

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017100546

DECISION

Parents on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings on October 12, 2017, naming Irvine Unified School District. On November 20, 2017, OAH granted the parties' joint request to continue the due process hearing. District filed its response to Student's complaint on October 23, 2017, which permitted the hearing to go forward.¹ Administrative Law Judge Judith L. Pasewark heard this matter in Irvine, California on February 27, 28, and March 1, 2018.

Amanda Selogie and Vickie Brett, Attorneys at Law, represented Student. Mother and Father alternated days attending the hearing. Student did not attend the hearing.

Tracy Petznick-Johnson, represented District. Jennifer O'Malley, Director, and Melanie Hartig, Executive Director of Special Education, attended the hearing on behalf of District.

¹ (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017), 858 F. 3d 1189, 1199-1200 (*M.C.*)).

At the parties' request, OAH continued the hearing for the parties to file written closing arguments. The record closed on March 26, 2018, upon receipt of closing briefs from the parties

ISSUES²

1. Did District deny Student a free appropriate public education during the 2016-2017 school year by failing to assess her in all areas of suspected disability, specifically in the areas of functional behavior and auditory processing?

2. Did District deny Student a FAPE during the 2016-2017 and 2017-2018 school years by failing to provide appropriate interventions for Student in the areas of attention/behavior/executive functioning, academic achievement, speech and language and auditory processing?

3. Are Parents entitled to reimbursement of costs incurred from the provision of intensive intervention services and independent assessments?

STATUTE OF LIMITATIONS

On October 26, 2016, the parties entered into a settlement agreement which resolved all claims through its date of execution. Therefore, the statute of limitations in this matter commenced on October 27, 2016, and the operative period of this complaint ran through its date of filing on October 12, 2017.³

² The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issue so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir 2010) 626 F.3d 431, 442-443.)

³ The statute of limitations for filing a request for due process is two years unless certain exceptions apply. (Ed. Code 56505(l).)

SUMMARY OF DECISION

Parents consistently expressed concerns that District failed to understand Student's unique needs. Parents maintained strong opinions that Student required a 1:1 aide to assist her with recall, memory, understanding, and comprehension, as well as to provide consistent prompting to address her inattentiveness and behaviors. In doing so, Parent's relied heavily on the opinions of private service providers, who experienced significant behaviors with Student during intensive 1:1 speech and reading services which were intended to maximize educational benefit.

District contended it appropriately assessed Student in all areas of suspected disability and, crafted appropriate goals, and provided appropriate services to support Student's areas of need, which provided Student with a FAPE at all time.

Student's evidence was unpersuasive. Student's contentions in this matter sought to expand District's obligation to provide a FAPE far beyond the legal requirements of providing Student the 'basic floor of opportunity' consisting of specialized instruction and related services which are individually designed to provide educational benefit to the child, commiserate with his/her ability. Although remediation is a component of the IEP, pursuant to *M.C. v. Antelope Valley*, it is not required to overshadow Student's other educational needs or be provided in a program designed to maximize Student's progress.

FACTUAL FINDINGS

BACKGROUND:

1. At the time of the hearing, Student was an 11-year old girl residing with Parents within the boundaries of District, and attended a collaborative general education class at District's Westpark Elementary School. Student's primary language was Mandarin, and she was classified as an English Language learner. Student's overall

cognitive scores fell in the below average/low average range. Student qualified for special education and related services under the primary category of autism and secondary category of speech and language impairment.

2. Student's April 18, 2016 annual IEP was held in three parts over a period of two months, consisting of hours of review, discussion and revision. Her 2016 annual IEP was completed on June 8, 2016. District members of the IEP team determined that Student struggled writing independently, and required several prompts and 1:1 support to initiate and complete writing assignments with 50 percent accuracy. Student struggled with reading comprehension, and did not refer back to text when supporting her answers, resulting in a 60 percent accuracy level. Student made great progress towards her speech and language goals, with overall progress in the areas of semantics, grammar, narrative language and speech intelligibility; however, she continued to require adult prompts to use age-appropriate speech and tone of voice. She presented with age appropriate fluency skills; her expressive and receptive vocabulary skills were within normal limits; and her syntax/grammar and audio comprehension were also within the average range. Student exhibited a weakness with problem solving, making predictions and negative questions. She struggled in areas of theory of mind and perspective taking, which along with her other weaknesses, contributed to her social struggles and friendships with peers. Further, Student required multiple prompts, to complete non-preferred academics in areas such as following directions and completing classwork.⁴

3. District's offer of a FAPE consisted of 14 goals supported by both individual and group speech and language services, and accommodations. District

⁴ Student's status as an English Language learner did not impede her academic progress.

offered Student placement in a collaborative general education classroom, which was co-taught by a special education teacher and provided significant embedded programs to support Student's goals. Parents consented to placement, but did not consent to other aspects of the IEP.

4. On October 26, 2016, District and Parent's entered into a settlement agreement, in which all issues prior to the date of execution were settled and Parents fully consented to the April 18, 2016 IEP as amended, making it Student's last agreed upon IEP.

OCTOBER 27, 2016 THROUGH APRIL 17, 2017:

5. Mother requested another IEP team meeting to discuss Student's progress on goal, which was held on December 1, 2016. Mother expressed concern about the limited amount of time between short term objectives.⁵ Mother shared Student had difficulty with "main idea" concepts, and when presented with multiple choices, Student guessed at answers. Alexandra Gong⁶, District's education specialist and special education teacher in Student's collaborative class, explained she was working with Student on the main idea goal, and described how she was measuring Student's

⁵ The 2016 IEP called for annual goals to be completed by April 18, 2017. Parents, however, did not consent to the IEP until the settlement agreement on October 26, 2016. While Student may have been informally working on these goals prior to October, official reporting for short term goal progress, commenced November 21, 2016, and was again scheduled for March 15, 2017, before the 2017 annual IEP, due in April 2017.

⁶ Ms. Gong holds a master's degree in special education, and a credential as a mild/moderate education specialist. Ms. Gong also holds an autism authorization and is trained in applied behavior analysis.

performance. Mother voiced concern about goal measurements for speech and language goals, and asked to revise the goals to state that goals would be measured over a two week trial period to determine progress. District declined, and explained that progress on goals was measured over a year's period of time, rather than all at once.

6. Mother inquired about each goal to seek clarification about how Ms. Gong was working on each goal. Ms. Gong explained that when learning was more interactive, Student was more successful. Emily Kong,⁷ Student's general education teacher, explained Student was not the only child in the class struggling to do math; and in small group, Student demonstrated math skills. Further, all students in the class were recently introduced to decimals, and were continuing to work on acquiring new skills in this area. Student's behaviors were reported as very good, and she was making great progress with her behavior. Nahal Parsangi, Student's speech and language pathologist reported similar progress. Mother expressed dissatisfaction with a piece of writing Student did in class, noting grammatical errors. The teachers explained the work sample referenced by Mother was a rough draft, and the class spent a lot of time editing and revising. Student was successful when she had different opportunities to go back and edit her writing.

7. Mother indicated Student had difficulty organizing her ideas, and requested teachers help her with organization. Ms. Kong informed Mother that, in class, the students worked on brainstorming activities prior to writing to organize their ideas before they began writing. Ms. Gong described the writing process, and reported Student already requested a specific organizer on her own.

8. Mother related her concerns with Student's math skills, and asked that

⁷ Ms. Kong has a Master's degree in teaching, and holds a multiple-subject credential and English Language Learner authorization. She was also fluent in Mandarin and Cantonese.

teachers help Student when learning a new concept because she felt Student made more mistakes than others students. Ms. Kong explained the mistakes Mother pointed out were common for many students in class. Further, Mother was expressing concern regarding a grade level standard which all students were then working on, and the class had not yet been tested on the new concept.

9. Mother inquired about each speech and language goal, and Student's progress with them. Ms. Parsangi⁸ provided Student's speech and language services since kindergarten. Ms. Parsangi shared Student was making progress on her goals, and described how she was working on each goal. Mother expressed concern that the vocabulary words were too difficult for Student. The vocabulary words were grade level and being taught to the entire class. Accommodations were made for Student during her vocabulary tests. Ms. Parsangi described vocabulary strategies used with Student. She reported Student was doing well socially and had a group of friends at school. No changes were made to the IEP.

10. After the IEP team meeting on December 1, 2016, Parents continued to express concern about Student's behaviors and questioned whether appropriate accommodations and strategies were utilized in the classroom. Parents maintained Student continued to be inattentive and was not learning in class. Much of this concern was generated from Parents' belief that Student's classroom grades were not reflective of the work samples provided to them. To verify District's feedback regarding Student's progress, Parents renewed, and renewed again, their requests for more complete

⁸ Ms. Parsangi holds a Master's degree in communicative disorders, as well as a speech and language pathology credential. She also holds an American Speech, Language, Hearing Association certificate of clinical competence, and a California state license for speech and language pathology and audiology.

samples of Student's work product, including worksheets and classroom assignments, as well as anything else produced by Student in the classroom. Parents also requested all data collected by teachers and staff used to support District's determinations of Student's participation and progress in class. Much of what was requested was not available and not part of Student's educational file. The materials provided to Parents, in their minds, did not contain the information Parents desired. They thought the information was not sufficiently detailed to answer their questions, or they did not believe the information adequately supported District's determination that Student could access grade level curriculum. For example, Father expressed that District provided "bogus data" when behavioral data requested by Parents, and given to them, indicated Student remained on task in class similarly to her peers. Father indicated that although the data collected reported Student did not exhibit maladaptive behaviors in class, District did not address or collect data on whether she was actually focused on task.

11. Parents' understanding of special education vernacular and methodologies differed greatly from that of District professionals. Father admitted he was often at a loss to understand special education. He believed District overgeneralized parental requests. As an example, Father adamantly believed Student needed a 1:1 aide as an additional support to help her focus and remain on task. He explained he did not believe the aide was needed all the time; District could use the classroom aide to check Student's attention and gather data. To accomplish this, he felt Student's IEP goals should contain the specific instructions to be utilized by staff through the course of the day. At hearing, however, what Parents were really describing was 1:1 teaching throughout the day.

12. Parents believed District was obligated to include specific teaching strategies and methodologies to be used throughout the day to work on each goal, and

obligated to collect extensive data daily on each goal. This, Parents believed, would provide appropriate feedback to allow them to monitor Student's progress. Parents also believed this process would hold District accountable, by requiring "proof" that Student had actually met her goals and/or made meaningful progress towards mastery of grade level curriculum. Mother defined "proof" as the production of work samples which showed Student reached the correct answers, and the assignments corresponded to Student's goals. To support her request for proof, Mother explained that if grades were based on grade level tasks, then Student's grades were modified and inflated, because, in her mind, Student was not working at grade level. She questioned how Student could get an "A" grade in science, when she did not understand the science vocabulary, such as "what was an ocean current." She questioned how Student could be working at grade level if her State Standardized Testing scores indicated she required urgent intervention. Deanna Rutter, Principal at Westpark, explained that "urgent intervention" indicated a student needed supports. Student received these supports in the form of her IEP.

