

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2018020479

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL
DISTRICT.

DECISION

Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings on February 12, 2018, naming Santa Monica-Malibu Unified School District ("Santa Monica"). On March 29, 2018, OAH granted the parties' request for a continuance.¹

Administrative Law Judge Kara Hatfield heard this matter in Santa Monica, California, on June 5, 6, and 7, 2018.

David German, Attorney at Law, represented Student. Both Parents attended the hearing on all days. Student did not attend the hearing.

Kristin Meyers, Attorney at Law, represented Santa Monica. Pamela Kazee, Santa

¹ Santa Monica filed its response to Student's complaint on February 22, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir.) 858 F.3d 1189, 1199-1200.)

Monica's Director of Special Education, attended the hearing on all days.

At the parties' request, OAH continued the hearing to June 25, 2018, for written closing arguments. Closing arguments were timely filed, the record was closed, and the matter was submitted on June 25, 2018.

ISSUE

Did Santa Monica deny Student a free appropriate public education since February 16, 2016, by failing to offer him an appropriately individualized and intensive program of special education interventions tailored to meet his individual needs, which were necessary to enable Student to make progress in remediating his disability-related deficits in reading?

SUMMARY OF DECISION

Student had a moderate to severe visual processing disorder, and severe dyslexia. Despite high average to above average cognitive abilities and grade-level success in other academic subjects, Student was below grade level in reading, reading comprehension, and writing. Student received special education from Santa Monica for two and a half years and made progress, but not at a pace that satisfied Parents. Parents wanted Santa Monica to close Student's reading gap from his same-aged, typical peers and, in disagreement with Santa Monica's special education offer for the 2017-2018 school year, Parents moved Student to a private school for students with language-based learning disabilities and sought reimbursement from Santa Monica. However, Student's progress at the private school was no faster than it had been at Santa Monica. The evidence showed that Santa Monica's offers from February 16, 2016, through May 17, 2017, constituted a FAPE.

Student did not meet his burden of demonstrating that Santa Monica denied him a FAPE in any of the three individualized education programs years at issue. Therefore,

Student takes no remedy.

FACTUAL FINDINGS

1. Student had just turned nine years old at the time of the hearing and was finishing third grade. He resided with Parents within Santa Monica's boundaries at all relevant times. Student's eligibility category for special education and related services changed over time, as detailed below. At the time of the hearing, his eligibility was based on specific learning disability.

INITIAL ELIGIBILITY ASSESSMENT DURING KINDERGARTEN

2. Student attended kindergarten at his school of residence, Grant Elementary School, for the 2014-2015 school year. His teacher, Christine Thomas, had taught kindergarten for approximately 18 years and was familiar with the variety of abilities children in kindergarten arrived with and developed over the school year. At the start of the year, Student was kind, thoughtful, quiet, and shy. Although Student was cognitively bright, and a hard worker, he struggled to learn letters. Ms. Thomas introduced four to five letters, worked on them for three weeks, tested students, and then introduced more letters. Student did not pick up on the letters and did not recall things. Ms. Thomas used several approaches with Student, including repetition she described as "drill and kill," tracing on paper, and tracing on sand paper or shaving cream for tactile input during instruction. By the middle of the school year, Ms. Thomas was concerned about Student's lack of progress.

3. Parents also had concerns about Student's academic, motor, and behavioral progress and requested Student be evaluated for special education and related services eligibility. Santa Monica staff conducted assessments and reported the results in a Confidential Psycho-Educational Evaluation report dated February 20, 2015.

4. In late January and early February 2015, Santa Monica school psychologist

Michael Hoover administered several tests of Student's cognitive functioning, psychological processing, and social-emotional/adaptive functioning. Santa Monica assessed Student's cognitive abilities with the Differential Ability Scales, Second Edition, to determine Student's ability to learn, apply knowledge, generalize, utilize abstractions, and evaluate. Santa Monica reported scores in three clusters, and an overall summary score. For this test, scores from 70 to 84 were below average, 85 to 115 were average, from 116 to 130 were above average, and 131 and greater were the upper extreme.

5. In the area of verbal ability, measuring Student's verbal skills and acquired knowledge, Student's standard score was 126, in the above average range. His percentile equivalent was 96, reflecting that he scored the same or higher than 96 percent of similar-aged students within the test's normative sample. In the area of nonverbal reasoning, measuring Student's inductive reasoning, Student's standard score was 106. His score was the same or greater than 66 percent of same-age individuals within the normative sample. In the area of spatial ability, measuring Student's visual-spatial processing, Student's standard score was 104, the 61st percentile. Student's general conceptual ability, an overall summary score reflecting Student's performance on tests of fluid reasoning, verbal comprehension, and visual spatial thinking, was a standard score of 114, in the high average range and in the 82nd percentile. In sum, when compared to same-age peers, Student demonstrated average cognitive abilities, with normative and personal strength in verbal ability, in the high average range. Testing showed that Student's cognitive skills were adequate to obtain meaningful benefit in the general education setting.

6. Mr. Hoover assessed Student's auditory processing, the ability to attend to, analyze, store, retrieve, and use auditory information, using the Comprehensive Test of Phonological Processing, Second Edition. Student's standard score in phonological awareness, the awareness of distinct phonemes within words and the ability to

manipulate phonemes, was 86, in the low average range and in the 18th percentile. Student's standard score in phonological memory, the ability to encode information phonologically in short-term memory, was 104, in the average range, the 61st percentile. Student's standard score in rapid symbolic naming, retrieval speed of phonological information from long-term memory repeatedly, was 92, in the average range, the 30th percentile. Student's standard score in rapid non-symbolic naming, quickly naming colors and common objects, was 82, in the below average range, the 12th percentile.

7. Mr. Hoover assessed Student's visual processing, the ability to perceive, discriminate, interpret, and recall visual information, and his visual-motor integration, the paired input of visual information and output of motor activity, using the Developmental Test of Visual Perception, Third Edition. Student's standard score for visual perception was 95, in the average range, the 37th percentile. Student's standard score for visual-motor integration was 97, in the average range, the 42d percentile. Student's general visual perception skills had a standard score of 95, the 37th percentile. Student demonstrated proficient visual spatial and visual-motor integration skills.

8. Mr. Hoover assessed Student's social-emotional functioning and adaptive functioning using the Behavior Assessment System for Children, Second Edition, the Attention Deficit Disorder Evaluation Scale, Fourth Edition, the Social Skills Improvement System Rating Scales, and the Social Responsiveness Scale, Second Edition. In sum, one Parent and Ms. Thomas reported adequate social skills, concerns in the area of inattention, and mild to moderate autistic mannerisms.

9. Santa Monica special education teacher Catherine Cammarota completed an academic assessment using the Wechsler Individual Achievement Test, Third Edition. This test also used the scoring scale detailed above. In math problems solving, Student's standard score was 108, placing Student in the average range. He scored the same or higher than 70 percent of similar-aged students within the test's normative sample. In

numerical operations, Student's standard score was 96, within the average range, the 39th percentile. In listening comprehension, Student's standard score was 117, with a 95 percent confidence interval of 104 to 130, within the average, or high average to above average range, placing him in the 87th percentile. In oral expression, Student's standard score was 105, in the average range, the 63d percentile. In written expression, Student's standard score was 83, below average, the 13th percentile.

10. In early reading skills, Student's standard score was 92, with a 95 percent confidence interval of 72 to 94, within the below average to average range. When reported as a single standard score of 92, Student's early reading skills were in the average range, and in the 30th percentile. Because Student's kindergarten teacher Ms. Thomas reported Student's significant difficulties in early reading skills, Ms. Cammarota selected additional test instruments to assess in this area because the first test did not reveal the weaknesses reported by Ms. Thomas.

11. Ms. Cammarota administered the Woodcock-Johnson Tests of Achievement and Tests of Oral Language, Fourth Edition. Student's scores in the areas of oral expression, listening comprehension, and mathematics calculation were, as with the Wechsler scores, in the average range. However, on the Woodcock-Johnson tests, Student scored below average on the math problem solving cluster, due to his below average standard score of 72 in the area of number matrices (third percentile). On the written expression cluster, Student's standard score was 85, the bottom of the average range (16th percentile), with subtest scores for spelling at 93 (average, 32d percentile) and writing samples at 83 (below average, 13th percentile). On the phoneme-grapheme knowledge cluster, Student's standard score was 86, near the bottom of the average range (18th percentile), with subtest scores for word attack at 84, the top of the below average range (14th percentile), and spelling of sounds at 91 (average, 27th percentile). On the phonetic coding cluster, Student's standard score was 84, the top of the below

average range (14th percentile), with subtest scores for segmentation at 91 (average, 27th percentile) and sound blending at 81 (below average, 10th percentile). On the basic reading skills cluster, Student's standard score was 81 (below average, 10th percentile), with subtest scores for letter-word identification at 91 (average, 27th percentile) and word attack as reported above at 84 (top of the below average range, 14th percentile). On the speed of lexical access cluster, Student's standard score was 90 (average, 25th percentile), with a subtest score in sentence repetition at 98 (average, 45th percentile) and retrieval fluency at 80 (below average, ninth percentile).

12. To gain additional information about Student's reading, listening comprehension, and math computation skills, Ms. Cammarota administered the Kaufman Test of Educational Achievement, Second Edition. In letter and word recognition, Student had a standard score of 100, in the average range. In written expression, Student had a standard score of 84, at the top end of the below average range. In math concepts and applications, Student had a standard score of 107, in the average range. In math computation, Student had a standard score of 105, in the average range.

13. In summary, Student's academic skills ranged from below average to above average. He demonstrated below average scores in written expression and reading, and these areas of difficulty were commensurate with current academic functioning in the classroom.

14. During classroom observation, at times, Student showed inattention by staring blankly and looking around the class during independent work time.

15. A Santa Monica licensed occupational therapist assessed Student and determined he showed challenges in sensory processing and motor planning, but did not meet the criteria for direct occupational therapy services.

16. Mr. Hoover considered Student's eligibility for special education and

related services under the categories of specific learning disability, other health impairment, and autism. Mr. Hoover recommended Student be made eligible for special education under the category of other health impairment because "inattention which limits [Student's] alertness to classroom instruction and classwork appear[ed] to best describe the factor which adversely affect[ed] his educational performance."

FEBRUARY 20, 2015 IEP TEAM MEETING

17. Santa Monica convened an IEP team meeting on February 20, 2015, to review the assessment results and discuss eligibility and a program of special education and related services. Parents, Ms. Thomas, Ms. Cammarota, Mr. Hoover, a school psychologist intern, the occupational therapist, and an administrator attended. Ms. Thomas and Parents shared their views of Student's strengths and challenges, and their areas of concern. The assessment results and reports were reviewed, and the team discussed eligibility. The team agreed Student was eligible for special education and related services and agreed upon the eligibility category of other health impairment due to Student's inattention. Student's areas of difficulty were only in phonemic awareness and letter sounds.

18. Ms. Cammarota proposed four goals: one in writing/letters; two in phonemic awareness; and one in letter sounds. In the area of writing/letters, Student had the following present level of performance: when dictated letters to write out of order, both upper and lower case, he was able to do that with approximately 69 percent accuracy, but he wrote a few backwards and upside down; when dictated sounds out of order to write the corresponding letter, both upper and lower case, he was able to do that with 23 percent accuracy; writing both by letter name and sound, he was able to do that with 34 percent accuracy. The proposed goal was, within one year, when dictated letters by name and letter sounds, both upper and lower case, Student would write the letter dictated with 90 percent accuracy as measured by teacher charted data and

informal assessments. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number L.K.1a.² Student's general education teacher and a specialized academic instruction staff were responsible for this goal.

19. In the area of phonemic awareness, Student had the following present levels of performance: when asked to identify the beginning, middle, and end sound in a word, Student was accurate 20 percent of the time; Student was unable to manipulate a letter by dropping a sound from the beginning, middle, or end of a word; he was able to segment words and syllables with 50 percent accuracy; he was unable to blend sounds into a word. One proposed goal for phonemic awareness called for Student to, within one year, when given 20 words, identify the beginning, middle, and end sounds, and manipulate the sounds into words by deleting a sound at the beginning, middle, or end, with 90 percent accuracy as measured by teacher-charted data and informal assessments. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.K2d and e. Student's general education teacher and a specialized academic instruction staff were responsible for this goal.

20. The second proposed goal for phonemic awareness required Student, within one year, when given 20 words, to segment and blend with 90 percent accuracy as measured by teacher-charted data and informal assessments. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.K2b and c. Only specialized academic instruction teachers and staff were responsible for this goal.

² No evidence indicated what the enumerated standards addressed but "K" is understood as a kindergarten level standard, "1" as a first grade level standard, and "2" as a second grade level standard.

21. In the area of letter sounds, Student had the following present levels of performance: He was able to identify the sound of a letter with 26 percent accuracy for the uppercase letters, and with 30 percent accuracy for the lowercase letters. The proposed goal for letter sounds was, within one year, when shown a letter, upper- or lowercase, Student would produce the sound of the letter with 90 percent accuracy as measured by teacher-charted data and informal assessments. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.K.3a. Student's general education teacher and a specialized academic instruction staff were responsible for this goal.

22. To implement these goals, Santa Monica offered Student specialized academic instruction in a separate classroom for 240 minutes each week, approximately 60 minutes per day, four days per week, and not on the day with a short schedule. Santa Monica also offered the following accommodations: Seating near the instruction; use of sensory strategies including a wiggle seat, Velcro under his desk, and a hand fidget; presenting one task or direction at a time; having Student rephrase in his own words what he needs to do as a way to repeat or rephrase instructions; and checking Student's understanding of what was expected of him and if he understood the concept being taught. Parents signed their agreement to all parts of the IEP, including the offer of special education.

