

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2017121021

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL  
DISTRICT.

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DECISION

Student filed an amended due process hearing request with the Office of Administrative Hearings on May 8, 2018, naming Baldwin Park Unified School District. On June 25, 2018, OAH granted the parties' joint request for a hearing continuance. Administrative Law Judge Sabrina Kong heard this matter in Baldwin Park, California, on August 29, 30, and September 5, 2018.<sup>1</sup>

Attorney Seshah Wolde-Tsadik represented Student. Attorney Idanys Pomares-Molina attended the hearing on August 29, 2018; attorney Margaret McNair attended the hearing on August 30, 2018; and attorney Mark Moore attended the hearing on September 5, 2018, all on Student's behalf. Mother attended the hearing. Attorney

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<sup>1</sup> Baldwin Park filed its response to Student's amended complaint on May 14, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir.) 858 F.3d 1189, 1199-1200.)

Sundee Johnson represented Baldwin Park. Baldwin Park's Special Education Director, Christine Stuckey-Simmons, attended the hearing on Baldwin Park's behalf.

A continuance was granted for the parties to file written closing arguments and the record remained open until September 20, 2018. The parties timely filed written closing arguments. The record was closed on September 20, 2018, and the matter was submitted for decision.

## ISSUES<sup>2</sup>

1. Did Baldwin Park deny Student a free appropriate public education from December 27, 2015, to May 14, 2018, by failing to appropriately Student assess in the following areas: (a) psycho-education, including a comprehensive mental health assessment; and (b) speech and language?

2. Did Baldwin Park deny Student a FAPE from December 27, 2015, to May

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<sup>2</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) The parties agreed to the issues at the PHC. At hearing, on August 31, 2018, Student represented that she was not alleging that Baldwin Park failed to conduct a mental health assessment appropriately, as stated under Issue 2(a)(ii) of the August 20, 2018 Order Following PHC. Instead, Student represented that Baldwin Park failed to appropriately assess Student's mental health as a part of a complete psycho-educational assessment. The parties agreed that Issue 2(a)(ii) was not a separate issue, but part and parcel of the Issue 2(a)(i), the psycho-educational assessment issue in the August 20, 2018 Order Following PHC. On September 5, 2018, Student withdrew Issue 2(a)(ii) in the August 20, 2018 Order Following PHC; the parties agreed to the revised Issue 1(a) as stated in this Decision.

14, 2018, by failing to offer appropriate:

- (a) placement at the (i) September 29, 2015 individualized education program team meeting; (ii) September 23, 2016 IEP team meeting<sup>3</sup>; (iii) August 31, 2017 IEP team meeting; and (iv) December 5, 2017 IEP team meeting<sup>4</sup>;
- (b) resource services at the (i) September 29, 2015 IEP team meeting; (ii) September 23, 2016 IEP team meeting; (iii) August 31, 2017 IEP team meeting; and (iv) December 5, 2017 IEP team meeting;
- (c) accommodations at the (i) September 29, 2015 IEP team meeting; (ii) September 23, 2016 IEP team meeting; (iii) August 31, 2017 IEP team meeting; and (iv) December 5, 2017 IEP team meeting;
- (d) speech and language services at the (i) September 29, 2015 IEP team meeting; (ii) September 23, 2016 IEP team meeting; (iii) August 31, 2017 IEP team meeting; and (iv) December 5, 2017 IEP team meeting; and
- (e) counseling services at the (i) September 29, 2015 IEP team meeting; (ii) September 23, 2016 IEP team meeting; (iii) August 31, 2017 IEP team meeting; and (iv) December 5, 2017 IEP team meeting?

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<sup>3</sup> The September 29, 2015 IEP team meeting was relevant to Baldwin Park's FAPE offer during the 2015-2016 school year even though the date of the IEP team meeting predated the relevant statutory period of December 27, 2015, to May 14, 2018.

<sup>4</sup> The December 5, 2017 and December 14, 2017 IEP team meetings will be treated as one IEP team meeting, and referred to as the December 5, 2017 IEP team meeting or the December 2017 IEP team meeting, as the December 14, 2017 IEP team meeting was a continuation of the December 5, 2017 team meeting.

## SUMMARY OF DECISION

Student proved that Baldwin Park denied her a FAPE by not appropriately conducting her psycho-educational evaluation<sup>5</sup> to include a comprehensive mental health assessment. Student did not prove that Baldwin Park failed to conduct a proper speech and language assessment. Student did not prove that Baldwin Park denied Student a FAPE by not assessing her before the fall of 2017.

Student did not prove that Baldwin Park denied her a FAPE by not offering appropriate placement, and resource services at the September 29, 2015, September 23, 2016, August 31, 2017 and December 5, 2017 IEP team meetings. Student did not prove that Baldwin Park denied her a FAPE by: not offering accommodations at the September 29, 2015 IEP team meeting; and offering inappropriate accommodations at the September 23, 2016 and August 31, 2017 IEP team meetings.

However, Student proved that Baldwin Park denied her a FAPE by not offering her accommodations at the December 2017 IEP team meeting. Student also proved that Baldwin Park denied her a FAPE by not providing the IEP team with the necessary information to determine whether she needed special education related counseling services at the December 2017 IEP team meeting. Student also proved that Baldwin Park denied her a FAPE by withdrawing her speech and language services at the December 2017 IEP team meeting and inappropriately exiting her from special education.

As a remedy for Baldwin Park's failure to properly conduct a comprehensive psycho-educational evaluation, Student is awarded an independent evaluation in that area, including a comprehensive mental health evaluation.

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<sup>5</sup> Federal law uses the term "evaluation" instead of the term "assessment" used by California law, but the two terms have the same meaning and are used interchangeably in this Decision.

As a remedy for not offering Student any accommodations at the December 2017 IEP team meeting, Baldwin Park shall reinstate the accommodations offered at the August 31, 2017 IEP team meeting of: seating near the teacher and away from distracting stimuli; cues, prompts, and reminders of procedures; repeated instructions and confirmation of understanding; extended time for in-class assignments and tests, especially for complex written assignments; have Student ask questions about recent lessons; adjust assignments for time spent in speech therapy; encourage Student to attend after school tutoring; and visual images and calculator usage.

As a remedy for Baldwin Park's inappropriate withdrawal of Student's speech and language services at the December 2017 IEP team meeting and inappropriately exiting her from special education, Baldwin Park shall reinstate Student as qualifying for special education under the speech and impairment category, and reinstate the 90 minutes of group speech and language services offered at the August 31, 2017 IEP team meeting. Baldwin Park shall also fund 10 hours of speech and language services from a non-public agency to compensate Student for Baldwin Park's denial of FAPE from December 14, 2017 to May 14, 2018 for inappropriately withdrawing speech and language services and exiting Student from special education.

As a remedy for denying Student a FAPE from December 14, 2017 to May 14, 2018 by not providing the IEP team with the necessary information to determine whether she needed special education related counseling services at the December 2017 IEP team meeting, Baldwin Park shall fund a total of 17 hours of one-to-one compensatory services of either counseling and/or academic tutoring, or a combination of counseling and academic tutoring (at Mother's election), from a non-public agency.

## FACTUAL FINDINGS

1. Student was 13 years old, and attended eighth grade at Baldwin Park's Holland Middle School at the time of the hearing. She resided with Mother,

grandparents and siblings within Baldwin Park's boundaries at all relevant periods, and attended Holland Middle School, through an intra-district transfer. She was eligible for special education under speech and language impairment; and had been receiving special education services since 2011.

2. Mother indicated in Baldwin Park's enrollment form that Student first learned to speak in Spanish, lived in a bilingual Spanish/English home, but only spoke English. In her 2015 California Assessment of Student Performance and Progress state testing, which is generally administered to all students, Student scored: 2429, in level 2, in her English language arts/literacy assessment; and 2394, in level 1, in her math assessment; she did not meet grade level standards in either subject area.

#### SEPTEMBER 29, 2015 IEP TEAM MEETING: FIFTH GRADE

3. At the September 29, 2015 IEP team meeting, Student's fifth grade homeroom and English language arts teacher, Shawni Jioras, shared that Student was at a third grade reading level based on the Standardized Testing and Reporting Results, and scored a 63 percent average from her classroom reading tests. Ms. Jioras spoke with Student's math teacher and reported the math teacher's concerns to the IEP team. Student scored a 48 percent on her math facts, and did not know her multiplication tables. The math teacher was concerned that Student's failure to learn math facts and multiplication tables would inhibit her progress. Mother shared with Baldwin Park's IEP team members that Student was quiet, shy, and had difficulty asking for help, but improved her reading skills from last year. Student did not have any behaviors impeding her learning. She met her speech and language goal, and could identify solutions to problems and explain why those solutions were appropriate with 80 percent accuracy, with cues and support from her speech and language therapist.

