternate curriculum for students who were unable to access general education core curriculum without significant modification. Students with an alternate curriculum took the California Alternate Performance Assessment instead of state standardized tests taken by students who were participating in the general core curriculum. Student was working towards a Certificate of Completion.

4. The IEP team did not meet formally on March 12, 2015, but it did meet on April 22, 2015. Mother, administrator Christina Cisneros, Ms. Smith, a speech/language pathologist and an interpreter attended. Ms. Smith reported Student's present levels of performance in academics, vocational education, communication and expressive language based upon her experience with Student in her classroom. Performance levels

in occupational therapy, reported by occupational therapist Craig Lee, and adapted physical education, reported by District's adapted physical education specialist, were based upon observation and teacher report.

5. District team members developed eight goals. Student's goal for English language development was to listen attentively to stories and identify important details and concepts by using both verbal expanded vocabulary and non-verbal communication with 80 percent accuracy on eight out of 10 opportunities. Student's sensory goal was to participate in a classroom tabletop task for 20 minutes. His functional reading goal was to identify community survival signs, symbols and landmarks. His functional writing goal was, when given a keyboard, computer and mouse, Student would use the device for locating information on the internet in eight out of 10 opportunities. His functional math goal was to identify the symbol for plus/and, minus/take away, or equals with 80 percent accuracy in eight out of 10 opportunities. His communication goal was to participate in social conversation with peers and adults on familiar topics by asking and answering questions while remaining on topic. Student had a vocational education goal in which he would run errands within the school daily with 100 percent accuracy on four out of five opportunities. Student's expressive language goal was similar to his communication goal i.e., participating in classroom oral language opportunities such as requesting, commenting, and answering questions, with peers and adults throughout his school day.

6. The March 12, 2015 IEP offered placement in the full time special day program at Lanterman due to the nature and severity of Student's disabilities. Transportation and extended school year were included. Accommodations included small group instruction, individualized instruction, and frequent checks for understanding. He participated in the alternative curriculum based upon District's Curriculum Guide for Student's with Moderate-Severe Disabilities. Other supports

included close adult supervision and monitoring when in the community and when engaging with non-disabled peers. Related services included 360 minutes of occupational therapy yearly in collaboration with the special education teacher and 450 hours of individual speech and language services during the regular school year; 90 minutes per month of individual speech and language therapy during the extended school year and 50 minutes of Special Design Physical Education daily.

7. The March 12, 2015 IEP included an Individual Transition Plan. The Transition Plan had three sections: Education/Training, Employment, and Independent Living. Student's abilities in Education/Training were that he enjoyed computers, working one-to-one with a teacher, writing and art. The Transition Plan did not identify any needs in the area of Education/Training. The goal for Education/Training was to enroll in and attend a vocational training program and to develop a work-based vocabulary to be used in an area of vocational interest. Student's abilities in Employment were that he enjoyed repetitive activities such as sorting, collating, and packaging. The Transition Plan did not identify any needs in the area of Employment. The goal for Employment was to participate in a work activity program to explore interests and to develop work-related skills and abilities. Student's abilities in Independent Living were feeding, clothing and toileting. The Transition Plan did not identify any needs in the area of Independent Living. His Independent Living goal was to live with family and practice self- management skills.

8. District did not conduct a transition assessment before developing the Transition Plan. The Transition Plan did not propose any accommodations, modifications or supports to assist Student to meet the proposed goals. The Transition Plan was based upon District's practice to relocate disabled students from Lanterman to a District Career Transition Center when a student turned 18 years of age.

9. Mother did not consent to the IEP. Mother informed District that she did not agree with the level of speech and language services District offered because Student's speech was limited and affected academics and socialization. She informed District that her son needed a psycho educational triennial assessment. She wanted Student to remain in his current placement at Lanterman until the matter was resolved. District did not conduct a psycho educational triennial assessment in response to Mother's request. District determined a psycho educational assessment was not required to prepare for Student's triennial IEP.

#### JANUARY 25, 2016 LANGUAGE AND SPEECH ASSESSMENT

10. Lindsey Lueders conducted a language and speech assessment on January 25, 2016. Ms. Lueders was a qualified language/speech therapist. Student was 17 years and five months of age at the time of Ms. Lueder's assessment.

