

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019120858

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PARENT ON BEHALF OF STUDENT,

v.

CHULA VISTA ELEMENTARY SCHOOL DISTRICT.

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DECISION

JULY 6, 2020

On December 19, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Chula Vista Elementary School District as respondent. The matter was continued on January 24, 2020, at the parties' request. Administrative Law Judge Marlo Nisperos heard this matter by videoconference on May 5, 6, 7, 8, and 12, 2020.

Corrin Johnson and Roxanne De La Rocha, attorneys at law, represented Student. Student's Parent attended all hearing days on Student's behalf. Pamela Townsend and Daniel Lowe, attorneys at law, represented Chula Vista Elementary School District.

Sharon Casey, Executive Director of Special Education and Instruction attended all hearing days on Chula Vista's behalf.

At the parties' request the matter was continued to June 1, 2020 for written closing briefs. The record was closed, and the matter was submitted on June 1, 2020.

## ISSUES

1. Did Chula Vista Elementary School District deny Student a free appropriate public education during the 2017-2018 school year, including extended school year, commencing with the individualized educational program dated February 20, 2018 by:
  - a. failing to provide measurable goals reasonably calculated to provide Student with educational benefit in all areas of need, specifically in academics and mental health services; and
  - b. failing to provide appropriate services, supports and accommodations, specifically in academics and mental health services?
2. Did Chula Vista Elementary School District deny Student a free appropriate public education during the 2018-2019 school year, including extended school year, by:
  - a. failing to timely and appropriately assess Student in all areas of suspected disability, specifically: psychoeducational, educationally related mental health services, and developmental vision or vision therapy;
  - b. failing to provide measurable goals reasonably calculated to provide Student with educational benefit in all areas of need, specifically in academics and mental health services; and
  - c. failing to provide appropriate services, supports and accommodations, specifically in academics and mental health services?

3. Did Chula Vista Elementary School District deny Student a free appropriate public education during the 2019-2020 school year until December 19, 2019 by failing to timely and appropriately assess Student in all areas of suspected disability, specifically: psychoeducational, educationally related mental health services, and developmental vision or vision therapy?

Before the hearing, Student withdrew several of the issues set forth in the Order Following Prehearing Conference dated April 24, 2020. The remaining issues have been re-ordered and re-numbered accordingly. The date in issue three has been changed from December 12, 2019 to December 19, 2019, as the evidence at hearing established the December 12, date was a ministerial error.

The administrative law judge has authority to re-word and re-organize 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.).

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- 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 further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof by a preponderance of the evidence. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was eleven years old and in sixth grade at the time of hearing. He resided within Chula Vista's geographic boundaries at all relevant times. Student was eligible for special education under the primary category of other health impairment and the secondary category of specific learning disability.

ISSUES 2.A AND 3.A: DID CHULA VISTA DENY STUDENT A FAPE DURING THE 2018-2019 AND 2019-2020 SCHOOL YEARS, INCLUDING EXTENDED SCHOOL YEAR AND ENDING DECEMBER 19, 2020, BY FAILING TO TIMELY AND APPROPRIATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY, SPECIFICALLY: PSYCHOEDUCATIONAL, EDUCATIONALLY RELATED MENTAL HEALTH SERVICES, AND DEVELOPMENTAL VISION OR VISION THERAPY?

Student contended Chula Vista failed to conduct a legally compliant psychoeducational assessment because it omitted Student's test scores from the Feifer Assessment of Reading and the Woodcock-Johnson Test of Oral Language. As a result, Student was not identified as having dyslexia. Student argued that as a consequence of the omission, the IEP team did not have accurate information to consider. He claimed the psychoeducational report was deficient because it lacked necessary information such as analysis of the assessments, analysis of the interventions used or recommended, and no review of Student's progress on his goals. Student also alleged the mental health assessment was inappropriate because Chula Vista failed to seek input from Student's therapist. Lastly, Student argued he was denied a FAPE because Chula Vista did not conduct a developmental vision or vision therapy assessment.

Chula Vista conceded results from the Feifer Assessment of Reading and the Woodcock-Johnson Test of Oral Language were accidentally left out of the psychoeducational report but argued the psychoeducational report was valid despite the clerical mistakes. Chula Vista asserted the Feifer Assessment was used to measure Student's processing speed and not to analyze Student's eligibility for dyslexia. Finally, Chula Vista contended that no further testing related to mental health or developmental

vision was required. Chula Vista claimed the assessments performed were legally compliant and provided the IEP team sufficient information to determine whether Student continued to qualify as a student with a disability and develop an appropriate IEP to provide Student a FAPE.

## PSYCHOEDUCATIONAL ASSESSMENT

Assessments must be conducted by individuals who are both “knowledgeable of [the student’s] disability and “competent to perform the assessment, as determined by the local educational agency.” (Ed. Code, §§ 56320, subd. (f), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).)

Amanda Estrada worked at Chula Vista as a school psychologist for six years. She conducted Student’s psychoeducational assessment and prepared a report for the February 20, 2019 triennial review and meeting to develop Student’s individualized education program, called an IEP. Ms. Estrada had attended over 600 IEP meetings and authored more than 300 psychoeducational evaluations while employed as a credentialed school psychologist. Ms. Estrada was qualified to conduct the assessment.