4. Student's baseline indicated that she had adequate expressive and receptive language skills, but had deficits in pragmatics, including making inferences

and problem solving. Baldwin Park's IEP team proposed one pragmatics language goal: By September 2016, Student would make inferences, or solve problems, by stating the solutions with 80 percent accuracy, in four out of five trials, as demonstrated by student work samples and teacher charted records. Baldwin Park's FAPE offer included placement in the general education environment, with 30 minutes of individual and group speech and language services per week, in a separate classroom. Baldwin Park did not offer any accommodations or other services to Student.

5. Ms. Jioras concluded that Student was at risk of retention in September 2015, and in February 2016 because of her deficient reading and math skills. By the third trimester, Ms. Jioras opined that Student should not be retained because Student's reading ability, class test scores, and California Assessment of Student Performance and Progress scores all improved. In 2016, Student's California Assessment of Student Performance and Progress scores were: 2483, in level 2, in the English language arts/literacy assessment; and 2442, in level 1, in math. While she did not meet grade level standards in either subject areas, Ms. Jioras concluded that Student made significant progress in English language arts and some progress in math from the year before. Specifically, Student improved her reading scores from a third grade level from the year before, to almost a fifth grade level by the end of the 2015-2016 school year in the California Assessment of Student Performance and Progress.

6. Ms. Jioras opined at hearing that Student would not benefit from services of a resource specialist program. Ms. Jioras attributed Student's below grade level performance to Student's speech and language needs, which were adequately being addressed with speech and language services; and to vocabulary difficulties common to English language learner students, and which would improve with time.

#### SEPTEMBER 23, 2016 IEP TEAM MEETING: SIXTH GRADE

7. At the September 23, 2016 IEP team meeting, Mother expressed concerns

to the Baldwin Park IEP team about Student's academic progress and shared that Student was slow, taking a long time to complete assignments; and had difficulty understanding what she read. Mother also shared that Student was depressed and that Student and the family received counseling from Hillside, a non-public agency, once a week for 30 minutes. Similarly, Student's math and science teacher, Andrew Lawson, shared that Student had a C in science and a D in math because she was struggling to learn her math facts and performed low in her math tests. Baldwin Park's IEP team suggested that: Student enroll in the Think Together after school tutoring program to help with academics; a school psychologist review Student's academic progress to make recommendations to the IEP team; and Student receive school counseling through a program available to all students. All of Baldwin Park's students had access to one of two types of counseling programs: The Family Center Program, which provided counseling to families who were eligible to receive Medi-Cal assistance; and the Kaiser intern program, which provided counseling to families who were not eligible to receive Medi-Cal assistance. The Baldwin Park IEP team informed Mother that a school counselor would contact Student's Hillside therapist and initiate counseling for Student either through The Family Center Program or the Kaiser intern program. Baldwin Park did not contact Hillside; Mother did not request counseling from either the Family Center Program or the Kaiser intern program.

8. Speech pathologist Sylvia Chandler shared that Student was cooperative and participated in group discussions during speech and language sessions. Ms. Chandler shared that Student's articulation, voice fluency and receptive/expressive language skills were age appropriate and that Student met her speech and language goal from last year. Student's baseline was that she could make inferences and solve problems; had difficulty applying verbal reasoning skills in context; and spoke softly while in a small group with peers. Ms. Chandler proposed one communications



development goal: By September 22, 2017, Student would analyze a given narrative, apply verbal reasoning in the relevant context with 80 percent accuracy with the speech and language therapist's prompts, as measured by the speech and language therapist.

9. Baldwin Park's FAPE offer to Student was placement in the general education environment, with 90 minutes of group speech and language services per month, in a separate classroom. Baldwin Park also offered the following accommodations to Student: seating near the teacher and away from distracting stimuli; cues, prompts, and reminders of procedures; repeated instructions and confirmation of understanding; extended time for in-class assignments and tests, especially for complex written assignments; have Student ask questions about recent lessons; adjust assignments for time spent in speech therapy; encourage Student to attend after school tutoring. Baldwin Park did not offer any other services to Student.

10. In the sixth grade, Student received D's in both semesters of her math class; a D in the first semester, and a C in the second semester of her English language arts class; B's in both semesters of her science class; and C's in both semesters of her history class.

11. Student made progress toward her speech and language goal in December 22, 2016 and in March 22, 2017. Ms. Chandler noted in the December 22, 2016 goal progress notes that Student was reluctant to speak in a group; and in the March 22, 2017 goal progress notes that Student required many prompts to participate in a small group.

#### THERAPY FROM HILLSIDE

12. Belen Guerra was Student's therapist and provided psychotherapy to Student individually, once a week, for approximately 15 months, from 2016-2017, at Hillside. Mother participated in the therapy session once a month, sometimes with Student, sometimes alone with Ms. Guerra. Ms. Guerra held a bachelor's degree in

behavioral science and a master's degree in social work. During the 2016-2017 period, she worked for Hillside providing individual therapy and group therapy, both in a school and clinic setting. She assessed Student on, or about, February 3, 2016, when Student was referred by the middle school staff for mental health services. Student exhibited depressive symptoms including low self-esteem relating to her abilities; body issues; poor hygiene; and aggressive verbal and physical behaviors, such as door slamming and yelling at siblings. She did not know if Student had a speech disorder, but noted that Student had verbal difficulties and preferred nonverbal communication. For example, Student passed notes to Ms. Guerra to communicate during therapy sessions; and at times Ms. Guerra used music and art interventions as part of her therapy with Student. Ms. Guerra shared that sometimes Student appeared distracted and unable to follow directions, but Ms. Guerra did not know whether to attribute it to Student's lack of focus, or inability to comprehend.

13. During the first three months Ms. Guerra provided therapy to Student at her elementary school by pulling Student out of her classes. Thereafter, when Student transitioned to the middle school, she worked with Student at Hillside's office, and sometimes picked Student up from her home. At the beginning when Ms. Guerra started working with Student, Student had a few friends, but was unable to sustain those friendships and slowly lost her friends. Ms. Guerra never observed Student at school, because it was not her job. However, because Mother shared that Student had behavioral and attention issues, Ms. Guerra sent one of her team members, a mental health rehabilitation specialist, to observe Student at school in the fifth grade. The mental health rehabilitation specialist provided services to Student in the elementary school, but did not provide any services when Student transitioned to the middle school because Hillside did not have a contract to provide services to students in the middle

school.<sup>6</sup>

14. Ms. Guerra was aware that Student was diagnosed with persistent depressive disorder and prescribed medication from a psychiatrist. She shared that Student had negative thoughts, cried during a few therapy sessions, but did not have any suicidal or homicidal ideations. Student suffered abuse when she was under foster care in her early years. Ms. Guerra reassessed Student in February 2017 and recommended continued individual therapy once a week, and family and sibling sessions to address family conflict. Because Ms. Guerra only had one hour a week with Student, Student made minimal progress during the 15 months. In May 2017, Ms. Guerra concluded that Student required more intense therapy to progress so she referred Student to another agency that could provide Student with increased therapy time, and/or a higher level of care.

15. After Ms. Guerra's referral in May 2017 for more intensive counseling, Student stopped all medication and declined to participate in psychotherapy because Student did not like discussing emotions. Although Mother shared at hearing that Student stuttered, neither Ms. Guerra, nor any of Student's teachers observed any stuttering from Student. Mother acknowledged that Student did not speak any Spanish, and only spoke English.

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<sup>6</sup> Neither party provided any information about the nature of Hillside's contract with the elementary school; how Ms. Guerra was able to provide counseling services through Hillside at the elementary school; who specifically suggested that Student receive counseling from Hillside; who funded the counseling; or whether the Hillside counseling was a service available to all general education students.

## AUGUST 31, 2017 IEP TEAM MEETING: SEVENTH GRADE

16. At the August 31, 2017 IEP team meeting, Mother expressed concerns to the Baldwin Park IEP team about Student's struggles with academic and emotional challenges, and Student's social skills and inability to retain friends. Mother shared that Student took a long time to complete homework, was unable to understand concepts even when those concepts were broken into small steps, and forgot what she read. Mother also shared that Student cried when stressed, and that Student and the family received counseling from Hillside to assist with family dynamics which included an autistic sibling, and a grandparent with cancer. Mother signed an authorization for Baldwin Park to obtain information from Hillside. School psychologist Patricia Lopez and administrative designee Brenda Padilla reviewed Student's academic record and discussed Student's weakness in math and English language arts; Student had a C in math and a F in English language arts at the time of the IEP team meeting. Math teacher Mercedes Munoz shared that Student benefitted from the class's pilot team teaching approach.<sup>7</sup> A student in Ms. Munoz's math class could earn a C, even though the student received F's in tests and quizzes, because Ms. Munoz awarded C's to students who participated in class projects. Ms. Munoz opined that Student worked hard, but was unable to demonstrate her understanding of math in tests and quizzes. The English language arts teacher did not attend the IEP team meeting, and Ms. Padilla did not

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<sup>7</sup> The pilot program in Ms. Munoz's math class included a special education teacher, Melody James, and a classroom aide, who provided resources specialist program services in Ms. Munoz's class to students who qualified for resource services, as well as to provide help to all the students in the class, on an as needed basis. Student did not receive any push-in resources specialist program services from Ms. James or the aide, but generally benefitted from the extra help in the classroom.