11. Ms. Lueders observed Student in his classroom. Student sang to himself while sorting blocks by color. He sang the lyrics to "Schoolhouse Rock" with a high level of accuracy. He did not initiate interaction with other students. He left the classroom with his hands in his pockets when the class was engaged in activities he did not enjoy. He looked at the book "Green Eggs and Ham" and recited the words from memory with about 70-80 percent accuracy as he turned the pages.

12. Ms. Lueders conducted an informal articulation screening which revealed significant errors in Student's speech patterns. For example, when shown a picture Student said "cads" instead of "clouds," "footpaint" instead of "footprint," "unkey" instead of "monkey" and "hain" instead of "hair." Student used a high-pitched voice and unintelligible speech. Ms. Lueders determined Student had an expressive language disorder characterized by verbal output that was limited to echolalia and one-to-three word utterances. A majority of Student's verbal output consisted of non-communicative echolalia and unintelligible jargon in response to questions. He rarely initiated

communication with adults or peers. Student's speech was very difficult to understand in both academic and social situations.

13. Ms. Loaders did not administer standardized tests due to Student's limited verbal communication skills. She used the Spanish Bilingual version of the Receptive One-Word Picture Vocabulary Test, the Expressive One Word Picture Vocabulary Test and a Functional Communication Profile-Revised, to obtain information. Student pointed to the correct picture for some common words such as shoe, fish and balloon but not to other common words such as chair, people or onion. He said the word when shown pictures of things such as "bees," "cup," and "penguin" but not when shown pictures of things such as "suitcase," "bottle," and "clothes." At hearing, Ms. Lueders testified that Student "knows more than he lets on," was able to label more words than he expressed, and that "he has more language than you would think" based on his social presentation.

14. In Ms. Lueders' opinion, Student met the communication goal from the March 12, 2015 IEP. Ms. Lueders' opinion was not consistent with her observations or her informal testing. Student did not participate in social conversation with peers and adults on familiar topics by asking and answering questions while remaining on topic.

15. Ms. Lueders concluded Student did not benefit from language/speech services because the results from her assessment did not differ greatly from assessment results dating back to 2009. She recommended "dismissing" Student from language/speech services. She recommended collaboration between a therapist and a special education teacher in a communication support model using visual supports and encouragement to increase Student's participation in curricular and social activities in the classroom.

## JANUARY 26, 2016 OCCUPATIONAL THERAPY ASSESSMENT

16. Mr. Lee conducted an occupational therapy assessment on January 26, 2016 and prepared a report. Mr. Lee was qualified to assess Student for occupational therapy. His assessment included teacher interview, school observation and clinical observation. He reviewed samples of Student's work. Mr. Lee did not obtain any information from Mother. He was hoping to attend the IEP and expected parent concerns would be discussed at the IEP meeting. Mr. Lee observed Student required occasional verbal prompting to redirect him to follow adult instructions to complete tasks when he did not have one-on-one supervision. Mr. Lee concluded Student did not require occupational therapy services to assist him to benefit from his program.

## 2015-2016 SCHOOL YEAR

17. Student attended 12th grade in Gabriel Rodriguez's special education class at Lanterman during the 2015-2016 school year. Mr. Rodriguez was a very experienced special education teacher. He worked for District as a special education teacher at Lanterman for 17 years.

18. There were 10 students and a fulltime special education assistant in Mr. Rodriguez's class. Student was not capable of participating in a general curriculum. Student participated in an alternate curriculum for students with moderate to severe disabilities. The program met California state standards. Student was working toward a Certificate of Completion. He was not capable of obtaining a high school diploma. A typical day in Mr. Rodriguez's class began with breakfast followed by storytelling and recess. After recess, the class participated in vocational skills in the car wash, laundry, garden or recycling. Additional classroom time or vocational training took place after lunch. The focus on Mondays was assessment and "pencil to paper" academics. Students worked on their goals and spent more time in the classroom. The class walked to the

market on Wednesdays to work on independent living skills such as understanding environmental signs, crossing streets safely, and reading labels on items such as potato chips.

#### FEBRUARY 25, 2016 IEP

19. District convened Student's triennial IEP team meeting on February 25, 2016. Mother, administrative designee Elva Warren, Mr. Rodriguez, Ms. Lueders and an interpreter attended. Neither Mr. Lee nor any other occupational therapist attended the meeting. The IEP team reviewed Student's progress on goals from the March 12, 2015 IEP. Of the eight goals, Student met the goals for functional reading, functional writing, vocational education, and expressive language. He did not meet the goals for English language development, sensory, communication or functional math.