Ms. Estrada was trained and qualified to use an empirically sound cross-battery assessment approach to test Student in all areas of suspected disability. Despite ample training and experience, Ms. Estrada acknowledged the results from the Feifer Assessment and Test of Oral Language administered by Allison Cometa-Schnalzer, Student’s special education teacher, were inadvertently left out of her final report. The failure to report these test results were procedural errors.

## ANALYZING A PROCEDURAL VIOLATION

Not all procedural violations are of legal consequence. A due process decision shall be based on substantive grounds based on whether a child received a FAPE. (20 U.S.C. § 1415 (f)(3)(E)(i); Ed. Code, § 56505, subd. (j) [decision cannot be based solely on a non-substantive error unless the error resulted in the loss of an educational opportunity or interfered with parental participation in the IEP process].) A district's failure to conduct appropriate assessments or to assess in all areas of suspected disability constitutes a procedural violation that may result in a substantive denial of FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032-1033.) The failure to obtain critical assessment information about a student, "render[s] the accomplishment of the IDEA's goals -- and the achievement of a FAPE -- impossible." (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 quoting *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 894.)

A procedural violation results in a denial of a FAPE only if the violation impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded in part on other grounds by 20 U.S.C. § 1414(d)(1)(B); *L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 910.) The Ninth Circuit has held that a procedural error that causes a loss of an educational opportunity denies a student a FAPE. (*Doug. C. v. Hawaii Depart. of Education* (9th Cir. 2013) 720 F.3d 1038, 1047.) "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative educational possibilities for

the student 'would have been better considered.'" (*Id.* at p. 1047, quoting concurring opinion of Judge Gould in *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 657.)

The Feifer Assessment was an instrument used to test processing speed and the omitted results showed that Student performed in the extremely below average range. Ms. Estrada administered a different set of tests for processing speed produced by Woodcock-Johnson and included those scores in her report to the IEP team. The results contained in Ms. Estrada's report were valid to measure Student's skills and showed an average composite score in the area of processing speed. Ms. Estrada considered the missing Feifer Assessment scores along with the assessments contained in her report and said it did not change her opinion that Student performed in the average range for processing speed. Her opinion was based on the Woodcock-Johnson subtests which showed Student had an average processing speed. She also considered the Wechsler Intelligence Scale for Children, Fifth Edition, administered by Student's expert. This tool tested the same areas as the missing Feifer Assessment and Student scored in the average range which further supported Ms. Estrada's opinion.

Student argued in his closing brief that the missing Feifer Assessment tests were specifically selected by Ms. Estrada to determine whether Student met the criteria for dyslexia and therefore omitting the scores prevented a finding of dyslexia. However, the more persuasive evidence showed Ms. Estrada administered subtests by Woodcock-Johnson and the Comprehensive Test of Phonological Processing, Second Edition, to determine whether Student met the criteria for dyslexia. Student's argument that the Feifer Assessment was necessary to test Student for dyslexia is contradicted by his expert's testing since she did not administer the Feifer Assessment when



investigating dyslexia. To test for dyslexia, Student's expert, clinical psychologist Dr. Donica Dohrenwend, administered subtests from the Comprehensive Test of Phonological Processing and the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition. Therefore, the evidence showed that the Feifer Assessment was not necessary for Ms. Estrada's determination of whether Student met the criteria for dyslexia.

There was sufficient information available for the IEP team to consider regarding Student's processing speed based on the Woodcock-Johnson scores contained in Ms. Estrada's report. The omitted Feifer Assessment scores did not impair Parent's opportunity to participate in the decision making process, did not affect Student's right to a FAPE, or deprive Student of an educational benefit. Student did not meet his burden of proving this procedural error resulted in a substantive FAPE violation.

The Test of Oral Language was also omitted from Ms. Estrada's psychoeducational report in error. Ms. Cometa administered this assessment and inadvertently failed to provide the scores to Ms. Estrada so they were not reflected in the report. Ms. Cometa was qualified to administer the Test of Oral Language based on her training and experience in conducting this assessment. This assessment evaluated Student's communication skills and ability to follow directions. The skills tested by this assessment were not areas of suspected disability, in fact communication was an area of strength for Student.

Student did not prove he had a suspected disability in the area of communication skills or ability to follow directions. Therefore, omitting the Test of Oral Language scores did not impact Student's education. The Test of Oral Language scores missing from Ms. Estrada's psychoeducational report did not affect Student's right to a FAPE, impair

Parent's opportunity to participate in the decision making process, or deprive Student of an educational benefit. Student failed to prove a substantive FAPE violation for omitting the Test for Oral Language score.

## DUTY TO REASSESS

To meet the continuing duty to develop or maintain an appropriate educational program, the school district must assess and reassess the educational needs of a student with a disability. (20 U.S.C. § 1414(a) & (b); 34 C.F.R § 300.305 (2006); Ed. Code, §§ 56320, 56321.) In California, the term "assessment" has the same meaning as the term "evaluation" in the IDEA. (Ed. Code, § 56302.5.)

For purposes of evaluating special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4) (2006); Ed. Code, § 56320, subd. (f) [child must be assessed in all areas related to the suspected disability].) A student's unique educational needs are to be broadly construed to include academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1501 (*Seattle*), reversed in part on other grounds by *Schaffer, supra*, 546 U.S. at pp. 56-58.) The "educational benefit" to be provided to a student requiring special education is not limited to addressing the student's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*).)