Speak with the English language arts teacher before the IEP team meeting.

17. Baldwin Park's IEP team proposed the iReady and Think Together programs to help Student in math and English language arts. Both iReady and Think Together were programs available to all students. The IEP team offered iReady as a class, in lieu of Student's preferred elective; Student declined to substitute iReady for her preferred elective. Think Together was an after school homework assistance program. Mother shared at the IEP team meeting that Student would not be able to participate in Think Together because it conflicted with Mother's work, which started at 3:30 p.m. At this meeting, Mother also requested that Baldwin Park evaluate Student.

18. Ms. Chandler attended the August 31, 2017 IEP team meeting and shared that Student was cooperative, comprehended material discussed in speech and language sessions, but was reluctant to speak in the small group of three. Student did not meet her speech and language goal from last year. Student's baseline was that she could make inferences and solve problems when presented with pictures depicting a situation; had difficulty applying verbal reasoning skills in context; spoke softly and required prompting to participate. Ms. Chandler proposed one communications development goal: By August 30, 2018, Student would make inferences, predictions and provide justification for her reasoning when given a short narrative with 80 percent accuracy with the speech and language therapist's prompts, as measured by the speech and language therapist.

19. Baldwin Park's FAPE offer to Student was placement in the general education environment, with 90 minutes of group speech and language services per month, in a separate classroom. Baldwin Park also offered several accommodations to Student: seating near the teacher and away from distracting stimuli; cues, prompts, and reminders of procedures; repeated instructions and confirmation of understanding; extended time for in-class assignments and tests, especially for complex written

assignments; have Student ask questions about recent lessons; adjust assignments for time spent in speech therapy; encourage Student to attend after school tutoring; and visual images and calculator usage. Ms. Chandler drafted these accommodations based on her experience as Student's speech and language therapist, and familiarity with Student's functional level and needs, even though she was not a credentialed general education, or special education teacher. Baldwin Park did not offer any other services to Student. Student continued to be eligible for special education under the speech and language impairment category. Mother consented to the IEP.

#### NOVEMBER 1, 2017 SPEECH AND LANGUAGE EVALUATION

20. Ms. Chandler conducted a speech and language assessment to determine whether Student qualified for special education under the speech and language impairment category as a part of Student's triennial assessment in November 2017. Ms. Chandler held a bachelor's degree in communicative disorders, a master's degree in speech pathology, worked for Baldwin Park for 13 years as a speech and language pathologist, and retired in May 2018. Her duties as Baldwin Park's speech and language pathologist included conducting speech and language assessments, providing speech and language services, attending IEP team meetings and making eligibility recommendations. She provided speech and language therapy for Student in 2016 and 2017, organized and attended Student's 2016 and 2017 IEP team meetings. She did not speak with Mother, or any of Student's teachers, when assessing Student because she received all the input from those individuals at the recent August 31, 2017 IEP team meeting.

21. Ms. Chandler assessed Student with the Expressive Vocabulary Test, Second Edition; the Expressive One-Word Picture Vocabulary Test, Fourth Edition, Spanish Bilingual Edition; the Peabody Picture Vocabulary Test, Fourth Edition; the Receptive One-Word Picture Vocabulary Test, Fourth Edition, Spanish Bilingual Edition;

the Comprehensive Assessment of Spoken Language, Second Edition; and the Clinical Evaluation of Language Fundamentals, Fifth Edition. Baldwin Park typically tested students in both English and the language, other than English, listed by a student's parent in the enrollment form.

22. Ms. Chandler was qualified to assess Student and qualified to interpret all test results. All instruments were reliable and widely accepted assessment tools. All instruments were administered and interpreted consistent with the publisher's protocols and yielded valid results. Ms. Chandler appropriately assessed Student in the Spanish Bilingual edition of two tests because Student's home language was Spanish, even though Student spoke only English. She gave Student the opportunity to respond to questions stated in Spanish when Student was unable to respond when the questions were stated in English. Student did not provide any responses in Spanish. Ms. Chandler did not penalize Student for not providing responses in Spanish.

23. Student performed in the sixth percentile on the Expressive Vocabulary Test; in the 23rd percentile on the Expressive One-Word Picture Vocabulary Test; in the 30th percentile on the Peabody Picture Vocabulary Test; in the 75th percentile on the Receptive One-Word Picture Vocabulary Test; and in the 21st percentile on the Comprehensive Assessment of Spoken Language. The Comprehensive Assessment of Spoken Language measured Student's general language ability. Within the Comprehensive Assessment of Spoken Language, Student scored: in the sixth percentile in the receptive vocabulary subtest; in the first percentile in the grammatical judgment subtest; in the 73rd percentile in the sentence expression subtest; in the 58th percentile in the non-literal language subtest; in the 63rd percentile in the double meaning subtest; in the 55th percentile in the pragmatic language subtest. Further, in the Clinical Evaluation of Language Fundamentals, Student scored in the: 23rd percentile in the core language score, representing a measurement of general language ability; 21st percentile

in the receptive language index, representing a measurement of general receptive language skills; 45th percentile in the expressive language index, representing a measurement of general expressive language skills. Within the Clinical Evaluation of Language Fundamentals, Student scored: in the 25th percentile in the word classes, following directions, recalling sentences, and semantic relationships subtests; in the 37th percentile in the formulated sentences subtest; and in the 75th percentile in the sentence assembly subtest. The standard deviation for both the Comprehensive Assessment of Spoken Language and the Clinical Evaluation of Language Fundamentals carried a standard deviation of 15.

24. During the testing, Student was compliant, respectful, attentive, and self-assured, requested repetition and clarification, and able to self-correct during testing. Ms. Chandler believed the results represented Student's speech and language skills. She also opined that Student's articulation, phonology, oral-peripheral structures, voice and fluency were functional, and not of any concerns and that Student could construct appropriate sentences, express ideas and that her expressive and receptive vocabulary, sentence production and language were all within age level expectations and appropriate for classroom use. Therefore, Ms. Chandler concluded that even if Student scored below the seventh percentile in two or more subtests, she did not find that Student's speech and language skills adversely affected her ability to perform academically in the general education environment with general educational interventions. She concluded that Student did not qualify for special education under the category of speech and language impairment. She recorded all of her assessment findings and conclusions in her November 11, 2017 Speech and Language Assessment Report.

25. Ms. Chandler opined at hearing that the grammatical judgment subtest score, from the Comprehensive Assessment of Spoken Language, was not representative



of Student's understanding of grammatical sentences. She opined that the Peabody Picture Vocabulary Test and the Receptive One-Word Picture Vocabulary Test scores more accurately reflected Student's abilities because students with bilingual background usually had difficulty with the Comprehensive Assessment of Spoken Language. She also opined that the Clinical Evaluation of Language Fundamentals sentence assembly score, which evaluated Student's ability to formulate grammatically acceptable and meaningful sentences by manipulating and transforming words and word groups, more accurately reflected Student's abilities in that area. More specifically, Ms. Chandler opined that the grammaticality judgement subtest of the Comprehensive Assessment of Spoken Language was difficult for most students; so, Student's score in that subtest was not reflective of her actual abilities, but reflective of the abilities of most students her age. Ms. Chandler further opined that attending school on a more consistent basis would help Student learn more and improve academically.

26. Ms. Chandler's opinion that the Comprehensive Assessment of Spoken Language was difficult as an explanation for Student's low performance, and therefore non-reflective of Student's abilities, was unpersuasive as the test itself was norm-referenced and standardized, meaning that the scores had already considered the difficulty level among all test takers and adjusted the percentile rankings accordingly to reflect the difficulty.

#### DECEMBER 5, 2017 PSYCHO-EDUCATIONAL EVALUATION

27. Based on Mother's request and academic concerns, Dr. Lopez conducted a psycho-educational evaluation to determine if Student qualified for special education under the specific learning disorder category. Dr. Lopez held a bachelor's degree in psychology and Spanish; a master's degree in educational psychology and counseling; a doctorate degree in school psychology; was credentialed in school psychology and counseling; and was a Board Certified Behavior Analyst. She worked as a school

psychologist since 2006 and for Baldwin Park as a school psychologist since 2014.

