

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

LA CANADA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2018051171

DECISION

La Canada Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on May 25, 2018. On June 11, 2018, OAH continued La Canada's case based on a showing of good cause.

Administrative Law Judge Laurie Gorsline heard this matter in Van Nuys, California on August 28, 29, 30, and September 4, 6, 12, 13, and 14, 2018.

Attorney Lyndsy B. Rodgers and David Salazar represented La Canada. La Canada's Director of Special Education, Dr. Tamara Jackson attended all days of hearing. Mother represented Student. Student did not attend the hearing.

At the close of hearing on September 14, 2018, the ALJ granted the parties' request for a continuance to October 9, 2018, for the parties to file written closing arguments. The parties timely filed written closing arguments, the record was closed and the matter was submitted for decision on October 9, 2018.

## ISSUES<sup>1</sup>

1. Is La Canada's April 3, 2018 psychoeducational assessment appropriate such that Student is not entitled to an independent educational evaluation in the area of psychoeducation and/or dyslexia at public expense?
2. Is La Canada's February 28, 2018 speech and language assessment appropriate such that Student is not entitled to an independent educational speech and language evaluation at public expense?
3. Is La Canada's March 22, 2018 occupational therapy assessment appropriate such that Student is not entitled to an independent educational occupational therapy evaluation at public expense?

## SUMMARY OF DECISION

La Canada failed to prove that its February 28, 2018 speech and language assessment and its April 3, 2018 psychoeducational assessment were appropriately conducted. La Canada's speech and language assessor failed to seek or obtain Parent input with regard to any part the speech and language evaluation. La Canada failed to prove the speech and language assessor administered a valid version of the Comprehensive Assessment of Spoken Language. The speech and language assessor demonstrated a profound misunderstanding of the behavior data obtained on the Clinical Evaluation of Language Function 5 pragmatics profiles, undermining the trustworthiness of her assessment. The psychoeducational assessment did not meet the legal standards for assessments because the school psychologist failed to follow the

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<sup>1</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.)

publisher's instructions on administering the Comprehensive Test of Phonological Processing, second edition, and then failed to disclose this deviation in his written report. Student is entitled to an independent psychoeducational evaluation and an independent educational speech and language evaluation at public expense.

La Canada proved that its March 22, 2018 occupational therapy assessment was appropriate. Student is not entitled to an independent educational assessment at public expense in the area of occupational therapy.

## FACTUAL FINDINGS

1. Student was an eight-year-old male at the time of the due process hearing. At the time of hearing, his eligibility was based upon a specific learning disability. Parents divorced in 2016 and shared joint custody and educational rights over Student. At relevant times, Student resided part-time within La Canada School District with Father, and part-time with Mother outside La Canada School District.

## BACKGROUND

2. From birth, Student had issues with eye contact and developed communication and digestive issues. In 2012, he was diagnosed with autism and found eligible for special education. In 2013, Student was enrolled in the UCLA Early Childhood Partial Hospitalization Program. He was also diagnosed with developmental coordination disorder, a condition which affected his speech.

3. In March 2015, La Canada convened Student's triennial IEP team meeting and the IEP team reviewed Student's triennial assessment results. Student qualified for special education as a child with autism. La Canada offered special education and related services, including resource specialist program teacher support, occupational therapy, physical therapy, speech and language services, behavior intervention, and consultative psychological services to attain his goals.

4. In August 2015, Student enrolled at La Canada Elementary School as a kindergartner. On March 10, 2016, La Canada convened Student's annual IEP team meeting. Student met some of his annual goals, including his occupational therapy goal. He was using an effective grasp. Areas of need included: on task behaviors, conversational rules, writing, gross motor skills, speech and pragmatics. La Canada offered a general education placement, and related services, including: occupational therapy, physical therapy, speech and language, a one-to-one aide during the school day, and resource specialist program teacher consultation, along with goals in the areas of behavior, speech, occupational therapy/writing, and physical therapy. Mother consented to the IEP on April 14, 2016.

5. In March and April 2017, La Canada held Student's annual IEP team meeting. Student met his goals in speech, physical therapy, and writing/fine-motor, and one behavior goal. He did not meet his goal for task completion. He was achieving grade level standards in math, but was reading over half a year below grade level overall. His speech was intelligible in the classroom, and there were no voice or fluency concerns. He held a writing tool without a pencil grip using a functional and effective quadrupod grasp. He made good progress with his fine motor strength and continued to demonstrate appropriate fine motor skills and hand skills to access classroom tools and participate in classroom tasks. He independently wrote all lower and upper case letters without visual model or verbal prompt displaying adequate legibility. At times, he reversed some letters, but this was noted to be common at his age. Student's areas of need were stated as: initiating academic tasks, task completion, reading, writing, fine motor, gross motor and expressive language.

6. La Canada offered general education with 30 minutes per week of occupational therapy, 30 minutes per week of physical therapy, 60 minutes four times per week of specialized academic instruction for language arts, 30 minutes per week of

group speech and language services, behavior support services in the form of a one-to-one aide during the school day, behavior intervention program development, 60 minutes per month of psychological services, along with goals in the areas of reading (fluency, phonics/word recognition), behavior (initiating academic tasks, task completion), speech (expressive language), occupational therapy/writing (text type/sequencing), and physical therapy (coordination). La Canada agreed to continue monthly meetings with Parents. Parents consented to the IEP in May 2017.

### THE 2017-2018 SECOND GRADE GENERAL EDUCATION CLASSROOM

7. Carey Lynn Durfee was Student's second grade general education teacher at La Canada Elementary during the 2017-2018 school year. Ms. Durfee held a master's degree in mathematics education and a multiple subject teaching credential. She has been a teacher since 1999, and employed at La Canada as a second grade teacher since 2014. She had experience working with special education students, including students with autism. Her duties included attending IEP team meetings and participating in the special education assessment process.

8. There were 22 students in Ms. Durfee's classroom and one aide assigned to Student. Ms. Durfee observed Student on a daily basis in the classroom and occasionally on the playground when she conducted yard supervisions. Student's aide provided him with reminders when he was off-task and helped him with assignments.

9. Introduction to writing paragraphs was part of the second grade curriculum, but correct letter formatting was not a second grade standard. In Ms. Durfee's opinion, writing a number backwards was typical of a second grader, and the age when children started to self-correct those errors. Ms. Durfee's writing assignments included preparation of rough drafts which were not graded, but used merely as a vehicle for students to get their ideas on paper. Students were encouraged to use their best handwriting on final drafts. Rough drafts were sent home weekly, and final drafts

were bound in a book and sent home at the end of the school year. Ms. Durfee thought Student's handwriting was legible and age appropriate.

## STUDENT'S 2018 TRIENNIAL EVALUATION

### The Assessment Plan

10. On January 10, 2018, La Canada sent a letter to Father, and on January 24, 2018, sent a letter to Mother, notifying them that Student was due for his triennial assessment. The letters enclosed an assessment plan, a copy of Parent's Rights and Procedural Safeguards, questionnaires for updating Student health and family history, and surveys for assessing social emotional functioning and autism.

11. The assessment plan stated that Student would be assessed in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social emotional/behavior, adaptive behavior, and task initiation and completion. The assessment for academic achievement would be conducted by the resource specialist, the motor development assessment would be conducted by the occupational therapist/physical therapist, the speech and language assessment would be conducted by the speech and language specialist, and the assessments in the area of intellectual functioning, social emotional/behavior and adaptive behavior would be completed by the school psychologist.

12. Father and Mother signed their consent to the assessment plan on February 6, 2018 and February 11, 2018, respectively, and returned it to La Canada.

### District's Psychoeducational Evaluation

13. In March 2018, La Canada conducted a psychoeducational evaluation of Student, which included academic assessments. The psychoeducational assessment team included school psychologist Terry Crowe and Whitney Worster, a resource support program specialist. Mr. Crowe drafted a written report dated April 3, 2018,

based upon the assessments he performed and the academic achievement assessment administered by Ms. Worster.

#### Academic Assessment

14. Ms. Worster held master's degrees in education and educational leadership and policy studies and was credentialed in administrative services, education specialist instruction with an autism spectrum disorder authorization, and as a multiple subject teacher. She was authorized to teach general education and special education children. Prior to working for La Canada, she was a general education teacher and a resource specialist and response to intervention teacher specialist. As a La Canada resource specialist between August 2014 and June 2018, her responsibilities included providing specialized academic instruction, acting as a case manager, conducting academic assessments, supervising aides, working with classroom teachers, and writing IEP's. As part of her duties, Ms. Worster was Student's case manager since fall 2015, provided specialized academic instruction to him during the 2017-2018 school year, and attended monthly meetings with Parents.

15. Ms. Worster's academic assessment included a variety of tools to gather information about Student, including a standardized assessment, observation during testing, and record review. Her assessment was not affected by economic, cultural or environmental factors.

16. Ms. Worster administered the most current version of the Wechsler Individual Achievement Test, Third Edition, in Student's primary language, English. The Wechsler Achievement Test was comprised of a battery of tests that assessed reading, writing, oral language and math. She was qualified, trained and had experience in administering the test, and followed the instructions in the publisher's manual. The Wechsler Achievement Test was valid and reliable for the purposes for which it was used and it was administered so as not to be culturally, racially or sexually discriminatory.

17. Student's oral language composite scores were in the well above average/above average range in listening comprehension and oral expression. On the subtests, he scored in the above average to well above average in listening comprehension, in the following two areas: receptive vocabulary, and oral discourse comprehension. In oral expression his scores fell in the average range or above average range for expressive vocabulary, oral word fluency and sentence repetition. Student's scores were consistent with Ms. Worster's experience with him. Ms. Worster concluded that oral language was not an area of need.

18. Most of Student's reading scores fell in the average range, with his lowest subtest scores in oral reading fluency and oral reading rate, which fell in the below average range. His basic reading composite scores fell in the average range, scoring average on the subtests in word reading, and pseudoword decoding and above average in early reading skills. In reading comprehension, his score fell in the above average/average range, and his subtests score in oral reading accuracy fell in the average range. Reading comprehension was a strength for Student and reading fluency was his biggest weakness. Student did not read with the speed reflective of his intelligence. In conjunction with all of the other information gathered as part of the psychoeducational assessment, Ms. Worster concluded that reading was an area of need for Student.