Once a district is on notice that a student may have a qualifying disability, it must formally assess the student in all areas of suspected disability "using the thorough and reliable procedures specified in the [IDEA]." (*Timothy O., supra*, 822 F.3d 1105, 1119.)

"A school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel this suspicion through informal observation." (*Id.* at p.1121.)

A district must ensure that an evaluation is sufficiently comprehensive to identify all of the student's needs for special education and related services, whether or not commonly linked to the identified disability category. (20 U.S.C. §1414(b)(3); 34 C.F.R. § 300.304(b)(1)(ii) &(c)(6) (2006).); *Letter to Baus* (2015 OSEP) 65 IDELR 81 [right to request an independent evaluation in an area district failed to assess].) Given the importance of assessments, the IDEA and accompanying regulations set forth an extensive set of procedural safeguards to ensure that evaluations achieve "a complete result that can be reliably used to create an appropriate and individualized educational plan [sic] tailored to the needs of the child." (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1110.

## REASSESSMENT REQUIREMENTS

After a student has been deemed eligible for special education, a reassessment shall be conducted if the district determines that the educational or related service needs, including functional performance of the student, warrant a reassessment, or if the parent or teacher requests reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) A reassessment shall occur not more frequently than once a year, unless the parent and the district agree otherwise, and shall occur at least once every three years, unless the parent and the district agree, in writing, that a reassessment is unnecessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b) (2006); Ed. Code, § 56381, subd. (a)(2).)

## DEVELOPMENTAL VISION ASSESSMENT

Dr. Dohrenwend, Student's expert, administered the Beery Visual-Motor Integration subtest as part of her psychoeducational assessment. Student scored in the very low range on this subtest. This score indicated to her that Student had difficulties with visual processing. Dr. Dohrenwend explained that sometimes problems with visual processing can occur because of problems with the eye teaming and tracking ability. If an individual has teaming and tracking problems, it may cause reading challenges. Based on the results from the Beery Visual-Motor Integration subtest, Dr. Dohrenwend opined Student may have an eye teaming and tracking problem that required further assessment by a specialist in the area of developmental vision.

Between December 2018 and February 2019 Ms. Estrada had administered the same Beery Visual-Motor Integration subtest later conducted by Dr. Dohrenwend in February 2020. Student scored in the below average range, which indicated to Ms. Estrada a deficiency in Student's sensory-motor processing ability. Ms. Estrada reviewed this assessment along with the academic achievement assessment conducted by Ms. Cometa to determine if Student met the criteria for specific learning disability. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C). Ms. Estrada also considered Student's prior IEP's, assessments, report cards, Student's strengths and challenges demonstrated in the classroom, and input from the IEP team in forming her opinion. Student demonstrated a sensory-motor processing weakness relative to his overall average cognitive ability. Ms. Estrada determined there was a correlation between Student's processing deficiency and his academic weakness in the area of written expression. Based on these observations, Ms. Estrada opined the sensory-motor processing weakness combined with his challenges in written expression made him eligible for the secondary category of specific learning disability.

Student did not meet his burden to demonstrate the below average scores on the Beery Visual-Motor Integration subtest put Chula Vista on notice that an assessment for developmental vision should have been conducted. Student failed to point out other deficiencies in Student's vision or any other factor to support a finding that a developmental vision deficiency may exist. Dr. Dohrenwend's explanation that the results of the Beery Visual-Motor Integration subtest might indicate an eye teaming and tracking deficit that might lead to a reading problem was too attenuated and not supported by evidence of such a condition other than Student's low score on the Beery. Therefore, Student did not prove Chula Vista denied him a FAPE by failing to assess in the area of developmental vision or vision therapy.

## EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

Student asserted Chula Vista's mental health assessment was insufficient because the assessor only administered the Behavior Assessment System for Children. Chula Vista argued the mental health assessment was appropriate.

Chula Vista assessed Student in the areas of social and emotional status and behavior to address Parent's concern regarding Student's recent diagnosis of anxiety. Ms. Estrada administered the Behavior Assessment System for Children, Third Edition, to assess in this area of suspected disability. To complete this assessment Ms. Estrada asked Parent and Student's fifth grade general education teacher, Rosa Martinez, to complete rating scales. Ms. Estrada and Dr. Dohrenwend agreed the proper way to analyze the rating scales was to look for elevated scores across settings to determine if an educational impact exists. Ms. Estrada observed no elevated scores across settings in the areas of anxiety, depression, or somatization. Ms. Estrada also considered the input from all members of the IEP team to get a picture of the Student as a whole.

Dr. Dohrenwend opined that administering a single test is insufficient to rule out concerns related to mental health and explained that anxiety can present as hyperactivity for some students. Dr. Dohrenwend pointed out the Behavior Assessment System for Children scores showed elevation in hyperactivity and attention problems across settings. She opined that the elevated scores in hyperactivity and attention combined with Parent's concern about Student's anxiety should have triggered further assessment of Student's mental health.