20. The IEP team reviewed Student's present levels of performance. Student was able to read some indoor/outdoor community survival signs. Student was unable to identify the amount of each coin and did not understand which math function to use to complete simple single digit addition and subtraction. Student participated in vocational activities including the car wash, a laundry, and going to the market. At the car wash, Student could measure soap and sort towels, vacuum and rinse. In the laundry, Student could separate yellow shirts from black shorts and fold. Going to the market, Student could assist the group in determining when it was safe to cross a street; carrying assigned items and scan his item at the self-checkout. He needed to increase his communication skills and his ability to follow rules in all activities.

21. Present health levels were provided by a school nurse report that Student required monitoring in the classroom and on the playground for safety measures, and recommended adult supervision and a safe environment during school hours. Present levels of performance in physical fitness included needs in the area of complex motor skills, object control, muscular strength and endurance.

22. Ms. Lueders summarized her report. She recommended Student be dismissed from direct speech and language services and placed on a communication support model.

23. District team members proposed seven goals. Goals in English language development, practical reading, practical writing, practical math, sensory and communication were virtually the same as goals contained in the March 12, 2015 IEP. A goal in vocational education was added. The goal was for Student to remain on task and complete a given assignment or specific job until complete with no more than one redirection with 80 percent accuracy in four out of five trial days.

24. The team determined that Student continued to be eligible for special education under the category of autism. District offered special education on the alternate curriculum at Lanterman, 360 minutes per year of collaborative occupational therapy, 50 minutes daily of Special Design Physical Education and an unspecified amount of time in which the speech/language pathologist would collaborate with the special education teacher on classroom-based communication goals. Extended school year and transportation were included. Accommodations, modifications, and supports for Student's program at Lanterman included the opportunity to participate in small group and individual instruction, use of real and hands-on materials, and close monitoring and adult assistance with support when planning any interactive events with nondisabled peers on campus and in the community.

25. The IEP offered a transition to Widney High School, a District Career Transition Center on August 16, 2016. The IEP did not include any services, accommodations, modifications or supports for the transition.

26. The IEP included an Individual Transition Plan. There was very little difference between this Transition Plan and the Transition Plan offered in the March 12, 2015 IEP. Student continued to enjoy working with electronic devices. He enjoyed

activities and assignments he was familiar with and that he could complete on his own. He helped with "breakfast in the classroom" and folding laundry. The proposed goals were to enroll and attend a vocational training program, complete a sequence of work related tasks, and live with family. The Transition Plan did not identify any needs or propose any accommodations, modifications or supports to assist Student to meet the proposed goals.

27. Lanterman was a small high school with approximately 130 students. Widney was a much bigger school than Lanterman. The focus at Widney was to help young adults, ages 18 to 22, develop skills within their interests and abilities that could lead to employment and independent living. There were more options for vocational training at Widney than the vocational training offered at Lanterman. For example, Widney offered approximately 35 programs including computer science, culinary arts and car detailing.

28. Mother did not consent to the IEP. She did not agree with the Transition Plan. Mother felt that Widney was not appropriate for Student because his academic level was below first grade. She was concerned about transferring Student to Widney because Student lacked the capacity to make the decisions required of him to participate in that environment. He lacked the capacity to consider his future goals for education, employment skills or activities for an independent life. He was incapable of finding a professional interest or developing skills that supported activities after school.

29. Student did not return to a District program for the 2016-2017 school year. Mother kept him out of school because she did not want him to go to Widney. She was concerned that he could not understand the program at Widney, that no one would be with him, and she was concerned that he could not take care of himself in that environment. Mother understood that Student did not have the capacity to graduate from high school. She believed that with appropriate placement and related services

until he reached the age of 22, Student could make progress toward independent living. She thought Student would be better served in a more restrictive educational environment than Widney.