13. Parents' definition of IEP accommodations was more akin to implementation of specific teaching strategies and methodologies. Specifically, Parents wanted the IEP accommodations to include (1) what teaching strategy was going to be used; (2) when would each strategy be used; and (3) who would implement each strategy.

14. Ms. Gong described her daily interactions with Student. First, Ms. Gong made it clear to Parents that she was aware of Student's unique needs. Between 8:00 a.m. and 1:00 p.m. daily, Ms. Gong provided Student with small group support, which included pre-teaching and re-teaching of daily lessons, as well as working on specific goals. She also provided Student's pull-out specialized academic instruction, which included working on those IEP goals which could be addressed in class. Pull-out instruction was 1:1. Most of the day, Student was with Ms. Gong or the educational aide,

who had been trained by Ms. Gong.

15. For small group, students were grouped by their reading and comprehension levels. In group, Student was able to initiate tasks. Ms. Gong asked follow-up comprehension questions and used informal assessments to measure Student's comprehension of lessons almost daily.

16. At hearing Ms. Gong further explained that the work samples provided to Parents were not a complete file of Student's assignments. They were as indicated, a sample, or representation of areas being worked on for IEP goals.

17. Ms. Gong explained teaching strategies and models differed and changed throughout the day. In the collaborative classroom, the teachers fluidly switched teaching lessons between them, and jointly prepared the lesson plans. Mirror teaching was utilized where each of the teachers were teaching the same content separately within the same classroom. Ms. Gong used strategies such as scaffolding of instruction for comprehension, clarification of instruction, and pre-teaching, when needed, all of which depended upon the subject matter and task at any given time. Vocabulary strategies were taught. Ms. Gong used books on tape for auditory retention. Student read books aloud. Visual supports were used. Ms. Gong did not use the Aspire Reading Program for reading intervention, because Student did not qualify for the program; and the program covered areas which were strengths for Student, not areas of need.

18. At hearing, Ms. Gong addressed Parents' concerns about Student's reading level. Not all children reading below grade level have a disability or are special education students. In her class, Student was placed in a more intensive small reading group, in which reading levels range between third and fifth grade levels. Student made progress and was, at the time of hearing, reading at the fifth grade level.

19. Ms. Gong explained Student needed explicit directions and additional instructions with writing tasks. She was working on constructing sentences to tie in

details and connect subject matter. Student's science and social studies vocabulary was similar to that of other students in the class, including general education peers.

20. Ms. Gong discontinued the use of Parents' preferred behavior chart, as it was ineffective. Student was an attention seeker, and the use of the chart only reinforced Student's negative behaviors. The chart was replaced with a token economy utilized as positive behavior reinforcement. As a result, Student's behaviors had dramatically decreased by the end of fifth grade, although at times, Student still exhibited silly behavior with other peers. She still could be inattentive, but she frequently initiated requests for help with tasks.

21. Student did not need a 1:1 aide as she already received 1:1 support when needed. Further, the strategies described by Ms. Gong, such as pre-teaching were absolutely used in Student's class. Additional techniques used with Student included brainstorming, worksheets, and checking assignment. Student's entire writing program embedded with "first/then" strategies. Chunking and graphic organizing were regularly used in the classroom. Cindy Goebels, District educational specialist who had worked with Student for five years through fourth grade, concurred with Ms. Gong's description of classroom supports and learning strategies. Ms. Goebels also emphasized that teaching strategies were not IEP accommodations.

APRIL 11, 2017 AND MAY 18, 2017 IEPs (2017 IEP)⁹

22. District held Student's 2017 annual IEP team meeting in two parts. The first part, held on April 11, 2017, was continued to May 18, 2017, for completion and District's offer of FAPE.

⁹ Although the IEP team meeting took place in two parts, the IEP meeting process is discussed as one event herein.

23. On April 27, 2017, Student obtained legal counsel who made a records request on behalf of Student. The records request included extensive information outside of Student's educational records, specifically, "any and all items that contained personally identifiable information about Student and parent, whether by name, reference, social security number or student identification number."

24. The 2017 IEP team meeting covered all required topics for an annual IEP. All required IEP team members were present, along with legal counsel for both Student and District, at the second meeting.

25. The IEP team determined Student demonstrated a developmental disability significantly affecting verbal communication, nonverbal communication, and social interaction which adversely affected her educational performance. Based upon school observations and classroom participation, Student was described a kind and curious student who enjoyed dancing, playing with her friends, and basketball. Student worked best when motivated and in small group environments. Student's strengths included her ability to engage and interact appropriately with her peers. She could follow classroom routines and procedures, and able to contribute to the classroom environment by holding a classroom job. Student was able to organize and gather academic materials and follow the classroom schedule daily.

26. Academically, Student faced reading difficulties within the areas of reading fluency, intonation, and expression. She required additional prompting when answering questions related to inferences or perspective taking. Student required additional adult prompting to complete multi-step writing assignments. Student faced math challenges which required some additional re-teaching and small group support when learning new material. Student requested adult assistance an average of seven times per hour, and had difficulty with time management when completing multi-step assignments.

27. Student made steady progress towards her speech and language goals

from the 2016 IEP. She showed overall growth in semantics, pragmatic language and grammar. She showed progress in maintaining conversations with peers and adults, and improvement in problems solving in social scenarios. On the other hand, non-literal/pragmatic language continued to be an area of need, including inferences, perspective taking and problem solving. Grammar/morphology continued to be an area of need for Student, and she struggled with appropriate use of verb tense.

28. Ms. Parsangi reported Student did not meet 2016's Goal Twelve, addressing conversation. Although she did not reach the mandated 80 percent accuracy level, Student progressed on the short-term goals from 30 percent to attaining 70 percent accuracy. Student continued to have difficulty with inferences and perspective due to her autism.

29. Student easily met Goal Fourteen, which addressed pragmatics. She did not meet Goal 13, which addressed grammar, meeting an accuracy level of 70 percent instead of the 80 percent sought in the goal.

30. In all, Parents disagreed Student had met her goals as reported by District. In response, they requested production of the data used to determine Student's progress on goals; data on how often staff was working on each goal; and in what setting Student was working on goals. Ms. Parsangi did not produce worksheets or data Parents requested, and explained that most of her "data" consisted of observations, personal notes, and checklists.

31. Kelsey Harris,¹⁰ Student's private speech pathologist, prepared a quarterly

¹⁰ Ms. Harris holds a Master's degree in speech and language pathology. In addition to working for Speech Pathology Associates, Ms. Harris worked for the University of California Irvine Center for Autism and Neurodevelopmental Disorders, where she worked with pediatric patients with a range of communication disorders

speech and language progress report from Student's private speech therapy, dated April 13, 2017, which was reviewed by the IEP team. Ms. Harris, a qualified speech and language pathologist, was employed by Speech Pathology Associates, and provided Student with 1:1 speech and language therapy twice a week for 60 minutes. Student attended 23 of 25 sessions with Ms. Harris.

32. The report was not an assessment, but provided Ms. Harris's information and recommendations regarding Student's private speech and language therapy. Ms. Harris found Student to be distracted and not easily redirected. She found Student was rigid and perseverated, which affected her ability to retain information. Student did not complete work independently according to Ms. Harris. To combat Student's maladaptive behaviors, Ms. Harris recommended the use of positive reinforcement. Student worked hard for Ms. Harris when provided with external reinforcements in the form of a token or prize system. However, even with the token system in place, Student was highly distractible and often difficult to redirect to the given task when in her private speech and language sessions. Student demonstrated progress in her ability to ask on-topic questions and structure narratives, with Ms. Harris, however she continued to require intervention to improve her judgment of grammatically appropriate sentences, provide supportive comments to peers in social scenarios, problem solve with peers, and provide on-topic comments during conversation. Ms. Harris recommended Student continue participation in her current level of private speech and language services (25 sessions per semester) to further improve Student's expressive, receptive and social language skills. These intensive services were intended to assist Student to "bridge the gap," and maximize remediation to obtain grade level skills. Additionally, Ms. Harris recommended a functional behavior analysis to assist in obtaining in-home applied behavior analysis.

secondary to an autism diagnosis.

33. At hearing, Ms. Harris reviewed Student's proposed speech and language goals and services. She did not believe the IEP contained sufficient individual speech and language services for Student. Ms. Harris opined that Student needed more therapy due to her attention and behavior deficits. Ms. Harris worked on Student's IEP goals in individual speech therapy sessions and Student did not meet any of her goals. Ms. Harris, however, had never worked in a school setting, and was unaware of Student's participation levels in the classroom or in small group settings. Likewise, in recommending applied behavior analysis and positive behavior reinforcements, Ms. Harris did not know District was already utilizing similar token economy strategies and positive behavior reinforcement with Student, which was already effective for Student.

34. Ms. Parsangi disagreed with Ms. Harris's report, as her experiences with Student at Westpark were completely different. In addition to providing speech services, Ms. Parsangi had significant observation and interaction time with Student during playground and transition observations, and during game club at lunch. She also visited the collaborative classroom several times per week. She stressed that Student performed much better in a group setting than in individual sessions. Student responded and maintained focus much better with peer models. She was highly motivated by peers, and would initiate and complete tasks. Her performance, on both preferred and non-preferred tasks, increased in group.

35. Contrary to Ms. Harris, Ms. Parsangi did not experience significant behaviors with Student. Student's behavior had greatly improved from 2016 to 2017. She found Student was occasionally inattentive, but easily redirected with a gesture or verbal prompt. Ms. Parsangi utilized a prize box for positive reinforcement. Student worked well with Ms. Parsangi, and understood Ms. Parsangi's expectations of her. Student was capable of attending to task, and now needed to work towards independence.

36. The IEP team reviewed a progress report prepared by Claire Camaya¹¹, the owner and educational therapist for Doors Educational Center, Student's private academic tutoring provider. Through her work at Doors, Ms. Camaya developed academic programs utilizing researched based practices for children and teens with special needs. Ms. Camaya prepared her report based upon informal assessments, an independent assessment by Dr. Scott Larson in 2016, and notes from Parents. Based upon her initial recommendations Ms. Camaya determined Student required 600 hours of 1:1 intensive academic tutoring, preferably to be completed two-to-three hours per day, five days per week to reach her grade level academics.¹² As of April 15, 2017, Student completed a total of 52 hours, attending with some regularity twice per week, in addition to participating in a more intensive tutoring schedule during spring break. The report noted Student was not receptive to the 1:1 tutoring, and she expressed her frustrations by crossing her eyes, fidgeting, getting out of her seat, or refusing to continue with the task. Accordingly, Ms. Camaya reported Student's behavioral and motivational challenges impacted her academic progress. Father expressed frustration that the recommendations in the Doors report were not incorporated into the IEP.