Ms. Estrada considered information from the IEP team members who knew Student and interacted with him daily in addition to the scales completed by Parent and Ms. Martinez. Ms. Estrada properly considered the scores of the assessment according to the manufacturer's guidelines and observed no elevated scores across settings related to anxiety, depression, or somatization. Thus, Student failed to meet his burden of proving that Chula Vista failed to properly assess him for educationally related mental health services.

## ASSESSMENT TIMELINES AND MATERIALS

Student's complaint alleged that the assessments conducted were not timely.

The school district must provide the student's parent with a proposed assessment plan along with notice of the parent's rights within 15 days of the referral for assessment, not counting days between the student's regular school sessions. (Ed. Code, § 56321, subd. (a).) The assessment must be completed and an IEP team meeting held within 60 days of receiving consent, exclusive of school vacations in excess of five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c); Ed. Code, §§ 56043, subd. (f)(1), 56302.1, subd. (a), & 56344, subd. (a).)

Chula Vista prepared the assessment plan on December 13, 2018 and provided it to Parent on the same date with a copy of the procedural safeguards. On December 18, 2018 Parent consented to the assessment plan. Chula Vista's winter break was from December 24, 2018 to January 15, 2019. All assessments were completed prior to the triennial IEP meeting held on February 14, 2019. At the February meeting, Parents asked for another date so they could review the proposed IEP. Parties agreed to hold another IEP meeting on March 1, 2019. Parents questions were answered at the March meeting, their input was incorporated into the IEP and they consented to it.

It appears that Student has abandoned this argument since it was not raised in his closing brief and no evidence was presented at hearing. But if considering it, the IEP meeting held on February 14, 2019 was timely as it occurred 58 days after Parent consented to the assessment plan. If Student argued it was untimely because Parent consented to the IEP at the March 1, 2019 meeting, that assertion would fail because that meeting was also held within the 60 days required by state and federal law. Therefore, the triennial review and annual IEP meeting was timely.

## PSYCHOEDUCATIONAL REPORT

Student argued the psychoeducational report was deficient because it did not contain analysis of the assessments, analysis of the interventions used or recommended, and failed to report Student's progress on his goals.

The assessor shall prepare a written report of the result of each assessment. (Cal. Ed. Code § 56327.) The report shall include, but not be limited to, all of the following: (1) whether the student may need special education and related services; (2) the basis for making the determination; (3) the relevant behavior noted during the 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 and development, and medical findings, if any; (6) for students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; (7) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and (8) the need for specialized services, materials, and equipment for students with low incidence disabilities, consistent with guidelines established pursuant to section 56136.

*Id.*

Ms. Estrada's report was thorough and included all information required to comply with the law. She adequately described why she recommended Student be considered for special education services based on meeting the criteria for specific learning disability and other health impairment. Ms. Estrada detailed relevant behavior observations of Student in appropriate settings and the way his behavior affected academic and social functioning. The report included relevant information related to Student's health, development and medical conditions as well as the ecological factors that she considered. Student failed to prove a deficiency in the psychoeducational report prepared by Ms. Estrada.

Tests and assessment materials must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56324, subd. (a).) No single measure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Rather, the



assessor must use a variety of technically sound instruments. (20 U.S.C. § 1414 (b)(2)(A); 34 C.F.R. § 300.304(b)(1) & (2).)

Chula Vista's psychoeducational triennial assessment dated February 14, 2019 was legally compliant and Chula Vista completed assessments in all areas of suspected disability. The tools utilized for the assessments were not discriminatory in any way, were used properly, and were administered in English, Student's primary language. Chula Vista employed a variety of technically sound instruments and strategies to gather relevant information about Student that assisted it in determining his eligibility and content of his program. Student failed to prove the assessments conducted for the February 14, 2019 IEP meeting were deficient.

ISSUES 1.A AND 2.B: DID CHULA VISTA DENY STUDENT A FAPE DURING THE 2017-2018, 2018-2019, AND 2019-2020 SCHOOL YEARS, INCLUDING EXTENDED SCHOOL YEAR, COMMENCING WITH IEP DATED FEBRUARY 20, 2018 AND ENDING DECEMBER 19, 2019, BY FAILING TO PROVIDE MEASURABLE GOALS REASONABLY CALCULATED TO PROVIDE STUDENT WITH EDUCATIONAL BENEFIT IN ALL AREAS OF NEED, SPECIFICALLY IN ACADEMICS AND MENTAL HEALTH SERVICES?

Student contended his 2018 and 2019 IEP's should have contained additional annual goals in the areas of reading comprehension and written expression. Specifically, there should have been goals related to decoding, encoding, phonemic awareness, and spelling. Student also asserted the 2019 IEP reading and writing goals were not reasonably calculated to address Student's unique needs, were not attainable within a

year, and contained conflicting baseline information so they were not measurable. Chula Vista argued the goals in Student's IEPs were measurable and provided a FAPE.

A FAPE means special education and related services that are available to an eligible child, that meet state educational standards, and are provided at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501 (2006).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034; 73 L.Ed.2d 690]; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000].)

Whether an IEP offers a Student a FAPE is assessed in light of information available at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective"; it must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Id.* (quoting *Fuhrmann v. East Hanover Bd. Of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 (Mansmann, C.J., concurring)); see also *L.J. v. Pittsburg Unified Sch. Dist.* (9th Cir. 2017) 850 F. 3d 996, 1004 ("the 'snapshot' rule . . . instruct the court to judge the appropriateness of the determination on the basis of the information reasonably

available to the parties at the time of the IEP meeting.”); *JG v. Dougals County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801.)