19. Student scored average/above average on the written expression composite, alphabet writing fluency and sentence composition, above average in sentence combining and average in sentence building and spelling. Student's scores were consistent with Ms. Worster's expectation and experience with Student. Ms. Worster determined Student's writing skills were strong because his sentences were thoughtful and well-constructed. In Ms. Worster's opinion, the scores did not indicate Student had problems with written expression; however, after speaking to Ms. Durfee,



and considering all of the information obtained during the assessment period, she determined that writing was an area of need for Student.

20. Overall in math and on the subtests in problem solving and numerical operations, Student scored in the average range. His scores in math fluency composite, including the scores in both math fluency-addition and math fluency-subtraction were in the below average range. Ms. Worster was surprised by these lower scores because math was always an area of relative strength and a preferred subject for Student. After reviewing Student's classroom work and speaking with Ms. Durfee, Ms. Worster concluded Student's lower scores were the result of a fluency issue, and not a lack of understanding of the mathematical concepts. She concluded that math was not an area of need for Student.

21. In Ms. Worster's opinion, the test results on the Wechsler Achievement Test indicated Student was functioning at an average range and that he had the prerequisites to access the curriculum. The lower academic fluency scores indicated he needed more time for processing and work completion.

22. Two of the tests administered from the Wechsler Achievement Test were germane to assessing the condition of dyslexia, specifically the subtests of word reading and pseudoword decoding. In Ms. Worster's opinion, dyslexia was a phonological impairment which possibly affected Student's access to the curriculum. She did not believe Student required further testing in the area of dyslexia, because the psychoeducational assessment addressed the same skills that might be affected by that condition.

#### School Psychologist's Assessment

23. Mr. Crowe worked part-time as a school psychologist at La Canada since 2013. He held a master's degree in psychology and a pupil personnel services credential in the areas of school psychology, school psychometry, and child welfare and

attendance, which authorized him to assess children for special education and interpret tests, provide counselling services, and perform certain administrative functions. He was a full-time school psychologist for another school district for 31 years, where he performed about 80 assessments per year. His primary duty at La Canada was conducting assessments and he conducted an average of 19 assessments per year. He was assigned to La Canada Elementary and was on campus two days a week.

24. Mr. Crowe never worked with Student before he assessed him. At the time of his assessments, Student's suspected areas of disability were autism and specific learning disability. He determined these were the areas to assess because Student's existing eligibility was autism and because school psychologist Nicole Pilarski had informed him that Mother was questioning if Student had dyslexia, so he wanted to cover specific learning disability in his assessment.

25. Mr. Crowe opined that autism eligibility criteria for special education was characterized by severe deficits in communication and social relatedness, which could include such things as stereotypical behavior, repetitive patterns of behaviors, rigidity, and difficulties with transition. In determining whether a student was eligible for special education under the category of autism, he looked for the presence of those types of behaviors, including severe difficulties with communication and social behavior that caused problems for the child in accessing the curriculum.

26. Mr. Crowe described specific learning disability eligibility as a severe discrepancy between the results on the intelligence tests and scores on academic achievement test along with a processing deficiency to explain the discrepancy. In the case of dyslexia, he looked for a difficulty in understanding and using phonics.

27. During his assessment Mr. Crowe used multiple measures, both formal and informal assessment tools. The formal measures he used were standardized tests administered in English, including one-to-one testing administered over two days for a

couple of hours in the campus psychology office. The informal measures included observations in the classroom, on the playground and during the assessment process, reviewing records, reviewing teacher and parent questionnaires, and a Student interview.

28. Standardization meant the consistency within which the test was given. Standardized tests were normed on a group of children and each test had to be administered in the same way in order for the results to have reliability and validity. Norming meant that the test, if given to large group of children at different age levels, the average scores and distribution of the scores around the average or mean was determined for each of the categories and each of the subtests.

29. Mr. Crowe administered the following formal standardized measures: Wechsler Intelligence Scale for Children, fifth edition, the Test of Word Reading Efficiency, second edition, the Comprehensive Test of Phonological Processing, second edition, two subtests from the Test of Visual Perceptual Skills, third edition, the Behavior Assessment Scale for Children, third edition, the Berry-Buktenica Developmental Test of Visual Motor Integration, sixth edition, and the Gilliam Autism Rating Scale, third edition. He also gave two supplemental tests, including an academic test for reading and one related to processing, specifically, the Test of Word Reading Efficiency and the Comprehensive Test of Phonological Processing. Each test had a manual that accompanied the test written by the publisher which gave instructions on how to administer the test.

30. The Wechsler Intelligence Test was a general intelligence test, using five strands of intelligence, three of which were very strongly related to thinking and problem solving skills, specifically, verbal comprehension, fluid reasoning, visual-spatial ability, and two strands for processes required for intellectual functioning, specifically working memory and speed of processing. It was a measure which provided a full scale IQ score, a standard score for each of those strands and the subtests within each strand.

Mr. Crowe administered all of the core subtests and was able to obtain a full IQ score from those subtests. He was familiar with the test publisher's manual and followed the instructions without deviation. He used the most current version of the test. It was valid and reliable for the purpose for which it was used and selected and administered so as not to be culturally, racially or sexually discriminatory.

31. Student's full scale IQ was 122, well above average and in the 93rd percentile. His strengths were in verbal comprehension, and fluid reasoning which were in the very high range. Student's scores on the verbal comprehension scale meant he had the capacity to participate and understand within the classroom during verbal discussions at a high level of functioning. The scores in fluid reasoning indicated Student was able to use deductive reasoning to draw conclusions. His visual spatial ability score was lower, but within average range. Student had average ability in visual figure ground perception and was spatially able to determine top from bottom and left from right, which suggested Student did not have a lot of difficulty with pictorial presentations, charts and graphs.

32. Student's relative weaknesses were in working memory and processing speed. Working memory tested the ability to keep things in mind as part of problem solving. It consisted of two subtests, digit span and picture span. Student's results were spilt on the subtests. On the digit span subtest, an auditory subtest, which required Student to listen to sequences of numbers read aloud and recall them in different orders, his score was above average. On picture span, which was a visual memory test, his score was below average. The difference in scores indicated Student was more inclined to excel when things were presented verbally, compared to matters which were presented visually.

33. The processing speed index consisted of two subtests and determined the mental rate at which a student could function. Student's results were spilt. On the

coding subtest, which required him to copy symbols, he performed at the bottom of the average range. On the symbol search, which did not require him to copy information, he performed at the high end of the average range. The scores suggested Student would have some mild difficulty in keeping up with his written work.

34. Mr. Crowe administered the additional measure of the Test of Word Reading because Student had a suspected reading problem. Mr. Crowe wanted to make certain he had ample information about the Student's ability to read sight words and sound out nonsense words because that was a critical skill for phonics development. Although two tests from the Test of Word Reading were similar to two of the tests from the Wechsler Achievement Test, specifically the subtests for word reading and pseudoword decoding, he gave the Test of Word Reading because it was more demanding than the Wechsler Achievement Test in terms of the speed at which a child was required to perform and skills it tested, which were critical to a child's reading and in determining how to help them. The Test of Word Reading was valid and reliable for the purpose for which it was used, and selected and administered so as not to be racially, culturally and sexually discriminatory. Mr. Crowe personally administered the entirety of the Test of Word Reading and he was qualified to give the test based on his credential. He used the Test of Word Reading in most of the assessments he performed where the child was suspected of having a specific learning disability, particularly in reading. He was familiar with the publisher's instructions, which had time limitations, and he did not deviate from those instructions.

35. Student's results on the Test of Word Reading were in the average range, corroborated his scores on the Wechsler Achievement Test, and were reported under the basic reading composite. The basic reading composite, as compared to reading comprehension and fluency, assessed specifically how well a student coped with determining what a single word says, and was comprised of two subtest scores in the

areas of word reading and pseudoword decoding. Word reading was sight reading of single words of increasing or decreasing difficulty. Pseudoword decoding required Student to sound out nonsense words. His scores in the two areas were in the average range suggesting he was capable of reading work assigned to him at a second grade level.

36. Mr. Crowe administered the Comprehensive Test because it evaluated the skills necessary for phonological processing which were related to reading. For students with real deficits in phonological skills, this assessment provided information as to what was causing those deficits. Phonological processing was related to a child's inherent ability to use sound information to decode language. The Comprehensive Test assessed phonological processing skills in three areas, phonological awareness, phonological memory and rapid naming. There were seven subtests. Phonological awareness tested the awareness of sound and how to put sounds together and manipulate sounds. Rapid naming was a processing speed task to determine the rate at which a child could read familiar letters and numbers. Phonological memory assessed a child's ability to maintain sounds in his or her mind while trying to sound out a word.

37. Mr. Crowe administered the Comprehensive Test in all of the assessments he conducted in which the child was suspected of having as a reading disability. He did not have specific training administering this test, but he was familiar with the manual and was qualified to administer the test based on his credential. He personally administered the core subtests, which were the only tests necessary to obtain the full measure of standard scores, and used the most current version of the test.

38. Mr. Crowe deviated from the instructions in the publisher's manual on three of the subtests of the Comprehensive Test. The manual clearly described how each subtest was required to be administered. The instructions required the child to listen to a compact disc provided by the publisher for three of the subtests, including the subtest

for blending words which was part of the phonological awareness composite score. Mr. Crowe initially claimed he deviated on "a couple" of the tests. The instructions stated that the purpose of having the child listen to the compact disc was to standardize the presentation of the subtest. The compact disc contained sounds the child was required to listen to in order to answer the questions. Mr. Crowe made the sounds himself instead of having Student listen to the publisher's compact disc. He claimed that he began doing this many years ago because the publisher's audio was very cumbersome to use.

39. Mr. Crowe considered his substitution of his own voice to be "a minor deviation," but his testimony was unpersuasive. He testified inconsistently as to the number of subtests in which he deviated from the instructions, initially stating there were "a couple" and then admitting there were three subtests. He was equivocal in his testimony as to whether the deviation affected Student's Comprehensive Test scores, stating, "I don't think so" and admitted that it gave an advantage to a child who could read lips. When asked if the publisher permitted his deviation in administration, he was demonstrably evasive. He conceded the instructions directed him to use the compact disc, but maintained that the instructions did not specifically state the results would be invalid if he did not use the compact disc.