¹¹ Ms. Camaya holds a master's degree in special education and previously held a preliminary Level I educational specialist instruction credential from the State of California. She had previously been a reading specialist for students with autism spectrum disorders and emotions and behavioral disorders. Ms. Camaya was previously a consultant/clinician with Lindamood Bell Learning Processes.

¹² Doors artfully included a caveat that variables such as Student's speech and language challenges, her known behavior challenges and other factors were likely to have a major impact on the her rate of progress with the Doors program.

However, the progress report itself is given little weight, as it primarily described Doors informal assessments which correspondingly supported the services to be provided by Doors, and legitimized the recommendation that Student continue with the intensive tutoring program offered by Doors.

37. In the area of reading, Student had difficulties with vocabulary, fluency, and misread multi-syllabic words, or substituted similar looking words. Both Student's reading and verbal comprehension were very literal. Memory, recall, and word retrieval were difficult for Student. To assist Student, Ms. Camaya determined Student needed strategies such as front loading her vocabulary before reading, and warm up sessions, and review.

38. Tutoring at Doors was 1:1. Student exhibited difficulty complying with instructions, which Ms. Camaya believed was related to not understanding the instructions. Ms. Camaya opined that Student's inattentive behaviors were often based on these frustrations, and Student would simply disengage. As a result, Ms. Camaya believed it would be difficult for Student to participate in whole group learning. As of April 2017, during her tutoring sessions, Student could not access fourth to fifth grade level work independently.

39. Similarly to Ms. Harris, Ms. Camaya reported Student had the ability to bridge the gap. Student needed to develop foundational skills to make learning easier before remediation to access grade level academics. To establish this foundation, Ms. Camaya reported that Student needed to complete the intensive 12-week program. When completed, Student would show growth. Ms. Camaya's limitations were noted by the ALJ. She did not obtain any information from District, and was not working on IEP goals. She provided only 1:1 services, and had not observed how Student performed in group settings. She did not know how reading intervention was delivered in the collaborative classroom, and did not utilize a behavior plan or positive interventions

with Student. Further, at hearing, Ms. Camaya would not speak to the appropriateness of the proposed academic goals. She only responded that her biggest areas of concern for Student were the areas of reading comprehension, fluency, and decoding.

40. District's staff, at hearing, related that, contrary to the Doors report, Student's behavior improved over the last few months, and behavior was not a concern at school. Specifically, Ms. Kong, Ms. Gong, and Ms. Parsangi all testified as to Student's improved behavior at school, and no one reported the types of behavior reported by Ms. Camaya. They all testified credibly to this. Further, they did not dispute that Student could not consistently read or comprehend at grade level. The proposed goals in this area addressed those deficits.

41. Based upon Student's strengths and weaknesses, the IEP team drafted ten goals designed to provide educational benefit for Student covering: (1) reading; (2) written expression; (3) time management; (4) grammar; (5) complex sentences (6) inferences; (7) perspective taking; (8) and problem solving.

42. Parents participated extensively in the IEP team meeting. In addition to presenting the reports from their two private providers, Parents provided six pages of written feedback to the IEP team regarding the proposed goals. The outline presented parental concerns and recommendations regarding: (1) Student's progress on 2016 IEP goals; (2) their feedback on proposed goals for Student's 2017 annual IEP; and (3) their recommendations of goals to carry from 2017 to 2018 based upon their understanding relative to California Common Core standards and Student's deficits. To support their contentions, Parents referenced specific samples of Student's work.

Parental Feedback on Progress of 2016 Goals for 2016-2017 School Year

43. District reported Student met Goal One which addressed reading comprehension in the school setting. Parents, along with Student's private speech pathologist and tutor, did not believe Student met this goal. Parents reported Student

could not state main idea concepts or draw inferences as required by the goal. To support this contention, Parents referenced Student's school work sample, which they believed showed Student did not meet the goal, except for finding detail. As a result, they believed Student did not meet the standard set in the *California Common Core State Standards English Language Arts and Literacy* (Parents citing pages 12-16 of that document). Parents requested District continue the reading comprehension goal into the 2017-2018 school year to address key idea and inference, and revise proposed Goal Seven from an inference goal to a reading comprehension goal.

44. District reported Student had met Goal Three which addressed math word problems. Parents contended Student did not meet this goal, as she had a lot of difficulty in processing the information in word problems required to identify known information and the final goal, as well as in organizing the steps needed to solve the problem. Parents found Student confused about when to apply math concepts, especially when multiple steps were required. Student made frequent calculation errors, especially with complex problems, i.e., fractions and decimals, and with math applications, such as measurement and interpreting data. As evidence of these concerns, Parents provided a work sample of Student's math abilities. Parents requested District carry the math word problem goal into the 2017 IEP.

45. District reported Student had met Goal Four for telling time. Parents reported Student did not demonstrate the knowledge or skill to calculate begin time, end time, or time elapsed with mixed hour and minutes. Parents believed Student's work samples confirmed their fears. Parents requested District carry the time calculation goal into the 2017 IEP.

46. District reported Student had met Goal Five, which addressed behavior compliance in the classroom setting. Parents contended Student's behavior compliance remained inconsistent. Parents reported Student had consistently and frequently shown a lot of non-compliance and behavior issues with special education professions in structured settings in her reading, speech and other settings. Feedback from private providers indicated Student's accuracy with compliance wavered depending on her mood, task engagement, and the type of reinforcement she was offered. Parents requested District add this behavior goal to ensure behavior consistency and compliance across settings.

47. District reported Student did not meet Goal Six which addressed task initiation and attending. Student performed with 65 percent accuracy instead of 70 percent as sought by the goal. Parents expressed concern that District did not comment on other aspects of the goal regarding length of time needed to initiate tasks and number of prompts still required. Parent's private service provided reported Student did not meet the portion of the goal to independently initiate the assignment within one minute with no more than one prompt, or attend to the task with no more than a total of three prompts. Parents requested this goal also be incorporated in a proposed behavior goal ensure compliance. Parents also requested preparation of a daily behavior chart to address all aspects of this goal, to include initiation, attention, completion and accuracy.

48. District reported Student did not meet Goal Seven which addressed written expression. Parents expressed that Student had difficulty writing a topic sentence that highlighted the key idea and a conclusion sentence that summarized the text. Based upon work samples, Parents found most of Student's writings to be well below grade level or not age appropriate. They believed Student's vocabulary was not at grade level and her sentences were not organized, and her grammar remained a

concern, as it was still not grade level or age appropriate. Parents requested this goal be continued and incorporated in proposed Goal One for the 2017 IEP.

Parent's Feedback on Proposed 2017 IEP Goals for the 2017-2018 School Year

49. District proposed ten new goals for the 2017-2018 school year. Parents asked for modifications to most of these proposed goals, to increase goal production and address all areas of California's common core standards.

50. Parents requested District redraft proposed Goal One, which addressed writing, pursuant to *California English Language Arts Common Core Standards* (*supra*, at pages 22-23). Specifically, "By April 10, 2018, when given a grade-level topic (for both non-fiction and fiction subjects) Student will independently initiate pre-writing activities, collect/research supporting materials/details, and use grade level vocabulary and grammatically correct sentences to write a multi-paragraph composition that includes each of the following (1) key idea sentence(s) that clearly introduce a topic or state an opinion; (2) create an organizational structure with narratives in which ideas, facts, details or other information are logically grouped to support the key ideas; (3) provide a concluding statement or section related to the opinion presented with 80 percent accuracy, in ten trials, as measured by clinician data and work samples."¹³

51. District declined these changes. There were too many components to measure within one goal, and it would be overly time consuming to collect data as requested by Parents. Additionally, District was concerned that the goal would possibly be above Student's ability to comply with grade level core curriculum.

52. Parents requested District revise proposed Goal Three, which addressed behavior, to state, "... when working independently, after the teacher explains a new

¹³ Underlined text reflects changes requested by Parents.

concept (methodology) or gives an instruction, Student will use at least two strategies to problem solve (re-read directions and problems, look at a reference table/sheet) prior to asking the teacher for help on how to proceed with the activity, and will ask no more than one question of teachers during 30-minutes and complete the work with 80 percent accuracy in four out of five independent work periods, across a two-week trial period, as measured by clinical data/work samples." District changed the goal to four out of five work periods, but made no other changes.

53. Parents requested District amend proposed writing Goal Four, to measure "Student's success in three out of four assignments, over a two week trial period." District declined to measure this goal over a two-week time period.

54. Parents requested District revise proposed grammar Goal Five, as follows: "... given a set of 45 verbs from the spelling words of the 2017-2018 school year, Student will use each verb to generate a grammatically correct sentence and/or question using correct and consistent tenses, subject and verb consistent (add -s or -es when the subject is a singular noun or pronoun), complete sentence (not fragmented), spelling, regular and irregular nouns/verbs, conjunction words, punctuations, etc., with 80 percent accuracy, across a two-week trial period, as measured by clinician data/work sample." District did not make these changes as the vocabulary lists for 2017-2018 had not yet been introduced.

55. Parents requested District redraft proposed Goal Seven, using common core standards (*supra*, at pages 12-13, and 15-16) as follows: "... after reading or listening to a non-fiction and fiction grade level article of 20 sentences or more, without visual assistance, Student will independently use grade level/age appropriate vocabulary and grammatically correct sentences to state (write and speak) each of the following: (1) the main idea of a text, explanation of who it is supported by key details and summary of the text; (2) an integrated event line about the setting (when/where/why/how).

problem, consequence, solution, or facts, concrete details, or other information logically grouped to support the key idea; (3) answer inferential questions (e.g. how, why, how do you know, what if, what did you learn from this article, etc.) with 80 percent accuracy, across a two-week trial period, as measured by clinical data and work samples." District found the requested changes to be inappropriate for Student at that time. Further, the proposed changes contained too many variables to measure within one goal.

56. Parents requested District increase Student's problem solving Goal Nine, to read as follows: "Student will be able to do each of the following: (1) when presented with verbally and/or visually a hypothetical social conflict (e.g., via illustration, photograph, video clip, etc.) student will identify the points of view of two different people involved in the conflict, and then provide dialogue for the people to reach a compromise or self-advocate; (2) in peer interactions, where there is a potential conflict or conflict happening, Student will apply the strategy learned in (1) above; (3) in an adverse social condition (Student being excluded or offended), she can realize the problem and walk away or stand up for herself, in 80 percent of opportunities, across a two-week trial period, as measured by clinical data and observation." District declined to add these changes as Student did not demonstrate deficits in self-advocacy in the school setting.