An annual IEP must contain a statement of the individual’s present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R § 300.320 (a)(1)(2007); Ed. Code, § 56345, subd. (a)(1).) The present levels of performance create baselines for designing educational programming and measuring a student’s future progress toward annual goals.

An annual IEP must also contain a statement of measurable annual goals designed both to meet the individual’s needs that result from the individual’s disability to enable the pupil to be involved in and make progress in the general curriculum; and meet each of the pupil’s other educational needs that result from the individual’s disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child’s special education program. (*Letter to Butler* (OSERS 1988) 213 IDELR 118; U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300 (2006), 64 Fed. Reg., pp. 12,406, 12,471 (1999 regulations).)

## FEBRUARY 20, 2018 READING GOAL

Ms. Cometa was Student’s special education teacher in the fourth, fifth, and sixth grades. She had been employed as a resource specialist for Chula Vista for eighteen years, taught special education in all grades between first and eighth, and had over thirty years of experience teaching in public schools. In her free time, Ms. Cometa

developed and marketed programs to reteach reading and spelling skills to special education students with academic challenges due to phonic gaps. She held a master's degree in education, a clear multiple subject general education credential, a clear special education credential, and an administrative credential.

Ms. Cometa had significant training and experience in common core curriculum for kindergarten through sixth grade. She had drafted goals for IEP's and had attended over one thousand IEP meetings during her career. Based on her ongoing educational relationship with Student and her vast experience in education, Ms. Cometa was a credible and reliable witness, and her testimony was given significant weight.

Student's reading goal was created by Ms. Cometa and she wrote the baseline consistent with her observations of Student's abilities. Student's baseline for independent reading level was the end of first grade to middle of second grade and was reported as a lexile score of 500. Lexile level is a measurement of reading ability correlated to an age and academic grade level. A Student that is learning to read will have their reading skill reflected by two measures, the independent and instructional reading levels. An independent reading level reflects the difficulty of the text a student chooses to read; this is a level that student has little to no difficulty in reading and comprehending the text. Instructional reading is the level educators instruct at to challenge a student to acquire more advanced skills.

Student's independent reading level reflected the text Student selected to read recreationally, it did not reflect his ability to read when engaged in learning in the classroom. His instructional reading level was late third grade and was demonstrated by him reading a passage with one hundred percent accuracy, one hundred ten correct words per minute and answering eight out of eight comprehension questions correctly.

The baseline for the reading comprehension goal accurately reflected Student's present levels of performance for independent and instructional reading levels.

The goal offered by Chula Vista was for Student to read an early fifth grade narrative or expository reading passage. He needed to read the passage with appropriate pacing, intonation and expression. The goal also required Student to answer four out of five grade level appropriate comprehension questions in two consecutive trials with ninety-five percent accuracy as measured by teacher records.

Student claimed the baseline was confusing because Student cannot have two reading levels, one between first and second grade and another at a late third grade level. Student also asserted if his reading level was at the end of first grade, it was unreasonable to expect him to reach the goal of reading at an early fifth grade level in one year.

When Ms. Cometa wrote the reading goal she was familiar with Student's ability based on her daily observations and the work he produced. Although a student is expected to improve approximately 100 lexile points in a year, Ms. Cometa observed Student increased 150 lexile points in his instructional reading level in the seven months they worked together prior to the February 20, 2018 IEP meeting. Based on Student's performance, it was reasonable to target an early fifth grade instructional reading level in one year based on his baseline instructional level being late third grade. Ms. Cometa's daily assessment of Student's reading ability and her expertise in teaching reading to students with phonic gaps made it reasonable to expect more than one year's progress in Student's instructional reading level within a year's time. It was appropriate for the goal to exclude Student's independent reading level because that

was merely an indicator of where he felt comfortable reading and was not a measurement of his ability.

The baseline for the reading goal accurately reflected Student's needs and present levels of performance in reading at the independent and instructional levels. The February 20, 2018 reading goal was accurate, reasonable and measurable thereby satisfying state and federal legal requirements.

## ADDITIONAL GOALS

Student contended that in addition to the reading and written expression goals, there should have been separate goals for decoding, encoding, phonemic awareness, fluency, accuracy, and spelling in the February 20, 2018 and the February 14, 2019 IEP's. Erin Sensibaugh, director of La Jolla Learning Works, explained that a goal targeting accuracy was not looking at specific decoding skills. Ms. Sensibaugh testified that Student demonstrated deficiencies in many foundational reading skills and his needs were not being addressed because there were not goals for each skill. Therefore, Ms. Sensibaugh opined the IEP's required goals for each area where Student demonstrated a deficiency to address all of Student's needs and provide him a FAPE.

The law does not require a separate goal for each area of deficit or challenge. An annual IEP must contain annual goals that are measurable, and that "meet the child's needs that results from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and "meet each of the child's other educational needs that result from the child's disability . . . " (20 U.S.C. § 1414(d)(1)(i)(A)(II)(aa), (bb); 34 C.F.R. § 300.320(a)(2)(i)(A), (B) (2007); Ed. Code, § 56345, subds. (a)(2)(A), (B).)