40. Student's scores on the Comprehensive Test were largely in the average range except for memory which was above average, but were below his level of expectancy given his intelligence. Mr. Crowe denied the scores pointed to a phonological processing as the reason why Student's reading was below his expectancy given his intelligence, but admitted his scores suggested Student had difficulties in phonological processing relative to his cognitive level. Although Student's underlying skills and phonics were at a second grade level, he would have relative difficulty in the classroom with phonological processing tasks if related to his speed of reading, the

main feature of the concerns. Mr. Crowe both denied and was equivocal in his testimony as to whether there was any specific information in his report that corroborated the Comprehensive Test results, although he later claimed that the scores were similar to Student's reading scores elsewhere.

41. Mr. Crowe administered two subtests from the Test of Visual Perceptual Skills to help him understand the results on the picture span subtest on the Wechsler Intelligence Test working memory index. He was not familiar with the manual so he looked at the publisher's manual to administer the test because it was not a test he generally used. He only assumed that the test was reliable and valid because he never read that part of the manual, but he had no information which indicated to him that the test was not standardized. He personally administered the test. He claimed he was qualified to administer the test, but did not state a basis for his claim. He followed and did not deviate from the instructions. Student's scores were consistent with his scores on the picture span subtest, all in the below average range. The results indicated that Student's memory was better when information was given to him verbally, or visually along with verbal explanation.

42. Mr. Crowe relied on the Wechsler Achievement Test results and information from the classroom teacher and resource specialist in order to analyze Student's functioning in the areas of mathematics, written language and oral language. In math, there was a significant discrepancy between Student's problem solving skills, and the fluency with which he answered problems. Student's scores in math fluency were significantly lower than his problem solving skills. However, math was an area of academic strength for Student even though he had difficulties during the testing. Student's writing was consistent with his high language abilities and he did not struggle with spelling. Oral language was an area of strength.

43. Mr. Crowe administered the Developmental Test of Visual-Motor



Integration in its entirety. The test measured Student's ability to coordinate his pencil movements with what he saw, and his understanding of shapes. The test was reliable and valid for the purpose for which it was used. Mr. Crowe was familiar with the test manual. It was selected and administered so as not to be culturally, racially and sexually discriminatory. He was qualified to administer the test by his credential and training. Mr. Crowe used the test in most of the assessments he conducted. He followed the publisher's test instructions and did not deviate from the instructions. He administered the test because Student had received occupational therapy services. Student's score was in the below average range which was consistent with the coding subtest on the Wechsler Intelligence Test, Student's occupational therapy history and what Mr. Crowe observed in the classroom. Mr. Crowe observed that the mechanics of writing were difficult for Student. He moved slowly in his writing and used a lot of pressure to write. Student's score indicated to Mr. Crowe that Student should be assessed in the area of fine motor skills.

44. The Gillum Autism Rating Scale was a norm referenced screening instrument used to identify persons who have autism spectrum disorders based on six areas of autistic functioning. Mr. Crowe used the rating scale whenever a student was suspected of having autism. The rating scale was completed by the Parents, Student's aide, Ms. Durfee, and Ms. Worster. The measure was reliable and valid for the purpose for which it was used. It was selected and administered so as not to be culturally, racially and sexually discriminatory. Mr. Crowe was qualified to interpret the responses by virtue of his credential and he followed the publisher's instructions. On the autism index which was the overall score taken from the six composite scores, Parent's responses fell in the Very Likely range, Ms. Durfee's responses fell in the Probable range and Ms. Worster and the aide's scores fell in the Unlikely range. The discrepancy in the scores indicated that Student behavior's was different at school, than at home.

45. The Behavior Assessment System for Children was a norm-referenced, standardized behavioral assessment system designed to facilitate the differential diagnosis and classification of a variety of emotional and behavioral disorders of children. The assessment tool was reliable and valid for the purpose for which it was used. Mr. Crowe selected and administered the test so as not to be culturally, racially and sexually discriminatory. He was qualified to interpret the responses and he followed the publisher's instructions. Behavior Assessment surveys were completed by Parents, Ms. Durfee, Ms. Worster, and Student's aide. The responses indicated that Student behaved differently at home than at school. Parents, particularly Mother, saw Student behave in a manner that was not seen in the school environment. In the school environment, Student was at-risk for attention which was part of the composite for the at-school problems, but the rest of the scores were in the normative range. Most of Mother's scores fell in the clinically significant range. Most of the Father's scores fell into the at-risk range. In Mr. Crowe's opinion, teacher questionnaires did not identify behaviors associated with autism as being problematic. The Behavior Assessment incorporated three validity scales, including the F-index, which detected that extreme caution had to be used with regard to Mother's answers. Mr. Crowe concluded that Student did not present at school with those problems identified by Mother.

46. Mr. Crowe conducted observations on February 7 and 8, 2018, in the general education classroom, in the resource room and on the playground. During the February 7, 2018 observation, Mr. Crowe reported Student was using a pencil grip in the presence of an occupational therapist.

47. Based on the evaluation, Mr. Crowe concluded Student was a disabled learner who continued to require special education services. He recommended that Student be found eligible for special education under the category of specific learning disability. Student displayed disorders in visual processing and memory, basic

psychological processes involved in understanding or in using language, spoken or written, that have manifested in an imperfect ability to read, write, spell and do mathematical calculations. He demonstrated a severe discrepancy between ability and achievement in oral reading fluency and significant, but not severe discrepancies in overall reading, basic reading, reading comprehension and fluency, math and math fluency. Student required special education because of his fluency difficulties in combination with his visual processing weaknesses. Mr. Crowe determined that Student did not meet the criteria for special education under the criteria of autism, because he no longer demonstrated a significant disability affecting verbal and nonverbal communication and social interactive or stereotyped movements, resistance to environmental change or change in daily routines, and/or unusual responses to sensory experiences.

48. La Canada's assessment of Student for a specific learning disability included testing specifically relevant to determining whether dyslexia affected his ability to assess the curriculum. Those tests were the Wechsler Intelligence Test, the Wechsler Achievement Test, the Test of Word Reading, and the Comprehensive Test, which canvassed phonological processing. In Mr. Crowe's opinion, Student may have dyslexia. He denied Student was eligible for specific learning disability based upon Student's presentation regarding dyslexia, but rather reading fluency. However, he admitted that reading fluency could have been affected by Student's dyslexia profile. Mr. Crowe opined that Student did not require further assessment for dyslexia because he had been adequately assessed.

49. The psychoeducational evaluation report prepared by Mr. Crowe included a summary of information gathered as part of the assessment, including the results of standardized and non-standardized measures and interpretation of the results, along with Mr. Crowe's findings and recommendations and the basis for his determinations.

The report was organized such that the various measures pertaining to a particular skill were grouped together. The subtests for pseudoword decoding on the Wechsler Achievement Test and the Test of Word Reading were not reported in the same section as the Comprehensive Test scores for auditory/phonological processing. The psychoeducational evaluation report did not disclose that Mr. Crowe had deviated from the instructions in administration of the Comprehensive Test and it did not include Mr. Crowe's opinions about dyslexia.

### Speech and Language Assessment

50. Student's 2018 triennial evaluation included a speech and language assessment by speech pathologist Angela Deno. Ms. Deno has been a speech and language pathologist at La Canada since 2011. She held a master's degree in communicative disorders and has been a licensed speech pathologist since 1982. She held credentials and certificates which authorized her to evaluate and provide speech and language services to children, and teach students with autism, learning disabilities and speech and language disorders. Prior to working for La Canada, she worked as an itinerant speech pathologist and a special day class teacher.

51. Ms. Deno's duties as a La Canada speech and language pathologist included evaluation and screening of students with suspected speech and language disorders, consulting with teachers and staff, providing speech therapy, developing IEP goals, and attending IEP team meetings. She evaluated approximately 800 students for speech and language services, the majority of which were elementary school children. She conducted a speech and language assessment of Student in 2015, provided speech services to Student since 2015, and attended his IEP team meetings for the past three years.

52. Ms. Deno assessed Student in February and March 2018. She used multiple measures, including the following standardized measures which she

administered on February 9, 23 and 26, 2018: Expressive One-Word Picture Vocabulary Test 4, Receptive One-Word Picture Vocabulary Test 4, the Test of Pragmatic Language 2, and the Comprehensive Assessment of Spoken Language. She selected this formal testing battery because of Student's history with delays in speech and language development, and she wanted to make certain Student was assessed in all areas of language, which included semantics or vocabulary, syntax or grammar, and pragmatics. The tests selected covered all of these areas. She also used non-standardized/informal assessment measures: Clinical Evaluation of Language Function 5 pragmatics profile, review of records, observations and interviews. She obtained a spontaneous language sample on March 13, 2018. She also obtained information from Mr. Crowe about Student's developmental history and current health, although her testimony as to when, how and what she specifically reviewed was unclear and inconsistent. The tests were selected and administered so as not to be racially, sexually or culturally discriminatory. The assessment measures were provided in English. The standardized assessments and informal assessments were given equal weight, and all were necessary in order for Ms. Deno to reach her conclusions.

53. Ms. Deno choose the Expressive One-Word Picture Vocabulary Test because it provided a standardized measure of Student's verbal vocabulary. She administered the current version of the test in its entirety. She frequently used the test to assess students, was familiar with the publisher's testing instructions and did not deviate from them. Student obtained a standard score of 115 which was in the high average range which indicated he had the vocabulary to participate in a general education classroom grade level curriculum.

54. The Receptive One-Word Vocabulary Test provided a measure of Student's understanding of words. Ms. Deno used the most current version of the test, administered it in its entirety and did not deviate from the publisher's instructions.

Student achieved a standard score of 119 which is in the above average range, which indicated he was learning age level appropriate concrete and abstract vocabulary terms. Because the test compared him to other children of his same age and gender, his above average score indicated he was functioning above typical children of his same age and gender.

55. The Test of Pragmatic Language assessed how Student was functioning in the area of pragmatics, which was an area of need for him in the past. It targeted pragmatic language deficits and identified strengths and weaknesses in areas of social communication. She followed the publisher's instructions and did not deviate from them. Student's score of 110 placed him at the top of the average range, which indicated that he did not have a problem with pragmatics. He could perform in the classroom such that he could determine the best way to communicate with a variety of people in a variety of settings, he could introduce a topic and carry on a conversation with appropriate detail, he could apologize, make requests, negotiate and describe things, monitor facial expressions and body language, and he understood metaphors and proverbs. These results were consistent with Ms. Deno's experiences with Student at the time, including her observations of Student's conversations with people.