## LEGAL AUTHORITIES AND CONCLUSIONS

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

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

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

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

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

services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. On March 22, 2017, the Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School District* (2017) 580 U.S. \_\_\_, [137 S. Ct. 988], 2017 WL 1066260. *Endrew F.* explained, under *Rowley*, when a child is fully integrated in a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Id.*, 2017 WL 1066260 at p. 11.) However, both *Rowley* and *Endrew F.* declined to hold that advancing from grade to grade proved a student was receiving a FAPE. (*Endrew F.* at p. 14, fn. 2; *Rowley*, 458 U.S. at p. 202 [no one test for determining adequacy of educational benefits]; see also *id.* at p. 203, fn. 25.); *Endrew F.* held, as applied to a student that was not fully integrated in a regular classroom, the student's IEP must be reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. (*Endrew F.* at p. 11.) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has

the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Student had the burden of proof in this matter.

ISSUE 1(A): TRIENNIAL ASSESSMENT; 2(A) PLACEMENT AND 2(C) APPROPRIATE SERVICES.

5. Mother contends District was required to conduct a triennial assessment. District contends it was not required to conduct a triennial assessment because there was no question that Student was eligible for special education with a disability of autism. District argues the occupational therapy assessment and the language and speech assessment were sufficient to identify Student's needs for his triennial IEP in February 2016.

6. Mother further contends Widney is not an appropriate placement because Student does not have the capacity to consider the options presented in a vocational center, or the possibility of future employment or comprehend the skills necessary to lead an independent life. Mother argues District should maintain Student's placement at Lanterman, or consider placement in a more restrictive environment in a non-public school such as Village Glen. District contends District can implement Student's IEP at Widney and Widney is the least restrictive environment. Lastly, Mother contends District did not offer appropriate services the area of social skills; occupational therapy; speech/language; and English language development. District disagrees and stands by the recommendations in the January 2016 assessments.

Applicable Law

7. School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized instruction and

related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services the student requires.(34 C.F.R. §§ 300.301 and 300.303.) The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of the student’s educational career. (See 71 Fed. Reg. 46,640 (Aug. 14, 2006).)

8. 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 (2006); Ed. Code, § 56381, subd. (e).) The student 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 student has a disability or whether the student’s educational program is appropriate. (20 U.S.C. § 1414(b)(2) & (3); Ed. Code, § 56320, subds. (e) & (f).)

9. The evaluation must be sufficiently comprehensive to identify all of the child’s special education and related services needs, regardless of whether they are commonly linked to the child’s disability category. (34 C.F.R. § 300.306.) As part of a reevaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including teacher and related service-providers’ observations. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. §300.305; 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 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. (20

U.S.C. § 1414(c)(1)(B); 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).)

10. A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) Upon parent request, the local educational agency must conduct a reassessment, even when the school determines that no additional data is needed to determine the student's educational needs. (20 U.S.C. § 1415 (a)(2)(A)(ii); Ed. Code, § 56381, subds. (a)(1) & (d); 34 C.F.R. § 300.303 (a)(2).) A parent's request for an assessment initiates the assessment process. (Cal. Code Regs., tit. 5, § 3021(a).)

11. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a) Ed. Code, § 56500.4.) Parents cannot meaningfully collaborate with the IEP team without valid reliable information about their child's disability.

12. The failure to perform an assessment when an assessment is warranted, as well as the failure to conduct an appropriate assessment, are procedural violations of the IDEA. (*Park v. Anaheim Union High School Dist.* (9th Cir.) 464 F.3d 1025, 1031.) Procedural violations of the IDEA constitute a denial of FAPE if the violation: (1) impeded the student's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 quoting *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 894.)

13. The failure to obtain critical assessment information about a student "renders[s] the accomplishment of the IDEA's goals - - and the achievement of a FAPE -- impossible." (*N.B. v. Hellgate Elementary School Dist. supra*, 541 F.3d 1202, 1208, quoting *Amanda J. ex rel. Annette J. v. Clark County School Dist. supra*, 267 F.3d 877, 892.) On May 23, 2016, the Ninth Circuit reaffirmed *Hellgate* and *Amanda J.* in *Timothy O. v. Paso Robles Unified School District.* (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21.)

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

#### Analysis

15. In this case, Student's most recent triennial psycho educational evaluation was in February 2010, when Student was 11 years old and in sixth grade. Student was 16 years old and in 11th grade at the time of the March 12, 2015 IEP. For the March 12, 2015 IEP District relied on present levels of performance based upon informal observation by Student's teacher and the teacher's report to others. There was no evidence of any assessments between February 2010 and March 2015.