57. Parents objected to Student's vocabulary Goal Ten, as they believe it did not follow common core standards (*supra*, at page 38). Specifically the vocabulary goal did not give enough coverage of grade level vocabulary and District's requirement of 60 words was less than 20 percent of a school year's vocabulary. Parents requested District replace Goal 10 with the following: " ...given the set of grade-level vocabulary terms of each session of language arts, science, and social studies, for 80 percent of words in each group, Student will be able to do the following: (1) use a vocabulary strategy (e.g., context clues, affixes and roots, dictionary, picture clues) to determine the meaning of

each word, describe the attributes of its category (thing, place, action verb, adjective, etc.) color, number, size, shape, function, movement/action involved, mood/emotion s associated; (2) use the word to make a relevant and grammatically correct sentence; (3) retrieve the word after hearing the description of the word or seeing a picture, across a two-week trial period , as measured by clinician data and work product.” District declined to change this goal, as they found the original vocabulary goal appropriate, as it was written to provide Student with vocabulary strategies to access grade level vocabulary.

Parent Requested Goals.

58. Parents requested several goals be added based upon Student’s deficits relative to their understanding of California common core standards.

59. Parents asked for the following goal “when given ten multi-step grade level word problems with a mix of addition, subtraction, multiplication or division operations, and including whole numbers, fractions, and decimal numbers, Student will independently (1) list the steps to solve the problems and calculate, with 80 percent accuracy; and (2) use grammatically correct sentences to explain the rationale and steps with 80 percent accuracy daily, across a two-week trial period, as measured by clinical data and work sample pursuant to common core” (*supra*, at pages 25 and 31.) District declined to add this goal, since Goal Five covered this area.

60. Parents requested a goal for Student to achieve 80 percent accuracy in each of the following categories: (1) knowing each category of measure units including length, distance, mass, volume, weight, time, etc. and relative sizes of measurement units within one system of units; (2) converting among different-sized standard measurement units within a given measurement system including multiple-step conversion; (3) using the four operations to solve word problems involving distances, interval of time (with mixed hours and minutes, liquid volumes, masses of objects, and

money, including problems involving simple fractions or decimals, in eight out of ten opportunities daily, across a two-week trial period, as measured by clinical data and work sample, pursuant to common core (*supra*, at page 32). District declined to add this goal, as it was not considered an area of concern at that time.

61. Parents requested a goal that Student would independently do each of the following with 80 percent accuracy: (1) make a line plot to display a data set and the frequency of each variable; (2) label the horizontal and vertical sides of the plot; (3) use operations to solve problems involving information presented in line plots, find the data, compare the data of different groups, calculate the subtotal of each group, total and average, in eight out of ten opportunities daily, across a two-week trial period, as measured by clinical data and work sample, pursuant to common core (*supra*, at page 32). District declined to offer this goal as it was not an area of concern at that time.

62. Parents requested a vocabulary goal for root words in which Student would demonstrate the understanding of the following root words, “un, in-, pre-, spec, man, manu, bi-, tri-, uni-, mono, ped, -tion, -al, -ly, -er, -or, -ian, -ic, -ics, -grat, sect, bene, bon, boun, ful, port, miss, and mit” by being able to explain the meaning of the root word, the meaning of the word itself, and make grammatically correct sentences with the words contained in root words, with 80 percent accuracy across a two-week trial period, as measured by clinical data and work sample. Parents indicated these were all root words in the fifth grade. District declined to add this goal as its proposed Goal Ten was offered for vocabulary.

63. Parents requested a goal for speech/reading/fluency and decoding of multiple syllable words of four syllables or more, in which Student would be able to apply grade-level phonics, decoding skills, all letter-sound correspondences, syllabication patterns and morphology (roots and affixes) to do each of the following: (1) accurately read multisyllabic words; and (2) identify the root word to help understand

the word, if applicable with 80 percent accuracy, across a two-week trial period, as measured by clinician data and work samples pursuant to common core standards (*supra*, at page 19). District declined to offer this goal as its Goal Two was offered for reading fluency.

64. Parents were concerned that District had never addressed Student's classroom participation. Parents requested a goal for class participation in which Student would make relevant answers/comments/suggestions with grammatically correct sentences and grade level vocabularies, twice or more in each small group discussion and once or more a day in large group discussion, with teacher prompts, if needed, in each of the subject areas (language and arts, math, science, social studies, etc.) in eight out of ten opportunities daily, across a two-week trial period, as measured by clinician data and work samples. District declined to offer this goal, as classroom participation was not an area of concern for Student.

65. Parents requested a goal in which after reading or listening to both non-fiction and fiction paragraphs/articles that involve a cause and effect relationship, Student would identify the cause and effect, and formulate (write and speak) grammatically sentences to explain the cause/effect relationship, with 80 percent accuracy in both non-fiction and fiction, across a two-week trial period, as measured by clinician data and observation. District declined to add this goal, as this skill had been met in the school setting.

66. Parents believed Student's prior goals addressing conversation were relatively basic. They requested a speech and language goal addressing conversation, which, in structured and unstructured settings, during conversations with peers and adults, Student would initiate or join a conversation, stay on the relevant topics for five minutes and make five relevant follow-up comments or questions that can expand the topic (e.g. "so when or where do you play basketball on weekends?" or "do you plan to

audition for the music show?," in eight out of ten opportunities, across a two-week trial period, as measured by clinician data and observation. District declined to add this goal, as Student currently demonstrated age-appropriate conversational skills in the school setting.

67. Finally, Student did not meet the 2016-2017 Goal Thirteen. Parent requested a goal in which Student would achieve 85 percent accuracy in each of the following: (1) after reading or listening to a sentence that contains indentation, spelling, capitalization, punctuation and grammar errors, Student will independently identify and correct the errors; and (2) Student will independently edit her writing draft and revise for correct indentation, spelling, capitalization, punctuation and grammar, across a two-week trial period, as measured by teacher charted records/work samples. District declined to add this goal, as these grammar concerns were contained in Goal Five and Goal Six.

68. Parents felt Student had not met the goals without prompting and requested the goals be written so Student met them independently. Mother also expressed Student was exhibiting more behaviors in tutoring than at school. Mother opined that Student may be quietly sitting in class, but she was not understanding the material presented or making progress. Ms. Kong indicated the contrary; if Student was asked a question during whole group instruction, she was able to respond appropriately.

69. Ms. Gong disagreed with Parents' interpretation of prompting versus independence. Although the goals included prompting, the outcome of each goal was to decrease prompting and increase independence. Student's initiation skills had increased with explanation of directions. District staff used a hierarchy of prompts to discourage prompt dependence, as Student could be dependent at times. This hierarchy ran the gamut from subtle gestures or eye contact, to verbal cues, to physical prompting. Student generally responded to gesture or verbal prompts.

70. Parents asked that Student be provided with a 1:1 aide because they believed Student required continual monitoring to ensure she was attentive and engaged in her lessons. With regard to the 1:1 aide and accommodations/strategies, Parents wanted this included in the IEP. Ms. Gong asserted that the amount of time Student required for additional adult support varied based upon the subject or content of the task. Ms. Gong found it counterproductive to set a specific amount of time for prompting, as they were seeking task independence for Student.

71. Ms. Kong testified at hearing. There were 30 students in the collaborative classroom, ten of which were special education students. One-third of the day consists of whole class general education instruction in core subjects.

72. Ms. Kong reported that kids were kids, and they all go off task at times. It was Ms. Kong's practice to circulate the classroom while teaching to observe all students in the class. She also utilized strategies to check attention and comprehension, by noting such things as body language and eye contact. Ms. Kong tracked the progress of all of the students in class, and measured their growth, i.e., where the student stood at the end of a unit. As a result, Ms. Kong was confident she could then provide the appropriate level of redirection and support needed for each student. Ms. Kong reported she redirected Student approximately twice a day.

73. Ms. Kong further opined that Student could access the sixth grade curriculum with the supports and accommodations provided in her IEP. She believed Student comprehended the lessons after supports were provided. Completed tests were sent home to parents for signature and return to school. Student was not an "A" student. Her grades were lower, generally "C's and B's, similar to other students in the class. Student was making progress based upon her abilities. Ms. Kong's testimony was credible and supported by other evidence.

74. Parents expressed concerns about Student's attention to task, ability to follow directions, and whether she was actually learning in class. Given Parents continuing concerns, District agreed to Parent's request to collect data for attention to task, following directions, and learning. Parents also requested that data be collected on active engaged time and passive engaged time, and comparison to a typically developing peer. District agreed to conduct this as an observation, and explained Student's work completion had improved greatly, and she was turning in the same amount of work as her peers. Parents questioned the accuracy and correctness of Student's work. Ms. Kong reported it took Student a little longer to get started on her assignment, and if errors were made, Student was directed to make corrections, which she did.

75. Although placement in the collaborative general education class at Westpark was not in issue, at hearing, Deanne Rutten, Principal at Westpark, explained some of the unique aspects of the class. In the collaborative classroom, a team teaching approach was used to teach the same curriculum at the same time using different methods of delivery. Both teachers were teaching the same subject, lessons were shared, but special education students might be taught at a slower rate. Station teaching was utilized where student rotated to different stations for different subjects. In a collaborative general education classroom, inclusion was a high priority. Student's placement met the mandated considerations for least restrictive environment.

District's 2017 Offer Of Fape

76. District's offer of a FAPE¹⁴ consisted of: (1) 1735 minutes per week of

¹⁴ The ALJ noted upon review of the 2017 IEP, District erred in the start and end dates for special education and related services. The actual dates should have been reported as starting in April 2017 and ending in April 2018. Neither party raised the

specialized academic instruction to be provided in the regular classroom; (2) 60 minutes (two, 30-minute sessions per week) of specialized academic instruction outside the classroom; (3) two, 30-minute sessions per week of group speech and language outside the classroom; (4) 30 minutes per week of individual speech and language services outside the classroom; (5) 20 minutes per week of group speech and language services, collaboratively on the playground. Accommodations included: (1) preferential seating within close proximity to staff and near appropriate peer role models; (2) additional adult support and staff assistance; (3) checking for understanding; (4) extended time to complete assignments; (5) repetition and rephrasing of instructions; and (6) reading aloud for test items. Student was not offered extended school year as there was no evidence of regression, and Student was able to recoup skills at the same rate as her general education peers.