28. Before assessing Student, Dr. Lopez reviewed Student's cumulative file including her prior IEPs, transcripts, report cards from kindergarten to the sixth grade, and seventh grade grades. Student was absent eight days in the fifth grade, 11 days in the sixth grade, and four days in the seventh grade by December 2017.<sup>8</sup> Dr. Lopez also reviewed Student's October 25, 2016 California English Language Development Test results noting that Student scored higher in speaking, listening and writing skills than in reading skills. She further noted that Student's reading level was equivalent to that of a fifth grader. Dr. Lopez was not aware of any of Student's medical diagnoses and did not have any information from Hillside about Student's mental health status. Dr. Lopez received Student's health information through the school nurse's health evaluation. She received information about Student from questionnaires given to Student, Mother and to Student's teachers as part of the psycho-educational evaluation. She did not interview Mother or any of Student's teachers as a part of her psycho-educational evaluation. Dr. Lopez observed Student in her English language arts class for approximately 30 minutes. She concluded that Student had no attention issues based on a 20 minute on task/off task time sample and no social issues or behavior concerns as Student interacted with peers, did not stand out, and did not appear withdrawn.

29. Dr. Lopez tested Student on two days and found Student to be cooperative, respectful, happy, soft spoken, used her best effort, understood instructions, and sought clarifications when needed. All assessment tools were administered in Student's primary language of English except for one bilingual verbal ability test. Dr. Lopez had administered the following standardized tests many times and was qualified to administer them: the Achenbach System of Empirically Based

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<sup>8</sup> A typical school year is 180 school days. (Ed. Code, § 46200.)

Assessment; the Beery-Buktenica Developmental Test of Visual Motor Integration; the Beery Visual Motor Integration Developmental Test of Visual Perception; the Bilingual Verbal Ability Test; the Differential Ability Scales, Second Edition; and the Test of Auditory Processing Skills, Third Edition. Education Specialist Melody James administered the standardized Woodcock Johnson IV Test of Achievement, in consultation with Dr. Lopez, who interpreted all test results. All instruments were administered and interpreted consistent with the publisher's protocols and yielded valid results. The assessments were not racially, culturally, or sexually biased. All instruments were reliable and widely accepted assessment tools.

30. Ms. James held a multiple subjects teaching credential with a math supplement, and a level two special educational teaching credential to teach mild/moderate special education classes. She had been a special education teacher for Baldwin Park for 13 years. She had administered the Woodcock Johnson many times and was qualified to administer the test to Student.

31. The Achenbach was a standardized questionnaire that measured Student's behaviors and emotions over a six-month period, across different environment and settings. Dr. Lopez only gave the Achenbach to Mother, Student, and Student's math teacher, Ms. Munoz. Ms. Munoz's and Student's responses to the Achenbach were in the normal range; Mother's responses to the Achenbach showed that Student was anxious, depressed, and withdrawn at a clinically significant level, and had borderline social problems. Dr. Lopez did not administer any other standardized test to assess Student's mental health or emotional status, even after receiving Mother's responses on the Achenbach.

32. The Beery-Buktenica Developmental Test of Visual Motor Integration assessed Student's visual-motor integration skills such as eye-hand coordination. Student scored average indicating that her fine motor skills were within normal limits.

The Beery Visual Motor Integration Developmental Test of Visual Perception assessed Student's visual perceptual processing ability, or the ability to interpret what she saw, such as attending to visual details in a shape to find an exact duplicate in a series of shapes. Student scored in the average range.

33. The Bilingual Verbal Ability Test assessed measured Student's cognitive-academic language proficiency in English. The subtests were administered in English first, and then selected items were re-administered in Spanish if Student was unable to respond in English. Student did not respond in Spanish and was not penalized for not providing responses in Spanish. Student scored low average, an 88, in the third grade and five-month level, which showed that she found English language demands of age-level tasks difficult.

34. The Test of Auditory Processing Skills assessed Student's ability to manipulate, remember, and understand auditory information. Student scored average in all areas, which Dr. Lopez concluded was consistent with the band, history, math and science teachers' report that Student was able to understand orally presented material.

35. The Woodcock Johnson Achievement Test measured Student's academic achievement. She scored low average in: reading comprehension and reading fluency, both 82; math problem solving, an 86; and basic reading, an 89. Student scored the lowest in: math calculation, a 72; and written expression, a 77.

36. The Differential Ability Scale measured Student's cognitive and intellectual abilities. She scored low average, an 83, in verbal clusters which measured her ability to use spoken language to demonstrate knowledge of word meanings and deduce a conceptual relationship between words. She scored average, an 81, in nonverbal reasoning clusters which measured her ability to use nonverbal methods to identify, formulate and apply relationships to a task or stimuli. She scored average, a 102, in the spatial ability clusters which measured her ability to perceive and remember spatial

relationships and shapes. She scored average, a 103, in the working memory cluster which measured her ability to use short term and long term memory to recall number sequences and verbal and pictorial information. She scored above average, a 114, in processing speed clusters which measured her ability to work fast under time pressure, integrate visual and verbal processing efficiently, scan, attend and concentrate.

37. Dr. Lopez concluded that because Student was an English language learner and had a speech and language impairment, a better estimate of her abilities was her score of 90 on the Special Nonverbal Composite, which consisted of the nonverbal reasoning and the spatial ability clusters. Student's General Ability Score was 86, which consisted of the nonverbal reasoning, the spatial ability and the verbal clusters. Dr. Lopez did not use the General Ability Score, because the presence of the verbal cluster would have depressed Student's ability score because of her speech and language difficulties. Therefore, Dr. Lopez found the Special Nonverbal Composite to be more reflective of Student's actual abilities. Because Dr. Lopez did not find the General Ability Score to be reflective of Student's abilities, she did not use it and therefore did not include it in her report. She also concluded that Student did not have a processing disorder.

38. Dr. Lopez calculated the difference between Student's lowest academic achievement score of 72 in math calculation, and her score of 90 on the Special Nonverbal Composite of the Differential Ability Scale to be a total of 18 points. Because the point differential between academic achievement and cognitive abilities was less than 20 points, she concluded that Student did not exhibit a severe discrepancy between cognitive abilities and academic achievement needed to meet the legal definition of a specific learning disorder. Had Dr. Lopez used the General Ability Score of 86, the differential between Student's academic achievement score of 72 in math and cognitive abilities would only be 14 points.

39. Dr. Lopez distinguished between formal and informal assessment. She explained that she “formally” assessed Student only in the specific learning disability category, meaning she used standardized tests. She also explained that she ruled out Student’s qualification under other special education eligibility categories based on “informal” assessments, meaning that she did not use standardized tests, but included her own classroom observation of Student, and interactions during testing, and teacher’s responses to non-standardized questionnaires that Dr. Lopez generated. She relied on the band, history and science teachers’ responses for general information about Student’s attention and behavior issues. None of Student’s teachers reported to Dr. Lopez that Student had any attention, behavior, or mental health issues impacting Student’s education.

40. Mother was the only one who reported that Student displayed mental health/emotional issues. Dr. Lopez concluded that the mental health/emotional issues Mother reported were inconsistent with teachers’ reports of Student’s classroom behaviors because of the difference between the classroom and the home environment. However, Dr. Lopez did not have an explanation as to why the mental health/emotional issues Mother reported were so different other than, “it just happens.” Despite Mother’s report that Student received therapy from Hillside and despite Mother signing an authorization permitting Hillside to release information to Baldwin Park’s assessors, Dr. Lopez did not review any mental health information from Hillside as a part of her psycho-educational assessment. Dr. Lopez concluded that Student did not have other health impairments, attention, behavioral, or mental health issues adversely affecting her educational performance. She recommended that Student enroll in mental health services available to all students, access school-based interventions, including student study team and other accommodations and general classroom supports. She recorded all of her assessment findings and conclusions in her December 5, 2017 Psycho-

educational Assessment Report.

#### DECEMBER 5, 2017 AND DECEMBER 14, 2017 IEP TEAM MEETINGS: SEVENTH GRADE

41. The IEP team convened on December 5, 2017 to discuss the speech and language and psycho-educational assessments. Because Mother had to leave, the IEP team continued the meeting to December 14, 2017. There were less than 60 school days between the August 31, 2017 IEP team meeting where Mother requested that Baldwin Park assess Student, and the December 5, 2017 IEP team meeting convened to discuss the psycho-educational and speech and language assessments.

42. At the December 2017 IEP team meeting, Ms. Chandler presented Student's present levels of performance by reading comments provided by teachers: (a) in math, Student was slow and unsure of her responses, but capable of doing the work; (b) in English language arts, Student was respectful, polite, interacted well with peers, and showed good effort; had a B in homework and an overall grade of C because she did not complete her independent reading of 30 minutes each night; had not taken her Reading Counts tests since August 2017; did not ask for help; and did not ask for missed work when absent; (c) in social studies, Student was well behaved, a hard worker, motivated, but very shy; volunteered answers in class and asked for assistance when needed; demonstrated age appropriate attention to task and adequate social language; had a B, with some missing assignments and low quiz scores; (d) in science, Student was a hard worker, followed directions, preferred to work alone and was extremely shy, worked independently, had a C because of low test scores, and did not seek out other students for collaboration; (e) in band, Student was polite, respectful, and showed good effort, but forgot her instrument frequently, and being pulled for speech services during band affected her ability to play her instrument.