16. District was required to assess at least once every three years unless Mother and District agreed that reevaluation was not necessary. Mother did not agree a triennial evaluation was not necessary. To the contrary, on April 22, 2015 she made a written request for the assessment. Her written request triggered the assessment process even if District did not consider assessment necessary to determine Student's

eligibility. The mandated triennial evaluation was necessary to help the IEP team identify the special education and related services Student required.

17. Without a triennial assessment and, as discussed below without an appropriate transition plan, the February 25, 2016 IEP proposed to change Student's placement from a Special Education Center to a Career Transition Center for young adults in a very different educational environment while, at the same time, eliminating occupational therapy and direct language/speech services. Even aside from Mother's written request for a triennial assessment, such a change in Student's educational program would warrant comprehensive assessments before an IEP and transition plan were developed.

18. District argues that the occupational therapy and the language/speech assessments were sufficient to identify Student's abilities and need sat the February 25, 2016 IEP triennial team meeting. An occupational therapy assessment and a language and speech assessment are not a substitute for a comprehensive psycho educational assessment.

19. Mr. Lee's assessment addressed only occupational therapy. Mr. Lee did not speak to Mother before the IEP meeting, did not address parent concerns in the occupational therapy report, and no occupational therapist attended the IEP meeting. The IEP team as a whole was ill informed by the failure to have Mr. Lee or any occupational therapist at the meeting to explain the occupational therapy assessment. There was no evidence that the occupational therapy assessment was interpreted during the meeting or that District provided a translation of the occupational therapy report to Mother at any time. Thus, Mother could not participate in any discussion of Student's occupational therapy needs at the February 25, 2016 IEP meeting. Nonetheless, District substantially reduced the nature and level of occupational therapy services in the February 25, 2016 IEP.

20. Mother's concerns that Student's language and speech needs were not being addressed and that he needed more services were documented, in Spanish, on Student's March 12, 2015 IEP. Ms. Lueders did not interview Mother about her concerns during the January 2016 assessment. Although Ms. Lueders identified significant errors in Student's speech patterns, she did not suggest an articulation goal. Her conclusion that Student met his communication goal from the March 12, 2015 IEP was inconsistent with her testing and her observations. Ms. Lueders' testimony that Student "knows more than he lets on," was able to label more words than he expressed, and that "he has more language than you would think" indicates, at the time of her assessment, Student's current abilities were unknown. Nonetheless, the February 25, 2016 IEP eliminated direct language and speech services.

21. District's failure to conduct Student's long overdue triennial assessment prior to developing the March 12, 2015 IEP prevented the IEP team from having a complete picture of Student's abilities and needs. District's failure to conduct a triennial psycho educational assessment resulted in the loss of educational opportunity and deprived Student of educational benefit. District impeded Mother's participation in the decision making process by failing to conduct the psycho educational assessment and proceeding without vital information concerning the proposed transition.

22. The problem was compounded in the next annual IEP on February 25, 2016. District failed to conduct a psycho educational assessment even after Mother's February 22, 2015 written request. This failure resulted in another year without current information to help the IEP team identify the special education and related services Student required at Lanterman or that he would require for a transition to Widney Career Transition Center. Moreover, based on three year intervals beginning in February 2010 another triennial assessment was due in February 2016. District's failure to conduct a triennial psycho educational assessment resulted in the loss of educational

opportunity and deprived Student of educational benefit and impeded Mother's participation in the decision making process by failing to conduct the psycho educational assessment and proceeding without vital information concerning the proposed transition.

23. District proposed a significant change of placement in the February 25, 2016 IEP. Lanterman was a small high school special education center where Student received occupational therapy, language and speech services, and needed accommodations, modifications and supports. At Lanterman, with direct language and speech and occupational therapy, and where he had substantial individualized accommodations, modifications and support, Student met approximately half his goals. He did not meet goals for English language development, sensory, communication or functional math. His verbal communication was unintelligible. He needed close adult supervision and monitoring when in the community and when engaging with non-disabled peers. Widney was a far different educational environment at an adult Career Transition Center. While Widney might have been, in general, a less restrictive environment than Lanterman, District had no basis for offering that placement without current assessment information, and without an appropriate transition plan. Accordingly, neither the March 12, 2015 IEP nor the February 25, 2016 IEP's were reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

#### ISSUE 1(B): TRANSITION PLANS.

23. Mother contends District failed to offer an adequate transition plan. District contends the transition plans were appropriate.