56. The Comprehensive Assessment was a normed oral language assessment for young children. It examined the oral language processing systems of auditory comprehension, oral expression and word retrieval, the knowledge and use of words and grammatical structures, and the ability to use language for social communication in various contexts. It provided a core composite and a good representation of a student's communication skills. There were five subtests: antonyms, syntax construction, paragraph comprehension, nonliteral language, inference and pragmatic judgment. On the subtests, Student scored in the high average to above average range. The results indicated he was able to interpret the meaning of sarcastic and abstract language, make

inferences and use socially appropriate language. Ms. Deno also administered a supplemental test of supralinguistics because of Student's prior issues with pragmatics. The supralinguistics subset assessed comprehension of language that required inference from world knowledge and nonliteral meanings. The results indicated Student could carry on a conversation, that he demonstrated an adequate knowledge and use of pragmatic rules of language.

57. At hearing, Ms. Deno claimed she administered the entirety of the Comprehensive Assessment. She also claimed she gave the test frequently, but she failed to demonstrate familiarity with the scoring during her testimony. She testified inconsistently and demonstrated confusion as to what tests made up the core composite and supralinguistic scores, and claimed she could not recall what subtests were included in those scores even when looking at her report. Her inability to explain the scores negatively affected her credibility.

58. Initially, Ms. Deno falsely claimed she administered the most current version of the Comprehensive Assessment. She knew this testimony was false. She confessed she did not administer the most current version of the Comprehensive Assessment. She admitted the most current version of the test was available in November 2016 and tentatively claimed that the final version was published sometime in 2017. At hearing, she claimed she chose to use version one because version two had eliminated the paragraph comprehension subtest, and this auditory processing piece had previously been an area of need for Student, so she wanted to see how Student performed in this area. She later contradicted that testimony which undermined her credibility. She did not use version two because she did not have it and she was familiar with version one, and version one had always been reliable and valid for the uses that she needed it.

59. Ms. Deno opined that an assessor should always use the most current test,

but claimed she understood that version one was still a valid assessment tool if it was still being sold by the publisher. She also claimed that she conducted research, and that best practices indicated that a test was still reliable for about a year after a new version was issued. Her testimony was vague and otherwise not credible. She did not seem to know precisely when version two was issued. She was unaware of the reasons why the test was revised, including why the paragraph comprehension subtest was eliminated from version two, and did not specifically identify all of the changes made to the test. She did not persuasively detail any research she conducted before or at the time she administered the test that was specific to the Comprehensive Assessment.

60. The Clinical Evaluation was an evaluation of language function which included pragmatics and behaviors. Student's general education teacher Ms. Durfee, and his aide completed the pragmatics profile checklist from the Clinical Evaluation in February 2018. Ms. Deno did not ask either Parent to complete the form. The pragmatics profile was a checklist of 50 positive verbal and nonverbal contextual communication behaviors. The rater was required to rate each behavior by circling, one of four answers: (1) Student engaged in the behavior "never/almost never;" (2) "sometimes;" (3) "often;" or (4) "always or almost always." The directions stated on the form, "If you are unsure how to rate a skill or behavior, ask the student's teachers, parents, or other informants who know the student for their input. Discuss examples of each listed skill with the informant." Ms. Deno used this portion of the Clinical Evaluation because she thought it was important to have an understanding of Student's abilities from those who worked with Student.

61. At hearing, Ms. Deno confidently explained that out of 50 positive behaviors on the checklist, 40 to 41 of the behaviors were exhibited by Student, and 9 or 10 were not exhibited by Student. She confirmed that her conclusion was based on the fact that Ms. Durfee and Student's aide had answered "often" or "always/almost always"



to 40 or 41 of the items, and “never/almost never” or “sometimes” to 9 or 10 of the items. Ms. Deno was impeached on this issue. On the checklist, Ms. Durfee rated only 22 of the items “always/almost always” or “often”, and Student’s aide rated only 24 as “often” or “always/almost always.” Ms. Durfee answered “never/almost never” or “sometimes” to 28 of the questions, and the aide gave the same responses to 26 of the questions. Ms. Deno’s attempts to explain her prior testimony were unconvincing because they were inconsistent with her prior admissions, and nonsensical. Because she was impeached and she was unable to offer any valid explanation for her testimony, her credibility was negatively affected.

62. The pragmatics profiles was a checklist of items, including speech intentions that were typically expected skills for social and school interactions in the classroom. Ms. Deno did not demonstrate familiarity with the pragmatics profile analysis categories listed on the checklist. For example, she was unaware whether “giving/responding to advice or suggestions” fell within the category of “understanding/expressing complex intentions.” She claimed she had to review the manual even though the categories and the items within each category were listed on page two of the checklist. Even when looking at the checklist, she could not recall if using rituals was on the checklist, even though 18 of the items were listed under the heading of “rituals and conversational skills.” She failed to demonstrate a comprehensive knowledge of the assessment measure, which adversely impacted her credibility.

63. Ms. Deno did not administer any formal standardized assessments for articulation. Based on her three years of work with Student, she had opportunity to observe his intelligibility and articulation, and did not believe it warranted a formal assessment. At hearing, she claimed that she used informal measures to assess for articulation, specifically a spontaneous language sample and observations in different settings. Her report contained no comprehensive analysis of Student’s articulation as

determined by these measures. Ms. Deno concluded Student had no significant needs in the area of articulation and that Student had average articulation skills and intelligibility.

64. In conducting her assessment, Ms. Deno did not ask Parents for input or information. She admitted she obtained no input about anything from Parents for her 2018 assessment.

65. Ms. Deno determined that Student did not qualify for special education services as a student with a speech/language impairment. In her opinion, he did not demonstrate a communication disorder in any of the identified areas such as articulation, language, voice or fluency; he no longer demonstrated an inability to use oral language for age-appropriate communication; and he was able to relate to peers and adults appropriately. Ms. Deno recommended that Student be dismissed from direct speech therapy services.

66. Ms. Deno prepared an assessment report dated February 28, 2018, summarizing her evaluation, including Student's scores, her findings, conclusions and recommendations. Ms. Deno's report did not disclose that she had not used the current version of the Comprehensive Assessment. Ms. Deno's report did not address dyslexia. At hearing, Ms. Deno opined that Student did not require further testing in any area which could be affected by dyslexia. Her testimony on this issue was mostly incomprehensible, and therefore unconvincing.

#### Occupational Therapy Assessment

67. Tracy Wade-Prehn conducted an occupational therapy assessment of Student in February and March 2018 and prepared a written report dated March 22, 2018 in preparation for Student's triennial IEP.

68. Ms. Wade-Prehn was a licensed occupational therapist since 1992 and employed by La Canada since 2001. She worked as an occupational therapist for 27 years. Ms. Wade-Prehn provided occupational therapy services to about 300 La Canada

students from ages 3 to 22. Her duties included evaluation of students, monitoring IEP goals and progress, attending IEP team meetings, collaborating with IEP team members and providing services. She assessed about 350 La Canada students, including reevaluations to determine students' present levels of performance and current needs. Ninety percent of the students she assessed were elementary school age children and about 300 of the students she assessed required occupational therapy. She worked with students with sensory processing difficulties, attention issues, visual motor or fine motor deficits, and difficulties in assessing the playground or snacks.

69. Ms. Wade-Prehn provided occupational services to Student since fall 2015. She worked on strengthening his fine motor skills to improve his dexterity and coordination needed for using classroom tools, visual-motor skills to improve his handwriting skills, addressed his sensory needs for attention and positioning of his chair and desk, and collaborated with teachers to determine Student's progress, monitor his pencil grasp, and use of an adaptive grip or other tools to help him access his curriculum.

70. Ms. Wade-Prehn conducted testing of Student over four days between February 9 and March 14, 2018. She used multiple assessment measures, including the following standardized measures: Bruininks-Oseretsky Test of Motor Proficiency, second edition, Evaluation Tool of Children's Handwriting-Manuscript, and Sensory Processing Measure Main Classroom Autoscore Form. She used the following non-standardized measures: Functional Assessment of School Performance, school based observations and structured clinical observations. She administered the Functional Assessment and the Sensory Processing Measure to the teacher before administering the other tests to obtain a clearer understanding of the teacher's concerns which needed to be addressed by the assessment. She administered all of the standardized measures in their entirety except for the Bruininks. She administered only the Fine Motor Precision and Fine Motor

Integration measures which made up the Fine Manual Control subtest, and Manual Dexterity and Upper-Limb Coordination measures which made up the Manual Coordination subtest. She did not administer the gross motor section that addressed endurance, strength and agility, because the physical therapist performed that section. The standardized measures were valid and reliable for the purposes for which they were used, and were selected and administered in English and so as not to be racially, sexually and culturally discriminatory. She followed the publisher's instructions for the tests without deviation. She was qualified to administer the standardized assessments she used.

71. As part of the occupational therapy assessment, Ms. Wade-Prehn reviewed Student's prior occupational therapy assessments, his IEP's over the last three years, his IEP goals and progress reports, and his work samples. She reviewed the visual motor skills assessments by the school psychologists in 2015 and 2018. She also consulted with Ms. Durfee, Ms. Deno, Ms. Worster, his aide, his physical education teacher, physical therapist Judy Freedman, and Student. Ms. Durfee reported that Student may write slower than his peers, but his writing was legible and functional. Overall, Ms. Durfee had no concerns related to Student's pencil grasp, legibility of writing, or sensory indicating a need for school-based occupational therapy.

72. Ms. Wade-Prehn also obtained Mother's input. On March 14, 2018, she wrote an email to Parents and asked them if they had any occupational therapy concerns related to Student's accessing his current educational program. Mother responded the same day, stating that she had concerns in the area of sensory, specifically Student chewing his clothes, his pencil grasp, and visual and auditory discrimination. During her assessment, Ms. Wade-Prehn considered the issues La Canada had been addressing over the past three years, as well as Mother's and teacher's concerns related to occupational therapy.