SPECIAL EDUCATION SERVICES AND PROGRESS SPRING 2015

23. Student began receiving specialized academic instruction for 60 minutes, four days per week, from special education teacher Devyn Norris (formerly Bolden). The special education classroom had one credentialed special education teacher and one classroom paraprofessional serving as an aide. Student received instruction in a group with three other students, working in a rotation with either the teacher or the aide, in 25- to 30-minute segments of instruction using the LANGUAGE! and the Words Their

Way programs. Ms. Norris described LANGUAGE! as a research-based program for decoding, and Words Their Way as a program for spelling, but also decoding. LANGUAGE! was developmental and looked at letters and built upon them to teach word patterns, vowel sounds, vowel patterns, and included some sentence writing. Words Their Way began with a placement test to determine where a student was currently functioning and develop a list of spelling words appropriate for the student, rather than using a generic spelling list for the grade in which the student was enrolled. Words Their Way worked developmentally, starting with pictures, then short vowels, and worked aligned to grade-level standards. It involved dynamic sorting, moving, and looking at word patterns to learn the patterns for spelling and to read words; in that way, Words Their Way worked on reading while teaching spelling.

24. Ms. Norris also used flashcards of letters, and applied her background in discrete trial training to work with Student by starting with cards of letters he did know, so he experienced success, then introduced and taught letters he did not know, and then returned to the letters he did know to positively reinforce his learning experience by finishing with success. Ms. Norris also used flashcards of the Fry's Instant Sight Words, the 1000 most common words in the English language, sorted by groups of 100. There was a list of kindergarten words, and then lists of "the first 100 words," "the second 100 words," "the third 100 words," etc. During kindergarten, Ms. Norris worked with Student on the first 100 words.

25. Ms. Norris described the process of teaching a student to read as beginning with recognizing letters and naming them, then learning the sounds of letters, starting with short vowel sounds and then integrating long vowel sounds. After students can recognize and name letters, they were taught to combine letters (consonants) and vowels to make whole words. Some words can be read by sounding them out, letter by letter, and other words are known as sight words, which have

irregularities and cannot be sounded out but must be recognized as a whole unit, described as “see it and know it.” Ms. Norris taught students word families and word endings so they could see and know words with automaticity.

26. During the spring semester of kindergarten, Ms. Norris worked with Student on letter names and sounds. Student was below the kindergarten standard for recognizing and knowing the names and sounds of all the letters, both upper- and lowercase.

27. At the end of the spring semester, Ms. Norris reported Student’s progress on each of his goals. In the area of writing letters, he improved his accuracy of writing letters dictated to him by name and sound. Student had improved in all variants of writing letters when dictated to him by name and sound, and wrote the letter dictated to him with 75 percent accuracy. In the area of phonemic awareness, as indicated by Student’s ability to identify the beginning, middle, and ending sounds of words and then to manipulate sounds by deleting the beginning, middle, or ending sounds of words, Student improved his ability to accurately identify sounds from 20 percent to 70 percent. Student still could not delete sounds. As to phonemic awareness, indicated by Student’s ability to segment and blend words and syllables, Student’s ability to segment sounds declined, from 50 percent accuracy to 10 percent accuracy. However, his ability to blend sounds improved from not being able to blend at all to blending sounds with 30 percent accuracy. In the area of letter sounds, Student improved his ability to produce the sound of a letter he was shown from 26 percent accuracy with uppercase letters and 30 percent accuracy with lowercase letters, to 81 percent accuracy with both.

28. During the summer, Parents worked with Student on a list of words Ms. Norris said Student knew; Parents believed Student had only memorized them because when they gave him the words in order he knew them, but if they gave him the words out of order he did not know them.

FALL 2015 SEMESTER, FIRST GRADE

29. Student began first grade for the 2015-2016 school year in the general education classroom of Brynn Gormley. At that time, Ms. Gormley had been a first grade teacher for 20 years. Student had a great attitude and was enthusiastic, but reading, and specifically decoding, was challenging for him. Ms. Gormley used Writer's Workshop to work on writing, having students respond to books they read. The reading curriculum focused on consonant-vowel-consonant words, simple sight words, books with a lot of repetitive text, adding more and more sight words, more challenging words, reading longer passages, using phonemic awareness to sound out longer words, and reading comprehension by asking students questions about books they read.

30. Ms. Gormley taught reading using something called an anthology, and she read a general story to the whole class and asked the class comprehension questions. She sent phonic library books home with the students each night, to practice reading those books, which had many sight words. In addition to whole group instruction, Ms. Gormley broke up the class into five small reading groups based on ability level, and Student was in the lowest group. She supported those students by having them read the books with more repetitive text, simpler sight words, consonant-vowel-consonant words, and moved at a slower pace than the other groups to meet their needs.

31. In September 2015, Parents hired The K&M Center, Inc. to tutor Student. The director self-identified as dyslexic and had a Ph.D. degree. She tested Student and recommended tutoring services three times weekly. Parents could not afford that level of services, and funded K&M after school tutoring for Student twice a week.³ The tutor used a series of computer programs, one called Hear Builder; general sight words instruction; and doing writing and sounds with a teacher who had some certification in reading.

32. As the school year progressed, the majority of Ms. Gormley's other students became more fluent readers, but Ms. Gormley believed Student hit a plateau. He was cognitively capable and bright, but reading was a struggle for him, and he was aware that he was not doing as well (reading as fluently) as his peers. Student continued to receive specialized academic instruction from Ms. Norris in a small group of four students, and Ms. Gormley observed Student in that setting receiving targeted reading instruction in consonant-vowel-consonant words and using the Words Their Way program. Ms. Gormley recognized that Student excelled at math, was competent in science and social studies, completed art with two-step directions, and in all other areas, he followed along and kept up with the class; but there was some obstacle with his reading and had problems advancing in that area. Student struggled a little with writing but was still able to do it. Ms. Gormley believed that on the whole of the curriculum, Student participated like the rest of the class and he was appropriately placed in her class.

³ Parents paid K&M a total of \$7,260 from February 16, 2016, through August 15, 2016, for tutoring, at tutor's participation in a school meeting on March 2, 2016, and a meeting between Parent(s) and K&M's director Dr. Mullin on May 3, 2016.

33. In November 2015, Ms. Norris reported again Student's progress on each of his goals. In the area of writing letters, Student had improved in all variants of writing letters when dictated to him by name and sound, and able to write the letter dictated with 92 percent accuracy, exceeding the annual goal due in three months of 90 percent accuracy. With phonemic awareness, as indicated by Student's ability to identify the beginning, middle, and ending sounds of words and then to manipulate sounds by deleting the beginning, middle, or ending sounds of words, Student identified sounds with 80 percent accuracy, deleted beginning, middle, and ending sounds with 40 percent accuracy. As to phonemic awareness, indicated by Student's ability to segment and blend words and syllables, Student segmented words with three sounds with 60 percent accuracy and blended words with three sounds with 55 percent accuracy. In the area of letter sounds, Student improved his ability to produce the sound of a letter he was shown to 88 percent accuracy with both upper- and lowercase words.

34. The fall semester ended on February 5, 2016. Student received report card scores, and the final progress report on his four goals in preparation for the upcoming annual IEP team meeting. The report card explanation of marks noted that a score of "1" represented "making little progress toward standards"; a score of "2" represented "making some progress toward standards"; as score of "3" represented "approaching mastery"; and a score of "4" represented "masters standards."

35. On the report card, in English Language Arts, for the categories of Reading Foundational Skills (concepts of print, phonics and word analysis skills, and reading fluency and accuracy), Reading Literature (reading to understand key details, reading to understand craft and structure, reading to integrate knowledge and ideas, and developing a range of reading and text complexity), and Reading Informational Text (also including reading to understand key ideas and details, reading to understand craft and structure, reading to integrate knowledge and ideas, and developing a range of

reading and text complexity), Student did not receive numeric scores and it was noted to see the individualized student progress report.

36. The progress reports noted the following, with some details supplemented by information in the "Preacademic/Academic/Functional Skills" portion of the February 16, 2016 IEP. As to writing letters, Student had improved in all variants of writing letters when dictated to him by name and sound, and could write the letter dictated with 95 percent accuracy, exceeding the annual goal of 90 percent accuracy. In the area of phonemic awareness, as indicated by Student's ability to identify the beginning, middle, and ending sounds of words and then to manipulate sounds by deleting the beginning, middle, or ending sounds of words, when given 20 words with three or four sounds, Student identified sounds with 100 percent accuracy, and could delete beginning, middle, and ending sounds with 65 percent accuracy. Student did not meet his annual goal in that he was only successful at above 90 percent accuracy regarding identifying the beginning, middle, and ending sounds, but did not meet the target accuracy for the aspect of the goal addressing sound deletion. With phonemic awareness, as indicated by Student's ability to segment and blend words and syllables, Student segmented words with three sounds with 90 percent accuracy and blended words with three sounds with 95 percent accuracy. Student met this goal. For letter sounds, Student improved his ability to produce the sound of a letter he was shown to 100 percent accuracy with both upper- and lowercase words; he met this goal.

37. Student's report card reported scores in other areas of English Language Arts. In Writing (writing narrative texts, writing informational texts, and writing opinion pieces), Student scored a 2, making some progress toward standards. In Language (writing in complete sentences; using grade-appropriate grammar, capitalization, and punctuation; spelling grade-level words in written work; and using grade-appropriate vocabulary), Student scored a 2. In Listening and Speaking (demonstrating

comprehension and collaboration, and presenting knowledge and ideas), Student scored a 3.

38. In Mathematics, Student scored 3s in all areas included in the fall semester (operations and algebraic thinking, numbers and operations in base 10, and standards for mathematical practice). In Social Science (recognizing and understanding U.S. symbols, demonstrating map skills, and differentiating between now and long ago), Student scored a 3. In Science (understanding grade-level concepts in physical science and earth science), Student scored a 3.

39. Student "consistently" or "often" did well in the categories of Arts, Physical Education, Citizenship, and Work Habits. The only lower mark he received was for only "occasionally" producing neat and careful work. Ms. Gormley wrote a narrative comment block reporting that Student was making slow, steady progress in reading and writing; with his consistent practice at home and school, Student was reading more sight words, in addition to short books with repetitive text. In writing, Student needed to remember to reread his work for correctness and try to sound out longer, more challenging words that he wrote. He needed to work on improving his printing so it would be easier to read his stories and personal narratives. Other comments were positive and encouraging.

FEBRUARY 16, 2016 IEP TEAM MEETING AND IEP

40. Santa Monica convened an annual IEP team meeting on February 16, 2016. Parents, Ms. Gormley, Ms. Norris, an administrative designee, and a tutor Parents hired to work with Student outside school attended. Parents came to the meeting expecting to hear that the progress Student was making was commensurate with what he needed to do to catch up to his peers. Student's tutor reported progress in reading, sounds, beginning sounds, and reading more fluently with sight words. She used the program "RAVE-O" for reading and spelling and two Lindamood-Bell programs called LiPS and

Seeing Stars. Parents were concerned and did not see progress in reading; although math was easier for Student, word problems were more challenging because he could not read them and they had to be read aloud to him. Ms. Norris shared Student's progress on his goals, and Ms. Gormley shared Student's progress in the general education classroom. Ms. Gormley reported that in reading, Student struggled with decoding and reading fluency skills. He was able to read short, simple books with lots of repetitive text, but was memorizing a lot of the books he was reading. He also had a limited ability to read sight words, and at times he forgot to look at the first letter when sounding out or practicing a new word. Parents were concerned Student had a great memory and was memorizing full stories. At hearing, one Parent suspected Student's reported progress was not real, but believed a teacher was always giving him letters, words, or flash cards in the same order and he had merely memorized them. The only teacher examined on this point, Ms. Norris, testified Student was shown items in a random and always varied order, and that she ruled out memorization as the basis for Student's improvement. The February 16, 2016 IEP documented that Student's 100 percent proficiency with naming upper- and lowercase letters, their sounds, and writing letters when dictated to was based on being given letters in a random order or out of order.

41. Ms. Gormley reported that Student enjoyed writing in his journal, but needed to remember to reread his work for correctness and make sure all his sentences made sense. Sometimes he could not read what he had written. He also needed to improve printing on the lines. Student needed to slow down and focus on his work because he was capable, but sometimes had to redo his work based on his handwriting. Ms. Gormley and Ms. Norris agreed that Student's printing needed improvement. Despite the suggestions for improvement, Ms. Gormley considered Student's writing to

be legible. He continued to reverse his "b" and "d" letters, but that was "still within developmental norms."

42. Student did an excellent job in math, and understood all of the concepts Ms. Gormley taught. He was able to work confidently on word problems and "CGI" problems. In social studies and science, Student completed all the projects independently and understood the concepts Ms. Gormley taught.

43. Student was given an informal reading inventory using the San Diego Quick; his instructional reading level was "pre-primer" and his frustration reading level was at the "primer" level. He was unable to attain an independent reading level. Ms. Gormley acknowledged sentence reading was a concern. Parents voiced their question/concern regarding if Student would ever catch up to his peers; Santa Monica personnel responded that the goal of the special education process was that Student would catch up to his typical peers, but gave no time frame. Student's teachers said Student was meeting his goals; Parents misunderstood that as referring to their goal that Student would close the gap and catch up to his peers.

44. Student's areas of unique need were in phonemic awareness, decoding, and spelling/writing. As present levels of performance in the area of phonemic awareness, Student struggled with deleting words in sounds with three sounds (65 percent accuracy) and when asked to substitute sounds in words to create new words, he could do so with 20 percent accuracy. Also, Student was unable to segment sounds in words with four or five sounds (zero percent accuracy); he also could not blend sounds in words with four or five sounds (zero percent accuracy). Ms. Norris proposed two new goals in the area of phonemic awareness. The first was to address deletion and substitution of sounds: Within one year, when given a list of 15 words with no more than four sounds, Student would delete or substitute individual sounds in words with 90 percent accuracy in two consecutive trials, as measured by teacher observation and

teacher-generated tests. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.K.E. Student's specialized academic instruction teacher and staff were responsible for this goal. The second proposed goal was to address segmenting and blending of sounds: Within one year, when dictated a list of 15 words with no more than four sounds, Student would be able to segment and blend sounds in words with 80 percent accuracy in two consecutive trials, as measured by teacher observation and teacher-generated tests. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.K.2C. Student's specialized academic instruction teacher and staff were responsible for this goal.