43. Ms. James reported that Student was at grade level in reading

comprehension; was a slow reader; comprehended reading materials; and needed to re-read text for comprehension. The school nurse's hearing and vision screening results were shared with the IEP team. Mother wanted Student to receive homework assistance, but stated that Student could not stay after school because Mother needed to pick Student up immediately after school so Mother could make it to work on time. Mother was concerned about Student's social skills.

44. Ms. Chandler and Dr. Lopez presented their assessment findings, and provided Mother a copy of the speech and language and psycho-educational reports at the December 2017 IEP team meeting. Ms. Chandler shared that Student's language and communications skills were age appropriate; that Student did not qualify for special education under speech and language impairment; and Student therefore would not receive speech and language services. Mother agreed. Dr. Lopez shared that Student did not qualify for special education services under the category of specific learning disorder because Student did not demonstrate a deficit in the basic psychological processing areas, and did not demonstrate a severe discrepancy between cognitive ability and achievement. Mother disagreed, and asked for time to review the IEP document before signing it. Baldwin Park concluded that Student no longer qualified for special education services, and that Student's needs could be met in the general education environment with accommodations and general education interventions to address her needs. Baldwin Park concluded that Student should be exited out of special education.

45. Mother did not consent to the December 2017 IEP, and at some point, requested that Student resume speech and language services. Baldwin Park resumed providing the speech and language services at some point.

46. In the seventh grade, Student received a B in the first semester, and a C in the second semester of her math class; a C in the first semester, and a B in the second



semester of her English language arts class; a B in the first semester, and an A in the second semester of her science class; and an A in the first semester, and a B in the second semester of her history class.

#### TESTIMONY AT HEARING

Christine Stuckey-Simmons

47. Christine Stuckey-Simmons had been Baldwin Park's special education director since November 2017 and her duties included reviewing student's files in connection with handling due process complaints. She reviewed Student's file in connection with Student's due process filing, including Student's attendance records. Student did not have many unexcused absences, and her excused absences were supported by doctors' notes or parent phone calls. She opined from file review that the doctors' excused absences did not appear to be mental health related. Ms. Stuckey-Simmons did not indicate how many times Student was absent during the 2017-2018 school year, or how she concluded that the doctor excused absences were non-mental health related. Student's cumulative file did not reflect any behavioral or disciplinary incidents.

Ms. Chandler

48. Ms. Chandler opined at hearing that the speech and language services offered at the September 23, 2016, and August 31, 2017 IEP team meetings were FAPE for Student because they provided enough speech and language pull-out services for her to progress on her speech and language goals and allowed her enough time in the general education classroom so she could keep up with classwork. Ms. Chandler did not know why Student missed school; had not been informed that Student missed school because of mental health, or social emotional issues; and was aware Student missed school when Student was absent for her pull-out speech and language services. Ms.

Chandler and all Student's teachers opined at hearing that Student did not have any attention or behavioral issues, and did not appear depressed or sad in their classes.

49. Mother had consistently expressed her concerns about Student's academic struggles with the IEP team especially in math and reading, as well as concerns that Student was depressed and had no friends.

50. Only Baldwin Park's staff and teachers opined on what FAPE was for Student. Student did not present an expert witness, or any other witness, to opine on what FAPE was for Student; why the placement, accommodations, and speech and language services Baldwin Park offered during the relevant statutory period was not FAPE; and why Baldwin Park's failure to offer resource services and special education related counseling services constituted a FAPE denial.

## LEGAL AUTHORITY AND CONCLUSIONS

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

1. This due process hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)<sup>10</sup>; Ed. Code, § 56000, et seq.; and Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and

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

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

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); Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services as may be 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 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, and which sets forth 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, 200 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE

requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) In a recent unanimous decision, the United States Supreme Court declined to interpret the FAPE provision in a manner that was at odds with the *Rowley* court’s analysis, and clarified FAPE as “markedly more demanding than the ‘merely more than the de minimus test’...” (*Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. \_\_ [137 S. Ct. 988, 1000-1001] (*Endrew F.*)). The Supreme Court in *Endrew F.* stated that school districts needed to “offer a cogent and responsive explanation for their decisions” and articulated FAPE as that which is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstance.” (*Id.*)

4. The IDEA affords parents or 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)(f) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C) & (D); Ed. Code, § 56505, sub. (l).)

5. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA due process hearings is preponderance of the evidence].) In this case, Student has the burden of proof.

ISSUES 1(A) AND (B): PSYCHO-EDUCATIONAL AND SPEECH AND LANGUAGE

## ASSESSMENTS

6. Student contends that Baldwin Park's psycho-educational and speech and language assessments were not valid because they inappropriately used Spanish/bilingual assessments, and failed to properly assess Student's mental health.<sup>11</sup> Baldwin Park contends that it properly conducted its psycho-educational and speech and language assessments, and considered all areas of Student's needs, including properly ruling out that Student had any mental health needs impacting her education.

7. Assessments are required to determine eligibility for special education, and what type, frequency and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service's needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

8. The assessment must be conducted in a way that: (1) uses a variety of

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<sup>11</sup> Although Student contends that Baldwin Park denied Student a FAPE by not appropriately assessing her from December 27, 2015, to May 14, 2018, suggesting that Baldwin Park should have assessed Student before the fall of 2017, Student did not provide any evidence at hearing, expert or otherwise, to support her allegations. At hearing, Student only presented evidence relating to and challenged the propriety of Baldwin Park's fall 2017 psycho-educational and speech and language assessments.

assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; (2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and (3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; (3) used for purposes for which the assessments are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where the concern prompting the assessment was reading skills deficit].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).) Assessors must be knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd. (g).)

9. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5)

the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent (Ed. Code, § 56329, subd. (a)(3)), and an IEP team meeting must be held to consider the assessment. (Ed. Code § 56302.1, subd. (a).)

10. The IEP team shall review the pupil's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the pupil are being achieved, and revise the IEP, as appropriate, to address, among other matters, information about the pupil provided to, or by, the parents; the pupil's anticipated needs; or any other relevant matter. (Ed. Code, § 56341.1, subd. (d)(3), (4), and (5).) An IEP is a "snapshot" and must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

11. A student may be entitled to an independent educational evaluation if a parent disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].)

12. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v.*

*Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that particular disability or disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119 (*Timothy O.*)). The Ninth Circuit Court of Appeals in *Timothy O.* held a school district's failure to assess a child for autism using standardized tests and relying on informal staff observation during its initial evaluation of the child resulted in substantially hindering parents' ability to participate in the child's educational program, and seriously depriving the parents, teachers and district staff of the information necessary to develop an appropriate educational program with appropriate supports and services for the child.

13. A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.)

14. Student did not present any evidence supporting that Baldwin Park should have assessed Student in any area before the fall of 2017. Although Mother informed Baldwin Park that Student received therapy from Hillside at the September 23, 2016 IEP team meeting, she did not authorize Hillside to release information to Baldwin Park until August 31, 2017; and there was no evidence that Student displayed any mental health symptoms at school triggering the need an assessment at any time before the fall of 2017 when Mother made the Hillside records available to Baldwin Park. Further, Student did not present any evidence that Baldwin Park's failure to assess Student in any area,



psycho-educational, mental health, or speech and language, before the fall of 2017 significantly impeded parental participation in the decision making process; deprived Student of educational benefits; or impeded Student's right to a FAPE.

15. At hearing, Student *only* presented evidence challenging the propriety of Baldwin Park's 2017 psycho-educational and speech and language assessments. Neither party presented evidence as to when an assessment plan was sent to Mother; nor when Mother signed the assessment plan; nor that Baldwin Park did not timely convene an IEP team meeting after its fall 2017 assessments. Absent evidence to the contrary, the December 2017 IEP team meeting was timely convened.

#### Psycho-educational assessment

16. Dr. Lopez concluded that Student did not exhibit a severe discrepancy between cognitive abilities and academic achievement needed to meet the legal definition of a specific learning disorder because the point differential between Student's cognitive abilities and academic achievement was less than 20 points, and that Student did not suffer from a processing disorder. Although inconsistencies in Student's understanding capabilities and academic performance existed, especially in the area of math, Student did not present any evidence to contradict Dr. Lopez's findings. Student did not present any expert at hearing to show that Dr. Lopez's, or Ms. James', standardized testing of Student was deficient, incorrect, or that Student suffered from a specific learning disorder. Further, Dr. Lopez persuasively explained that the bilingual standardized tests were properly used to assess Student because Spanish was spoken in the home. Student did not present any evidence, expert or otherwise, to show that the bilingual tests used were inappropriate. Therefore, Dr. Lopez's conclusion that a specific learning disorder did not impact Student's access to curriculum was, un rebutted, and persuasive.

17. Although Mother shared with Ms. Guerra that Student had attention and

behavior issues which prompted Ms. Guerra to send a mental health rehabilitation specialist to observe Student in school, this occurred in elementary school. Further, Ms. Stuckey-Simmons persuasively testified that Student's cumulative file did not reflect any behavioral incidents. Teachers persuasively testified that Student did not have attention or behavior issues in their classes. Ms. Stuckey-Simmons' and teachers' testimony was unrebutted, and persuasive. Student did not present any evidence, expert or otherwise, to show that Student had attention or behavioral difficulties at Holland Middle School.