#### Applicable Law

24. Beginning at age 16 or younger, the IEP must include a statement of needed transition services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect

when a student reaches 16 years of age must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A); *Board of Education of Township High School Dist. No. 211 v. Ross, et al.* (7th Cir. May 11, 2007) 47 IDELR 241, 107 LRP 26543.)

25. Transition services are a coordinated set of activities that are (1) designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation; (2) based on the student's individual needs, taking into consideration the student's strengths, preferences and interests; and (3) include instruction, related services community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocation evaluation.(20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) Generally, it is inconsistent with the IDEA to delay transition services until a few months before a student's graduation. (*Letter to Hamilton* (OSEP 1995) 23 IDELR 721, 23 LRP 3421.)

#### Analysis

26. District failed to provide Student an adequate transition plan with either the March 12, 2015 or February 25, 2016 IEP's. Student's March 12, 2015 and February 25, 2016 Transition Plans did not consider Student's needs in light of the change in the educational environment offered; lacked individualized goals in all areas; did not

propose any transition services to be provided by District; and failed to include any accommodations, modifications or supports to help him with the transition. Neither Transition Plan was based upon an assessment or current information about Student's individual needs, taking into consideration his strengths, preferences and interests in education/training, employment, and independent living. Both Transition Plans contained generic goals that highlighted the lack of individualization for Student.

27. District's failure to provide an appropriate transition plan resulted in the loss of educational opportunity and deprived Student of educational benefit. District impeded Mother's participation in the decision making process by proceeding without vital information concerning the proposed transition.

#### ISSUE 2(B): ACADEMIC TUTOR.

28. Mother contends District failed to provide a tutor to aid Student with academic and social skills appropriate to his age. Mother did not offer any evidence concerning Student's need for a tutor. There was no evidence as to what a tutor would do or how much time a tutor would need to spend with Student. Mother did not meet her burden of proof on Issue 2(b).

#### ISSUE 2(D): STANDARD HIGH SCHOOL AND COLLEGE TESTING.

29. Mother contends District should have prepared Student to take the California English Language Development Test; California High School Exit Exam; PSAT and SAT standardized tests for college admission; California Standardized Test for English Language Arts and Mathematics and required exams by universities. Mother and District witnesses agreed Student did not have the capacity to read or comprehend any of these tests.

30. Student participated in the alternative curriculum and the California Alternate Performance Assessment at Lanterman. Student was on track to receive a

Certificate of Completion. District was not required to prepare Student to take the California High School Exit Exam or exams required for college or university applications. District acknowledged that the Certificate of Completion did not end District's obligation to provide Student a FAPE. Mother did not meet her burden of proof on Issue 2 (d).

## REMEDIES

1. Student requests independent educational evaluations. Student also seeks District funded placement in a non-public school.

2. Administrative Law Judges have broad latitude to fashion equitable remedies appropriate for the denial of a FAPE. (*School Committee of Burlington, Mass. v. Department of Education*, (1985) 471 U.S. 359, 370; *Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) The broad authority to grant relief extends to the administrative law judges and hearing officers who preside at administrative special education due process proceedings. (*Forest Grove School Dist. v. T.A.* (2009) 129 S.Ct. 2484, 2494, fn. 11; 174 L.Ed.2d 168.) The fashioning of equitable relief in IDEA cases requires a "fact-specific" analysis. (*Student W. v. Puyallup School Dist., No.3, supra*, at p. 1497.)

3. Independent educational evaluations may be ordered as an equitable remedy when a district fails to conduct a required assessment. (*Los Angeles Unified School Dist. v. D.L.* (C.D.Cal. 2008) 548F.Supp.2d 815, 822-823.) An independent educational evaluation is an evaluation conducted by a qualified examiner not employed by the district. (34 C.F.R. § 300.502 (a)(1).) A district may impose criteria to ensure that publicly funded independent evaluations are not unreasonably expensive. (Letter to Wilson, 16 IDELR 83 (OSEP October 17, 1989).) Public agencies are not required to bear the costs of independent evaluations where those costs are clearly unreasonable. (Letter to Kirby, 213 IDELR 233 (OSEP 1989).) To avoid unreasonable

charges for independent evaluations, a district may establish maximum allowable charges for specific tests. (*Id.*) If a district does establish maximum allowable charges for specific tests, the maximum cannot be an average of the fees customarily charged in the area by professionals who are qualified to conduct the specific test. (*Id.*) The maximum must be established so that it allows parents to choose from among the qualified professionals in the area and only eliminates unreasonably excessive fees. (*Id.*)