45. In the area of decoding, Student's present level of performance was that he could name upper-and lowercase letters and their sounds with 100 percent accuracy. He was beginning to decode consonant-short vowel-consonant words, and when given a list of real and non-real consonant-vowel-consonant words, Student sounded out the words and read them with 43 percent accuracy (13 out of 30). The proposed goal was, within one year, when given a list of 15 short consonant-vowel-consonant words, Student would read the words with 90 percent accuracy in two consecutive trials as measured by teacher observation and teacher-generated tests. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.K.3C. Student's specialized academic instruction teacher and staff were responsible for this goal.

46. Student had not previously had a goal regarding sight words. At the time of the February 16, 2016 IEP, Student could read 53 out of 100 words on the first 100 Fry's Instant Sight Words list. Ms. Norris proposed a goal that within one year, when given the first list of 100 words on Fry's Instant Sight Words list, Student would read the words with 90 percent accuracy in two consecutive trials, as measured by teacher

observation and teacher-generated tests. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.K.3C. Student's specialized academic instruction teacher and staff were responsible for this goal.

47. In the area of spelling/writing, Student wrote both the upper- and lowercase letters of the alphabet with 100 percent accuracy when dictated out of order by letter or sound. When dictated a list of words containing short consonant-vowel-consonant words, Student spelled the words with 73 percent accuracy (11 out of 15 words). When dictated a list of words containing short vowel with consonant digraphs (such as ch, sh, and th), Student spelled the words with 42 percent accuracy (five out of 12 words). The proposed goal was, within one year, when dictated a list of 15 short consonant-vowel-consonant and short vowel consonant digraphs, Student would spell the words with 90 percent accuracy in two consecutive trials, as measured by teacher observation and teacher-generated tests. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number L.1.2D. Student's specialized academic instruction teacher and staff were responsible for this goal.

48. Ms. Gormley agreed the five proposed goals were appropriate to work on in the general education classroom and in the specialized academic instruction setting. Parents agreed to the goals but expressed concern about Student falling further behind his classmates. Ms. Norris responded that Student would go to second grade with support.

49. To implement the agreed-upon goals, Santa Monica offered Student specialized academic instruction in a separate classroom for 270 minutes each week, approximately 60 minutes per day, four days per week, and 30 minutes on the day with a short schedule. Santa Monica also offered the following accommodations: seating as agreed upon between teacher and student to best meet learning needs; use of sensory strategies including a wiggle seat, Velcro under his desk, and a hand fidget; presenting

one task or direction at a time; having Student rephrase in his own words what he needs to do as a way to repeat or rephrase instructions; and checking Student's understanding of what was expected of him and if he understood the concept being taught.

50. Parents shared that nine months earlier, Student was diagnosed with autism; they asked about autism and asked if it was helpful for the IEP team to have a specific diagnosis to help Student in school. Ms. Norris shared she did not see autism concerns. She offered examples of how Student processes information and drills done in class. Parents were concerned about Student's fine and gross motor skills and shared that the tutor worked with Student on fine motor skills. Ms. Norris reviewed the prior assessment by the occupational therapist, who concluded Student did not qualify for occupational therapy services. Ms. Norris told Parents they could request an assessment if they had concerns.⁴

51. Parents signed their consent agreeing to all parts of the IEP.

SPRING 2016 SEMESTER, FIRST GRADE

52. Student continued first grade in Ms. Gormley's general education class, with daily pull-out specialized academic instruction from Ms. Norris. Ms. Norris believed that, from the February 16, 2016 IEP through the end of first grade, Student learned some skills related to reading. He could read short consonant-vowel-consonant words and a list of sight words. Student's spring report card for the grading period ending June 9, 2016, again noted that information about Student's work in three categories of English Language Arts was contained in an individualized report of student progress. However, progress reports on Student's five goal areas for this time period were not

⁴ Student did not contend as an issue at hearing denial of FAPE related to autism. (20 U.S.C. 1415(f)(3)(B); 34 C.F.R. 300.511(d).)

presented by the parties during the due process hearing and information about Student's periodic progress therefore is not included in this Decision.

53. The report card included scores for the three other areas of English Language Arts. In Writing (writing narrative texts, writing informational texts, and writing opinion pieces), Student scored a 3, approaching mastery, and an improvement from the prior semester in which he scored a 2. In Language (writing in complete sentences; using grade-appropriate grammar, capitalization, and punctuation; spelling grade-level words in written work; and using grade-appropriate vocabulary), Student scored a 3, also an improvement from the prior semester. In Listening and Speaking (demonstrating comprehension and collaboration, and presenting knowledge and ideas), Student scored a 4.

54. In Mathematics, Student scored 4's in four of five areas included in the spring semester (operations and algebraic thinking, numbers and operations in base 10, measurement and data, and geometry). Student scored a 3 in the area of standards for mathematical practice. In Social Science Student scored a 4. In Science (a topic that now also included life science), Student scored a 4.

55. Student "consistently" or "often" did well in the categories of Arts, Physical Education, Citizenship, and Work Habits, including producing neat and careful work. Ms. Gormley wrote a narrative comment block reporting that Student made steady progress in all academic areas. She described his progress in reading as "strong" but noted he still was not at grade level. She recommended that during the summer, Student read daily, continue to review sight words, participate in the local public library summer reading club, and write in a home journal.

56. At the end of the spring semester, Santa Monica administered a district-wide assessment called the Spring aReading curriculum assessment. Student's score on this assessment was not reported to Parents until its inclusion in a summary of his past

Santa Monica report cards, progress reports, and these curriculum assessments in the psychoeducational assessment conducted in the spring of 2017. In spring 2016, Student's performance on the aReading curriculum assessment was at the sixth percentile when compared to first grade students who completed the test nationally. Ms. Gormley described the Spring aReading assessment as a test given at the end of the spring term that was a 20-minute test with no preparation whatsoever, and as a first grade teacher, she did not find it meaningful, and she did not include it on report cards. At the time of her testimony in June 2018, she believed the test was given once a year and 2018 was possibly the third time it had been given, meaning Student took the test the first time it was given, in spring 2016.

57. Parents hired Ms. Gormley during the summer to tutor Student three times per week for 45 minutes each session, for about four or six weeks. They did partner reading, used the Great Leaps program, played sight word games, worked on word families, built words, and read words back. Student also continued to receive tutoring from K&M during the summer two to three times a week. Parents met with K&M's director, who told them Student's reading disability was very severe, that K&M worked with hundreds of children in a specific way and a child could not progress until they had mastered each piece of their instruction, and Student would need significantly more hours with K&M until he made the progress he needed to make. At hearing, Parent stated K&M's director estimated Student's progress had been not a measurable amount; Parent did not think the director would have said that Student had made no progress after the approximately 60 sessions he had received, but he had not made enough progress.

FALL SEMESTER 2016, SECOND GRADE

58. Student began second grade in the general education classroom of Aisha Gamboa. She had worked as a substitute teacher for three years, then was a full-time

second grade teacher at a parochial school for six years,⁵ and fall 2016 was her first school year with Santa Monica. Student had difficulty transitioning from his first grade teacher, with whom he had also worked regularly during the summer; Student cried sometimes, and one Parent sat with him in the morning for 20 to 30 minutes to help him transition, for about one month.

59. Ms. Gamboa knew Student had challenges in reading, writing, and spelling. Her classroom started the morning with a warm-up based on the calendar, and students shared news and things they were excited about in life as second graders. The class then worked on math, and next had recess. Students then received reading instruction for about one hour before lunch; writing instruction after lunch; then physical education; and at the end of the day, students had science or social studies and special classes like art, music, or an additional science class. Student was in the classroom when Ms. Gamboa taught reading. She used a guided reading workshop model, and began with five to 10 minutes of a lesson in specific strategies for reading skills. Sometimes she read to the class from a text, then students read independently or in pairs. While students read to themselves, Ms. Gamboa conferenced with students individually. She asked about the topic the student was reading, and she asked content questions such as about the characters, how the student felt about what they were reading, what they learned from the reading, and if the student required assistance with any vocabulary. Ms. Gamboa listened to each student for reading accuracy and fluency. Instruction in other academic areas also included reading, and throughout the day Ms. Gamboa placed written material on a document camera and projected it on the wall. She did

⁵ Ms. Gamboa had a multiple subject clear teaching credential with the Bilingual, Crosscultural, Language and Academic Development (BCLAD) authorization, and a master's degree in Education, Literacy and Language Arts.

guided reading by reading the content aloud to the students, or students read parts aloud, as whole group instruction. Academic texts as well as pleasure reading materials were all projected and accessible to the class in this way. The goal was for students to be able to read independently by the end of the school year.

60. Within the specialized academic instruction setting in the fall 2016 semester, there was turnover. Ms. Norris was teaching a different grade level, and the special education teacher Student began the school year with left, and then there were two substitute teachers, until a permanent teacher began in January 2017.

61. Parents saw a significant emotional change in Student, and believed he was being taunted and teased by students in general education for his inability to read and spell. Student told Parents the other students in specialized academic instruction were "naughty" and some boys were aggressive, hit him, pulled his pants down, and the teacher spent time focusing on them and gave him work to do by himself. Parents consulted Mr. Hoover and asked for his help, and also researched physicians and found developmental pediatrician Dr. Aubrey Griesbach. Dr. Griesbach told Student her son had severe dyslexia but now worked at NASA; Student liked that, knowing someone could process information differently and still be successful. Parents had Dr. Griesbach assess Student, and she performed three rounds of testing. Her findings were documented in a report dated November 9, 2016, which was not introduced into evidence. Dr. Griesbach interviewed Ms. Gamboa, and Ms. Gamboa's testimony confirmed the things she told Dr. Griesbach were accurately stated in Dr. Griesbach's report. The assessment was conducted sometime during the fall 2016 semester, before November 9, 2016. At that time, the average reading level in the class was "M," but Student was at a reading level "B," a kindergarten level.

62. Parent's testimony indicated Dr. Griesbach diagnosed Student with dyslexia and attention issues, for which she prescribed medication. Over a period of

time, Student took up to seven different medications in a trial-and-error approach to finding something that would help him. Parent testified Dr. Griesbach had done some genetic testing to determine what kinds of medications Student would respond to best. Ultimately, Parents discontinued medication because they believed Student did not have attention issues but just struggled so much with reading he was overwhelmed, frustrated, and gave up, which looked to others like an attention deficit. Parent had not believed Student's issue could be resolved pharmacologically from the beginning, but had been willing to try anything to assist Student.

63. Santa Monica again assessed Student on November 29 and 30, 2016, and reported the results in a document titled Assessment of Academic Achievement, signed by Ms. Cammarota and Ms. Norris on December 19, 2016. Santa Monica contracted with retired special education teacher Ruth Dewar to conduct assessments because it needed additional help to complete all the assessments it needed upon to complete. Ms. Dewar had been a fulltime special education teacher for Santa Monica. She worked one day per week in the 10 years since she had retired, only administering assessments. On November 29, 2016, Ms. Dewar met Student and administered test instruments she and school psychologist Mr. Hoover and two other teachers had selected. She administered the Wechsler Individual Achievement Tests, Third Edition, and two other instruments were selected after the results of the Wechsler to further test in areas he showed challenges, to determine if Student's deficits were genuine or only reflected some aspect of the Wechsler test instrument. Ms. Dewar testified that test results will never be identical, even for the same test given on consecutive days, but one could expect them to be similar. If a student was a good reader on one test, it was likely he would be a good reader on another test, but there might be variations on subtests, impacted by how the test was given, such as if it was timed or not.

64. The Wechsler Tests of Achievement had been administered to Student as part of his initial assessment, approximately 22 months earlier. In mathematics overall, Student's standard score was 108 (average, 70th percentile). In math problems solving, Student's standard score was 110 (average, 75th percentile). In numerical operations, Student's standard score was 104 (average, 61st percentile). Overall, Student was strong in math and he should have been able to access his general education curriculum, with word problems read aloud to him, especially on assessments, due to his reading and decoding challenges. In listening comprehension, Student's standard score was 119 (above average, 90th percentile). These results suggested Student was proficient with listening to grade level vocabulary and listening comprehension. It was a strength for him that allowed him to access grade-level material when given orally. In oral expression, Student's standard score was 116 (above average, 86th percentile). These results suggested Student demonstrated a strength with grade-level vocabulary and was proficient with word retrieval when presented meaningful context, and used short-term memory to recall oral information. In written expression overall, Student's standard score was 101 (average, 53d percentile), with the following subtest scores: sentence composition 94 (average, 34th percentile); spelling 87 (low average, 19th percentile); and alphabet fluency 123 (above average, 94th percentile). These results indicated Student had some skills to be successful in the general education setting, but needed support in the area of mechanics of sentence writing. The spelling results prompted additional testing.

65. In "total reading," Student's standard score was 78, within the below average range (seventh percentile). In "basic reading," Student's standard score was 73 (below average, fourth percentile). In the subtest of word reading, Student's standard score was 72 (below average, third percentile); in the subtest of pseudoword decoding, Student's standard score was 73 (below average, fourth percentile). In reading

comprehension, Student's standard score was 93 (average, 32d percentile). In oral reading fluency, Student's standard score was 87 (low average, 19th percentile). These results indicated Student had difficulty decoding unfamiliar words and did not have a strong knowledge of phonetic patterns; he also struggled with some letter reversals. He was challenged when reading grade-level words, and required a word reading and a decoding goal. Despite Student's word reading and decoding difficulties, Student was successful at reading comprehension of second grade level material. Although he could only read part of the passages, he worked hard to figure out difficult words and was able to get meaning from what he read. His answers were sporadic and he had difficulty with some literal information and also inferential questions. He had comprehension skills, but his ability to decode words made it difficult for him to understand everything he read. Student had some difficulty reading aloud with adequate accuracy at the second grade level, but he had adequate speed while reading. These results suggested Student was unable to decode words and use word recognition skills in the general education setting, resulting in a decreased ability to read accurately. He understood what he read and read at a good speed for a second grader. However, Student required specialized academic instruction for reading.