18. However, the December 5, 2017 psycho-educational assessment was inappropriate because Dr. Lopez did not have a complete picture of Student's mental health and was not knowledgeable of Student's individual needs. She did not know that Student had been diagnosed with depression, had been on medication prescribed by a psychiatrist, had been recommended by Student's therapist of 15 months for more intense psycho-therapy, and did not review any of Hillside's records which Mother had authorized released to Baldwin Park in August 2017. Even though the evidence did not support that Student displayed mental health symptoms at school triggering assessment before the fall of 2017, Baldwin Park was aware that Student received therapy both when Ms. Guerra pulled Student out of her elementary school class to receive therapy, and when Mother informed the September 23, 2016 IEP team that Student was receiving therapy from Hillside. Therefore, when Mother finally authorized the records released from Hillside on August 31, 2017, Baldwin Park should have immediately obtained and considered them when conducting its fall 2017 psycho-educational assessment. It was inappropriate for Baldwin Park to conclude in its 2017 psycho-educational assessment that Student's mental health challenges were home struggles that did not impact her curriculum access, absent comprehensive and standardized testing in the mental health area during the triennial evaluation, with only informal observation from Baldwin Park's teachers, and without reviewing the Hillside

records. *See Timothy O., supra*, 822 F.3d at 1119.

19. Dr. Lopez only administered the Achenbach to Mother, Student, and one teacher. Although Student did not self-identify or report any mental health and emotional issues, had Dr. Lopez reviewed the Hillside records, she would have been aware of Student's reluctance to continue more intense therapy and considered that when evaluating Student's self-report of no anxieties or depressive issues in the Achenbach. Dr. Lopez inappropriately disregarded Mother's report of clinically significant mental health and emotional issues in the Achenbach because similar behaviors were not reported at school. However, none of the teachers who reported to Dr. Lopez that Student did not appear sad or depressed were mental health professionals qualified to conclude that Student was not depressed. Dr. Lopez did not interview any teachers or administer the Achenbach to more than one teacher. Inexplicably, she elected to obtain information from Student's other teachers through informal, non-standardized questionnaires. Further, Dr. Lopez did not include in her report any specific information elicited from the teachers beyond their conclusions that Student did not have any mental health or emotional issues. While the teachers shared that Student did not appear sad or depressed, and did not exhibit any behavioral or mental health issues in their classes, they were general opinions that Student functioned without being disruptive within their classrooms. These general statements and conclusions did not credibly obviate an in-depth mental health evaluation (including using more than one standardized test, issued to one teacher, to assess Student's mental health status) as part of Dr. Lopez's psycho-education evaluation in light of Mother's report that Student was depressed, had social issues, and received therapy from Hillside. Mother's scores on the Achenbach should have caused Dr. Lopez to: interview Mother and all of her teachers, to administer another standardized test and/or the Achenbach to all the teachers.

20. Although portions of Baldwin Park's psycho-educational assessment were appropriate, they were insufficient to support that the entire assessment met the legal requirements under the IDEA. Dr. Lopez's decision to only "formally" assess Student for a specific learning disorder because that was the only category Mother asked Baldwin Park to assess rendered the psycho-educational assessment incomplete under the IDEA. The IDEA required school districts to assess in all areas of a student's suspected disability. Although, Dr. Lopez distinguished between formal and informal assessments, the IDEA makes no such distinctions; the legal requirement was that Baldwin Park conduct its assessments completely and appropriately.

21. Dr. Lopez's conclusion that she informally and appropriately determined that Student did not qualify for special education under other eligibility categories was unpersuasive because she did not review the Hillside records which Mother authorized released to Baldwin Park on August 31, 2017. The IEP team relied on this incomplete psycho-educational assessment in its recommendation to conclude that Student did not qualify for special education under any category. Neither Mother, nor the rest of the IEP team, had the benefit of a comprehensive psycho-educational assessment, with a comprehensive assessment of Student's mental health, which would inform the IEP team on whether Student needed special education related counseling services and on all areas of Student's suspected disabilities. This significantly impeded Mother's opportunity to meaningfully participate in the decision making process at the December 2017 IEP team meeting.

22. Student met her burden of proving by a preponderance of evidence that Baldwin Park's fall 2017 psycho-educational assessment was incomplete to address all of Student's suspected needs. Accordingly, Student is entitled to an independent psycho-educational assessment, including a comprehensive mental health assessment, at the public's expense. The remedy for this is discussed in the Remedies section below.

## Speech and Language Assessment

23. A student is eligible for special education and related services under the category of speech and language impairment if he or she demonstrates difficulty understanding or using spoken language under specified criteria and to such an extent that it adversely affects his or her educational performance, which cannot be corrected without special education. (Ed. Code, § 56333.) The criteria are: (a) Articulation disorder: the child displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention; (b) Abnormal voice: a child has an abnormal voice, which is characterized by persistent, defective voice quality, pitch, or loudness; (c) Fluency Disorders: a child has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener; and (d) Language Disorder: the pupil has an expressive or receptive language disorder, in pertinent part, when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile, for his or her chronological age or developmental level, on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

24. The November 1, 2017 speech and language assessment was appropriately conducted. Ms. Chandler used a variety of tools including personal observation during speech and language therapy sessions, and multiple standardized tests to assess Student. Ms. Chandler persuasively explained that she did not interview Mother or teachers because she received all the information and input she needed from them at the August 31, 2017 IEP team meeting, a few months before the assessment. Further, Ms. Chandler persuasively explained that the bilingual standardized tests were properly used to assess Student because Spanish was spoken at home.

25. However, Ms. Chandler's conclusion that even if Student scored below the seventh percentile in two speech and language subtests, and one stand-alone speech and language test, Student's speech and language skills did not adversely impact her academic performance was unpersuasive. Based on evidence that Student had struggled with math and reading since the fifth grade; performed below grade level in state testing; consistent teachers' reports of Student's shyness and soft voice; and not meeting her 2016 speech and language goal, it was unpersuasive to conclude that Student did not qualify for special education under speech and language impairment—especially when in August 2017 those same facts led Ms. Chandler to conclude that Student required continued speech and language services for the 2017-2018 school year. See discussion in Section 2(d) below regarding Baldwin Park's speech and language FAPE offer.

26. Student did not show that Ms. Chandler's inappropriate conclusion necessitated an independent assessment. Student did not present any evidence, expert or otherwise, to show that Ms. Chandler's bilingual tests usage was inappropriate or that she inappropriately selected, administered or scored any of the standardized tests. Ms. Chandler's unsupported conclusion itself did not render the entire speech and language assessment inappropriate. Student did not meet her burden of proving by a preponderance of evidence that Baldwin Park's speech and language assessment was inappropriate. Therefore, Student is not entitled to an independent speech and language assessment at the public's expense.

#### ISSUES 2(A), (B), (C), (D) AND (E): PLACEMENT AND SERVICES

27. Student contends that Baldwin Park should have offered appropriate placement, resource services, accommodations, speech and language services, and counseling services to address Student's below grade level academic performance at the September 29, 2015, September 23, 2016, August 31, 2017 and December 5, 2017 IEP

team meetings. Baldwin Park contends it offered appropriate placement and services at all times.

Placement: issue 2(a)

28. 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.) "Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services" and that providing a continuum of alternative placements includes "the alternative placements listed in the definition of special education" and "supplementary services" to be provided in conjunction with regular class placement. 34 C.F.R. § 300.115.

29. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: (1) that children with disabilities are educated with non-disabled peers; and (2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) 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. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050].)

30. Student did not present any evidence regarding the *Rachel H.* factors either showing that the general education placement was inappropriate, or that Student required a change of placement during the relevant statutory period. Student demonstrated she was capable of functioning and accessing her curriculum in the general education environment during the relevant statutory period by getting passing grades in her other academic classes of science and history; and by the seventh grade, Student was receiving A's and B's in her science and history classes. Evidence of Student's struggles in math and reading alone, was insufficient to prove that the general education placement Baldwin Park offered was inappropriate. Baldwin Park showed that Student had other general education interventions including tutoring programs, Think Together and iReady, to help with her academic struggles in math and reading which Student did not access. Further, Student did not present any expert, or other evidence, to contradict teachers' and staff's opinion that the general education placement Baldwin Park offered during the relevant statutory period was FAPE.

31. Although Baldwin Park's inappropriate 2017 psycho-educational assessment resulted in a procedural violation during the statutory period of December 2017 and May 14, 2018, Student did not show that this procedural violation significantly impeded parental participation in the decision making process; deprived Student of



educational benefits; or impeded Student's right to a FAPE such that the general education placement offered by Baldwin Park at the December 2017 IEP team meeting constituted a FAPE denial.