73. The Functional Assessment was a checklist in which the rater answered yes or no to questions in the areas of: attention/behavior/motivation, visual-motor skills/handwriting, hand use, feeding skills, self-care, sensory processing, managing school environment/mobility, and gross motor skills. Ms. Durfee filled out the checklist. Ms. Wade-Prehn reviewed it after Ms. Durfee completed it to determine if Ms. Durfee saw something that Ms. Wade-Prehn did not see, and she spoke to her about it. Ms. Wade-Prehn's and Ms. Durfee's observations of Student differed in one way: Ms. Durfee said Student could not tie his shoes, but Ms. Wade-Prehn observed him tie his shoes independently in the resource classroom. Overall, except in the area of attention/behavior/motivation, Student presented with strengths in all areas. In the area of visual motor handwriting, and sensory processing, there was one item in each category where there was one concern, but the strengths outweighed Student's challenges. Keeping his letters a consistent size was the issue in visual-motor handwriting and sitting without fidgeting with items on desk was the issue in sensory processing. In the remaining areas, Ms. Durfee and Ms. Wade-Prehn concurred these were areas of functional strength.

74. Ms. Durfee and Ms. Wade-Prehn perceived Student had more functional challenges in the area of attention/behavior/motivation. Ms. Wade-Prehn continued to observe and monitor this area throughout the assessment process. She conducted observations during her assessment as well as reviewed goals with the IEP team during the March 8, 2018 IEP team meeting. Ms. Wade-Prehn's overall impression from the results of the Functional Assessment was that Student was successfully assessing the curriculum in the school environment and that he made progress.

75. The Sensory Processing Measure was a standardized tool in which the teacher completed a detailed norm-reference questionnaire, scoring the student's typical behavior during the past month. It provided information about Student's ability

to process and modulate sensory input and provided standard scores for five sensory systems, including visual, auditory, tactile, proprioceptive-body awareness and vestibular-balance/motion. Ms. Durfee completed the questionnaire. Overall, the results indicated that in the general education classroom Student presented with typical performance overall in sensory processing according to his general education teacher. The only area in which Student's score fell below the typical performance range was in balance and motion, where his score fell one point below that range.

76. The Bruininks was a standardized administered test that used goal-directed activities to measure a wide array of motor skills, including specific hand skills needed by a child for grasping, writing, cutting, bilateral coordination, dexterity, precision and upper limb coordination. The activities included coloring in a small space, connecting dots, completing a maze, cutting out a circle, reproducing geometric designs, using two hands together with speed and small objects, dribbling, catching, throwing and hitting a target. The test instructions allowed Ms. Wade-Prehn to report scores from just the fine motor sections. On the composite and on each subtest, Student had average fine motor skills, which indicated that Student had average fine motor skills to write and use classroom tools. The results were consistent with Ms. Wade-Prehn's observations and experience with Student at the time of the assessment, and with the findings in his prior assessments in 2012 and 2015.

77. The Evaluation Tool evaluated manuscript handwriting skills. The primary focus of the test was to assess a child's legibility and speed of handwriting in tasks which were similar to those required of a student in the classroom. The assessment examined specific legibility components of handwriting such as letter formation, spacing, size, alignment, and a variety of sensorimotor skills related to the child's handling of the writing tool and paper. The manual include criteria for scoring legibility. Overall, on the Evaluation Tool, Student's word legibility was 100 percent, his letter

legibility was 91 percent and overall numeral legibility was 82 percent. His handwriting speed was in the average range for his age. He held his writing tool using functional and efficient dynamic quadrupod grasp without a pencil grip, one of four mature grasps that were functional in terms of speed or legibility for writing. Classroom samples demonstrated grade appropriate legibility in the areas of sizing, spacing, and placement the lines on a variety of line paper. Written samples had appropriate pencil control and consistency of letter size, spacing and pencil pressure.

78. During the assessment, Ms. Durfee and Student's aide reported that Student chewed or mouthed his clothing once during the last 30 days. Physical therapist Judy Freedman, Ms. Deno and Ms. Worster reported no observation of chewing. Ms. Wade-Prehn did not observe this behavior during assessment or during Student's occupational therapy sessions. At hearing, Ms. Durfee estimated she had seen Student engaged in chewing behavior twice during the 2017-2018 school year.

79. Ms. Wade-Prehn observed Student in his general education classroom and on the playground on February 9, 2018, and during transition to the morning recess on March 14, 2018. She also observed Student on February 14 and 15, 2018, in the specialized academic classroom during testing. Ms. Wade-Prehn observed Student independently transition to recess. She saw him sit and eat with peers, socialize, run and interact during play. He sat at a desk appropriate for his size and position. He followed two-step teacher directions and interacted with peers. He independently implemented sensory strategies he had been taught. He wrapped his legs around the chair legs, which did not appear to be related to sensory processing differences, but to be appropriate strategies to maintain attention and concentration to participate in class.

80. Ms. Wade-Prehn documented her findings, conclusions and recommendations in her written report. Among other things, she concluded that Student presented with functional range of motion, muscle tone, muscle strength and

postural stability. He had adequate visual perceptual skills. When producing self-generated writing assignments, he occasionally made letter reversals but was observed to erase and correct the reversals independently. These reversals were observed to be related to attention rather than difficulties with visual perception. He possessed the underlying fine motor and visual motor skills to adequately support his ability in functional handwriting, cutting, coloring, classroom tool use and fine manipulation of small items. Although his teacher reported he had some difficulties in the area of attention, concentration, initiating and completing tasks on time, and organizational skills, it was comparable to other second grade students in her classroom. Student engaged in very mild sensory seeking behaviors, but this did not appear to be related to sensory processing differences, but rather, to maintain attention. Based on the assessment, mouthing objects was not indicated as a functional challenge. She referred to Ms. Worster's report regarding the area of auditory discrimination because that was not an area assessed by an occupational therapist.

81. The occupational therapy report contained a photograph of Student grasping a pencil during writing. It did not look exactly like the exemplar picture of a bilateral quadrupod grasp shown to Ms. Wade-Prehn by Mother at hearing. Because of the angle of the picture in the report, the image was skewed and unclear. Ms. Wade-Prehn maintained that Student demonstrated a functional quadrupod grasp, and that she was not concerned with Student's pencil grasp during the assessment. In her opinion, at the time of her 2018 assessment, Student did not need the adaptive grip. Based on the Evaluation Tool and comparison to Student's work samples, Ms. Wade-Prehn described Student's handwriting as legible and average in comparison to his same age peers. Although rough drafts of Student's work looked different than his final work product, in Ms. Wade-Prehn's opinion, the rough drafts were legible and appropriate. Ms. Wade-Prehn's testimony was corroborated by Ms. Durfee. Ms. Durfee



had students prepare a rough draft of an assignment for the purpose of the putting their ideas on paper for writing content, rather than handwriting mechanics, which students later edited and corrected. The photograph of Student's work product in Ms. Wade-Prehn's report was Student's final draft and was representative of Student's handwriting.

82. Ms. Wade-Prehn concluded that Student did not present with needs that warranted direct intervention by an occupational therapist. Student made good progress and met his goals in the areas of using a functional grasp without the use of a pencil grip or mechanical pencil or other assistive device. She recommended accommodations and school based occupational therapy consultation as needed. As part of the criteria for determining whether Student required occupational therapy services, Ms. Wade-Prehn used the Educational Framework for Child Success as a guide through the assessment process. In her opinion, this model took into account the curriculum, the educational environment, and a student's abilities to help establish current levels of performance. In her opinion, this model was best practice pursuant to the California Department of Education Guidelines for Occupational Therapy and Physical Therapy in California Public Schools.

#### THE MARCH/APRIL 2018 IEP TEAM MEETINGS

83. Student's annual/triennial IEP team meeting took place over the course of three days, March 8, 2018, and April 3 and 11, 2018. Parents, Ms. Worster, Ms. Deno, Ms. Wade-Prehn, Ms. Durfee, school psychologist Ms. Pilarski, La Canada principal Emily Blaney, the physical therapist, and Director of Special Education Dr. Tamara Jackson attended. Mr. Crowe attended the April 3 and 11, 2018 IEP team meetings.

84. On March 8, 2018, the IEP team reviewed Student's goals and present levels of performance. La Canada reported Student met his annual goals in the areas of fluency, phonics and word recognition, initiating academic tasks, and expressive

language. He did not meet his goals for text type sequencing, but he was able to write with functional legibility independently, his goal for task completion, and his physical therapy goal for coordination.

85. The IEP team reconvened on April 3, 2018. Parents received signed copies of the psychoeducational evaluation report prepared by Mr. Crowe, the speech and language assessment report prepared by Ms. Deno, and the occupational therapy assessment report prepared by Ms. Wade-Prehn. The IEP team reviewed and discussed Student's present levels of performance. Mr. Crowe, Ms. Deno and Ms. Wade-Prehn presented their reports and reviewed it with the other members of the team. Mr. Crowe later edited his report because he erroneously stated Student met all goals as of his 2016 annual IEP. He prepared an addendum to his report and made a change in the body of the report referring to the addendum.

86. The IEP team met on April 11, 2018. A copy of the addendum to the report was provided to Parents. The team considered eligibility, placement and services. The La Canada members of the team concurred with the recommendation that Student did not qualify for special education under the category of autism. Mother did not request an independent educational assessment at that time. She informed the IEP team that she intended to request an independent educational evaluation for dyslexia and she asked the IEP team members for their position regarding a dyslexia assessment. Mr. Crowe explained his assessment covered dyslexia. After she conducted further study, Mother disagreed.

#### MOTHER'S REQUESTS FOR INDEPENDENT EDUCATIONAL EVALUATIONS

87. On May 2, 2018, La Canada received Mother's April 30, 2018 written requests for independent educational assessments in the areas of psychoeducation, dyslexia, speech and language, and occupational therapy. Between May 2 and May 7, 2018, La Canada sent Mother a Notice of Parent Rights and Procedural Safeguards.

88. By email to Parents on May 7, 2018, La Canada acknowledged receipt of the requests for independent educational assessments, attaching a copy La Canada's independent educational evaluation policy, which contained the standards regarding the qualifications for assessors. La Canada informed Parents that it would respond to the requests within a week.

89. On May 10, 2018, La Canada sent an email to Parents denying Mother's requests for independent educational evaluations and explaining the reasons for its denial. The email included a letter to Parents, Parents' Rights and Procedural Safeguards, and La Canada's Independent Educational Evaluation Policy. La Canada also sent the letter and the attachments to Parents by mail.