In *Coleman v. Pottstown Sch. Dist.* (E.D.Pa. 2013) 983 F.Supp.2d 543, parents made the same contention as Student does here, but the District Court disagreed:

Plaintiffs interpret [§ 1414(d)(1)(A)(i)(II)] as requiring a school district to create measurable goals for every recognized educational and functional need of a student with disabilities. . . .[I]t would . . . be inconsistent with the longstanding interpretation of the IDEA to find that providing a FAPE requires designing specific monitoring goals for every single recognized need of a disabled student. As noted above, a FAPE is a threshold guarantee of services that provide a meaningful educational benefit, not a perfect education.

(*Id.* at pp. 572-573.) The Court of Appeal affirmed that part of the District Court's decision. (*Coleman v. Pottstown Sch. Dist.* (3d Cir. 2014) 581 Fed.Appx. 141, 147-148; see also *N.M. v. The School Dist. of Philadelphia* (3d Cir. 2010) 394 Fed.Appx. 920, 923 [nonpub. opn.]; *L.M. v. Downingtown Area Sch. Dist.* (E.D. Pa., April 15, 2015, No. 12-CV-5547) 2015 WL 1725091, p. 16; *Benjamin A. v. Unionville-Chadds Ford Sch. Dist.* (E.D. Pa., Aug. 14, 2017, Civ. No. 16-2545) 2017 WL 3482089, pp. 12-13.)

The February 2018 and February 2019 IEP goals in reading and written expression were appropriate. The skills that Student alleged should have been separate goals were embedded in the goals that were offered. Student had to apply his decoding and phonemic awareness skills to accurately and fluently read the text which enabled him to comprehend the information presented. All of the skills that Student claimed require separate goals work together and are measured by his degree of comprehension. The same analysis applies to Student's assertion that a spelling goal was required. The skill of spelling is encompassed in the reading and written expression goals. Student did not

prove Chula Vista was required to offer a separate IEP goal for each foundational skill that Student demonstrated a deficiency.

Student's complaint alleged claims regarding the extended school year, academics and mental health stemming from the February 20, 2018 IEP. Student presented no evidence related to his goals in attention, mental health services, written expression, or the need for extended school year instruction. It appears Student has abandoned these contentions since he made no arguments in his closing brief regarding those issues. Student has failed to prove any fault by Chula Vista related to his goals in attention, mental health services, written expression, or failure to offer extended school year services in the February 20, 2018 IEP.

#### FEBRUARY 14, 2019 IEP

Student asserted the reading and writing goals were not reasonably calculated to address Student's needs, were not reasonably attainable within a year and contained conflicting baseline information which rendered them unmeasurable. Student also contended there should have been a goal for mental health based on Parent's concern about his anxiety diagnosis and because he was meeting with a therapist.

#### READING COMPREHENSION GOAL

The baseline for Student's independent reading level in February 2019 was a mid-third grade level, and corresponded to a 660 lexile score. Student's instructional reading level was late fourth grade to early fifth grade. The baseline also indicated Student could decode multi-syllabic words and apply decoding strategies. Ms. Cometa noted that Student had grown in his reading level during the year but did not appear motivated to read independently. The baseline was clear and concise and stated



Student's educational needs and present performance related to reading comprehension.

The goal Chula Vista offered Student was to read a mid-sixth grade narrative or expository passage. His reading goal required appropriate pacing, intonation and expression. To achieve this goal, he was also required to answer four out of five grade level appropriate comprehension questions with ninety-five percent accuracy in two consecutive trials as measured by teacher records.

Ms. Cometa authored this goal with extensive knowledge of Student's academic strengths and weaknesses based on working with him daily for one year and seven months. With Ms. Cometa's instruction, Student had increased his lexile level by 160 points since the last IEP which demonstrated more than one year's growth in one year. For the reasons explained previously regarding the appropriateness of the 2018 reading goal, this reading goal is proper under the law. The goal offered by Chula Vista addressed Student's needs, was attainable within a year, and was measurable. Student did not meet his burden of proving the February 2019 reading goal denied him a FAPE.

## WRITTEN EXPRESSION GOAL

Student claimed the writing goal did not address his deficits in spelling and was not measurable because the baseline did not identify Student's ability to use proper capitalization. Chula Vista contends the written expression goal was proper.

The annual goal in written expression required Student to write a two to three paragraph expository or narrative composition following teacher-led prewriting activities. The writing would be organized and detailed, contain transitional expressions, and grade level vocabulary with eighty percent correct use of capitalization and

grammar. Student's progress would be measured by work samples in the general education and special education settings. The goal was developed for Student to progress in general education curriculum state grade level standards.

The baseline contained information about Student's ability in a structured setting and reflected his ability to use correct spelling and grammar eighty percent of the time. However, there was no measure of Student's ability to use proper capitalization in his writing samples.

Although Student's ability to use capitalization was not captured in the baseline, there was no evidence that this omission was necessary for Student to receive a FAPE. Capitalization is a small piece of the complex skill of writing that was otherwise adequately described in the baseline. Accordingly, not specifically targeting capitalization is not deemed a procedural error. However, even if it were found to be a procedural error, it would not have denied Student a FAPE. A procedural error is a denial of FAPE only if the violation impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisionmaking process, or caused a deprivation of educational benefit. Mere technical violations will not invalidate an IEP. (20 U.S.C. § 1415 (f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j).) Overall, the annual writing goal was measurable and appropriate.