#### INDEPENDENT PSYCHOEDUCATIONAL EVALUATION AND TRANSITION ASSESSMENT.

4. Mother demonstrated District failed to timely conduct Student's triennial evaluation, did not assess Student upon Mother's written request, or before District proposed a significant transition and change in Student's placement. In this case, it was particularly important to assess Student in all areas of suspected disability because Student had not had a triennial evaluation since 2010. District's Transition Plans did not meet legal standards. Accordingly, an independent psycho educational evaluation and an independent transition assessment are appropriate remedies based upon these facts.

#### INDEPENDENT LANGUAGE AND SPEECH ASSESSMENT, INCLUDING AUGMENTATIVE ALTERNATE COMMUNICATION AND ASSISTIVE TECHNOLOGY.

5. The evidence demonstrated significant errors in Student's speech patterns and expressive language disorder. Student was mostly non-verbal. His speech production was limited and unintelligible. In Ms. Lueders' opinion, Student knew more than what was revealed in her testing, was able to label more words than he expressed, and that his language skills were more than "you would think." Her conclusion that Student met his communication goal from his March 12, 2015 IEP was inconsistent with her other findings and with testimony of all other witnesses. Her conclusion that Student no longer needed direct language and speech services because the results from her

January 2016 assessment did not differ greatly from assessment results dating back to 2009 was not a legitimate basis for discontinuing direct services.

6. Student lacked adequate communication skills in school and social situations. While he was limited to one to three word sentences and most of his speech was unintelligible, he was able to connect words with pictures, he could use a keyboard and he enjoyed working on a computer. There was no evidence the language and speech pathologist considered an alternative augmentative communication device or assistive technology. Accordingly, an individual education evaluation for language and speech, including alternative augmentative communication and assistive technology is appropriate based upon these facts.

#### PLACEMENT

7. Mother did not prove Student required a non-public school.

#### ORDER

1. Within five business days of this Order, District shall provide Mother with District's policies for independent psycho educational evaluation and independent educational evaluations for post-secondary transition, speech and language and augmentative alternate communication/assistive technology. District shall provide the policies, with a Spanish translation, to Mother.

2. Within 15 business days of this Order, Mother will provide the names of the assessors she has chosen for the independent psycho educational evaluation, post-secondary transition, speech and language and alternative augmentative communication/assistive technology to District.

3. If Mother's chosen assessors meet District's policies, then within 10 days of receipt of Mother's selection, District shall send each designated assessor a contract to perform the assessor's particular assessment at District's expense. No assessment plan

shall be prepared by District. If a selected assessor does not meet District's policies, District shall inform Mother in writing, with a Spanish translation, and Mother shall choose another assessor that meets District's policies.

4. If Mother does not timely select an independent assessor who meets District policies, District may choose a qualified independent assessor who has experience assessing students in the area of particular assessment. District may not select an assessor that works for District.

5. District must enter into a contract with each selected assessors as soon as practicable. District shall ensure that employees under its control cooperate with each assessor. Each assessment report shall be translated into the Spanish language at District's expense and provided to Mother no later than two school days before any IEP in which the assessment will be discussed.

6. District shall hold an IEP meeting no later than 30 calendar days after it receives the last of the assessment reports, unless mutually agreed otherwise by District and Mother, to consider the assessments and develop an IEP. District shall fund the cost of each assessor to travel to and attend the IEP team meeting up to a maximum of three hours. Assessors may attend the IEP team meeting(s) in person or via telephone.

7. District shall provide Mother a Spanish language translation of the January 26, 2016 occupational therapy report no later than two school days before the IEP team meeting described in preceding paragraph IEP. District shall ensure a qualified occupational therapist attends the meeting in which the report is discussed.

8. All other claims for relief are denied.

## PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section, the following finding is made: Student

prevailed on Issue 1 (a) and (b) and Issue 2 (a). District prevailed on Issue 2 (b), (c) and (d).

## RIGHT TO APPEAL THIS DECISION

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

Dated: May 31, 2017

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MARIAN H. TULLY

Administrative Law Judge

Office of Administrative Hearings