#### MS. DENO'S CONTACT WITH THE PUBLISHER OF THE COMPREHENSIVE ASSESSMENT

90. In August 2018, Ms. Deno contacted the Comprehensive Assessment publisher's customer service. Based on what she was told and an August 2018 quote she was sent for purchasing the "CASL REC FM2 AGE 7-21 (12)," she determined that the publisher was still selling version one of the Comprehensive Assessment, and therefore understood that version one was valid at the time she administered it to Student.

#### DR. TAMARA JACKSON'S OPINIONS

91. Tamara Jackson has been La Canada's executive director of special education for 15 years. Dr. Jackson knew Student since he attended preschool. She had a master's degree in education, psychology and educational psychology, and a doctorate in special education. She held a single subject credential in life sciences, a reading specialist credential, pupil personnel services credentials in counseling and school psychology, and an administrative services credential. Prior to her employment with La Canada she was employed at other school districts as a teacher, school counselor, and school psychologist. Her duties at La Canada included responding to

requests for independent educational evaluations. Her duties as a school psychologist prior to working for La Canada included assessing students for special education eligibility, performing thousands of psychoeducational evaluations. Parent input was a required component of an assessment.

92. Dr. Jackson learned Mr. Crowe deviated from the instructions on the Comprehensive Test when she began preparing for the due process hearing. Upon learning this information, she was very concerned because of the impact the deviation could have on the validity of the test and the final results. After reviewing the publisher's manual, she determined the subtests affected were blending words which was part of the phonological awareness composite, and memory for digits and nonword repetition which were both part of the phonological memory composite. Phonological awareness was the ability to hear sounds of words. Phonological memory was the ability to remember the different sounds of the words.

93. In Dr. Jackson's opinion, Mr. Crowe's subtest scores on the Comprehensive Test were a valid report of Student's abilities regarding phonological awareness. She opined Mr. Crowe's deviation did not impact Student's Comprehensive Test scores because Student was assessed in the area of phonological awareness on other tests with similar results. Specifically, she opined that phonological awareness was also assessed on the pseudoword decoding subtests on the Wechsler Achievement Test, the Test of Word Reading, and the Test of Auditory Processing Skills, third edition, administered to Student in 2015.

94. Dr. Jackson's testimony was unconvincing. Her comparison to the 2015 test was unsupported by any evidence that it was properly administered and a valid test. She failed to comprehensively and specifically explain how the tests she compared were administered, or otherwise detail the similarities and differences between the tests in the administration of or the content of the tests. She also failed to explain why the results of

pseudoword decoding subtests were not reported as secondary measures of Student's phonological awareness in the phonological processing section of the psychoeducational report. In addition, Dr. Jackson's testimony appeared rehearsed because of the cadence of her responses, which negatively affected Dr. Jackson's credibility.

95. Dr. Jackson opined that Mr. Crowe's deviation did not impact the validity of the Comprehensive Test in the area of phonological memory because Student was assessed in that area on other tests with similar results, specifically, the Wechsler Intelligence Test digit span subtest and the Wechsler Achievement Test sentence repetition subtest. She concluded based on the review of the scores that the Comprehensive Test scores were accurate because these other subtests verified that Student had average to above average auditory awareness and auditory memory, claiming that auditory and phonological were "similar."

96. Dr. Jackson's testimony as to the validity of the Comprehensive Test for phonological memory was unconvincing. Dr. Jackson did not comprehensively and specifically explain whether or not there were differences between the tests she compared either in content or their administration. She claimed that auditory memory was similar to phonological memory, but she did not comprehensively explain her answer as it related to the validity of the Comprehensive Test. She falsely denied she had testified that auditory memory and awareness were "similar" to phonological memory and awareness. She admitted that auditory memory and phonological memory were different types of memory, phonological being a more specific type of memory. The credibility of Dr. Jackson's testimony was adversely affected by her failure to adequately support her opinions, her denial of her prior testimony, the lack of clarity in her responses, and the inconsistencies in her testimony.

97. According to Dr. Jackson, the assessment of Student for specific learning

disability included the condition of dyslexia. Because Mr. Crowe assessed for reading disorders it necessarily included dyslexia. Dr. Jackson corroborated Mr. Crowe's testimony that the necessary assessments for specific learning disability included testing in the areas of IQ or cognitive ability, academic achievement and processing disorders.

98. During the hearing, Dr. Jackson looked at the website of the publisher of the Comprehensive Assessment. Based on her review of the website, she determined that the most current version of the Comprehensive Assessment, not administered by Ms. Deno, was released on February 15, 2017.

#### MOTHER'S TESTIMONY REGARDING HER DISAGREEMENT WITH THE ASSESSMENTS

99. Mother observed Student on school grounds and during recess during the 2017-2018 school year. Every week during the 2017-2018 school year, Mother received a folder which contained some of Student's work.

100. Mother criticized the speech assessment because it did not address or identify needs in the areas of articulation which Mother claimed Ms. Deno had been addressing informally. Although Student's articulation had improved, Mother noticed an increase in articulation issues during the last year, including Student rolling or skipping sounds. Mother felt pragmatics was an area of need which La Canada did not identify in the assessment. Mother felt Ms. Deno ignored the data on the pragmatics profile and excluded her from the assessment process because Ms. Deno never asked for Mother's input. Mother was also critical of the assessment because Ms. Deno did not use the most current version of the Comprehensive Assessment and could not explain the difference between the two versions of the test.

101. Mother disagreed with the occupational therapy assessment because she did not believe it assessed Student in all areas of need. Referring to Student's writing samples, Mother felt Student did not keep his letters within the lines or provide appropriate spacing between letters and words. She also disagreed with some of the

statements in the assessment report, including that Student's handwriting was legible and that he had a dynamic quadrupod grasp without the use of a pencil grip based on a photograph in the report of Student's grasp, a photograph of an exemplar of a quadrupod grasp, and a statement in the psychoeducational report that Student was observed by Mr. Crowe in the presence of an occupational therapist using a pencil grip on February 7, 2018. Mother felt Student did not have appropriate posture and disagreed that the Functional Assessment was a valid tool because it was created by La Canada. She also disagreed with the assessor's failure to conclude Student had a sensory disorder based on reports that he chewed on his clothes. She believed the assessment report was invalid because it failed to recommend direct occupational therapy services.

102. Mother believed the psychoeducational assessment was not valid for several reasons. Among other things, Mother disagreed with some of the statements in the report that Student met his goals. She did not fully understand the report because it was unclear and English was not her native language. She did not believe Mr. Crowe accurately described Student's abilities and that Mr. Crowe ignored her input. As a result, Mother felt she could not participate fully at the IEP team meeting. Mother believed the IQ test was unnecessary. She also disagreed with the assessment because she did not believe La Canada appropriately assessed for dyslexia and failed to address Student's psycho-emotional health. Mother also disagreed with the assessment because it concluded Student no longer qualified for special education as a child with autism.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>2</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)<sup>3</sup> et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

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

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<sup>2</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>3</sup> All references to the Code of Federal Regulations are to the 2006 version unless otherwise specified.



under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 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.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.) In a recent unanimous decision, the United States Supreme Court clarified FAPE as "markedly more demanding

than a 'merely more than the de minimus test' . . ." (*Endrew F. v. Douglas School Dist. RE-1* (2017) 580 U.S.\_\_\_\_ [137 S.Ct. 988, 1000].) School districts must "offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (*Id.* at p. 1002.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6), (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) 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, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, La Canada bears the burden of proof.

## ASSESSMENTS

5. 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 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 needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

6. 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.) To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321.) Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f).)

7. The assessment must be conducted in a way that: (1) uses a variety of 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(a)(2), (b) & (c); Ed. Code, §§ 56320, 56381, subd. (e).) 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).)

8. 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).)

9. "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d

877, 882.)

10. A student may be entitled to an independent educational evaluation if he or she 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].) In response to a request for an independent evaluation, an educational agency must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an independent evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

#### ISSUE 1: PSYCHOEDUCATIONAL ASSESSMENT

11. La Canada contends its psychoeducational assessment, which it argues included assessment of those skills which could be affected by dyslexia, was appropriate and therefore Student is not entitled to a publicly funded independent psychoeducational evaluation.

12. Student contends La Canada's assessment was invalid because, among other things, La Canada failed to find Student eligible under the category of autism, failed to assess for dyslexia, included an IQ assessment, ignored Mother's input and Student's emotional and health history, and prepared a misleading report.

13. A child qualifies for special education under the category of specific

learning disability if he or she has “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” (5. Cal. Code Regs., § 3030 (b)(10); Ed. Code, § 56337, subd. (a) [The term “specific learning disability” includes conditions such as...dyslexia...”].) Basic psychological processes include attention, visual processing, auditory processing, phonological processing, sensory-motor skills, and cognitive abilities including association, conceptualization, and expression. (5. Cal. Code Regs., § 3030 (b)(10).)

14. A school district may “take into consideration whether a pupil has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning,” by computing and measuring mathematical differences between ability and achievement scores on standardized testing (the severe discrepancy approach). (Ed. Code, § 56337, subd. (b); 5 Cal. Code Regs., § 3030 (b)(10)(B).)

15. Specific learning disability eligibility does not include a learning problem “that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.” (Ed. Code, § 56337, subd. (a).) In addition, a discrepancy “shall not be primarily the result of limited school experience or poor school attendance.” (Cal. Code Regs., tit. 5, § 3030(b)(10)(B)(4).)

16. The April 3, 2018 psychoeducational assessment did not meet the legal standards because La Canada failed to prove all of the assessment tools were administered in accordance with the publisher’s instructions and were provided in a

form most likely to yield accurate information on what Student knew and could do.

17. Mr. Crowe administered the Comprehensive Test, consisting of seven subtests in areas of phonological awareness, phonological memory and rapid naming. Mr. Crowe had no specific training administering tests of this type, but was familiar with the manual and had experience administering this assessment. The manual required three of the subtests to be administered using a compact disc provided by the publisher, specifically the blending words subtest which was part of the phonological awareness composite score, and the nonword repetition and memory for digits subtests, which were both part of phonological memory composite. Mr. Crowe deviated from the publisher's instructions on those three subtests. Instead of having Student listen to the publisher's compact disc, Mr. Crowe produced the sounds himself in Student's presence. Mr. Crowe had no valid basis for deviating from the publisher's instructions.