Student contended it was a denial of FAPE to not have a goal for spelling because the progress report indicated teacher's concerns regarding his spelling ability. His argument is also based on his score in the less than one percentile range, meaning he did better than one percent of other children his age, on the spelling assessment administered by Ms. Sensibaugh.

The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2) (2007); Ed. Code, § 56345, subd. (a)(2).)

In a November 16, 2015 joint letter, the Office of Special Education and Rehabilitative Services and the Office of Special Education Programs state that IEP goals must align with state academic content standards for the grade in which the special education student is enrolled. The agencies explained that aligning IEP goals with grade-level content standards reflects the IDEA's emphasis on having high expectations for students with disabilities. (*Dear Colleague Letter*, (OSERS/OSEP 2015) 66 IDELR 227.) These offices are a division of the United States Department of Education and are charged with administering the IDEA and developing its regulations.

Ms. Cometa was well versed in the common core requirements for writing. There were no common core requirements for fifth or sixth graders for the skill of spelling; therefore, she did not include a spelling goal in Student's IEP. The written expression goal was adequate despite not addressing spelling since that was not required by the state academic content standard.

Student criticized the February 14, 2019 IEP for failing to address the extended school year, academics and mental health. No evidence was presented at hearing nor argument advanced in Student's closing brief related to his goals in behavioral modification, calculation, mental health services, or the need for extended school year instruction. It appears that Student has abandoned these claims. Student has failed to

prove fault by Chula Vista related to goals in behavioral modification, calculation, mental health services, or failure to offer extended school year.

ISSUES 1.B AND 2.C: DID CHULA VISTA DENY STUDENT A FAPE DURING THE 2017-2018, 2018-2019, AND 2019-2020 SCHOOL YEARS, INCLUDING EXTENDED SCHOOL YEARS, COMMENCING WITH THE IEP DATED FEBRUARY 20, 2018 AND ENDING DECEMBER 19, 2019, BY FAILING TO PROVIDE APPROPRIATE SERVICES, SUPPORTS AND ACCOMMODATIONS, SPECIFICALLY IN ACADEMICS AND MENTAL HEALTH SERVICES?

Student contended Chula Vista failed to provide Student with services in the 2018 and 2019 IEP's that were necessary for Student to gain an educational benefit commensurate with his capabilities. Student claimed he required a specific literacy intervention for his dyslexia. The dyslexia program had to be a multi-sensory, structured reading intervention that was empirically supported to work with dyslexia and he required individualized instruction in it. Student also alleged the specialized academic instruction time should have been increased when the IEP team added a math goal to the 2019 IEP.

Chula Vista declared it adequately provided services for Student's changing needs in reading, writing, math, and behavior.

Special education is specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs. (20 U.S.C. § 1401(29); Ed. Code, § 56031, subd. (a).) A Student's IEP must contain a statement of the special education and related and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to a student to enable the student to

advance to attaining the annual goals, to be involved in and make progress in the general education curriculum. (20 U.S.C. § 1414(c)(i)(B)(iv); Ed. Code, § 56345, subd. (a)(4).)

The methodology used to implement an IEP is left up to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149-1150; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Committee* (1st Cir. 2004) 361 F.3d 80, 84 (citing *Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992.)

## LITERACY INTERVENTION

Dr. Dohrenwend diagnosed Student with having a specific learning disorder based on criteria in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. Her clinical diagnosis determined Student met the criteria for specific learning disorder based on his impairments in reading and written expression. Dr. Dohrenwend opined that Student met the criteria for dyslexia. She defined dyslexia as an alternative term used to refer to a pattern of learning difficulties that falls within the diagnostic classification of a specific learning disorder.

Dr. Dohrenwend formed her opinion regarding dyslexia by comparing Student's performance on the cognitive assessments she administered and the academic achievement test administered by Ms. Sensibaugh. Ms. Sensibaugh was trained and experienced in conducting the academic assessment that she administered to Student. The academic achievement results that Dr. Dohrenwend relied upon were reliable and appropriate.

According to Dr. Dohrenwend, assessing for dyslexia is complex because it requires the assessor to take into account several different assessment measures in combination with Student's performance in reading and writing in the classroom. Dr. Dohrenwend's expertise limited her to identifying a specific weakness and explaining why Student might qualify for a certain type of dyslexia whereas other experts would be able to identify the subtype of dyslexia. Dr. Dohrenwend considered the following information to determine whether Student met the criteria for dyslexia: her observation of Student in the classroom setting, a review of assessments conducted by Chula Vista for the 2019 triennial review, and Student's current IEP, in addition to the assessments previously described.

While investigating Student's areas of suspected disability, Dr. Dohrenwend did not speak with Student's general education or special education teachers to obtain work samples or discuss his current performance in the classroom. Dr. Dohrenwend's observation of Student was limited to the three-and-a-half hours of testing in her office and a thirty-minute observation of Student in class. The classroom observation did not include Student demonstrating his ability to read so that his reading skills could be evaluated. Dr. Dohrenwend's opinion related to dyslexia is given little weight based on her limited personal knowledge of Student, limited knowledge of his present levels of performance in school, limited knowledge of his reading ability, and the absence of current work samples.