66. Ms. Dewar also administered some parts of the Kaufman Test of Educational Achievement, Third Edition. In spelling, Student had a standard score of 92, in the average range (30th percentile). Student could spell many sight words and used phonetic spelling. These results suggested Student demonstrated some proficiency in the area of spelling when compared to his same-aged peers. His score suggested he could access grade level spelling words in the general education setting. He also would have benefitted from continued practice in spelling and using word families, spelling patterns, and rules to help him with his spelling. In phonological processing, Student had a standard score of 105, in the average range (63d percentile). These results

indicated Student had made great progress, because this had been an area of struggle for him. He demonstrated some proficiency in the area of phonological processing when compared to his same-aged peers.

67. Santa Monica personnel also administered the Gray Oral Reading Test, Fifth Edition, due to Student's difficulties in reading and decoding. The test evaluated oral reading rate, accuracy, fluency, and comprehension. The four major purposes of the test were to: a) identify those students who were significantly behind their peers on oral reading and determine the degree of the problem; b) discover oral reading strengths and weaknesses within individual students; c) monitor students' progress in special intervention programs; and d) be used in research studying reading in school-aged students.

68. Oral reading rate referred to automaticity and reading speed, and students need to be able to read at a certain number of words over a specified period of time to find reading effortless and enjoyable. Student scored within the average range, but at the bottom end (16th percentile). Accurate reading is the hallmark of proficient reading, and those who cannot read accurately are generally targeted for word study interventions. Student scored in the below average range (fifth percentile). Fluency was measured on the Gray Oral Reading Test by combining rate and accuracy because fluent readers demonstrate a combination of the two skills. Student scored in the below average range (ninth percentile). Reading comprehension is deriving meaning from print. Student scored within the average range (16th percentile). His score on the Gray and his reading comprehension score on the Wechsler – in the average range (32d percentile) – combined suggested Student might struggle with grade-level reading comprehension, but with some accommodations and modifications should have been able to access the curriculum. The normative composite score for the Gray was called the Oral Reading Index, and was a standard score comparing each student to their

peers; it was considered the most reliable score on the test. Student's score was in the below average range (10th percentile).

69. Santa Monica also administered informal reading tests to determine strengths and weaknesses. Student was tested to establish his ability to decode real and nonsense words with a variety of patterns. For consonant-vowel-consonant words such as set, run, and red, Student was 92 percent accurate. For consonant digraphs, such as bath, whip, and fish, Student was 10 percent accurate. Student was not able to decode consonant blends, such as stand, clam, or crash. In the area of word recognition, Student was tested to establish his ability to recognize high frequency (sight) words. Using Fry's Instant Words, Student recognized 85 out of 100 on the first 100, 74 out of 100 on the second 100, and 38 out of 100 on the third 100. In the area of fluency, Student was tested to establish his ability to orally read with accuracy, appropriate pacing, intonation, and rate, using passages on AIMSweb. He read three passages at three different levels and was timed one minute each passage. He was scored on the amount of words he read correctly and given an accuracy score based on words read correctly in the passage. At the primer level, Student read 58 words per minute, with 15 errors, and a correct-words-per-minute rate of 38. At the first grade level, Student read 41 words per minute, with 9 errors, and a correct-words-per-minute rate of 33. At the second grade level, Student read 41 words per minute, with 8 errors, and a correct-words-per-minute rate of 32. According to the testimony of Franklin Manis, Ph.D., detailed later, a typical mid-year second grader reads between 70 and 100 words per minute on a passage at second grade level. A typical peer reads approximately 85 words per minute with two percent error (1.7 words incorrect). The results of Student's performance on the AIMSweb passages indicated Student had difficulty with reading words accurately at the second grade level.

DECEMBER 19, 2016 IEP TEAM MEETING AND IEP

70. Santa Monica convened an IEP team meeting on December 19, 2016, to review the results of the recent assessments, and classified it as an annual IEP team meeting. Parents, Ms. Cammarota, Ms. Norris, Ms. Gamboa, Mr. Hoover, a school psychologist intern, and special education coordinator (administrator) Victoria Hurst attended. Student met all five of his goals from the February 16, 2016 IEP. But his guided and independent reading level was "B," kindergarten, and Parents were concerned Student was not making progress. A special education teacher stated Student was making progress and meeting his goals, and Ms. Gamboa stated Student now started reading without teacher prompting.

71. Student was writing legibly, but continued to reverse his "b" and "d," which was still considered to be "within developmental norms." The IEP team determined Student required goals in decoding, reading fluency, and word recognition to receive educational benefit. Three goals were proposed, all classified as reading goals, but focused on decoding, fluency, and word recognition, respectively. Each goal was based on the present levels of performance reported from the informal assessments done for the IEP team meeting. The proposed goal for decoding was, within one year, Student would read 20 words from a list of consonant blends (blast, snap, drag) and consonant digraphs (wish, bath, rich) with 90 percent accuracy as measured by teacher-charted data and informal assessments. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.1.2b. Student's general education teacher and specialized academic instruction staff were responsible for this goal.

72. Based on the present level of performance reported from the informal assessments done for the IEP team meeting, the proposed goal for fluency was, within one year, when given three random passages at the first grade level, Student would read

those passages with 70 correct words per minute with no more than four errors as measured by teacher-charted data and informal assessments. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.1.4. Student's general education teacher and specialized academic instruction staff were responsible for this goal. The proposed goal for word recognition was, within one year, when presented with the first 250 Fry's Instant Words, Student would read the words with 90 percent accuracy as measured by teacher-charted data and informal assessments. This goal enabled Student to be involved and progress in the general curriculum/state standard for literacy number RF.1.3g. Student's general education teacher and specialized academic instruction staff were responsible for this goal.

73. Parents were concerned that a goal was for him to read at the first grade level during the next year, when he would be in third grade starting in the fall semester. Santa Monica personnel told Parents they had to look at Student's present level of performance at that time, and if Student achieved his goals, new goals could be developed. The IEP team discussed Student receiving additional specialized academic instruction at the Learning Resource Center, housed on a middle school campus within Santa Monica. Santa Monica proposed Student receiving 90 minutes per week, in addition to the specialized academic instruction in a separate classroom on the Grant Elementary campus. Santa Monica offered Student a total of 390 minutes per week of pull-out specialized academic instruction, an increase from 270 to 300 minutes per week at his school of attendance, and 90 minutes once a week at the Learning Resource Center. Santa Monica also offered the same accommodations as in Student's two prior IEPs, as well as reduced or shortened assignments if needed for reading; note taking support if needed; audiobooks if needed; extended time to complete large reading assignments; word problems (math) being read aloud; and a flexible setting and flexible timing or scheduling for assessments, if needed.

74. Parents requested another complete psychoeducational assessment, and Santa Monica agreed to conduct a psychoeducational assessment and occupational therapy assessment. Parents wanted to observe the Learning Resource Center located at John Adams Middle School before agreeing to that service, as Student would miss time from his general education classroom to travel to and attend specialized academic instruction on the middle school campus.

75. There was no evidence that Dr. Griesbach's November 9, 2016 report was discussed at the December 19, 2016 IEP team meeting, or that Parents told Santa Monica about Dr. Griesbach's assessment, report, or her diagnoses, conclusions, or recommendations (such as medication to address attention deficits) before May 2017. Ms. Gamboa had spoken to Dr. Griesbach when Dr. Griesbach contacted her as part of the evaluation, but there was no evidence anyone other than Ms. Gamboa knew Dr. Griesbach was involved with Student or that Ms. Gamboa knew why Student's pediatrician had contacted her, beyond the fact that she called to ask questions about Student's performance in the classroom.

76. Ms. Hurst took Parents to observe special education teacher Gina Kittel at the Learning Resource Center in January 2017. While Parents and Ms. Hurst observed, Ms. Kittel worked with students in a small group, provided some one-to-one instruction, and then took time to talk with Parents and Ms. Kittel about the reading programs she would use if Student attended. After the visit, Parents told Ms. Hurst they wanted Student to receive services at the Learning Resource Center, twice a week. One Parent, Ms. Gamboa, Ms. Cammarota, and a Santa Monica administrator signed an IEP Amendment/Addendum dated January 17, 2017, on January 25, 2017, amending the December 2016 IEP. Santa Monica increased Student's specialized academic instruction to 470 minutes per week, with 170 of those minutes delivered at the Learning Resource Center for intensive reading instruction. One Parent signed consent to the December

2016 IEP on January 17, 2017, before the date Parent and Santa Monica personnel signed the Amendment one week later. Parent noted the consent to implement was not an agreement "that the program constitutes free appropriate Public Ed and reserve all rights to object to the placement, supports and services offered here."

77. Santa Monica proposed to transport Student by school bus to the middle school campus for specialized academic instruction at the Learning Resource Center, and escort him to the classroom for the teacher who would work with him individually or with one other student. Parents elected to have one parent pick Student up from Grant Elementary and drive him to the middle school, wait there, and then take him home.

78. Also in December 2016, Parents began researching other possible interventions, including enrollment at a different type of school. Dr. Griesbach gave Parents a list of schools. Parents asked Ms. Gamboa if she had heard of them, and she had not. Parents started asking other parents and people they met if they had heard of any of the schools on the list.

79. In hindsight, one Parent regretted believing Santa Monica personnel who said Student was making progress in the face of his scores on standardized tests like the November/December 2016 Wechsler, which reported that Student's percentile scores had declined in all categories of reading and his performance remained below average. At the time of the December 19, 2016 IEP team meeting, Parent thought the fact that Student knew more sight words meant he had made progress. However by the time of the due process hearing, Parent believed there was a discrepancy between Santa Monica's perception of progress, that of meeting annual goals, and Parents' perception of progress, which included Student being at the same reading level as his typical peers.

REMAINDER OF FALL 2016 SEMESTER AND SPRING 2017 SEMESTER, SECOND GRADE

80. In January 2017, Student continued in Ms. Gamboa's general education classroom, and Lisa Ward became Student's specialized academic instruction teacher at Grant Elementary. Ms. Ward obtained a bachelor's degree in Special Education, Mild/Moderate in December 2011, and a master's degree in Education, Special Education in May 2015. She taught special education in North Carolina for three years before moving to California, and taught special education at another school in the area before taking the position with Santa Monica in January 2017. Ms. Ward obtained her California special education credential in 2017, and was certified in Word Study/Letter Land, LANGUAGE! Third Edition, and Orton-Gillingham. In her teaching in North Carolina, she worked with special education students on reading using the Orton-Gillingham methods, a phonemic, hands-on approach to learning reading using tiles to spell out words and other manipulatives to help with the decoding of words. In her teaching at the other school in Santa Monica, Ms. Ward worked with students who had reading difficulties, using a lot of Lindamood-Bell programs.

81. Ms. Ward taught Student in a small group totaling five children, with three other boys and one girl. She was also the case manager for Student. She collaborated with Ms. Kittel once every two weeks and discussed how Student was progressing toward his goals and if either of them had any concerns.

82. Ms. Kittel had been a teacher for over 30 years. She had been a teacher with Santa Monica since 1998, and after five years in the classroom as a resource teacher and a special day class teacher, she became a Reading Specialist in the Learning Resource Center working with students in kindergarten through 12th grade with moderate to severe reading or written language disabilities, using a variety of research-based structured literacy programs. She was a member of the International Dyslexia

Association, and had received training in the Lindamood-Bell programs called LiPS, Seeing Stars, and Visualizing/Verbalizing; LANGUAGE!; S.P.I.R.E.; Read Naturally; and others. All students who received instruction at the Learning Resource Center also received specialized academic instruction at their local school campus, and were referred to Ms. Kittel when teachers felt the students needed more intensive interventions. Ms. Kittel provided Student one-to-one instruction for 85 minutes, two times per week, starting in January 2017. Ms. Kittel had a teaching assistant who had worked with her at the Learning Resource Center since she started there. The assistant was also trained in all the programs Ms. Kittel used, and did some direct instruction with Student.

83. Ms. Kittel collaborated with Ms. Ward on looking at different reading intervention programs each was using and deciding what needed more intensity or repetition. Ms. Kittel used a variety of approaches with Student but the main program was the Wilson Reading System, a structured literacy curriculum that worked on sound-symbol relationships, total word construction (teaching student to decode words but simultaneously to spell words), and syllabication, so students learn the syllable types as they move on to more complex words. The Wilson Reading System and LANGUAGE! were based on the Orton-Gillingham method. Ms. Kittel also used some additional fluency materials and some informal activities to work on sight words. She assigned Student some independent work.

84. Ms. Kittel worked on Student's goal of reading words with short vowels with consonant digraphs and short vowels with consonant blends with the steps of the Wilson program and sound drills with word cards, reviewing concepts, and building words with magnetic tiles Student liked working with. Student read lists of words, read the words in sentences, and there were many controlled reading passages that went along with these activities.

85. Ms. Kittel reported Student's progress on the goals from his December 19, 2016 IEP on February 7, 2017. In the area of decoding, Student read 20 words from a list of consonant digraphs with 93 percent accuracy, exceeding the annual goal on this subpart. The progress report did not document Student's abilities with respect to the second subpart of the goal, regarding consonant blends. In the area of fluency, Student read three random passages at the first grade level with 39 correct words per minute, with an average of four errors. He had improved from his baseline and was one word per minute short of the benchmark that had been set for the first reporting period of the annual goal. In the area of word recognition, Student read the first 200 Fry's Instant Words with 84 percent accuracy. He had improved from his baseline and was close to meeting the benchmark that had been set for the first reporting period of the annual goal.

86. At the end of the fall semester in February 2017, Santa Monica had administered a district-wide assessment called the Winter aReading curriculum assessment and the Winter aMath curriculum assessment. Student's scores on these assessments were not reported to Parents until their inclusion in a summary of his past Santa Monica report cards, progress reports, and the curriculum assessments in the psychoeducational assessment conducted in the spring of 2017. In winter 2016, Student's performance on the aReading curriculum assessment was at the first percentile when compared to second grade students who completed the test nationally. Student's performance on the aMath curriculum assessment was in the 14th percentile for second grade students.