77. Parents did not consent to the IEP at the end of the May 18, 2017 IEP team meeting. They were seeing a different child than that described by District. Instead, on June 1, 2017, Student's attorney sent District a letter with Parents' renewed request for work samples from all goal areas, data logs used to determine progress on all goals, and data from informal assessments on behavioral engagement and attention. Additionally, Parents requested additional assessments in the following areas: (1) functional behavioral to collect accurate data regarding Student's attention/concentration to instruction and task, and task initiation and task completion; (2) occupational therapy to determine the need for services to address sensory processing deficits and motor control; (3) visual and auditory processing, including a Central Auditory Processing Disorder assessment, to determine Student's processing deficits and determine appropriate accommodations and strategies Student may benefit from; and (4) assistive

error as an issue. Thusly, it is treated as a typographical error.

technology to determine the need for appropriate assistive technology devices, including comprehensive reading programs that might benefit Student.

78. On June 5, 2017, District completed the Peer Comparison Behavior Data Report as requested by Parents at the May 18, 2017 IEP team meeting. Dr. Kalyn Boldrin¹⁵, school psychologist, used the Behavior Assessment System for Children, Second Edition, and structured observation protocol to conduct formal observations of Student in the classroom and to compare her behavior with that of her peers. This protocol facilitated the collection of behavioral observations, and allowed the examiner to evaluate the everyday classroom behavior of children. This behavior assessment was designed to assess a broad spectrum of behaviors, both adaptive and maladaptive. The assessment was conducted pursuant to its manual. Student was observed at three different periods on one school day in her general education classroom. Data was taken related to Student's adaptive and maladaptive behaviors, and peer comparison data was taken at the same time.

79. On the first observation, during a teacher-led, structured math lesson, Student was observed to engage in adaptive behavior 73 percent of the time, while the compared peer engaged in adaptive behaviors 57 percent of the time. Problem behaviors were observed in Student 27 percent of the time, compared to 43 percent of the time by the peer. The second observation took place during a teacher led, structured social studies lesson. Student engaged in adaptive behaviors 87 percent of the time, the comparison peer 60 percent of the time. Student engaged in problem behaviors 13 percent of the time, the peer, 40 percent of the time. The third observation was during small group social studies. Student's adaptive behaviors were equal to those of the

¹⁵ Dr. Boldrin holds a Doctorate degree in educational psychology and a Master's of Education degree in school psychology.

comparison peer, and engaged in problem behaviors only three percent more than the same peer.

80. At hearing Dr. Boldrin explained that, based upon the results of her assessment, no changes to the proposed IEP were needed. Student's only maladaptive behavior was inattention, which could take many different forms, such as not looking at the teacher, looking off, or failing to perform a task. Dr. Boldrin asked Student's teachers and staff if they believed Student required a 1:1 aide; consensus among District staff was, that although Student still required adult prompting, a 1:1 aide would not support Student's need to develop independence.

81. On June 9, 2017, Erin Ferguson, District's program specialist for Westpark, autism specialist, and Student's case manager, sent Parents a prior written notice in response to the June 1, 2017 correspondence from Student's attorney. In its notice, District indicated it had forwarded the work samples and data requested by Parents. In lieu of providing the assessments requested by Parents, District offered to provide a comprehensive early triennial assessment to update Student's needs and performance levels. The assessments would include, academic achievement, health, intellectual development, speech and language, communication development, motor development, social/emotional, and adaptive/behavior. An assessment plan accompanied the letter for Parents' review and consent. Parents did not consent, as they wanted Dr. Larson to conduct a supplemental neuropsychology assessment.

82. District declined to provide a functional behavioral assessment, as there was no current evident that Student demonstrated any behaviors which impeded her education. The peer comparison data indicated Student's attention was on par with her typical peers in the class, and the social/emotional portion of the triennial would provide behavioral information. Ms. Ferguson had interviewed Student's teachers and asked if Student's behaviors suggested a need for assessment; their responses indicated no

assessment was necessary. Additionally the comprehensive triennial assessments proposed by District would glean any information suggesting whether a functional behavioral assessment was advised.

83. District declined to provide an audio processing assessment as there was no evidence to suggest a deficit in this area, and Student was currently adequately processing information in the classroom. Further, the proposed triennial assessments included an audio processing screening. District also declined to provide an assistive technology assessment, as existing strategies being implemented were appropriate and Student did not demonstrate a need for assistive technology.

Placement At Prentice

84. Parents did not consent to the May 18, 2017 IEP, nor did they provide consent for the assessments offered by District on June 9, 2017. Instead, on August 8, 2017, Student's attorney, on behalf of Parents, wrote District indicating Parents did not believe the program offered by District constituted a FAPE for the 2017-2018 school year. Therefore, Parents were placing Student at Prentice, a nonpublic school, and would seek reimbursement from District. According to Father, Parents placed Student at Prentice because they were seeing a completely different child than District did. Parents wanted an independent assessment of Student in a school setting. Parents felt Prentice was designed for children with higher functioning autism, and could provide a valid assessment of Student's actual abilities and educational levels.

85. On August 17, 2017, Ms. Ferguson sent Parents a prior written notice responding to their notice of private placement at Prentice. Ms. Ferguson was surprised by Parents' choice of Prentice, as Prentice traditionally served more impacted children with autism. Student thrived in the collaborative classroom, which provided a general education environment and peer interaction among special education and general education students. Ms. Ferguson reiterated District's offer of FAPE, and offered to

reconvene an IEP team meeting to discuss Parental concerns further.

Return To Westpark

86. District received no further communication from Parents until October 6, 2017, when their attorney wrote District and indicated Parents' unilateral placement of Student was only intended to obtain additional assessments in all areas of suspected disability. "During this investigatory time" Parents were able to determine additional areas of need, and disabilities and now had recommendations for changes to Student's IEP. Parents were now ready to re-enroll Student in District and hold an IEP meeting to discuss the new findings and incorporate the recommendations into Student's IEP. Upon re-enrollment, Student returned to her placement in the general education/collaboration classroom, pursuant to the last agreed upon IEP from 2016.

87. On November 20, 2017, District held an IEP team meeting to discuss Student's transition back to District from Prentice, and Student's overall progress.¹⁶ District members of the IEP team reported some regression upon Student's return from Prentice. She struggled to remember the rules and systems that were in place prior to leaving District, but she was now settling in. Old behaviors resurfaced, such as baby talk. Her work completion was slow, but improving. Student exhibited progress with problem solving skills since her return, and staff was happy to see those skills previously learned, emerge again. Specifically, Ms. Gong reported that when Student returned from Prentice, her behavior had regressed from the advances she made in the fifth grade. Student used a more childish baby voice; she engaged in task avoidance. These

¹⁶ The IEP notes indicate that a private auditory processing evaluation presented by Parents was also discussed; however, the report was not offered into evidence, nor did Student present any testimony on the subject.

behaviors, however, were extinguished within two months of returning to Westpark, through the use of positive behavior reinforcement and peer modeling. Ms. Kong noted Student had regressed to the fifth grade level when she returned from Prentice. Once back at Westpark, her skills increased, and she exhibited academic growth in core subjects, which were more rigorous than the fifth grade curriculum. Ms. Parsangi reported that prior to attending Prentice, Student required between zero and two prompts per speech session. After Prentice, Student required increased prompting, however the need to prompt was lessening as the year progressed.

88. Parents disputed District's observation of engagement in the peer comparison assessment was incorrectly done, as the data collected did not measure Student's level of actual comprehension. Parents gave examples of Student's academic challenges, and complained the goals offered by District were too vague.

89. Parents felt Student's slow work completion revealed a need for a 1:1 aide. Dr. Boldrin, discussed the peer comparison data and her observations that Student was on task 80 percent of the time. Parents asked how one would know Student was on task. Dr. Boldrin noted that during the observations, Student was responding to teacher instructions and was on task compared to her peers. Parents questioned how one would know if Student was listening and comprehending the information given, since District had not taken data on comprehension of materials, as Parents had requested. District responded that the behavioral observations looked at task behaviors and the worksheets were part of the data collection which reflected work completion and comprehension. In class, exit slips, turned in upon completion of task, were used to check comprehension. If the exit slips were incorrect, they were able to reteach the lesson to Student. Parents had never seen an exit slip for Student.

90. Parents felt District was not meeting Student's needs and further argued the need for a 1:1 aide to implement the accommodations contained in her IEP. Parents

viewed Student's pace as behind that of her peers. They were concerned Student needed too much repetition and was not getting the information the first time. They felt Student should not be left to work on her own, and waste her time. In their opinion, a 1:1 aide would be able to implement strategies that the teacher would not be able to implement. Additionally, Parents felt the accommodations were not being provided at an appropriate level. Dr. Boldrin explained how implementation of accommodations worked within the classroom, and how some supports were embedded in the classroom.

91. District explained that Student might work differently with Parents than she did in the classroom. Student worked well with her peers and was influenced by their pace of work. Ms. Kong explained she gives a large lesson and then breaks into small groups, and also teaches individually based upon a student's needs. Ms. Kong constantly re-evaluates as the lesson progresses to see if a student needs re-teaching and more scaffolding. The classroom aide is able to support students in the class who require additional support.

92. District also noted that a goal was previously offered for behavior to address strategies to be used prior to asking an adult for assistance, to emphasize independence. Placing a 1:1 aide on Student would be counterproductive to the proposed goal. The IEP team meeting ended without consensus as the parties had reached an impasse.

Spa Speech And Language Evaluation

93. Speech Pathologist Associates prepared an evaluation report dated September 29, 2017. The assessment was conducted by Ms. Harris. Student's communication skills were assessed through observations, informal and formal testing, including the Comprehensive Assessment of Spoken Language, Test of Narrative Language, Social Language development Test- Elementary, and Test of Auditory Processing Skills, Third Edition. Based on the assessment results, Ms. Harris, reported

Student presented with severe deficits in the areas of syntax and grammar usage, nonliteral language and auditory cohesion. Student presented with moderate deficits in auditory memory and narrative formulation. Student demonstrated relative strengths/mild deficits in narrative comprehension with improvement when provided visual scaffolding; Student exhibited only borderline mild deficits with her social language skills.

94. The private speech and language assessment had its limitations, which led to questions about its validity. Student was assessed while attending Prentice, where she received no speech and language services. Ms. Harris primarily relied on Parents' descriptions of Student's inattentiveness and on her own observations of Student during her individual speech therapy sessions. Of greater concern, though, was that Ms. Harris did not observe Student at Westpark or with school peers. Although she did communicate with Ms. Parsangi, she remained unaware of District's observations of Student's improvement engaging in small groups or with peers.

95. At the time of the private assessment, Student participated in individual speech and language therapy at Speech Pathologist Associates twice a week for 60 minutes. Student had improved in some areas, but continued to struggle with formulating grammatically accurate sentences in spontaneous speech, using precise descriptive language, and retelling events in spontaneous conversations. The report again specifically noted reduced compliance, for many tasks impacted her overall progress toward goals. Ms. Harris opined that Student frequently demonstrated unexpected behavior that could be remediated in a social skills peer group.