18. The purpose of having the child listen to the compact disc was to standardize presentation of the subtests. Standardized tests were normed on a group of children and had to be administered in the same way in order for the results to have reliability and validity. Because Mr. Crowe deviated from the instructions his test results were not valid.

19. Mr. Crowe failed to administer the assessment in a form most likely to yield accurate information on what Student knew and could do. Mr. Crowe's testimony that his failure to follow the publisher's instructions was a "minor deviation" was not credible, self-serving, and adversely affected his testimony about the validity and reliability of his assessment. When asked whether the deviation affected Student's scores, Mr. Crowe was equivocal in his response. He testified, "I don't think so." He admitted the deviation gave an advantage to Student to the extent he could read lips because Student would have been able to both see and hear Mr. Crowe produce the sounds, which Student would have otherwise only been able to hear on the publisher

provided compact disc.

20. Mr. Crowe's overall credibility was also negatively affected by his attempt to downplay the scope of his deviation. He initially testified that he deviated only on "a couple" of subtests, but then admitted there were actually three tainted subtests. When asked if the publisher permitted his deviation in administration of the test, he was demonstrably evasive, claiming that the instructions did not specifically state that the assessment results would be invalid if he did not use the compact disc, while acknowledging that the instructions directed him to use the publisher's compact disc.

21. La Canada failed to prove that the blending words subtest score or any composite score which was based on the blending words subtest score were valid and reliable. The evidence did not establish that Student's Comprehensive Test phonological awareness scores were valid because Student had been assessed for phonological awareness on pseudoword decoding subtests in the Wechsler Achievement Test, the Test of Word Reading, and in La Canada's 2015 Test of Auditory Processing Skills. Dr. Jackson's testimony was unpersuasive. La Canada presented no evidence that the 2015 test was properly administered and a valid test. Similarly, La Canada presented no persuasive evidence which comprehensively explained the similarities or differences in the tests compared by Dr. Jackson, either in content or administration. In particular, although the other tests may have assessed Student in the area of phonological awareness, La Canada did not establish that the Comprehensive Test assessed the identical abilities and that it did not reveal unique data particular to that test as compared to the other tests. Nor did it prove that the test would not have revealed additional data and other information particular to that test because of its unique content and administration, as compared to the Wechsler Achievement Test, the Test of Word Reading, or the Test of Auditory Processing Skills, had it been properly administered.



22. La Canada also failed to explain why the results of the Wechsler Achievement or the Test of Word Reading were not reported as secondary measures of Student's phonological processing skills in the psychoeducational report where the phonological awareness test results were located. Mr. Crowe's report was organized by skill. If the pseudoword decoding subtests were secondary measures of phonological awareness, they should have logically been reported in the same section as the Comprehensive Test scores for phonological awareness, but were not.

23. La Canada failed to prove that the Comprehensive Test subtest scores in phonological memory were valid and reliable. Dr. Jackson testified that phonological memory skills were also tested as part of the Wechsler Intelligence digit span subtest and the Wechsler Achievement sentence repetition subtest where similar results were obtained. She concluded based on the review of these scores that Student had above average auditory awareness and auditory memory, stating that auditory was similar to phonological. However, her testimony on this issue was convoluted, inconsistent, and unclear, which undermined the persuasiveness of her testimony on this issue. Again, La Canada presented no convincing evidence which comprehensively explained the similarities or differences in content and administration between the subtests in phonological memory on the Comprehensive Test, on the one hand, and the digit span and sentence repetition measures, on the other hand. La Canada did not establish that the Comprehensive Test assessed the identical skills as the other tests, that it did not reveal unique data particular to that test, and that it would not have revealed additional data and other information particular to that test had it been properly administered.

24. La Canada cites no persuasive authority in support of its position that an assessment was valid even if not properly administered because other tests assessed in the same area. Mr. Crowe deemed the Comprehensive Test critical enough to a comprehensive evaluation that he administered it in all evaluations of children with a

suspected reading disability. For students with real deficits in phonological skills, this assessment provided information as to what was causing those deficits. Based upon Mr. Crowe's testimony, the Comprehensive Test was necessary for a comprehensive evaluation of Student, who was suspected of having a reading disability. Because Mr. Crowe failed to properly administer the Comprehensive Test to Student, the psychoeducational assessment was not appropriate.

25. The April 3, 2018 psychoeducational evaluation report failed to meet legal standards because La Canada did not disclose to Mother that Mr. Crowe had deviated from the instructions in his administration of the Comprehensive Test and explain the consequence of that deviation. Mr. Crowe was required to include in his report specific information enumerated by statute. However, that list of required information was not exhaustive. (Ed. Code, § 56327 ["The report shall include, but not be limited to, all of the following..."].) Although Mr. Crowe was familiar with the publisher's instructions, and knew at the time he wrote his report that the compact disc was required for administration standardization, he failed to disclose this key fact in the psychoeducational report he prepared and provided to the IEP team on April 3, 2018. Nor did Mr. Crowe even attempt to explain the consequence of his deviation in the report. There was no evidence that the IEP team knew about this deviation at the time of the April 2018 IEP team meetings. In fact, Dr. Jackson admitted she did not learn about it until just before Mr. Crowe testified. This relevant information should have been disclosed in the psychoeducational report, but it was not. The failure to disclose this information about Mr. Crowe's deviation from the publisher's instructions rendered the psychoeducational evaluation and the written report inappropriate.

26. La Canada failed to prove that the Test of Visual Perceptual Skills was valid and reliable. Mr. Crowe was not familiar with the manual so he looked at the publisher's manual to administer the test because it was not a test he generally used. Mr. Crowe

admitted he only assumed that the test was reliable and valid since he never read that part of the manual.

27. Having determined that La Canada's psychoeducational evaluation was not appropriate because Mr. Crowe deviated from the publisher's instructions, failed to disclose this deviation in its written report, and failed to meet its burden to establish the validity of the Test of Perceptual Skills, this Decision does not address Mother's other grounds for objection or the appropriateness of the other pieces of the assessment.

28. In summary, La Canada failed to establish that the April 3, 2018 psychoeducational evaluation was appropriate. Student is entitled to an independent psychoeducational evaluation, which includes assessment of skills that could be affected by dyslexia.

## ISSUE 2: SPEECH AND LANGUAGE ASSESSMENT

29. La Canada contends its speech and language assessment was appropriate such that Student was not entitled to a publicly funded independent assessment in that area. Student contends that La Canada's speech and language assessment was not appropriate because, among other things, the assessment did not include Parent input, it failed to properly consider teacher's data regarding pragmatics, and it failed to properly assess Student in the area of articulation.

30. La Canada failed to establish that its speech and language assessment met the legal standards. The speech and language assessment dated February 28, 2018 conducted by Ms. Deno failed to include Parent input. The law specifically required Ms. Deno to use a variety of assessment tools and strategies to gather relevant information, including input from parents. (20 U.S.C. § 1414 (b)(2)(A) & (c)(1)(B); Ed. Code, § 56381, subd. (b).) Significantly, Ms. Deno did not ask for and did not obtain input from Parents about anything for her 2018 speech and language assessment. She did not interview either Parent, or otherwise seek any information from Parents.

31. As part of her assessment, Ms. Deno used the pragmatics profile checklist portion of Clinical Evaluation. The checklist instructions directed the assessor to “ask teachers, parents, or other informants who know the student for their input” and to “discuss examples of each skill with the informant” if unsure how to rate a skill or behavior. Yet, Ms. Deno only provided the checklist to Ms. Durfee and Student’s aide, and did not ask Parents to complete the checklist, even though she used the checklist because she thought it was important to obtain an understanding of Student’s abilities.

32. The lack of parental input rendered Ms. Deno’s assessment fatally flawed. This result was corroborated by Dr. Jackson, La Canada’s special education director, who testified that parent input was a necessary part of any assessment. The failure to obtain parental input, a critical piece of the assessment process, undermined the credibility of Ms. Deno’s opinions, and rendered her entire assessment invalid.

33. La Canada’s argument that the speech and language assessment included parent input was unconvincing. Most significantly, La Canada’s argument ignores Ms. Deno’s unequivocal testimony that she did not obtain parent input about anything in conducting her assessment. The fact that Ms. Deno had been a member of Student’s IEP team, attended monthly communication meetings, and was familiar with his historical concerns since 2015, was not a substitute for Ms. Deno seeking focused input from Parents regarding Student’s current speech and language issues. Nor does the fact that Ms. Deno assessed in the area of pragmatics and at least, informally, in the area of articulation, the two areas Mother now argues were of concern, render the assessment appropriate.

34. The speech and language assessment was also invalid because Ms. Deno’s conclusions appeared to be based on a misperception of the information obtained from the pragmatics profile checklist portion of the Clinical Evaluation and La Canada failed to prove Ms. Deno was sufficiently familiar with pragmatics profile analysis categories. For

example, in explaining the results of the assessment, Ms. Deno self-assuredly asserted that only 9 or 10 out of the 50 positive behaviors on the checklist were not exhibited by Student. She confirmed that her statement was based upon Ms. Durfee's and the aide's responses of "never/almost never" and "sometimes" on the checklist. She also confidently affirmed that Student exhibited the other 40 or 41 positive behaviors, out of 50, on the checklist based on the answers "always/almost always" or "often."

35. In fact, the responses on the checklist were significantly different than the totals stated by Ms. Deno during her testimony. Ms. Durfee answered "never/almost never" and "sometimes" to 28 of the questions, and the aide gave the same responses to 26 of the questions. Ms. Durfee answered "always/almost always" or "often" to only 22 of the questions, and the aide provided the same answers to only 24 of the questions. After Ms. Deno was impeached, she unsuccessfully attempted to explain to her prior answers. The standardized and informal measures were given equal weight by Ms. Deno and all the assessment data she collected was necessary for her to reach her assessment conclusions. As such, her profound misunderstanding as to the actual results of the pragmatics profile as demonstrated by her impeached testimony rendered her assessment invalid.

36. La Canada failed to prove that the Comprehensive Assessment administered by Ms. Deno was valid and reliable. According to Ms. Deno, the most current version of any assessment should always be administered; yet, she administered an old version of the Comprehensive Assessment and failed to disclose this fact in her report. Contradicting her testimony about the importance of administering the most current version of the test, Ms. Deno claimed she conducted research, and that best practices indicated that an old version of a test was valid for about a year after the new version of the test was released. However, this testimony was not persuasive because it was not specific to the Comprehensive Assessment, because of the many inconsistencies

in her testimony, and Ms. Deno was not otherwise a reliable witness.