87. Student's report card for the fall 2016 semester issued on February 10, 2017. Information about the reading foundational skills, reading literature, and informational text topics within the category of English Language Arts was reported in the progress reports on Student's goals, detailed above. In writing, Student scored a 2,

making some progress toward standards. In listening and speaking, Student scored a 3, approaching mastery. In the category of Math, Student scored a 3 in all areas addressed in the fall semester. Student scored a 3 in Social Science as well as Science. Ms. Gamboa wrote comments praising Student's attentive listening and participation. Student moved up two levels in Readers' Workshop.

88. On March 28, 29, and 30, 2017, Santa Monica administered some instruments as part of the psychoeducational evaluation piece of an early triennial reevaluation, based on Parents' request at the December 2016 IEP team meeting. Student was seven years and 11 months old when assessed. The written report was dated May 11, 2017.

89. Parents had been investigating other schools and looked at Westmark School, which used a Lindamood-Bell instructional system, a program the director of K&M had referenced as an intervention that would likely work for Student. Parents had consulted Lindamood-Bell and were told to remove Student from school two hours a day, all week, at a cost of \$1,000. Parents believed they could not afford that amount. Westmark used the Lindamood-Bell system and taught reading across all subjects, all day, for annual tuition of \$44,626 plus a \$2,000 new student admission fee. Ms. Gamboa looked at the website for Westmark and told one Parent it looked like the perfect school for Student. During the time Santa Monica was conducting the triennial reevaluation, Parents applied to Westmark for the 2017-2018 school year and Ms. Gamboa wrote a letter of recommendation for Student.

90. Westmark accepted Student and Parents agreed to enroll him for the 2017-2018 school year. On April 18, 2017, Westmark charged Parents the \$2,000 new student fee and on April 21, 2017, Westmark charged Parents a \$4,000 tuition deposit. Parents paid Westmark \$6,000 on April 21, 2017.

91. Meanwhile, school psychologist Mr. Hoover assessed Student and prepared the psychoeducational evaluation report. Parents informed Santa Monica on a developmental history questionnaire that Student was diagnosed with Attention Deficit Hyperactivity Disorder since he had been evaluated by Dr. Griesbach in November 2016. Student had been trialed on numerous medications and at the time of Parents' report, Dr. Griesbach was continuing to alter the dosage of the current medication to achieve the appropriate dosage.

92. Mr. Hoover reviewed and summarized the results of the initial psychoeducational evaluation, academic achievement assessment, and occupational therapy evaluation from February 2015. He also reviewed the results of the academic achievement assessment from November/December 2016. Mr. Hoover interviewed Student, who reported physical education was his favorite subject, and he also liked math and writing because he was good at those subjects; he disliked reading because it was "difficult and boring." Parents were primarily concerned about Student's reading, and that Student felt bad because he could not read and everyone else in his class could. Ms. Gamboa reported Student's guided reading level was "E," the beginning of first grade level; Student struggled with decoding words. Student's writing ability varied depending on the assignment. In math, Student added and subtracted three digit numbers; knew numbers one to 1,000; counted money; broke apart numbers multiple ways; and read data from charts and graphs. He struggled with word problems and occasionally wrote numbers backwards. In word problems, he guessed what the skill being practiced was based on the unit being studied. Student occasionally needed additional prompting or oral directions for transitions.

93. Mr. Hoover observed Student in his general education classroom for 20 minutes and evaluated his behavior using the Behavior Observation of Students in School. Student demonstrated a high rate of active engagement (writing, answering

questions related to the activity at hand, or discussing the activity at hand at an appropriate time) and passive engagement (silent reading or orienting body and eyes toward lesson or activity) comparable to that of his classroom peers. Mr. Hoover observed Student at recess on a different date, for fifteen minutes. Student joined six peers playing basketball and interacted with them, adhered to the rules of the game, and engaged in play-related conversation. When the whistle was blown, Student walked with his peers toward the classroom.

94. Mr. Hoover again assessed Student's cognitive ability by administering the Differential Abilities Scale, Second Edition. Student's General Conceptual Ability Score, reflecting Student's performance on tests of fluid reasoning, verbal comprehension, and visual spatial thinking, was reported as possibly not meaningfully reflecting Student's abilities because of a statistically significant and uncommon difference between cluster scores. It was also reported as noteworthy that Student scored within the average and above average ranges on all subtests when compared to the performance of similar-aged peers within the normative sample. His General Conceptual Ability standard score was 108, in the 70th percentile, but also described as "non-interpretable." Mr. Hoover reported that when compared to similar-aged peers, Student demonstrated average cognitive abilities and his cognitive skills appeared adequate to obtain meaningful benefit in his then-current educational setting (general education and 470 minutes per week of specialized academic instruction in a separate classroom).

95. Mr. Hoover assessed Student's psychological processing in the areas of auditory processing and visual processing/visual-motor integration. Due to Parents' concerns regarding dyslexia, Mr. Hoover again administered the Comprehensive Test of Phonological Processing, Second Edition, as a measure of phonological processing skills including phonological awareness, phonological memory, and rapid naming. These processing skills are related to learning to read, write, listen, compute, and speak.

Student's standard score in the phonological awareness composite was 86, at the low end of the average range, in the 18th percentile. In this category, Student demonstrated awareness of distinct phonemes within words and the ability to manipulate phonemes; he restated words without a targeted sound; combined sounds to make words; and identified specific sounds within words. Student's standard score in the phonological memory composite was 116, in the above average range, in the 86th percentile. Student's standard score in the rapid symbolic naming composite was 101, in the average range, in the 53d percentile. In sum, Student did not present with a deficit in phonological awareness, auditory memory, or rapid naming skills.

96. Student's visual processing and visual-motor integration was again assessed with the Developmental Test of Visual Perception, Third Edition, to measure Student's ability to perceive, discriminate, interpret, and recall visual information, and the pairing of input of visual information with output of motor activity, such as hand control/strength. Student's general visual perception skills received a standard score of 95, within the average range compared to similar-aged peers. On the other composites and subtests, Student's standard scores (100 and 95) or scaled scores were within the average range, with the exception of his ability to identify target shapes hidden among a visually complex background (Figure-Ground subtest), in which his score was in the 9th percentile.

97. Mr. Hoover also administered the Jordan Left-Right Reversal Test, Third Edition, due to Parents' concerns about Student's letter reversals. The test assessed accuracy and error, and Student's scores were in the second percentile for both, classified as in the "atypical range." Student identified reversed images, but he experienced difficulty identifying reversed capital and lower case letters as well as reversed numbers. Mr. Hoover summarized the results of these two tests by stating Student demonstrated overall proficient visual processing and visual-motor integration

skills. He demonstrated significant deficit in the ability to identify letter and number reversals.

98. Student's academic achievement was assessed by Ms. Ward, Ms. Cammarota, and Ms. Kittel as part of the early triennial reevaluation. They conducted a records review of the academic achievement testing that had been done in November/December 2016, and did informal testing during the weeks of May 1 through 9, 2017. The Assessment of Academic Achievement report for the May 17, 2017 IEP meeting reported summaries of the Wechsler, Gray, and Kaufman tests administered five months earlier.

99. Ms. Kittel informally assessed Student's decoding by presenting Student with basic two-syllable words with both closed syllables (short vowels, such as nutshell, bathtub, and nutmeg). Student read words with this pattern with 47 percent accuracy. He read one-syllable words containing a silent e with 72 percent accuracy, but had more difficulty applying the rule to two-syllable words; he read two syllable words containing a closed and silent e syllable (invite, costume, dictate) with an average of 30 percent accuracy. Student tended to read the words quickly and needed reminders to slow down and sound words out. In some cases, he said the correct sounds in the words, but then blended them together incorrectly, such as "batman" for "bathmat" and "invest" for "invite." Student needed to work on improving his ability to read basic two-syllable words.

100. Ms. Ward informally assessed Student's reading fluency with AIMSweb passages. When presented with three randomly selected passages from the first grade level, Student read an average of 41 words per minute with six errors; from the second grade level he read 36 words per minute with seven errors. He used context clues to determine some unknown words in the passages, but needed to continue to improve his decoding skills and apply this to unknown words he came across when reading.

101. Either Ms. Ward or Ms. Kittel informally assessed Student's word recognition/sight words. Student read the first 100 Fry's Instant words with 90 percent accuracy, the second 100 with 85 percent accuracy, and the third 100 with 52 percent accuracy. He had improved his ability to read sight words and needed to continue to work on mastering the words in the third 100.

102. Ms. Kittel informally assessed Student with the Slosson Oral Read Test and Student was reading at the 1.8 grade level. His independent reading level was at the primer/beginning first grade level on the San Diego Quick Assessment, his instructional level was the upper first grade, and his frustration level was at the second grade level. This was consistent with his reading fluency across scores on AIMSweb passages, which indicated his reading fluency level was at the beginning first grade level.

103. Mr. Hoover assessed Student's social-emotional functioning and adaptive functioning with a variety of rating scale instruments. Overall, Mr. Hoover found Student had average social, emotional, and behavioral functioning in school, with some behaviors classified as "at-risk" of deficit in adaptive skills. Parent's ratings caused elevated scores indicating inattention and poor executive functioning, but Ms. Gamboa's ratings indicated Student's inattention and executive functioning was average among his same-age and gender peers.

104. Sari Ockner, OTR/L, assessed Student for occupational therapy services. Based on her assessment, Student demonstrated adequate fine motor, visual-motor, and sensory integration skills to access his educational environment and did not qualify for occupational therapy services to access his general education curriculum.

105. Mr. Hoover considered Student's eligibility for special education and related services under the categories of specific learning disability and other health impairment. Mr. Hoover concluded Student had a significant discrepancy between his ability and achievement in the areas of basic reading skills and reading fluency, as

indicated by norm-referenced tests, district assessments, and report card data. Student demonstrated a basic processing deficit in the area of visual process as indicated by his perception of letter and number reversals. Student met criteria for special education as a student with a specific learning disability. Mr. Hoover concluded Student did not meet the criteria for special education as a student with an other health impairment based on inattention adversely affecting his educational performance because while Parent report and rating scales indicated inattention in the home and community settings, Mr. Hoover's observation and Ms. Gamboa's report and rating scales reflected that Student did not demonstrate inattention in the school setting. Inattention was not evidenced to present an adverse effect on Student's educational performance in the school setting.

106. Data collected during the assessment did not suggest eligibility for special education under any other eligibility category. Mr. Hoover recommended several strategies to use to educate Student. To capitalize on strength in verbal ability, he recommended that when content was assessed, when appropriate, to allow Student to verbally express his idea; and to provide frequent opportunities for discussion of concepts. To address difficulties in identifying letter and number reversals, when Student incorrectly identified letters or numbers, to state the correct word/letter/number and continue the task at hand; to encourage Student to connect meaningful visual images with letters and numbers he commonly confused, such as associating the letter "b" with the image of a boot; and to provide Student with an alphabet strip for use and as a model and tool for self-correction. To support Student's progress in paying attention ("attending behavior"), Mr. Hoover recommended clearly establishing behavioral and task expectations; reinforcing attending behaviors; supporting Student's development of self-awareness of attending behavior by asking him to reflect on his behavior after a task. Finally, to support Student's progress in reading, Mr. Hoover recommended providing Student small group instruction specifically targeting areas of deficit, with

direct instruction, guided practice, prompt feedback, and frequent practice.

107. The May 17, 2017 psychoeducational evaluation report included, for the first time, Student's results from the 2016 Spring aReading curriculum assessment and the 2017 Winter aReading and aMath curriculum assessments. Parents regarded Student's percentile scores as a decline from his earlier performance because in kindergarten he had been in the 10th to 30th percentile with his reading scores, and in spring of first grade he was reported as being in the sixth percentile, and in second grade in the first percentile. Parents realized during the IEP team meeting the focus was always on the goals, not Student's development in relation to his same-aged peers.

MAY 17, 2017 IEP TEAM MEETING AND IEP

108. Santa Monica convened an IEP team meeting on May 17, 2017, to review the results of the early triennial reevaluation. The meeting was classified as an annual and triennial IEP team meeting. Parents, Ms. Kittel, Ms. Cammarota, Ms. Ward, Ms. Gamboa, Mr. Hoover, Ms. Ockner, and Ms. Hurst attended. After reviewing the assessment results, the IEP team discussed Student's eligibility category and agreed to change Student's eligibility category from other health impairment to specific learning disability. The occupational therapist reported Student had the motor skills to do appropriate work but needed reminders to slow down. She shared a strategy for writing for Student, suggesting spelling errors be corrected in a rough draft so Student could copy the correct words.

109. Student's progress on his annual goals from the December 2016 IEP was reviewed. On his first goal, decoding, Student had improved from reading consonant blends and consonant digraphs from 30 percent to an average of 73 percent accuracy. He had achieved the benchmark set for the second reporting period. On his second goal, fluency, as reported above, Student read passages from the first grade level at an average rate of 41 words per minute with six errors. He had improved from his baseline

of 33 correct words per minute with nine errors, but he did not meet the benchmark set for the second reporting period of 55 correct words per minute with no more than four errors. Ms. Gamboa reported Student had advanced from guided reading at "B" level books to "E" level. Ms. Gamboa's written report to Mr. Hoover, and her testimony at hearing, stated "E" level was the beginning of first grade. During the IEP team meeting discussion, according to the meeting notes, Ms. Gamboa stated the "E" level was the end of first grade, which aligned with the information from Ms. Kittel about Student's performance on the Slosson, with his instructional reading level being at grade 1.8. This apparent conflict is resolved by taking the view that Student's challenges in reading were significant and his ability and performance varied across instruments. Student was reading at a slower-than-average pace, with more-than-average errors, within the first grade level range. On his third goal, word recognition, Student's progress with the Fry's Instant Words hit the benchmark for the second reporting period. Overall, Student read 84 percent of the 250 Fry's Instant Words.