The more persuasive evidence regarding Student's processing weaknesses was provided by Ms. Estrada. The cross-battery testing Ms. Estrada utilized to test for dyslexia showed Student performed in the average range on the Woodcock-Johnson Cognitive Auditory Processing assessment and the Comprehensive Test of Phonological Processing. Dr. Dohrenwend's testing produced a below average score that was ten

points lower than that found by Ms. Estrada on the Cognitive Auditory Processing and Comprehensive Test of Phonological Processing. However, other factors likely affected Student's ability on the date he was assessed by Dr. Dohrenwend. Attendance records showed he went home sick with a fever the day prior to testing and his absence was excused the day after testing. Ms. Estrada conducted assessments over multiple days so that each session was approximately one hour. Ms. Estrada intentionally scheduled the assessments in this manner to make sure Student could perform to the best of his ability, especially given his diagnosis of attention deficit hyperactivity disorder. But Dr. Dohrenwend conducted all assessments in one day over the course of several hours. Dr. Dohrenwend gave Student breaks to make him comfortable, though she observed Student demonstrate frustration and appeared annoyed during difficult subtests. No other teacher or assessor observed Student demonstrating a low frustration tolerance during their interactions with him. Student's mood, motivation, and health are factors that all assessors agreed could impact test scores.

The test results Dr. Dohrenwend relied upon produced a snapshot of Student's ability on the date she administered the assessments and some measures were much different than those observed by Ms. Estrada during her testing. Chula Vista did not have the scores that Dr. Dohrenwend obtained when Student's IEP was created and therefore, pursuant to *Adams, supra*, Chula Vista cannot be faulted for failing to consider them. Therefore, Student failed to meet his burden of proving that the services offered by Chula Vista regarding a dyslexia literacy program were required to offer Student a FAPE in his February 20, 2018 or February 14, 2019 IEP's.

The reading intervention services provided by Chula Vista were appropriate and Student demonstrated adequate growth in reading each year as a result. Student increased his lexile level by more than 100 points each year and was able to read at the

instructional level required by his IEP goals. This progress demonstrated the instruction provided by Chula Vista met Student's needs and was reasonably calculated to provide Student a meaningful educational benefit commensurate with his capabilities in accordance with state and federal laws. This decision makes no finding regarding whether Student had dyslexia and only makes findings on services that were offered and implemented.

## MATH CALCULATION

Student asserted there were insufficient services to support Student's math need because the specialized academic instruction time did not increase when the math calculation goal was added to Student's IEP.

A math calculation goal was added to the IEP based on Student's regression in math. Student had historically excelled in math and often said it was his favorite subject. He scored in the above average range on the Woodcock-Johnson subtests for math which indicated a strength in this area. However, Ms. Martinez observed Student was hesitant in completing math problems for fear of making a mistake. Ms. Martinez observed Student was no longer successful in completing tasks in math that he was previously able to do as a result of his hesitation. The IEP team added the calculation goal to support Student's math need.

Ms. Cometa and Ms. Martinez explained the 120 minutes of specialized academic instruction was sufficient to address all goals, including math. It was reasonable for them to not recommend removing Student from the general education classroom during math instruction because he was performing at grade level expectation in many areas for math. Student's needs related to supports in math were for a few isolated skills and the best way to support him would be by checking in with him on a frequent



basis using a spiral approach. The spiral approach allowed Student to intermittently revisit basic math concepts to keep the information fresh in his mind so he could continue to grow and learn the new skills in the least restrictive environment. Based on his needs Student's math goal was adequately addressed without increasing the specialized academic instruction time.

Student did not offer any evidence regarding what math calculation services were lacking. He merely asserted that since the number of goals increased in this IEP, the amount of time allocated to specialized academic instruction should have increased. Student failed to prove that Chula Vista's math services denied him a FAPE.

Student presented no evidence or argument regarding a lack of mental health services or services during the extended school year. It appears Student has abandoned these arguments. Student did not prove a denial of FAPE for Chula Vista's failure to provide mental health services or services during the extended school year.

## CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Issue 1.A: During the 2017-2018 school year, commencing with the IEP dated February 20, 2018, Chula Vista provided measurable goals reasonably calculated to provide Student with educational benefit in all areas of need. District prevailed on Issue 1.A.

Issue 1.B: During the 2017-2018 school year, commencing with the IEP dated February 20, 2018, Chula Vista provided appropriate services, supports and accommodations. District prevailed on Issue 1.B.

Issue 2.A: During the 2018-2019 school year, Chula Vista timely and appropriately assessed Student in all areas of suspected disability. District prevailed on Issue 2.A.

Issue 2.B: During the 2018-2019 school year, Chula Vista provided measurable goals reasonably calculated to provide Student with educational benefit in all areas of need. District prevailed on Issue 2.B.

Issue 2.C: During the 2018-2019 school year, Chula Vista provided appropriate services, supports and accommodations. District prevailed on Issue 2.C.

Issue 3: During the 2019-2020 school year, until December 19, 2019, Chula Vista timely and appropriately assessed Student in all areas of suspected disability. District prevailed on Issue 3.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings

**ACCESSIBILITY MODIFIED**