37. For example, Ms. Deno initially testified she administered the most current version of the Comprehensive Assessment when she knew she administered an old version. She also testified inconsistently as to the reasons why she gave the old version of the test. Ms. Deno claimed she made the decision to use the old version of the Comprehensive Assessment because she wanted to use a subtest not contained in the new version. However, she later admitted she did not use the new version because she did not have it, and she had always used the old version and was familiar with it. She did not know exactly when the new version of the Comprehensive Assessment was released. She failed to persuasively articulate the specific research she conducted which established the old test was valid a year after an updated version was released. The only specific research she produced was a quote for the purchase of a product from the publisher which did not contain any specific information corroborating the continued validity of the old version of the test. Her testimony regarding her contacts with the publisher's customer service did not establish the validity of the test.

38. Ms. Deno testified she understood the old version was still valid at the time of Student's assessment because the publisher was still selling it in August 2018. However, La Canada failed to prove the old version of the Comprehensive Assessment was still being sold at the time of Student's assessment, or that the availability to buy an old version of the test from the publisher meant the test was still valid after a new version had been released. The August 2018 quote from the publisher did not objectively reference the old version of the Comprehensive Assessment or prove it was still being sold at the time of Student's assessment. The quote referenced "CASL REC FM2," and did not otherwise describe the product as the earlier version of the test. It appears to refer to version 2 because the description contains the number "2". Because Ms. Deno was not credible in other parts of her testimony, her testimony on this issue

was not convincing.

39. La Canada failed to prove Ms. Deno was sufficiently knowledgeable about the Comprehensive Assessment or the test results, which undermined her credibility. She testified inconsistently and demonstrated confusion as to which tests comprised the core composite and supralinguistic scores, claiming she could not recall what subtests were included in those scores when looking at her report. She did not know the reasons why changes to the old version were made, and did not specifically identify all of the changes to the test. Because she did not know the reasons for the changes and did not identify all of the changes, her assertion that the changes were not related to the validity of the old version was not convincing.

40. All of the inconsistencies in Ms. Deno's testimony, her unfamiliarity with the data and the tests, and her inability to clearly explain the composition of the scores when looking at her report, negatively affected her overall credibility about the validity and reliability of the speech and language assessment and the assessment findings.

41. In summary, La Canada's speech and language assessment did not comply with the legal requirements for an assessment. La Canada failed to establish that its February 28, 2018 speech and language assessment was appropriate. Student is entitled to an independent educational speech and language evaluation.

### ISSUE 3: OCCUPATIONAL THERAPY ASSESSMENT

42. La Canada contends its occupational therapy assessment was appropriate such that Student was not entitled to a publicly funded independent assessment in that area. In his closing brief, Student contends La Canada's occupational therapy assessment was not appropriate because Student did not demonstrate a dynamic quadrupod grasp, he was observed by Mr. Crowe using a pencil grip, and he did not use proper spacing between letters. Student also argued that the assessment ignored Student's sensory dysfunction.

43. La Canada demonstrated its occupational therapy assessment was properly conducted and the assessment report was appropriate. La Canada provided notice for, and Parents consented to, the occupational therapy assessment. La Canada's occupational therapy assessor, Ms. Wade-Prehn, was qualified to conduct the assessment. She had the appropriate credentials and the necessary experience to conduct her assessment. She was a licensed occupational therapist since 1992 and worked for La Canada for 17 years. She had conducted approximately 350 assessments and provided occupational therapy services to about 300 students between the ages of 3 and 22, with deficits in, without limitation, the areas of motor skills, sensory processing and attention. She was familiar with Student, having provided occupational therapy services to him since 2015.

44. Ms. Wade-Prehn assessed Student in all areas of suspected disability for occupational therapy, considering the issues La Canada had been addressing since 2015, teacher's concerns related to occupational therapy and Mother's occupational therapy concerns. She assessed Student in the areas of sensory processing, fine motor and hand skills, including handwriting, visual perceptual and visual motor skills, self-care skills, and sensory-motor/gross motor skills.

45. Ms. Wade-Prehn used a variety of assessment tools to conduct her assessment, including standardized and non-standardized measures. Among those tools were the Fine Manual Control and Manual Coordination subtests from the Bruininks, the Evaluation Tool, and the Sensory Processing Measure. She reported the results of those measures in her report. She also used the non-standardized Functional Assessment to gather information about Student's overall independence and functional performance within the school environment, the results of which she described in her report. She conducted observations of Student, a review of Student's records and work samples, obtained Mother's input, and consulted with Student and La Canada staff, including Ms.



Durfee, Ms. Worster, Ms. Deno, Student's aide, as well as Student's physical education teacher and physical therapist. Ms. Wade-Prehn's assessment included evaluation of relevant functional, developmental and academic information.

46. The assessments were conducted in Student's primary language of English. Ms. Wade-Prehn chose the assessment instruments and strategies to gather relevant information about Student's occupational therapy needs. Ms. Wade-Prehn was trained and knowledgeable. Ms. Wade-Prehn relied upon the Educational Framework for Child Success as a guide throughout the assessment process, taking into account the curriculum, the educational environment and Student's abilities to help establish Student's current level of performance.

47. Ms. Wade-Prehn prepared a legally compliant comprehensive written report which was timely reviewed on April 3, 2018 as part of Student's triennial IEP team meetings held on March 8, April 3 and April 11, 2018. In the report, she stated her opinion as to whether Student required occupational therapy. She concluded that Student did not present with needs that warranted direct intervention by an occupational therapist to access his current educational program. She suggested a list of accommodations to support access to his current educational program.

48. The report set forth the basis for Ms. Wade-Prehn's opinions. Among other things, she stated Student made good progress and met his goals in the areas of using a functional grasp without the use of a pencil grip or mechanical pencil or other assistive device during writing tasks demonstrating functional legibility. Student's anticipated goals and expected outcomes related to occupational therapy intervention were met for a particular episode of care (e.g., visual motor/handwriting skills, sensory strategies).

49. The written report also contained other information setting forth the basis of her determination, including the results of standardized measures and interpretation of the results. It described Student's relevant behavior (or absence of relevant behavior)

per interviews and observations in the classroom, on the playground and during structured clinical observations by Ms. Wade-Prehn, Ms. Durfee, Student's aide, Ms. Worster, Ms. Deno, and La Canada's physical therapist. For example, Ms. Worster, Ms. Deno and the physical therapist did not observe Student chew on his clothing during the school day. Ms. Durfee and Student's aide observed this behavior once in 30 days. Ms. Durfee reported that Student may write slower than his peers, but his writing was legible and functional. Overall, Ms. Durfee reported she had no concerns related to Student's pencil grasp, legibility of writing, or sensory concerns indicating a need for school-based occupational therapy. Some of the observations of Ms. Durfee and Ms. Wade-Prehn were also reflected in the Functional Assessment. The report also described the relationship of Student's behavior to his academic and social functioning and the educationally relevant findings. For example, although Ms. Durfee reported Student had some difficulty with attention, concentration, initiating and completing tasks on time, and organizational skills, it was comparable to his peers in the classroom. He was observed to wrap his legs around the chair legs, but this did not appear to be related to sensory processing differences, but to be appropriate strategies to maintain attention and concentration and participate in class.

50. Mother's claims that La Canada's occupational therapy assessment was not appropriate because Student did not demonstrate a dynamic quadrupod grasp and use proper spacing between letters, were unconvincing. Mother was not qualified to render expert opinions that Ms. Wade-Prehn's assessment results were inaccurate or inappropriate. Although the picture of Student's grasp contained in the written report did not look exactly like the exemplar picture of a dynamic quadrupod grasp shown to Ms. Wade-Prehn by Mother at hearing, the image in the report was skewed and unclear. Mother's reliance on Student's work samples to prove he did not write legibly or use proper spacing was also unpersuasive. Ms. Durfee credibly testified that the work

samples were only rough drafts meant for Student to jot down his ideas, not handwriting tests. The evidence presented by Mother was insufficient to undermine Ms. Wade-Prehn's expert opinions.

51. Similarly, although Mr. Crowe stated in his assessment report that Student used a pencil grip in the presence of an occupational therapist on February 7, 2018, this evidence was insufficient to render the occupational therapy assessment invalid. Ms. Wade-Prehn made no such observation in her written report and she was not directly confronted with this information at hearing. Having worked with Student for three years addressing his occupational therapy issues, Ms. Wade-Prehn was far more familiar with Student's writing habits and abilities than Mr. Crowe, who had never worked with Student. Ms. Wade-Prehn reported that Student was able to hold his writing tool using a functional and efficient dynamic quadrupod grasp without the use of a pencil grip. Ms. Durfee also reported no concerns with Student's pencil grasp.

52. Mother also argued that the assessment ignored Student's sensory dysfunction. However, the area of sensory processing was assessed by Ms. Wade-Prehn. She specifically considered Mother's concerns about Student chewing on his clothes and noted so in her report. Student's teacher completed a detailed norm-referenced questionnaire, the Sensory Processing Measure which provided information about Student's ability to process and modulate sensory input. On the standard scores in the five sensory systems, Student scored in the typical range except in the area of balance and motion, where his score fell only one point outside from the typical range. Student had no scores in the definite dysfunction range and his overall score, was in the typical range. Per assessment observations and interviews, Student chewed on his clothing only once in a 30-day period. Mother's assertion that Ms. Wade-Prehn ignored this issue was not supported by the evidence.

53. In summary, La Canada proved that its March 22, 2018 occupational

therapy assessment was appropriate. Student is not entitled to an independent educational occupational therapy assessment at public expense.

## ORDER

1. La Canada's psychoeducational and speech and language assessments did not meet the legal requirements. Student is entitled to independent educational evaluations in the area of psychoeducation and speech and language at public expense in accordance with La Canada's guidelines for independent educational evaluations.

2. La Canada's occupational therapy assessment was appropriate. Parent is not entitled to an independent educational occupational therapy evaluation at public expense.

## 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 prevailed on issues one and two, and La Canada was the prevailing party on issue three.

## 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 29, 2018

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/s/

LAURIE GORSLINE

Administrative Law Judge

Office of Administrative Hearings