110. Santa Monica developed new annual goals for reading in the same areas – decoding, fluency, and word recognition – based on Student's present levels of performance reported above in the informal assessments conducted during the first weeks of May 2017. In decoding, the new goal was, within one year, when presented with a list of 30 two-syllable words with closed and silent e syllables, Student would read the words fluently and with 90 percent accuracy based on teacher-charted data. This goal enabled Student to be involved and progress in the general education curriculum and state literacy standard number 2.3. Student's specialized academic instruction reading teachers were responsible for this goal. In fluency, the new goal was, within one year, when presented with three randomly selected passages from the second grade level, Student would read the passages at an average rate of 70 words per minute with three errors or less based on teacher-charted records. This goal enabled Student to be

involved and progress in the general education curriculum and state literacy standard number 2.4. Student's specialized academic instruction reading teachers were responsible for this goal. In word recognition, the new goal was, within one year, when presented with the third 100 Fry's Instant Words, Student would read the words with 95 percent accuracy as measured by teacher-charted records. This goal enabled Student to be involved and progress in the general education curriculum and state literacy standard number 2.3F. Student's specialized academic instruction reading teachers were responsible for this goal.

111. One Parent asked how sight words were taught and tested, and Ms. Kittel responded that they were worked on out of order. Parent still doubted Student had learned to recognize the words and suspected Student had only memorized the words in the order they appeared on a written list. Parent did not have confidence the progress Santa Monica reported for Student was genuine. Parents were concerned about Student's progress but stated they did see progress now that Student was attending the Learning Resource Center.

112. One Parent also asked about reading fluency for second grade. Student was finishing second grade and was reading somewhere in the first grade level, and the goal for him in one year, near the end of third grade, was for him to fluently read passages at the second grade level. Ms. Kittel stated the teachers hoped at the end of the next year he would be reading at the second grade level. At hearing, Parent explained this was when Parents lost faith that Santa Monica was adequately educating Student. Parents were alarmed that Student was going to be starting third grade but only reading at the beginning of second grade level and Santa Monica personnel could not alleviate this concern.

113. Santa Monica offered the same accommodations as in the December 2016 IEP. Santa Monica again offered Student placement in general education with 470

minutes per week of specialized academic instruction in a separate classroom, with 170 minutes per week of that time at the Learning Resource Center. The IEP team determined that due to Student's reading deficits he needed intensive reading to make meaningful progress on his reading goals. Santa Monica also offered Student extended school year services of specialized academic instruction 60 minutes per day, five days per week, at the Learning Resource Center. The IEP team discussed meeting within the first month of the next school year to check on Student's progress and see how the summer went, and determine if any changes needed to be made to the IEP.

REMAINDER OF SPRING 2017 SEMESTER AND SUMMER 2017

114. Parents were disappointed with what they perceived as Student's lack of progress in reading and believed Santa Monica had not provided Student an adequate education. Parents had hoped special education interventions would make Student "catch up" to or "close the gap" with his same-aged peers. Although all of Student's teachers said Student was making progress and reported he met most or all of his goals, his classmates were advancing at a far greater pace than Student was, and the result was he was falling further behind them.

115. On June 2, 2017, Parents notified Santa Monica they were dissatisfied with Santa Monica's offer in the May 17, 2017 IEP and planned to place Student for the 2017-2018 school year at Westmark, and to supplement his program with additional educational therapy/individual academic instruction and seek reimbursement from Santa Monica for all costs including transportation. Santa Monica received Parents' letter on June 5, 2017. On June 9, 2017, Santa Monica sent Parents prior written notice refusing to change Student's placement from a public school program to a private school program, and refusing to reimburse Parents for any tuition or costs associated with Parents' unilateral placement of Student at Westmark or any other private educational program or services.

116. Santa Monica issued Student's report card for the spring semester on June 9, 2017. Information about the reading foundational skills, reading literature, and informational text topics within the category of English Language Arts was reported in the progress reports on Student's goals, detailed above, from the May 17, 2017 IEP team meeting. In writing, Student scored a 3, approaching mastery. In listening and speaking, Student scored a 4, mastery of the standards. In the category of Math, Student scored a 4 in all areas addressed in the fall semester. Student scored a 4 in Social Science as well as Science. Ms. Gamboa wrote comments reporting Student's academic and social progress over the school year, including "big strides in reading." Student's "Just Right Reading Level" was "E."

117. During extended school year, Ms. Kettel was prepared to see Student daily for intensive reading interventions, but Student only attended eight out of 19 days of the extended school year in July 2017, due to family vacation. One Parent had approached Ms. Kettel about privately tutoring Student during the summer, but Ms. Kettel declined.

2017-2018 SCHOOL YEAR, THIRD GRADE AT WESTMARK

118. Student attended Westmark School in Encino for the 2017-2018 school year, third grade. Westmark was a private school and for the "lower school," included only grades three through five in the 2017-2018 school year due to low applications for even lower grade levels. It had in earlier years been a nonpublic school certified by the California Department of Education, but at the time Student attended, it was not. Westmark described itself as a school that only enrolled students diagnosed with a language-based learning disability and average to high average intelligence. Students entering Westmark typically had a significant delay in reading, and for grade school students, they ranged from below average to low average, from below the first percentile to upward of the 20th to 25th percentile, with the 16th percentile being the

benchmark between below average to low average in standardized testing. All the lower school teachers were trained in Lindamood-Bell approaches and in Slingerland, an Orton-Gillingham methodology.

119. Westmark's Language Programs and Assessment Coordinator Paul Curtis testified that the majority of the students at Westmark, by the time they graduated high school, were reading at grade level. Mr. Curtis acknowledged that while the bulk of students at Westmark closed the gap and caught up to their grade-level peers, each student was an individual and different from one another, and the process and trajectory was different for each student; each student responded to the program in his or her own way, but typically students responded to the program, made gains in their reading skills, and began to close that gap. Westmark's lower school students started the day with reading for first and second periods, 90 minutes per day except late-start Thursday, for a total of 400 minutes per week. At the lower school, teachers for all subjects were also reading teachers, to assist students with generalizing reading skills across all areas.

120. Parents enrolled Student and provided Westmark some records from Santa Monica and the neuropsychological assessment⁶ by Dr. Griesbach from November 2016. Westmark created a written Student Education Plan for Student, which incorporated information from the various sources Parents provided. Dr. Griesbach had diagnosed Student with dyslexia, attention deficit hyperactivity disorder, and "difficulty with central auditory processing," noting, "based on the phonological difficulties noted on the school district testing, [Student] is likely to have difficulty with Central Auditory Processing." Dr. Griesbach opined Student did not appear to be a generally anxious

⁶ Westmark required Students to have "neuropsychological testing" to be admitted.

child but given his ADHD and his dyslexia, she was not surprised he was anxious about being in school as his ADHD impacts him both academically and socially on the playground. Westmark was aware Student took an extended-release stimulant medication for his ADHD. Westmark noted in Student's education plan that "per report, once [Student's] ADHD has been adequately treated, he should have testing done to determine if he has Central Auditory Processing Disorder."

121. Upon entrance, Westmark administered four reading assessments to all students to document present levels of performance. Student took the "pre-test" on June 3, 2017, while still attending Grant Elementary. The Woodcock Reading Mastery Test measured Student's word attack (decoding) as a standard score of 99, at the third grade level, in the 47th percentile, and his word identification (sight words) as a standard score of 93, at grade level 2.1, in the 31st percentile. The Gray Oral Reading Test, Fifth Edition, measured Student's rate at a scaled score of seven, at grade level 1.2, in the 16th percentile; his accuracy at a scaled score of six, at less than first grade level, in the ninth percentile; his fluency (rate plus accuracy) at a scaled score of six, at grade level 1.0, in the ninth percentile; and his comprehension at a scaled score of eight, at grade level 2.0, in the 25th percentile. The Peabody Picture Vocabulary Test, Fourth Edition, measured Student's receptive vocabulary at a standard score of 117 (above average range), grade level 3.4, in the 87th percentile. The Symbol Imagery test had no explanation, and Student's raw score was 17 out of 50, standard score 91, age equivalent seven years and seven months (Student was eight years and one month old), in the 27th percentile.

122. These same tests were repeated on March 20, 2018, and reported in his education plan document in a chart alongside his pre-test scores as re-test scores. After approximately seven months at Westmark, Student's third grade word decoding standard score was 4 points, and 9 percentiles, lower than before he started, with a

standard score of 95, in the 36th percentile, but still in the average range. Student's standard score in sight words remained the same, 93 (average range), his grade level increased from 2.1 to 2.5, and he moved from the 31st to the 33d percentile. His reading rate scaled score declined from seven to six, his percentile rank declined from 16th to ninth, but his grade level increased from 1.2 to 1.4. His reading accuracy scaled score and percentile remained constant, but his grade level increased from below first grade to "1.0/1.4." His fluency scaled score and percentile remained the same, but his grade level increased from 1.0 to "1.2/1.4." His comprehension scaled score and percentile remained the same, but his grade level increased from 2.0 to 2.2. His receptive vocabulary standard score increased from 117 to 134 (upper extreme range), his percentile ranking increased from 87th to 99th, and his grade level increased from 4.3 to 7.5. His Symbol Imagery standard score increased from 91 to 97 (average range), increasing his percentile ranking from 27th to 42d, and increasing his age equivalent from seven years and seven months to eight years and five months, when Student was eight years and 10 months old.

123. There was a third column on the assessment data grid of Student's education plan for another re-test, but it was blank. Student did not provide any progress reports, report cards, end of year summaries, or other documentation of his end-of-year accomplishments or present levels of performance. None of Student's Westmark teachers testified. Student's academic counselor Robyn Bridges, who oversaw Student's academic program, interacted with his teachers, and filtered all of Student's report card comments, testified that Student had a successful year in math, an area of strength for Student. Student had made some progress in reading and gained independence in reading. In math, all word problems and directions were read aloud by the teacher to the whole class for assessments, to ensure the reading piece did not interfere with the students' math performance. In reading, Student was exposed to "high

interest/low level readers,” described as books with words that could be easily decoded and phonetically sounded out, with single syllable words and recognizable sight words, but on topics of interest to older students, such as a mystery, not just topics first graders liked such as puppies. Student’s penmanship improved through the Handwriting Without Tears program. Student’s spelling had improved, but he used support from his teachers. He sometimes used the assistive technology of voice-to-text and sometimes he typed, but he often preferred to go through the process of writing by hand. At the beginning of the year, Student was reserved/shy and not confident with his writing skills when participating in the Writers’ Workshop program component of publishing and sharing his work with peers, but he gained independence with writing and, at the conclusion of the year, he said it was his favorite subject, over math.

124. Mr. Curtis,⁷ who did not have a teaching credential, worked with Student after school one-on-one for eight or nine hours, which Parents paid for as an after-school supplemental tutorial program. He was not one of Student’s daily teachers and only had observed Student in the classroom as part of his duties as the reading program supervisor. He also had met with Student’s teachers individually to review the progress of all the students. Mr. Curtis testified that Student gained confidence in reading over the year. He stated on a common list of 1,000 words that construct a majority of sight words used or seen on a daily basis, Student had mastered a majority of them from 100 to 500, and at the time of the hearing was working on “list 700.” He described sight word recognition as an isolated skill, but indicated Student instantly recognized words

⁷ Mr. Curtis held a bachelor’s degree in English Literature from University of California, Los Angeles and, at the time of hearing, was half way through a five-year master’s degree program in educational therapy at California State University Northridge.

upward of three syllables that often “do not play phonetically fair,” which he said were many words in the English language, and Student could use those sight words to access text at the high second grade level. Mr. Curtis did not report Student in fact was reading at the high second grade level, only that he was learning words considered to be at a high second grade level. Any suggestion or inference Student read anywhere within the second grade level was not supported by data charted along with older data still reflecting a first grade reading level.

TESTIMONY OF STUDENT’S EXPERT FRANKLIN MANIS, PH.D.

125. Franklin Manis, Ph.D., was a professor at the University of Southern California in the Psychology Department, where he had been teaching for 37 years. He held a doctorate in child psychology from the University of Minnesota, Institute of Child Development. Dr. Manis taught undergraduate courses in child development and children’s learning, focusing on literacy and language, and taught graduate courses of cognitive development. He supervised master’s and doctorate degree students, and supervised research on reading development in children, dyslexia, and the course and causes of dyslexia, and sat on dissertation committees of other students whose areas overlapped with his. He received research grants and all the studies he conducted related to dyslexia involved testing and comparing children with dyslexia to children matched as closely as possible who did not have serious reading problems. He was a reviewer and on the editorial boards of several journals; his role was to determine if papers submitted for publication had sufficient scientific merit to be published and, as an editor, to choose reviewers and determine if an article was ready to be published, needed modification, or should be rejected. His scholarship focused on development of children’s reading skills and dyslexia; his publications were voluminous. He was an expert in children’s reading development and dyslexia.

126. Dr. Manis was not paid for his testimony or review of Student's file. He had not testified before, had not participated in the development of an IEP, or in the development of IEP goals. Dr. Manis met Student one time, in a restaurant with Parents, for about an hour a few days before his testimony. Dr. Manis did not assess Student, but had thoroughly reviewed his records and was familiar with small details about Student's assessment scores and percentile rankings over time. Dr. Manis did not observe Santa Monica's pull-out specialized academic instruction program at Grant Elementary or the services Ms. Kittel offered at the Learning Resource Center. He did not observe Student at Westmark or Westmark's program in general during the 2017-2018 school year.

127. Dr. Manis defined dyslexia as an unusual and persistent difficulty in a child reading/seeing the written word. Numerically, it could be identified by scores below the 16th percentile on the fluency score of the Gray Oral Reading Test, Fifth Edition, and an average or above average percentile ranking on tests of verbal or nonverbal ability, and without significant behaviors or emotional problems, and without visual or hearing impairments (a "relatively pure dyslexia"). Another measure for diagnosing dyslexia was if there was approximately a one-grade-level gap in reading in second grade, but a two-grade-level gap in fifth grade. Children with dyslexia commonly have problems with letter reversals. Researchers do not know why; there are many theories, but the most accepted one is that the children have not become automatic at reading letters and words. A child with dyslexia has not mastered reading to automaticity; a child might see letters or words and read them correctly one day, but not correctly the next day, because they often are guessing. They cannot remember which one is "b" or "d," or "M" or "W," and they might get it right by guessing, but they do not have a secure knowledge of it because the whole brain system is not built up to become a reader yet. A typical child might read a word two to three times and have the word, like those on the Fry's Instant Words lists, in their memory for the rest of their life. Children with

dyslexia require 10 to 20 times the amount of practice as a typical child to learn words. Letter reversals are common among all first graders, and compared to children reading at Student's level it is common, but Dr. Manis estimated Student's letter reversals might have been a little more severe than commonly seen.

128. Dr. Manis concluded Student's records reflected a classic developmental pattern for dyslexia, specifically average to above average abilities in math and most importantly verbal skills, but a discrepancy between verbal and math skills and his achievement in the area of reading. Student had a gap in reading and reading comprehension, with the most distinctive gap between above average/high listening comprehension and below average/low reading comprehension. A key signature of dyslexia was skills ranging from above average to below average. Dr. Manis's recollection of Student's early testing scores was that his reading comprehension was a little higher than his ability to read printed words on a page (his fluency), in the 17th to 30th percentiles versus 10th percentiles. In kindergarten and first grade, Student's testing scores were borderline average or low average, but his records reflected he did not progress beyond mid-first grade for reading skills and phonological skills, key skills necessary to read words "on the printed page."

129. Dr. Manis described Student as "extremely impaired in reading," "in the moderate to severe range of impairment among students with dyslexia," and he "surely fit[] within moderate to severe dyslexia," as a case where he had a lot of remediation and was still quite behind.

130. Dr. Manis compared Student's scores on the Comprehensive Test of Phonological Processing, showing an overall standard score of 86 in the 18th percentile, at the borderline of the low average range, to his standard score on the phonological processing subtest of the Kaufman Test of Educational Achievement from late 2016 which was higher, 105, and squarely in the average range. He stated it was hard to

interpret the difference between test scores because they were different materials, administered on a different testing occasion, and he could not say which one was the correct score. As a researcher, his approach was to take both into account and hypothesize a skill level somewhere in between.

131. Dr. Manis had personally only done one study about remediation of dyslexia, but had reviewed dozens of articles on the topic over the decades. There were two schools of thought regarding the appropriate timing of interventions for children when they begin having reading difficulties. One model was to wait until educators had a clear diagnosis of dyslexia and then begin intense interventions, sometimes referred to as “wait to fail.” Research showed it was difficult to bring children up to grade level with later intervention. In a commonly replicated finding, originally made by Joseph Torgesen, children with dyslexia, upon receiving 80 to 100 hours of remediation in third to fourth grade could come up to close, but not quite, to grade level. The remediation included intensive one-to-one instruction, but the children in the study did not come close to grade level on fluency or speed.

132. The other model was early intervention, to catch children when they first showed signs of a delay in reading; one might not yet be able to conclude the child had a dyslexia diagnosis, but the child was struggling and falling behind in reading. Early intervention was the model highly supported by researchers. Torgesen and other researchers showed intensive intervention can prevent some reading difficulties children with dyslexia have, and they can be brought up to about a third grade level in 80 to 100 hours. Dr. Manis said these interventions were not the same as interventions in a school; they were the highest quality intensive interventions. Dr. Manis noted it was hindsight to look at Student’s record in third grade and say that is what should have been done.

133. On the subject of interventions in school, Dr. Manis described a very thorough longitudinal study at public schools in Connecticut by Sally Shaywitz at Yale

University. There were others on the topic but the Connecticut study was the most recent and the most definitive. While acknowledging that every child is different, Dr. Manis explained that in that study, children identified with dyslexia in first grade (defined as having a percentile gap in correct grade-level words per minute – accuracy only, not fluency – of 50th percentile to 16th percentile), and who got a standard amount of time out of general education class in special education, and standard accommodations in public school, remained at the same gap by the time they were in twelfth grade. For these students, their standard score gap remained approximately the same, but the grade level deficit grew over time, expanding from approximately one half grade level during first grade, to approximately two grade levels by twelfth grade. The outcome was that students with dyslexia who received public school special education interventions to address their reading deficits graduated from high school reading at about the tenth grade level.

134. In studies by Joseph Torgesen regarding early interventions, students who started intensive early interventions at the beginning of first grade closed the gap with their same-aged peers at the end of third grade only in reading accuracy, but not fluency. These students maintained reading accuracy levels with their same-aged peers through twelfth grade.

135. Dr. Manis' impression of Student's trajectory was that Student had proven to be resistant to remediation and required a higher level of intervention. Even without knowing the details of the interventions he had received, he could say that it was not budging him much from his functional first grade reading level skills. Dr. Manis thought Student showed in second grade that in the public school program, he would not catch up. He recalled that Student was close to meeting or met many of his goals, he had not been as successful in word reading and fluency, but at best, with the interventions he received, Student would probably remain a grade or a grade and a half behind. He

opined it was possible that Student would “turn around,” but it was unlikely because children do not “turn on the lights and start accelerating.” He noted Student needed to make one and a half year’s progress every year to get caught up, and he had not shown up to this point that he could even make one year’s progress. Dr. Manis hoped Student could make one and a half year’s progress every year, and that would put him on target for catching up in three or four years.

136. Dr. Manis had some familiarity with Westmark and some years earlier had toured the school and observed classrooms there. He had not observed Student at Westmark. From what he knew of Westmark, Dr. Manis believed many children who attended Westmark did get “caught up,” but some did not. He thought on the average, Students who attended Westmark did better than they otherwise would in a public setting. He opined Student was appropriately placed at Westmark.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁸

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁹ 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

⁸ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁹ All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

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

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the

IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Supreme Court’s recent decision in *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S.____ [137 S.Ct. 988, 999, 1001, 1002] (*Endrew F.*) reaffirmed that 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; “the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end” (*Id.* at pp. 996 and 999 (and quoting *Rowley*.) Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Id.* at p. 999, citing *Rowley*, 458 U.S. at pp. 206–207.) “*Rowley* had no need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. That case concerned a young girl who was progressing smoothly through the regular curriculum. If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must 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.” (*Endrew F.*, *supra*, at p. 1000.)¹⁰

¹⁰ The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528]; 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 case, Student, as the complaining party, bears the burden of proof on the issue in the case.

ISSUE: FAILURE TO PROVIDE "APPROPRIATELY INDIVIDUALIZED AND INTENSIVE INTERVENTIONS" RE READING DISABILITY

5. Student argues that Santa Monica failed to offer appropriate and sufficient special education since February 16, 2016. Student asserts the reported progress on Student's goals was illusory and any actual progress on goals did not amount to any progress in his ability to read actual passages at his grade levels, meaning Santa Monica's specialized academic instruction services were inadequate because what Santa Monica provided did not enable Student to overcome his dyslexia and close the reading performance gap with his same-aged peers. Student contends Parents acted reasonably to supplement Santa Monica's special education program with private tutoring during fall 2015 and spring and summer 2016, and to move Student to Westmark for third grade; Student seeks reimbursement for all costs of services, placement, and transportation from February 16, 2016, through the 2017-2018 school year.

6. Santa Monica argues in each of the IEPs at issue in this case, February 16, 2016, December 19, 2016 (as amended on January 17, 2017), and May 17, 2017, Santa

Monica was aware of Student's reading deficits and drafted goals in each area of need that took into account Student's present levels of performance within various aspects of reading and appropriate estimates of what Student could reasonably be expected to accomplish within one year. Student partially met or met each goal every time goals were reviewed, and new goals were set more frequently than annually as Student made gains in his skills in areas of reading deficit. Santa Monica contends it offered Student ever-increasing and appropriate amounts and types of specialized academic instruction to enable Student to make progress on and meet his goals, while Student participated in the general education curriculum in a general education classroom with typical peers, Student's least restrictive environment. Santa Monica asserts it did not deny Student a FAPE and therefore Student is not entitled to reimbursement for any additional services or placement Parents procured.

Legal Authority

7. The IDEA defines "special education" as specially designed instruction to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. (20 U.S.C. § 1401(29)(A); 34 C.F.R. § 300.39(a)(1); see also Ed. Code, § 56031, subd. (a).)

8. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

9. The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for

enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS March 25, 1998).)

10. The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 (the use of percentages tied to the completion of discrete tasks is an appropriate way to measure student progress); *Virginia S. ex rel. Rachael M. v. Department of Educ.* (D.Hi. Jan. 8, 2007, Civil No. 06-00128 JMS/LEK) 2007 WL 80814, *9.)

11. A school district must deliver each child's FAPE in the least restrictive educational environment appropriate to the needs of the child. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) In determining the educational placement of a child with a disability, a school district must ensure that: 1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; 2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; 3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; 4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and 5) a

child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2).)

12. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: 1) the educational benefits of placement full-time in a regular class; 2) the non-academic benefits of such placement; 3) the effect [the student] had on the teacher and children in the regular class; and 4) the costs of mainstreaming [the student]. (*Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H., etc.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Bd. of Educ.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's syndrome].) Whether education in the regular classroom, with supplemental aids and services, can be achieved satisfactorily is an individualized, fact-specific inquiry. (*Daniel R.R., supra*, 874 F.2d at p. 1048.) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Id.* at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs;

designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

13. No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) The IDEA does not contemplate that all annual goals will be achieved. It expressly provides that one of the purposes of the annual IEP review is to determine whether annual goals are being achieved and *revise* the IEP to address any lack of expected *progress toward* those goals. (34 C.F.R. § 300.324(b)(1)(ii)(A), emphasis added.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School Dist.* (2d Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist. No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450; *Perusse v. Poway Unified School Dist.* (S.D. Calif. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759, *11.)

14. To determine whether a school district offered a student a FAPE, the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred

another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*) An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parent's desires," citing *Rowley, supra*, 458 U.S. at p. 207]; see *Gregory K., supra*, 811 F.2d at p. 1314.). "An 'appropriate' public education does not mean the absolutely best or 'potential-maximizing' education for the individual child." (*Gregory K., supra*, 811 F.2d at p. 1314, citing *Rowley, supra*, 458 U.S. at p. 197 n. 21, 200.) A parent's preferred placement, though better for the child, does not necessarily mean the placement proposed by a school district is inappropriate. (See *Gregory K., supra*, 811 F.2d at p. 1314.)

15. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).) An IEP is "a snapshot, not a retrospective." (*Id.*, citing *Fuhrman v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrman*).) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p. 1149; *Fuhrmann, supra*, 993 F.2d at p. 1041 ("an IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted").) Also, after-acquired evidence "may shed light" on the adequacy of the program a public agency proposed, although such evidence is not outcome-determinative. (*Adams, supra*, 195 F.3d at p. 1149.) The holding of *Adams* "that exclusive use of hindsight is forbidden does not preclude consideration of subsequent events. [Citation to *Adams, supra*, 195 F.3d at p. 1149-1150, quoting *Fuhrmann, supra*, 993 F.2d at p. 1041.] The clear implication of permitting some

hindsight is that additional data, discovered later in the evaluation process, may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006.)

Analysis

FEBRUARY 16, 2016 IEP

16. At the time of Student's annual IEP in February 2016, Santa Monica was aware of Student's average cognitive abilities and his deficits in attention and reading and writing skills. With the 240 minutes per week of specialized academic instruction in a separate classroom focused on reading instruction plus general education curriculum, including reading instruction, in the general education classroom, Student had made progress on each of his four annual goals in the area of reading and writing and had met three of the goals. He wrote all the letters of the alphabet, upper- and lowercase, when they were dictated to him out of order by letter name or sound, with 100 percent accuracy. Student was 90 to 95 percent accurate at segmenting and blending words that contained three sounds. And when shown an upper- or lowercase letter, he produced the sound of the letter with 100 percent accuracy. None of these foundational reading skills were possible for Student with any degree of accuracy or reliability one year earlier. On the fourth goal, Student had exceeded the goal in one aspect, identifying the beginning, middle and ending sounds in words, but he did not fully meet the second component of the goal regarding deleting sounds. The methodologies Santa Monica used in providing specialized academic instruction during the prior year had effectively enabled Student to make meaningful progress in his areas of deficit in reading and writing.

17. Santa Monica took new stock of Student's abilities in reading and developed five new goals in the area of reading and writing, including spelling

consonant-vowel-consonant words and words with short vowel digraphs; deleting and substituting sounds in words that contained four sounds; segmenting and blending sounds in words that contained four sounds; decoding and reading short consonant-vowel-consonant words; and recognizing and reading the first 100 words on Fry's Instant Words list. All of these goals were aligned to the general curriculum/state standards, although not necessarily for the grade level in which Student was and would be during the year in which the IEP would be in effect. But, as noted by Dr. Griesbach and Dr. Manis, Student had severe dyslexia, which markedly delayed and impaired his acquisition of fundamental reading skills such as letter and sound identification, and other skills that sequentially develop from those, such as decoding unfamiliar written words and recognition with automaticity of the written expression of the most common words in the English language. The IEP team estimated, based on what they knew of Student's abilities, challenges, and past timetable for his progress on and achievement of prior goals, Student could achieve the new goals within one year. Student did not demonstrate the goals were not appropriate or insufficiently ambitious.

18. Santa Monica was aware, based on Student's first grade, fall semester, report card and input from Student's teacher during the IEP team meeting, that Student was making some progress toward standards in writing, and was approaching mastery of standards in listening and speaking, and in all areas of math, social studies, and science. Santa Monica considered accommodations Student required to continue to make progress on his goals and the general education curriculum. The IEP team determined Student's goals and accommodations could be implemented in the general education classroom at the neighborhood school Student attended, and increased the time he received specialized academic instruction in a separate classroom by 30 minutes per week, adding some service on the late-start day to increase service from four to five days per week.