32. Student did not show that the inappropriately conducted 2017 psycho-educational assessment made it impossible for the December 2017 IEP team to consider and recommend an appropriate placement. Unlike *Timothy O., supra*, 822 F.3d at 1119 where the district's failure to assess for autism in the child's initial assessment and development of an initial IEP deprived the IEP team of information to determine what FAPE was for the child, Student had been receiving special education since 2011. The evidence supported that Student was accessing her curriculum and receiving passing grades in all her academic classes of math, reading, science and history at the December 2017 IEP team meeting while in the general education placement. Student did not show that Student's mental health needs necessitated a change from the general education placement to receive a FAPE during the relevant statutory period.

33. Therefore, Student did not meet her burden of proving by a preponderance of evidence that Baldwin Park's placement offer was inappropriate, or denied her a FAPE, at any IEP team meeting.

#### Resource Service: issue 2(b)

34. Student did not present any evidence showing that Student required resource specialist program services during the relevant statutory period to receive a FAPE. The evidence showed that Student needed academic help with math and reading, but Student did not present any expert, or other evidence, to show what type of services Student required, or that Student specifically required resource service to receive a FAPE. Baldwin Park showed that Student had other general education interventions including tutoring programs, Think Together and iReady, to help with her academic struggles. Student did not access these interventions and did not show that they would

have been insufficient to address Student's deficits, and required resource services. When asked specifically whether Student would benefit from resource services of a resource specialist program, Ms. Jioras opined that Student would not benefit from resource services. Because Ms. Jioras' opinion that Student's below grade level performance was attributable to her speech and language needs, and Student's English language learner status, and both were properly addressed with existing general education and speech and language services was uncontradicted, she was persuasive.

35. Although Baldwin Park's inappropriate 2017 psycho-educational assessment resulted in a procedural violation during the statutory period of December 2017 and May 14, 2018, Student did not show that this procedural violation significantly impeded parental participation in the decision making process; deprived Student of educational benefits; or impeded Student's right to a FAPE such that Baldwin Park's failure to offer resource service at the December 2017 IEP team meeting constituted a FAPE denial. Student did not show that the inappropriately conducted 2017 psycho-educational assessment made it impossible for the December 2017 IEP team to consider and recommend whether Student required resource services. Unlike *Timothy O., supra*, 822 F.3d at 1119 where the district's failure to assess for autism in the child's initial assessment and development of an initial IEP deprived the IEP team of information to determine what FAPE was for the child, Student had been receiving special education since 2011. The evidence supported that Student was accessing her curriculum and receiving passing grades in all her academic classes of math, reading, science and history at the December 2017 IEP team meeting in her general education placement, without any resource services. Student did not show that Student's mental health needs necessitated resource services to receive a FAPE during the relevant statutory period.

36. Therefore, Student did not meet her burden of proving by a preponderance of evidence that Baldwin Park's failure to offer resource services was

inappropriate, or denied her a FAPE, at any IEP team meeting.

Accommodations: Issue 2(c)

37. Student did not present any evidence to show that Baldwin Park's failure to offer any accommodations to her at the September 29, 2015 IEP team meetings was inappropriate; or that the accommodations it offered in the September 23, 2016 and August 31, 2017 IEP team meetings denied her a FAPE. Although Student argued that Ms. Chandler, a speech and language therapist who was neither a general, nor a special education teacher was unqualified to draft the August 31, 2017 accommodations, Student did not present any expert, or other evidence, to show that those accommodations were inappropriate, or that Ms. Chandler was unqualified to draft the accommodations. Ms. Chandler credibly explained that she drafted the August 31, 2017 accommodations based on her experience as Student's speech and language therapist and her familiarity with Student's functional level and needs. Her opinion that the August 31, 2017 accommodations were appropriate and part of Student's FAPE offer was not contradicted or rebutted. Therefore, Student did not meet her burden of proving by a preponderance of evidence that Baldwin Park's failure to offer accommodations at the September 29, 2015 IEP team meeting, or that Baldwin Park's offers of accommodations at the September 23, 2016 and the August 31, 2017 IEP team meetings were inappropriate and denied Student a FAPE.

38. However, Baldwin Park's failure to offer accommodations to Student at the December 2017 IEP team meeting was inappropriate because it was unsupported by evidence. A few months earlier at the August 31, 2017 IEP team meeting, Baldwin Park offered accommodations and credibly showed those accommodations were part of Student's receipt of FAPE. Inexplicably, Baldwin Park withdrew its offer of accommodations to Student in December 2017. Baldwin Park did not present evidence showing that Student did not need accommodations in December 2017, or that Student

had improved, or that her needs changed between September 1, 2017, and December 2017 such that the accommodations it offered at the August 31, 2017 IEP team meeting should not continue. Therefore, absent evidence to the contrary, Student met her burden of proving by a preponderance of evidence that Baldwin Park's failure to offer any accommodations at the December 2017 IEP team was inappropriate. The remedy for this is discussed in the Remedies section below.

#### Speech and Language Services: Issue 2(d)

39. Student did not present any expert testimony or any evidence to show that the speech and language services Baldwin Park offered at the September 29, 2015, September 23, 2016, and August 31, 2017 IEP team meetings were inappropriate. Ms. Chandler opined that the speech and language services offered at the September 23, 2016, and August 31, 2017 IEP team meetings constituted FAPE for Student because they provided enough speech and language pull-out services for her to progress on her speech and language goals and allowed her enough time in the general education classroom so she could keep up with classwork. Baldwin Park also showed that Student met her speech and language goals from the prior year at the September 29, 2015, and September 23, 2016 IEP team meetings; and made progress toward her speech and language goal both in December 22, 2016 and March 22, 2017, albeit not meeting the 2016 speech and language goal at the August 31, 2017 IEP team meeting. At the August 31, 2017 IEP team meeting, Ms. Chandler drafted a new speech and language goal for Student to work on during the 2017-2018 school year. Student did not offer any evidence to contradict or rebut Ms. Chandler's opinion. Therefore, Student did not meet her burden of proving by a preponderance of evidence that the speech and language services Baldwin Park offered at the September 29, 2015, September 23, 2016, and August 31, 2017 IEP team meetings were inappropriate.

40. Student persuasively showed that Baldwin Park inappropriately withdrew

all speech and language services and exited Student from special education at the December 2017 IEP team meeting. Student did not meet her 2016 speech and language goal. Teachers consistently reported that Student had a soft voice. Student scored below seven percent in two speech and language subtests, on grammatical judgment and receptive vocabulary, and on a stand-alone, expressive vocabulary test. Dr. Lopez's Bilingual Verbal Ability Test showed that Student found English language demands of age-level tasks difficult, and she recognized that Student had a speech and language impairment which rendered the Special Nonverbal Composite more reflective of Student's abilities. These facts all supported Student had continued speech and language needs, and that she met the legal definition of a speech and language impairment. Even Ms. Chandler recognized that Student had continued speech and language needs at the August 31, 2017 IEP team meeting, and opined that Student continued to qualify for special education under the speech and language impairment category, and needed continued speech and language services to receive a FAPE for the 2017-2018 school year. At the August 31, 2017 IEP team meeting, Baldwin Park offered 90 minutes of group speech and language services per month and Ms. Chandler proposed another communication development goal for Student to achieve in 2018. Yet inexplicably, Ms. Chandler concluded, just a few months later, that Student did not qualify for special education under the speech and language impairment eligibility category because she did not find that Student's speech and language needs impacted Student's access to education.

41. Ms. Chandler's opinion that the Peabody Picture Vocabulary Test and the Receptive One-Word Picture Vocabulary Test, where Student performed much higher than the Comprehensive Assessment of Spoken Language, more accurately reflected Student's abilities because students with bilingual background usually had difficulty with the Comprehensive Assessment of Spoken Language was unpersuasive. Although

Baldwin Park typically tested students in both English and the language, other than English, listed by the parent in the enrollment form, there was no evidence that Student was bilingual in the sense that she spoke both English and Spanish. Student did not respond in Spanish when tested by either Dr. Lopez, or Ms. Chandler, which was consistent with Mother's report that Student did not speak any Spanish. Ms. Chandler's generic statement that if Student missed school less she would learn more was generally true, but Student's school attendance was irrelevant to justify the withdrawal of speech and language services. Student had only missed four days of school from August to December 2017, which was not a significant number of days.

42. The weight of the evidence did not support Ms. Chandler's conclusion that Student did not require speech and language services, and did not qualify for special education under the speech and language impairment category. The facts weighed in favor of Student's continued receipt of speech and language services as offered at the August 31, 2017 IEP team meeting despite Student's failure to present an expert in support of same because Ms. Chandler, and the Baldwin Park IEP team, opined that was FAPE for Student just a few months earlier. Baldwin Park did not present evidence showing that Student's speech and language needs decreased, changed, or that she had improved, between September 1, 2017, and December 2017 to rebut Student's showing of continued speech and language needs.