96. Ms. Harris made three recommendations for Student's continuing speech and language needs. Ms. Harris sought intensive remediation services to "close the gap" for Student. This would require an increase in Student's individual speech and language therapy to 60 minutes, three times per week, and participation in group speech once a

week for 60 minutes. She also highly recommended an in-home program or school shadow behavioral therapy to increase Student's task compliance and improve attention to adult directed tasks.

97. In testimony, Ms. Harris acknowledged that Speech Pathologist Associate recommendations were intended to maximize a student's progress. Her definition of "remediation" was further limited in testimony, as she acknowledged, Student's speech and language deficits were part of her autism, which could not be remediated. However, she testified Student could make progress to increase her skills. She conceded that for purposes of speech services in a special education or educational setting, one hour of District provided individual speech services per week could be acceptable.

98. Ms. Parsangi reviewed the Speech Pathology Associates report, and noted Student had not met any of the 16 goals set for her individual speech sessions. Ms. Parsangi expressed that the difference in Student's performance with Ms. Harris was most likely related to external factors, and this opinion is supported by the evidence. Student's private speech sessions were after school when Student already was tired. Ms. Harris provided individual 1:1 services when Student performed better in a group setting. Further, two hours of 1:1 speech services was inappropriate for Student. Intensive and challenging speech therapy sessions are difficult and strenuous for any child. It was especially so for Student, who found it difficult to attend more than 30 minutes at a time.

Student's Problematic Placement At Prentice

99. Michelle Simon,¹⁷ Student's sixth grade teacher at Prentice, telephonically

¹⁷ Ms. Simon holds a bachelor's degree in liberal studies, and a special education, mild/moderate, teaching credential, as well as a multiple-subject teaching credential. She was also certified in Slingerland teaching methodology. Slingerland is a teaching

testified at hearing. Prentice utilizes Slingerland teaching methodology. Ms. Simon used the IRating computerized assessment program for Student's pre-testing to determine her placement at the appropriate instructional level for structured small group instruction of four to five students. Ms. Simon employed a multi-sensory approach, using preparation for learning, comprehensive checks and mindful meditation in Student's reading group. Prentice provided no reading curriculum per se, but utilized literature. Prentice followed state standards, but modified lessons to a student's level.

100. Student scored at a below third grade level in language, and below second grade in math on the IRating. While acknowledging IRating scores might be impacted by Student's attention issues, Ms. Simon, nevertheless, found the scores to be accurate as to Student, and Student's classroom performance was on a second to third grade level. It was difficult for Student to access grade level materials independently.

101. Ms. Simon collected data on Student's behaviors, task performance, initiation and peer relations. She determined Student needed significant prompting throughout the day. Student completed less than five percent of tasks independently, and 50 percent with prompts. Others in class completed 75 percent of tasks independently, and 90 percent with prompts. As a result, Ms. Simon concluded Student would be more successful with a 1:1 aide at her side for prompting.

102. At hearing, Student introduced email correspondence between Parents, Ms. Simon and Ms. Nguyen, Student's math teacher at Prentice. Ms. Simon provided Parents with their requested feedback, indicating Student's greatest changes were focus, attention, and processing speed. She opined Student required remediation in the form

methodology which utilizes a simultaneous, multi-sensory, structured approach for teaching language arts, particularly for students with dyslexia and other students struggling with speaking, reading, writing and spelling.

of structured literacy which, at Prentice, required Student to be immersed in its intensive program, as Student needed more monitoring and support than could be provided in the regular Prentice programs.

103. An email between Mother and Student's Prentice teachers, dated September 19, 2017, is demonstrative of the level of involvement and information Parents required from teachers at Prentice, similar to the level of information they required from District. In response to Parents' requests, Ms. Nguyen stated, "I do not think I will be able to *write down each instruction* and give you much detail since I am limited on time. The students only have three minutes to transition from class to class, and I need to prepare for the next class that will be coming into the classroom. I will continue to give [Student] verbal and nonverbal cues to help her keep on task and will continue to initial the chart. Thank you for your understanding." Ms. Simon concurred, and added, "As Ms. Nguyen stated, it *takes significant time* to make *detailed comments* about Student's ability to complete each classroom task." (Emphasis added).

104. Ms. Simon reviewed District's 2017 offer of a FAPE and opined it was not appropriate as Student needed more support. Ms. Simon reiterated that Student needed more specialized academic instruction, with at least one hour per day of language arts, and she would still require additional tutoring for remediation for at least 45 minutes to an hour, four days per week provided in a multi-sensory mode by a special education instructor. Although a credentialed special education teacher, Ms. Simon was not qualified as an expert to render her opinion regarding what constitutes a FAPE. She was unaware of the programs District offered, and was not familiar with the collaborative classroom at Westpark, or the specialized academic instruction provided within that classroom.

105. When asked whether Student's reading problems were more related to behavior or comprehension, Ms. Simon opined it was mostly behavior related. She gave

several examples, such as Student crying in class for attention, asking other students to do her work, or reverting to baby voice. Mother provided Prentice with Student's behavior chart from home, but it did not work consistently at school. Ms. Simon noted that in the short time she had Student at Prentice, she did not see Student's best work in class. She remained convinced Student could not access sixth grade content at Prentice without special education modifications and support. Consequently, Ms. Simon did not feel Student would be successful at Prentice. Student was distracting to peers, required constant prompting, and special education modification of lessons.

106. Prentice offered to place Student in its intensive program for the 2017-2018 school year. Although Father initially indicated the decision to place Student at Prentice was for assessment purposes only, he also stated at hearing that Student exited Prentice, because Prentice staff decided Prentice was not a good fit for Student. Staff could not furnish the monitoring of Student's focus and attention that Parents sought; it was too much for a teacher responsible for eight students to provide. Father believed Student could have been successful at Prentice, if provided with the 1:1 aide. Unfortunately, Prentice did not provide or allow 1:1 aides in their program.

Dr. Larson's Independent Assessment And Testimony

107. Dr. Scott Larson conducted a neuropsychological assessment of Student, and provided a written Academic Summary of the assessment, dated May 6, 2016. Dr. Larson was a licensed psychologist with a Ph.D. in clinical psychology and clinical neuropsychology proficiency. Dr. Larson's qualifications as a neuropsychologist, and experience in clinical psychology is extensive, and was not disputed by District. He was highly qualified in his profession. Dr. Larson's assessments included valid assessment tools and observations, and were considered an in-depth assessment by the IEP team in 2016. Although the information and recommendations offered by Dr. Larson, were presented in May 2016, prior to the parties' settlement agreement, the information was

presented to District, and subsequently was heavily relied upon by Parents.¹⁸

108. At hearing, Dr. Larson testified as an expert on behalf of Student. Based upon his assessments, Dr. Larson diagnosed Student with moderate/severe attention deficit hyperactivity disorder, autism spectrum disorder with moderate language impairment, and specific learning disorder with impairment in reading comprehension.

109. Dr. Larson reported Student's symptoms of autism impacted her in the educational environment. Coupled with her speech and language deficits, Student had difficulties expanding and generalizing word knowledge and concepts beyond simple verbal definitions. In other words, Student could recite a definition of a word, yet might not truly understand the word. This, in turn, impacted her comprehension and she often proceeded on a task without understanding if she was doing so incorrectly. These difficulties were most obvious in measuring Student's reading comprehension and when asked to complete written language tasks. Dr. Larson determined that continued speech and language intervention was of the utmost importance to improve Student's language foundation so it could be applied to academic tasks.

110. Student also displayed a restricted pattern of behavior and interests which were core aspects of autism. Dr. Larson explained the impact of Student's perseverative ideation was significant because (1) it impacted the quality of her reciprocal interactions and (2) her high preference for thinking about her preferred interests constantly distracted her away from goal-directed classroom activities. As a result, Student's difficulty regulating her attention and the constant pull of her perseveration contributed to uncompleted acquisition of task instructions and lectures which led to task confusion and active avoidance. This was particularly problematic at home, where there was less

¹⁸ Parents considered Dr. Larson's assessment to be the gold standard for Student.

structure, and Student developed several maladaptive strategies to avoid non-preferred activities, such as homework. Dr. Larson recommended continuing social skills training in both individualized and group settings, and consistently implementing those social skills across the school setting.

111. The impact of Student's autistic symptoms was exacerbated in the classroom and at home by the presence of considerable inattention and impulsivity. Student struggled to sustain her attention. On activities which required Student to remain focused or self-manage her attention across time, her performance was routinely impaired compared to peers. Student's teachers reported significant difficulties attending to task. Student was distracted by both external environmental distractions as well as internal thoughts. Student struggled to generate and organize strategies to solve problems, resulting in a very passive learning style which made fact and knowledge retrieval difficult. Student exhibited difficulty making transitions and orienting her attention which led to initiation without comprehending what a task required.

112. Based upon his behavior observations, Dr. Larson found Student might sit still in her seat, yet she might not be engaged in her task. It was hard to tell from looking at her, and therefore it was hard to track her attention. Dr. Larson concluded that Student's ADHD was primarily inattentive, rather than hyperactive. He suggested it would be useful to have Student's classroom placement nearer the teacher and board so she could benefit from more frequent redirection. Additionally, Student's attention and productivity improved when she worked in a small group setting, such as reading intervention. When placed in small group instruction for reading, in a separate setting with six to eight other students, Student exhibited higher engagement. When called upon, she responded; she read aloud. Student engaged well with peers and interacted appropriately.

113. Dr. Larson made eight recommendations to improve Student's success in the classroom: (1) provide Student with an incentive based positive behavior plan with visual supports, such as a token reward system; (2) provide Student with peer tutoring as a method of instruction to assist in learning academic material; (3) increase structure, thereby lessening the need for self-producing stimulation; (4) take advantage of Student's specific interests (perseverations) to increase her motivation and engagement in academic tasks; (5) allow Student a level of decision making and personal control over the nature of tasks to increase task performance and productivity, and social relatedness; (6) make task and instructional modifications, such as reducing task length, chunking tasks into subunits, giving explicit instructions, and modifying to modality of instruction to fit Student's learning style; (7) provide strategy training to teach and transfer specific skills to Student can be used in academic situations to improve their performance; and (8) provide computer-assisted instruction.

114. Student did not use language well due to her autism. Dr. Larson, however, also noted the presence of a specific learning disability of reading comprehension, which was well above that anticipated due to autism and ADHD. Student's reading was often "empty" as she was capable of reading, but often did not understand what she read. Importantly, at the core of Student's reading comprehension deficits were more general speech and language weaknesses that also impacted more general comprehension. Student also struggled when asked to make inferences about what she had read or when required to apply practical knowledge to identify relevant information when reading. Dr. Larson concluded Student required both an increased focus on developing and applying word knowledge through speech and language interventions, as well as specific strategy-based reading interventions.

115. Dr. Larson recommended specific skills instruction which would focus teaching skills that could be applied to texts, such as vocabulary, finding the main idea,

making inferences and finding facts. Given Student's vocabulary and language-based difficulties, more direct intervention would be useful. Dr. Larson also recommended strategy instruction in the cognitive processes required in decision-making and critical thinking, although Student's limited attention and executive weaknesses made such interventions difficult. For example, Dr. Larson suggested; (1) monitoring Student's reading comprehension, by asking her to stop after reading a phrase and asking if the material is making sense; (2) encouraging a "look-back" strategy when a comprehension errors occur, such as re-reading the text; (3) utilizing visualization techniques, by having Student pause after reading a few sentences and make a mental picture about what she has read; (4) having Student repeat back or summarize information to verify understanding and correct errors; and (5) utilizing collaborative study with peers. In essence, Dr. Larson reported Student would benefit from strategies involving pre-teaching to clarify instructions, re-teaching content, scaffolding tasks, chunking instructions, reinforcement, and repetition. These were all strategies used in Student's collaborative classroom at Westpark.

116. Dr. Larson suggested several accommodations, which included: (1) providing Student with reading assignments early so she could work ahead, and provide extra time and support when required to do in-class reading; (2) providing Student with extended time to complete formal tests; (3) providing cues or highlighted key words when posing questions to provide Student with maximal structure and guidance for providing responses; (4) presenting information and directions in multiple modalities; and (5) continued objective monitoring of Student's reading ability with the intent of individualizing remediation programs and evaluating outcome.

117. At hearing, Dr. Larson was questioned about Student's proposed IEP. Dr. Larson emphasized he was not an educator. His responses to questions regarding proposed goals lacked depth. He generally opined the goals appeared reasonable and

appropriate; however he was uncertain if Student could meet some of them. In discussing Student's "D" grade in language, Dr. Larson pointed out that moving Student between two schools was not a good idea, as autistic children do not do well with transitions. Student's transfer to Prentice could have contributed to her lower grades as she received no special education services, and then was returned to District. Dr. Larson did not make recommendations for common accommodations and supports in the IEP, as District was already providing them.

118. Of greater importance at hearing, Dr. Larson did not recommend a 1:1 aide for Student. He had observed that in small group, Student exhibited higher engagement, responded when called upon, engaged with peers, and interacted appropriately. Student was already getting support from the classroom aide, and needed to develop independence. A full time 1:1 aide would be counterproductive as it would socially ostracize Student from her peers. He expressed his belief that his assessment was comprehensive and provided enough information to reference Student's problem areas. He did not suggest or recommend additional assessments. He also noted more maladaptive behaviors occurred at home, as there was a need for more realistic expectations at home.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹⁹

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20

¹⁹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided herein.

U.S.C. § 1400 et seq; 34 C.F.R. §300.1 (2006) ²⁰ et seq.; Ed. Code, § 56000 et seq.; Cal Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE

²⁰ All citations to the Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

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

5. In *Endrew F. v. Douglas County School District* (2017) 580 U.S.____ [137 S.Ct. 988], the Supreme Court reconsidered the meaning of the phrase “some educational benefit” for a child not being educated in a general education classroom. The court rejected the contention by the school district that the IDEA was satisfied by a program providing “merely more than *de minimis*” progress, as well as parents’ contention that school district’s must provide an education that is substantially equal to one afforded to children without disabilities. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.*, 580 U.S.____, 137 S. Ct. at p. 1001.) The Court retained its earlier holding in *Rowley* that any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. While *Endrew F.* does not require an IEP to maximize educational benefit, it does require that “a student’s educational program be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is

appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”

(*Id.*, 580 U.S. ___, 137 S. Ct. at p. 1000.)

6. In so clarifying “some educational benefit,” however, the Court stated that it would not attempt to elaborate on what appropriate progress will look like from case to case. “It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Id.*, 580 U.S. ___, 137 S. Ct. at p. 1001.) *Endrew* does not create a new legal standard for what constitutes a FAPE, but is a clarification of *Rowley*. (*K.M. v. Tehachapi Unified School Dist.* (E.D. Cal. Apr. 5, 2017, 1:15-cv-001835 LJO JLT) 2017 WL 1348807,**16-18.)

7. The Ninth Circuit further refined the standard delineated in *Endrew F.* in *M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017), 858 F. 3d 1189), where the Court stated that an IEP should be reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities to enable progress to commensurate with non-disabled peers, taking into account the child’s potential. (*M.C.*, *supra*, at p.1201.) The Ninth Circuit affirmed that its FAPE standard before the *Endrew F.* decision comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. Feb. 14, 2018, No. 15-56452) __ Fed.Appx. ___, 2018 WL 847744.)

8. To assist court and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*J.L. v. Mercer Island School Dist.* (9th Cir 2010) 592 F.3d 938, 947 (*Mercer Island*)). “First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Acts procedures reasonably calculated to enable the child to receive educational benefits? (*Rowley*, *supra*, 458 U.S. at pp. 206-207.) If these requirements are met, the State has complied

with the obligations imposed by Congress and the courts can require no more.” (*Id.* at p. 207.)

9. 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. (*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.*) 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 must be designed to meet the student’s unique needs, comport with the student’s IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not hindsight. “An IEP must take account what was, and what was not, objectively reasonable... at the time the IEP was drafted.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1142 (*Adams*), citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

10. 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].) In this matter, Student had the burden of proof on the issues presented.

ISSUE 1: FAILURE TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY

11. Student contends District failed to assess Student in all areas of suspected disability, specifically functional behavior, including attention, task initiation, and task completion, resulting from executive functioning and language processing deficits. District claims that it did assess Student in all areas of suspected disability, or, in the alternative, already had sufficient information about Student so that additional assessments were not necessary. Further, in June 2017, District offered to conduct a comprehensive early triennial assessment, to which Parents refused consent.

Applicable Law

12. A school district must assess the child in all areas of suspected disability. (20 U.S.C § 1414(a), (b); Ed. Code, §§ 56320, 56321.) The school district must assess a student in all areas, including, if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocation abilities and interests, and social and emotional status. (20 U.S.C § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).)

13. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et. al.* (9th Cir. 2006) 464 F. 3d 1025, 1031-1933.) A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only 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; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Analysis

14. Student's contentions that District failed to assess her in all areas of suspected disability are not persuasive. Student heavily relied on Dr. Larson's evaluation. It is noted however, that the assessment was dated, with testing having been conducted in 2015 to early 2016, and it was presented at the May 18, 2016 IEP team meeting, prior to the statute of limitations. Nevertheless, Dr. Larson's assessment was comprehensive and explored all areas of Student's suspected disability. Dr. Larson testified that he believed his assessment was comprehensive and provided sufficient information to reference Student's problem areas. The functional behavioral areas at issue regarding attention, task, initiation, and task completion were fully identified and referenced in Dr. Larson's report. No doubt Student's autism and related deficits were significant, as reported by Dr. Larson. Yet, after fully assessing Student, at no point did Dr. Larson recommend a functional behavior assessment, or any other additional assessments for that matter. Instead, he provided recommendations for improving Student's success in the classroom and accommodations to support her, many of which were adopted by District. Two years later, during his testimony at hearing, Dr. Larson still did not recommend or suggest a need for a functional behavior assessment.

15. Further, Student's contention that the District's peer comparison assessment was an inappropriate measure designed to unilaterally refuse to conduct a functional behavior assessment is misplaced. Dr. Larson's comments regarding the limitations of the BASC-2 (SOS) were not unfounded. However, District did not conduct this assessment in lieu of a functional behavior assessment, nor was it conducted to determine whether such assessment was needed. The BASC-2 (SOS) was a supplemental tool used to provide Parents with information they requested regarding Student's attention compared to peers. It was not intended as a comprehensive assessment.

16. The testimony of Ms. Harris, and assessment reports generated by Speech Pathology Associates, must be viewed with caution. There was no dispute that Ms. Harris's formal testing was valid. District was well aware that Student had deficits in the areas of syntax, grammar, and non-literal language. District had addressed these areas in speech goals, as well as in reading goals. The variance in opinions arose from the observation of Student's behaviors, in which Student exhibited significant behaviors in intensive 1:1 speech therapy sessions. Ms. Harris's observations of Student may have been valid in relation to her experiences with Student during her private services. Were her experiences with Student's maladaptive behaviors also evident in the school setting, a behavior assessment would have been appropriate. This, however, was not the case. The testimony from all of Student's District teachers and support providers consistently reported Student's attention and task initiation/completion, had increased over time, and she did not exhibit the maladaptive behaviors which would suggest the need for assessment.

17. Further, the environments for comparison of Student's behaviors between intensive private 1:1 services and Student's behaviors at school were distorted. Student's private speech services were provided in a non-preferred setting of individual therapy, rather than in a group setting. Dr. Larson, in his report, noted Student's attention and productivity improved when she worked in a small group setting. In small group, he observed that Student exhibited higher engagement, responded when called upon, engaged with peers, and interacted appropriately. In making her recommendation for a functional behavior assessment, Ms. Harris was unaware that positive behavior reinforcement was being successfully implemented in the school setting.

18. Similarly, Ms. Camaya's testimony and the Doors report were given less weight than District's observations and reports. The Doors progress report was unimpressive, as it self-fulfilled the prophecy for continuing intensive private

remediation services. Ms. Camaya's testimony, although more enlightening, again presented a scenario in which Student was provided lengthy and intensive individual tutoring session designed to produce grade level remediation. Ms. Camaya was unaware of how Student performed in a small group or classroom setting; she was unaware that District was utilizing the same teaching strategies that she was recommending.

19. Student's noncompliance and disengagement in these intensive programs was not surprising. The level of intensity and the length of time Student was expected to attend to task in attempting to reach grade level remediation in a limited period were excessive for a child with attention difficulties. Also, the instruction was 1:1, a non-preferred method for Student.

20. The information collected at Prentice cannot be considered a valid assessment. Student's enrollment at Prentice was not educationally beneficial. Student's time spent at Prentice was in no way reflective of her academic levels or behaviors at Westpark. For example, Ms. Simon reported Student read at a second to third grade level. This was contradicted by Ms. Camaya, who reported Student could not read at the fourth to fifth grade level *independently*. As Dr. Larson reported, a child with autism has difficulty with transitions. He further opined that moving her between two schools in such a short period of time was not a good idea. Student was unable to seamlessly transition into the new school. The academic program at Prentice utilized an unfamiliar teaching methodology for Student. Specific curriculum was not followed. All of these factors made it a logical conclusion that Student would regress to more maladaptive coping behaviors while at Prentice. Student was simply not a good fit for Prentice and was unable to appropriately access her education in that setting.

21. A functional behavior assessment entails the determination of antecedent events associated with the targeted behaviors (i.e., attention, engagement, and compliance), consideration of the environment in which the targeted behaviors occur,

and determination of the function of the behavior to develop a positive reinforcement behavior plan. A behavior assessment based upon Student's behaviors during private tutoring sessions is useless and not required by the IDEA. The assessment should be based upon Student's behaviors at school and in the classroom. Based upon the reliable testimony of Student's teachers and service providers, Student did not exhibit behaviors to suggest a functional behavior assessment was necessary or appropriate.

22. Further, as of June 9, 2017, District offered to conduct a comprehensive triennial assessment of Student, which included social/emotional and adaptive behavior components, which might have validated the need for a functional behavior assessment. Parents refused consent to further assessment.²¹

ISSUE 2: FAILURE TO PROVIDE APPROPRIATE INTERVENTIONS FOR STUDENT IN THE AREAS OF ATTENTION, BEHAVIOR, EXECUTIVE FUNCTIONS, ACADEMIC ACHIEVEMENT, AND SPEECH AND LANGUAGE

23. Student contends District denied Student a FAPE because the supports and services proposed were not tailored to meet Student's unique needs in the areas of: (1) attention, behavior, executive functioning; (2) academic achievement; and (3) speech and language. District claims the 2017 IEP offered Student a FAPE, and was appropriate, as it provided goals and services which comported to her unique areas of need.

Applicable Law

24. An educational agency must permit a child's parents "meaningful participation" in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132 (*Vashon Island*)). The standard for "meaningful participation" is an

²¹ Student's issue included a contention regarding auditory processing; however no evidence was presented on the issue.

adequate opportunity to participate in the development of the IEP. Although a student's parents have a right to meaningful participation in the development of an IEP, a district "has no obligation to grant [a parent] a veto power over any individual IEP provision." (*Ibid.*)

25. Merely because the IEP team does not adopt the placement, services, or goals advanced by parents, does not mean that the parents have not had an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D.Hawaii 2006) 483 F.Supp.2d 1042, 1051.)

26. The IDEA does not mandate that a school district use a particular methodology. *Rowley* established that as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at pp. 207-208.) The *Rowley* standard recognizes that courts are ill equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*Ibid.*) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses his or her basic needs, courts should be loath to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs." (*Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992 (citing *Rowley, supra*, 458 U.S. at pp. 207-208).)

27. The Ninth Circuit, in *Mercer Island, supra*, 592 F.3d at p. 952, reiterated its position that a school district is not necessarily required to disclose its methodologies. The Court found that it is not necessary for a school district to specify a methodology for each student with an IEP if specificity is not necessary to enable the student to receive an appropriate education. In finding that the district had not committed a procedural violation of the Act by failing to specify the teaching methodologies it intended to use, the court stated, "We accord deference to the District's determination

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

28. To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of the district's proposed program and not on the family's preferred alternative. (*Gregory K., supra*, at p. 1314.) An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [IDEA does not provide for an "education...designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at pp. 198-200.) Hence, if the school district's program meets the substantive Rowley factors, then that district provided a FAPE, even if the child's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p.1314.)

29. An educational agency in formulating a special education program for a disabled pupil is not required to furnish every special service necessary to maximize the child's potential. (*Rowley, supra*, 458 U.S. at p. 199.) Instead, an educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 4654 F. 3d 1025, 1033.)

Analysis

30. Chronologically, Student contends the 2016 IEP failed to provide Student a FAPE. Parents consented to this IEP for the 2016-2017 school year as part of their 2016 settlement agreement. Any issues surrounding Parent's FAPE contentions regarding the

2016 IEP were extinguished as of the date of the settlement. Subsequent to the settlement agreement, Parents renewed their denial of FAPE contentions for the remainder of the 2016-2017 school year. While Parents may have questioned Student's progress on the goals contained in the 2016 IEP, nothing had changed in the IEP, and Parents presented no evidence to suggest that District's supports or services were no longer valid after the settlement agreement was signed, or for the remainder of that school year. Student's concerns regarding a lack of progress was not a determining factor in whether the goals were appropriate at this time, as an IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight.

31. Student's contentions regarding the 2017 annual IEP for the 2017-2018 school year were not persuasive. Student's contentions regarding the behavioral components of the IEP were predicated on Parents belief District had failed to conduct a functional behavior assessment, and it would therefore follow that without the assessment, the IEP team had insufficient information on which to appropriately determine Student's present levels of performance, goals, services, and accommodations. As indicated in the discussion of the functional behavior assessment above, District was not obligated to conduct the functional behavior assessment, as Student was not demonstrating significant behaviors at school. Further, the reports and opinions of Student's private service providers were also discredited above with regard to their behavioral concerns. Again, Student was not exhibiting the same behaviors at school.

32. Dr. Larson's assessment was respected by District, and District identified the similar areas of need for Student. District also adopted some of Dr. Larson's recommendations. Student's contentions and the evidence presented blurred the line between accommodations to support Student in accessing her education, and teaching strategies and educational methodology employed by teachers and staff in doing their

jobs. In spite of this, District established that almost all of the teaching strategies recommended by Dr. Larson, and/or implemented by Student's private providers, were utilized by District on a regular basis. Student failed to establish any requirement for District to disclose or include these teaching strategies in an IEP.

33. Parent's request for a 1:1 aide was not supported by the evidence. Certainly, an adult constantly monitoring Student and continually prompting her would increase her attention to task. It would not guarantee increased comprehension. It would not increase independence. It would not support peer relationships. Further, Dr. Larson did not recommend a 1:1 aide, as Student was already getting sufficient support from the classroom aide.

34. Student did not establish that the services offered in the 2017 IEP failed to support the goals. Dr. Larson testified that the goals contained in the 2017 IEP appeared reasonable and appropriate. Ms. Harris's recommendations for intensive remediation were made in the context of private speech services designed to "close the gap" and maximize progress. For purposes of speech services within the school setting, Ms. Harris found one hour per week of speech services acceptable. Likewise, Ms. Camaya's service recommendations were in relation to her tutoring program, which was also intended to maximize progress. Ms. Camaya provided no opinion regarding the IEP goals, and only identified three areas of concern: Reading comprehension, fluency, and decoding. These areas of need were addressed in the IEP goals. District did not dispute that Student could not read at grade level without supports; the supports were offered in the context goals and specialized academic instruction, just not in the manner preferred by Parents.

35. The goals requested by Parents could not reasonably be implemented in the classroom setting. The additional constraints and data collection requirements provided no additional benefit, other than to allow Parents to micromanage goal implementation and Student's progress, as Prentice experienced during Student's short

placement. While Student's goals needed to be sufficiently challenging, the additional objectives contained in Parent's proposed goals, were compound, and overly burdensome. Many of the additional goals Parents proposed addressed issues which were not areas of need for Student. Sometimes, more is simply more, and the number of goals and objectives requested by Parents were overwhelming and counterproductive for a child with attention difficulties.

36. Admittedly, Student experienced regression in behavior and academic level due to her removal from District and the fiasco at Prentice. This regression was remediated in a short time after Student's return to Westpark using the strategies in effect when District developed the 2017 IEP. Additionally, Parent's failure to allow District to reassess Student when it offered to do so in June 2017, prevented District from determining whether changes were needed in the 2017 IEP.

Applicable Law Regarding District's IEPs

37. An IEP is a written document which details the student's current levels of academic and functional performance, provides a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with non-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).)

38. When developing an IEP, the team must consider the strengths of the child; the concerns of the parents for enhancing their child's education; information about the child provided by or to the parents; the results of the most recent assessments; the academic, developmental, and functional needs of the child; and any

lack of expected progress toward the annual goals. (20 U.S.C. § 1414(d)(3)(A), (d)(4)(A); 34 C.F.R. § 300.324(a), (b); Ed. Code, § 56341.1, subds. (a), (d).)

Analysis of District IEP

39. The 2017 IEP contained all statutorily required elements. District appropriately identified Student's unique areas of need, which correlated with Dr. Larson's neurological diagnoses, including those areas related to attention. District identified Student's academic needs in the areas of reading comprehension, writing, math, and grammar, which were undisputed by Ms. Camaya. District identified Student's speech and language needs in the areas of grammar, inferences, and social skills, which were also identified by Ms. Harris.

40. District crafted ten goals designed to provide educational benefit in the areas of reading, writing, time management, grammar, complex sentences, inferences, perspective taking and problem solving. Each of these goals comported with Student's identified unique needs.

41. The specialized academic instruction provided in the classroom and in pull-out 1:1 sessions was sufficient to support Student in the collaborative classroom. Student's speech and language services were sufficient to support the goals, and the amount of service offered for school-based speech and language services was not disputed by Ms. Harris.

42. There was no dispute that placement in the collaborative general education class was appropriate, and provided Student with full inclusion and interaction with peers. As such the placement constituted the least restrictive environment for Student pursuant to *Rachel H. criteria*. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403.)

43. As indicated in the factual findings, Parents and District did not view Student in the same light. Parents maintained grade level, if not higher expectations for

Student, as might be expected of a parent. Unfortunately, the empirical information on which they relied in this case was flawed, and did not accurately describe Student's educational weaknesses in the classroom setting. Placement in a general education classroom, collaborative or not, does not necessarily equate to grade level abilities or performance. Nor is special education, as defined by the IDEA, mandated to cure a disability. As stated in *Rowley*, and reiterated in *Endrew F.*, FAPE requirements are met when a child receives access to education that is reasonably calculated to confer some educational benefit upon the child.

44. Student's contentions in this matter sought to expand District's obligation to provide FAPE far beyond the legal requirements of providing Student the 'basic floor of opportunity' consisting of specialized instruction and related services which are individually designed to provide educational benefit to the child, commiserate with his/her ability. Although remediation is a component of the IEP, pursuant to *M.C. v. Antelope Valley*, it is not required to overshadow Student's other educational needs or be provided in a program designed to maximize Student's progress.

45. The 2017 IEP complied with the procedures set forth in the IDEA. The goals and services comported with Student's unique needs, and the IEP was reasonably calculated to provide Student access to her education and receive educational benefits. Once these requirements were met, District satisfied its FAPE obligation.

ISSUE THREE: REIMBURSEMENT

Applicable Law

46. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.)

47. A parent may be entitled to reimbursement for placing a student in a

private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)C(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Burlington v. Department of Ed.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed.2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the districts proposed placement does not provided a FAPE).)

Analysis

48. This decision holds District did not deny Student a FAPE. Therefore the issue of reimbursement is denied as moot.

ORDER

Student's request for relief is denied.

PREVAILING PARTY

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

RIGHT TO APPEAL DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code § 56505, subd. (h).) The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of this Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b); Ed. Code, § 56505, subd. (k).)

DATE: April 27, 2018

/s/

JUDITH L. PASEWARK

Administrative Law Judge

Office of Administrative Hearings