19. Based on Student's success in meeting his goals in the prior year and his success in the general education classroom in some areas of English Language Arts as well as math, social studies, and science, it was reasonable for Santa Monica to offer Student continued placement in the general education classroom with 270 minutes per week of specialized academic instruction in a separate classroom. The reasonableness of Santa Monica's offer was reinforced by Student's subsequent fulfillment of his goals slightly faster than estimated, by the time of the early annual IEP 10 months later in December 2016.

20. Student failed to demonstrate that in the February 16, 2016 IEP, Santa Monica did not offer Student, in Student's words, "an appropriately individualized and intensive program of special education interventions" to address Student's disability-related deficits in reading.

DECEMBER 19, 2016 IEP, AS AMENDED ON JANUARY 17, 2017

21. Parents noted that Student did not seem to read well despite receiving special education and tutoring outside school. At their request, Santa Monica assessed Student's academic achievement during the fall of 2016 and held an early annual IEP team meeting to review Student's progress on his goals. Student's report card from the spring semester in first grade reflected that he had approached mastery of or mastered all standards reported. Student met each of his five goals. He spelled short consonant-vowel-consonant and short vowel digraph words with at least 90 percent accuracy. He deleted or substituted individual sounds in words with four sounds with at least 90 percent accuracy. He segmented and blended sounds in words with four sounds with at least 80 percent accuracy. He read short consonant-vowel-consonant words with at least 90 percent accuracy. And he recognized and read the first 100 words on the Fry's Instant Words list with at least 90 percent accuracy.

22. The standardized testing of Student's academic achievement reflected similar results to the prior testing almost two years earlier: Student's achievement in verbal skills, math, and overall was in the average and above average ranges for second graders, but his total reading skills and skills in components of reading such as decoding, fluency (speed combined with accuracy) were below average for second graders, and his reading comprehension of second grade passages was average but required significant effort because his decoding and word reading skills only enabled him to read parts of the passages.

23. Parents focused on comparing the percentile rankings from Student's scores on standardized tests from the middle of kindergarten and the middle of second grade, and assert Student's reading abilities actually declined over the two years because, in comparison to his same-aged peers, his performance placed him in a lower percentile. This analysis ignores Student's measurable improvement from his baselines taken in February 2016. Student had severe dyslexia, marked by a significant difference and delay in the brain's ability to perceive and process written language. Through frequent repetition and drills, Student successfully demonstrated acquisition of fundamental skills of reading, and writing, such as letter and sound recognition and manipulation, familiarity with word patterns and word families; and whole word recognition. Student did not acquire these skills at the same pace as his same-aged peers, because his peers did not have any impairment but Student had a severe impairment. This does not detract from the meaningful progress Student actually made as reflected by his fulfillment of the goals from his February 2016 IEP by December 2016, and his average to above average academic achievement in other areas of the general education curriculum. Student made progress that was appropriate in light of his circumstances.

24. Santa Monica again determined Student's present levels of performance in reading and developed three new goals in the area of reading: decoding and reading words with consonant blends and consonant digraphs; improving reading fluency to read first grade passages at 70 words per minute with no more than four errors; and recognizing and reading the first 250 words on Fry's Instant Words list. All of these goals were aligned to the general curriculum/state standards, although not for the grade level in which Student was and would be during the year in which the IEP would be in effect. But, as observed before, Student had severe dyslexia, which markedly delayed and impaired his acquisition of early reading skills such as decoding unfamiliar written words and recognizing with automaticity the written expression of the most common words in the English language. The IEP team estimated, based on what they knew of Student's abilities, challenges, and past timetable for his progress on prior goals, Student could achieve the new goals within one year. Student did not demonstrate the goals were not appropriate or insufficiently ambitious.

25. Santa Monica was aware, based on Student's first grade, spring semester, report card and input from Student's second grade teacher during the IEP team meeting, that Student had been successful in the general education classroom before and was adequately participating and progressing in his second grade subject matter. Santa Monica considered accommodations Student required to continue to make progress on his goals and the general education curriculum and added some that he had not had before, such as reading word problems aloud to him and audiobooks. The IEP team determined Student's goals and accommodations could be implemented in the general education classroom at the neighborhood school Student attended, and proposed to increase the time and type of specialized academic instruction in a separate classroom Student received by adding another 30 minutes per week of specialized academic instruction per week in a small group, and adding one-to-one or two-to-one

instruction from a reading specialist at the Learning Resource Center for 90 minutes per week, in addition to the 300 minutes per week of small group specialized academic instruction at Grant. Based on Parents' approval of what they observed at the Learning Resource Center, they requested and Santa Monica offered even more time for Student with Ms. Kittel, increasing the offer at the Learning Resource Center to 170 minutes per week, for a total of 470 minutes per week of specialized academic instruction in reading.

26. Based on Student's success in meeting his goals in the prior year and his success in the general education classroom in some areas of English Language Arts as well as math, social studies, and science, it was reasonable for Santa Monica to offer Student continued placement in the general education classroom with 470 minutes per week of specialized academic instruction in a separate classroom, including 170 minutes per week of one-to-one or two-to-one instruction with a credentialed special education teacher with over 30 years of experience and expertise in a variety of methodologies and programs for addressing children's reading disabilities. The reasonableness of Santa Monica's offer was reinforced by Student's subsequent fulfillment of his goals faster than estimated, by the time of the early triennial IEP in May 2017.

27. Student failed to demonstrate that in the December 19, 2016 IEP, as amended on January 17, 2017, Santa Monica did not offer Student, in Student's words, "an appropriately individualized and intensive program of special education interventions" to address Student's disability-related deficits in reading.

MAY 17, 2017 IEP

28. Parents continued to be disappointed with Student's inability to read at grade level despite receiving special education and tutoring outside school. At their request, Santa Monica conducted an early triennial comprehensive reassessment and held an early annual and triennial IEP team meeting to review Student's progress on his goals and performance in all areas of suspected disability. The results of Mr. Hoover's

psychoeducational evaluation led the IEP team to change Student's eligibility category from other health impairment due to attention deficits to specific learning disability. Student was diagnosed with an attention disorder and prescribed medication by his pediatrician, but inattention did not interfere with Student's ability to access his education; it was his identified visual processing disorder and severe discrepancy between his general cognitive ability and his performance in the area of reading that impacted Student's progress in the general education curriculum. Student's report card from the fall semester in second grade reflected that he had been making some progress toward and was approaching mastery of all standards reported. Student partially met and was on track to meet each of his annual goals. He improved his accuracy in reading words with consonant blends and consonant digraphs from 30 percent to 73 percent accuracy. He improved his reading fluency with first grade passages from 33 words per minute with eight errors to 41 words per minute with six errors. And he recognized and read the first 100 words on the Fry's Instant Words list with 90 percent accuracy and the second 100 words with 85 percent accuracy; overall he read the first 250 words on the Fry's Instant Words list with 84 percent accuracy.

29. The informal reading assessments conducted shortly before the May 2017 IEP team meeting measured Student's reading at the 1.8 grade level, but in other systems of measuring reading levels he was at the beginning first grade level (San Diego Quick assessment and Reader's Workshop Level "E"). Santa Monica again determined Student's present levels of performance in reading and developed three new goals in the area of reading: decoding and reading two-syllable words with a closed and silent e syllable; improving reading fluency to read second grade passages at 70 words per minute with no more than three errors; and recognizing and reading the first 300 words on Fry's Instant Words list with 95 percent accuracy. All of these goals were aligned to the general curriculum/state standards for second grade, but Student would be in third

grade during the year the IEP would be in effect. But, as observed before, Student had severe dyslexia, which markedly delayed and impaired his acquisition of early reading skills such as decoding unfamiliar written words and recognizing with automaticity the written expression of the most common words in the English language. The IEP team estimated, based on what they knew of Student's abilities, challenges, and past timetable for his progress on prior goals, Student could achieve the new goals within one year, they were challenging, and achievement of them would enable him to make progress in the general education curriculum. Student did not demonstrate the goals were not appropriate or insufficiently ambitious.

30. Parents focused on the fact that the goal, by the end of third grade, was for Student to achieve tasks in reading that were appropriate only for a second grader. They expected Santa Monica to "close the gap" and "catch up" Student to the same levels of reading ability and performance as his same-aged peers. Santa Monica expressed a desire to bring Student up to grade-level standards, but the IDEA did not require Santa Monica to achieve any particular outcome. Student made measurable, meaningful improvement from his reading-ability baselines taken in December 2016 and, overall, from the beginning of his special education services. Student had severe dyslexia, marked by a significant difference and delay in the brain's ability to perceive and process written language. Through frequent repetition and drills, Student successfully demonstrated acquisition of fundamental skills of reading and writing, such as familiarity with word patterns and word families and whole word recognition. Student slowly acquired these skills through the frequent repetition Dr. Manis explained is required for children with dyslexia to develop the automaticity necessary to recognize and read written words.

31. The studies Dr. Manis cited regarding the remediation of the reading abilities of children with dyslexia only addressed the reading rate, the number of words

per minute in grade-level passages, of children who received public school-based versus other unspecified forms of "intensive intervention." Dr. Manis did not report that services in the Torgesen study or others in any measure cured dyslexia, or affected/improved other aspects of reading performance of children with disability. What Dr. Manis termed the Connecticut study indicated that children with dyslexia who received special education in public schools graduated high school reading at the 10th grade level. It cannot be said that children with dyslexia who graduate high school with a regular diploma and read at the 10th grade level (as measured by the number of words per minute in grade-level passages) have not received educational benefit from their programs of special education. While it might be possible for some children to achieve higher levels of reading performance on a variety of measures through different methodologies or degrees of "intensiveness," school districts are not required to maximize the potential of a student with a disability but must provide a student with educational benefit that is appropriate in light of the child's circumstances. And that educational benefit must be provided in the child's least restrictive environment, according to the Congressional mandate that children be removed from the general education environment no more than is necessary to adequately educate the child. Separating disabled children into what some classify as "segregated" schools for the disabled, with no access to same-aged, typically developing peers must be done only when required to deliver instruction that enables the child to make progress appropriate in light of his or her circumstances.

32. In the area of reading, Student was working at the level of a first grader despite his competence in second grade subject matter in other areas. This does not detract from the meaningful progress Student actually made as reflected by his progress on the goals from his December 2016 IEP by May 2017. His report card for spring 2017, issued a few weeks after the May 2017 IEP, reflected that he approached mastery of the

second grade standards for writing and language, and mastered the second grade standards for listening and speaking as well as all areas of math, social studies, and science. Within his area of disability, reading, and all other areas of the general education curriculum, Student made progress that was appropriate in light of his circumstances.

33. Santa Monica was aware, based on Student's second grade, fall semester, report card and input from Student's second grade teacher during the IEP team meeting, that Student had been successful in the general education classroom before and was adequately participating and progressing in his second grade subject matter. Santa Monica considered accommodations Student required to continue to make progress on his goals and the general education curriculum and continued the prior accommodations. The IEP team determined Student's goals and accommodations could be implemented in the general education classroom at the neighborhood school Student attended, and proposed to provide the same types, frequencies and duration of specialized academic instruction in a separate classroom, 300 minutes per week in a small group at Grant Elementary, and 170 minutes per week at the Learning Resource Center, for a total of 470 minutes per week. Santa Monica also, for the first time, offered Student extended school year service, with one hour per day of one-to-one instruction from Ms. Kittel at the Learning Resource Center.

34. Based on Student's success in meeting his past goals and making demonstrable progress on his most recent goals, and his success in the general education classroom in some areas of English Language Arts as well as math, social studies, and science, it was reasonable for Santa Monica to offer Student continued placement in the general education classroom with 470 minutes per week of specialized academic instruction in a separate classroom, including 170 minutes per week of one-to-one instruction with a credentialed special education teacher with over 30 years of

experience and expertise in a variety of methodologies and programs for addressing children's reading disabilities.

35. The conclusion that Santa Monica's offer was reasonably calculated to enable Student to make progress appropriate in light of his circumstances was reinforced by Student's subsequent equivalent pace of progress at Westmark in the 2017-2018 school year, a school supposedly infusing reading instruction across all content areas throughout the day. Student did not submit much evidence of his progress while at Westmark, but the limited information made available suggested Student started the school year reading at a beginning first grade level and, a little before the end of the year, he was reading at the beginning to middle first grade level. With respect to decoding/word attack, both pre-test and re-test scores reflected Student's decoding skills were at grade level 3.0, reflecting no improvement and therefore a decline in Student's percentile ranking as same-aged peers made gains. With respect to sight words/word identification, pre-test and re-test scores showed an improvement from grade level 2.1 to 2.5, about a half year gain over three-quarters of the school year. Student's reading rate increased from grade level 1.2 to 1.4; his reading accuracy increased from below first grade level to grade level 1.0/1.4; his reading fluency (rate and accuracy combined) increased from grade level 1.0 to 1.2/1.4; and his reading comprehension improved from grade level 2.0 to 2.2. Student did not demonstrate that Santa Monica's program of special education was inadequate, even in comparison to Parents' preferred program, because the program Parents selected and Dr. Manis endorsed failed to deliver Student gains at any greater rate than he had experienced through Santa Monica's special education services.

36. Student failed to demonstrate that in the May 17, 2017 IEP, Santa Monica did not offer Student, in Student's words, "an appropriately individualized and intensive

program of special education interventions” to address Student’s disability-related deficits in reading.

37. In sum, over the years, Student made expected progress toward learning to read. His progress was not at the same pace as his same-aged, nondisabled peers, but Student was making meaningful progress in reading and in all other areas of the general education curriculum appropriate in light of his circumstances. Student failed to prove that since February 16, 2016, Santa Monica denied Student a FAPE by failing to offer Student, in Student’s words, “an appropriately individualized and intensive program of special education interventions” to address Student’s disability-related deficits in reading.

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. Here, Santa Monica prevailed on the issue presented.

RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: July 20, 2018

/s/

KARA HATFIELD

Administrative Law Judge

Office of Administrative Hearings