43. Therefore, Student met her burden of proving by a preponderance of evidence that Baldwin Park's failure to offer speech and language services at the December 2017 IEP team meeting was inappropriate and denied Student a FAPE from December 14, 2017 to May 14, 2018. The remedy for this is discussed in the Remedies section below.

#### Counseling Services: Issue 2(e)

44. Student did not present any evidence to show that Baldwin Park's failure

to offer any counseling services, as a special education related service, at the September 29, 2015, September 23, 2016, and August 31, 2017 IEP team meetings denied Student a FAPE. Although Student had mental health and emotional needs, which should have been considered as a part of Baldwin Park's fall 2017 psycho-educational assessment upon Mother's release of the Hillside records to Baldwin Park, Student did not present any expert, or other evidence, to show what type, if any, special education related counseling services Student required to receive a FAPE at the September 29, 2015, September 23, 2016 and August 31, 2017 IEP team meetings. Further, like all students, Student had counseling available through either The Family Center Program or the Kaiser intern program. Student did not show that she needed counseling beyond what was available to all students, or specifically as a special education related service. Therefore, Student did not meet her burden of proving by a preponderance of evidence that Baldwin Park's failure to offer counseling services, as a related special education service, was inappropriate or denied her a FAPE at the September 29, 2015, September 23, 2016, and August 31, 2017 IEP team meetings.

45. Baldwin Park's inappropriate 2017 psycho-educational assessment resulted in a procedural violation during the statutory period of December 2017 and May 14, 2018. Under *Timothy O.*, *supra*, 822 F.3d at 1119, and based on the unique facts in this case, this procedural violation was a *per se* FAPE violation as to whether Baldwin Park should have offered any special education counseling services during the December 2017 IEP team meeting. In not considering the Hillside records Mother released to Baldwin Park at the August 31, 2017 IEP team meeting, Baldwin Park prevented the December IEP team from considering the "snapshot" of available mental health information which was directly related to determining if Student required counseling as a special education related service; and if so, what specific counseling intervention and supports she required to receipt a FAPE. Baldwin Park significantly impeded parental

participation in the decision making process at the December 2017 IEP team meeting and denied her a FAPE from December 2017 to May 14, 2018 with respect to Student's need for special education related counseling services. Therefore, Student met her burden of proving by a preponderance of evidence that Baldwin Park denied Student a FAPE from December 14, 2017 to May 14, 2018 by not providing the IEP team with the necessary information to determine whether she had educationally related counseling needs or required counseling as a special education related service. The remedy for this is discussed in the Remedies section below.

## REMEDIES

1. Student requests independent psycho-educational, mental health, and speech and language assessments; compensatory education, counseling and speech and language services; and appropriate goals and services to meet Student's needs. Baldwin Park contends no remedies are appropriate because Student did not meet her burden of persuasion on any issue.

2. Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Burlington v. Department of Education* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996, 85 L.Ed. 2d 385].) In addition to reimbursement, school districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p.1496.)

3. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would



have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

4. Student demonstrated that Baldwin Park did not conduct an appropriate psycho-educational assessment, including a comprehensive mental health assessment. Therefore, Baldwin Park shall fund an independent psycho-educational assessment, with a comprehensive mental health assessment for Student.

5. Student also demonstrated that Baldwin Park denied Student a FAPE by not offering any accommodations to Student at the December 2017 IEP team meeting. Therefore, Baldwin Park shall reinstate the accommodations offered at the August 31, 2017 IEP team meeting of: seating near the teacher and away from distracting stimuli; cues, prompts, and reminders of procedures; repeated instructions and confirmation of understanding; extended time for in-class assignments and tests, especially for complex written assignments; have Student ask questions about recent lessons; adjust assignments for time spent in speech therapy; encourage Student to attend after school tutoring; and visual images and calculator usage.

6. Student also demonstrated that Baldwin Park denied Student a FAPE by inappropriately withdrawing speech and language services and exiting Student from special education at the December 2017 IEP team meeting. Therefore, Baldwin Park shall reinstate Student as qualifying for special education under the speech and impairment category and reinstate the speech and language services offered at the August 31, 2017 IEP team meeting of 90 minutes of group speech and language services per month, within 20 school days after the date of this Decision. Baldwin Park shall also fund 10 hours of speech and language services from a non-public agency, with which Baldwin Park contracts, to compensate Student for inappropriately exiting Student from special education and withdrawing speech and language services at the December 2017 IEP team meeting and denying Student a FAPE from December 14, 2017 to May 14, 2018.

7. Student further demonstrated that Baldwin Park denied Student a FAPE from December 14, 2017 to May 14, 2018 by not providing the IEP team with the necessary information to determine whether she had educationally related counseling needs or required counseling as a special education related service. Therefore, Baldwin Park shall fund a total of 17 hours of one-to-one compensatory services of either counseling, academic tutoring, or a combination of counseling and academic tutoring (at Mother's election) from a non-public agency with which Baldwin Park contracts to compensate Student for this FAPE denial.

## ORDER

1. Baldwin Park shall fund an independent psycho-educational assessment, including a comprehensive mental health assessment, in accordance with Baldwin Park's independent assessment guidelines. Student shall provide Baldwin Park with the name(s) of the proposed assessor(s) and Baldwin Park shall have 10 days to respond to Student whether the proposed assessor(s) meets Baldwin Park's independent assessment guidelines. Baldwin Park shall convene an IEP team meeting within 30 calendar days of its receipt of the assessor's report of the independent assessment, excluding days between Baldwin Park's regular school sessions or terms or days of school vacation in excess of five school days, unless Mother agrees in writing to an extension.

2. Baldwin Park shall reinstate the accommodations offered at the August 31, 2017 IEP team meeting of: seating near the teacher and away from distracting stimuli; cues, prompts, and reminders of procedures; repeated instructions and confirmation of understanding; extended time for in-class assignments and tests, especially for complex written assignments; have Student ask questions about recent lessons; adjust assignments for time spent in speech therapy; encourage Student to attend after school tutoring; and visual images and calculator usage.

3. Baldwin Park shall reinstate Student as qualifying for special education under the speech and language impairment category and reinstate the speech and language services offered at the August 31, 2017 IEP team meeting of 90 minutes of group speech and language services per month, within 20 school days of the date of this Decision.

4. To compensate Student for Baldwin Park's inappropriate withdrawal of speech and language services and inappropriately exiting Student from special education at the December 2017 IEP team meeting, Baldwin Park shall fund 10 hours of speech and language services from a non-public agency. The 10 hours was calculated based on Baldwin Park's denial of FAPE from December 14, 2017 to May 14, 2017, a total of approximately 17 school weeks, compensating Student a few more hours more than the 90 minutes per month of speech and language services. Within 20 school days of the date of this Decision, Baldwin Park shall provide to Mother in writing the name of at least two non-public agencies with which it contracts, or with which it could consider contracting, to provide speech and language services to Student. Within 10 school days after receiving Baldwin Park's list of non-public agencies, Mother shall inform Baldwin Park in writing the non-public agency she selected to provide Student with speech and language services. Within 20 school days after Mother's selection, Baldwin Park shall arrange for direct payment with the selected non-public agency. Student shall have one year from the date of this Decision to access the compensatory speech and language hours.

5. To compensate Student for Baldwin Park's FAPE denial by not providing the IEP team with the necessary information to determine whether Student needed special education related counseling services at the December 2017 IEP team meeting, Baldwin Park shall fund a total of 17 hours of one-to-one compensatory services of either counseling, academic tutoring, or a combination of counseling and academic

tutoring (at Mother's election), from a non-public agency. The 17 hours was calculated based on Baldwin Park denial of FAPE from December 14, 2017 to May 14, 2018, a total of approximately 17 school weeks, at an hour of compensatory services per week.

Within 20 school days of the date of this Decision, Baldwin Park shall provide to Mother in writing the name of at least two non-public agencies with which it contracts, or with which it could consider contracting, to provide one-to-one compensatory counseling and academic tutoring to Student. Within 10 school days after receiving Baldwin Park's list of non-public agencies, Mother shall inform Baldwin Park in writing whether she elected counseling and/or academic tutoring; the number of hours she elected to be applied towards counseling and/or academic tutoring; and the non-public agency or agencies she selected for Student to receive the compensatory services. Within 20 school days after Mother's selection, Baldwin Park shall arrange for direct payment with the selected non-public agency or agencies. Student shall have one year from the date of this Decision to access the compensatory counseling and/or academic tutoring hours.

6. All other requests for relief are 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, Student was the prevailing party as to Issues 1(a), 2(c)(iv), 2(d)(iv), 2(e)(iv); and Baldwin Park was the prevailing party as to Issues (1)(b), 2(a)(i)(ii)(iii)(iv), 2(b)(i)(ii)(iii)(iv), 2(c)(i)(ii)(iii), 2(d)(i)(ii)(iii), and 2(e)(i)(ii)(iii).

## RIGHT TO APPEAL

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: October 12, 2018

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/s/

SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings