

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020010514

PARENTS ON BEHALF OF STUDENT,

v.

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT.

DECISION

SEPTEMBER 24, 2020

On January 16, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Palos Verdes Peninsula Unified School District. On February 21, 2020, OAH granted the parties' request for continuance. Administrative Law Judge Robert Martin heard this matter on June 23, 2020, but before any testimony, continued the hearing to July 7, 2020. An Administrative Law Judge is called an ALJ. On July 6, 2020, ALJ Martin recused himself and OAH continued the hearing to July 14, 2020. ALJ Kara Hatfield heard this matter by videoconference on July 14, 15, 16, 20, 21, and 22, 2020.

Attorney Andrea Tytell represented Student. Parents attended all hearing days on Student's behalf. Attorney Sundee Johnson represented Palos Verdes Peninsula. Kimberly Taylor, Executive Director of Special Education and Student Services, attended all hearing days on Palos Verdes Peninsula's behalf.

At the parties' request, the matter was continued to August 24, 2020, for written closing briefs. The record was closed, and the matter was submitted on August 24, 2020.

ISSUES

During the hearing, the ALJ clarified the issues after the parties realized that the June 16, 2020 Order Following Prehearing Conference omitted reference to the May 30, 2019 individualized education program, called an IEP, in Issue 3. The parties knew the May 30, 2019 IEP was at issue, and both parties litigated the claims related to it throughout the hearing. The parties agreed to the issues as stated below, adding the May 30, 2019 IEP to Issue 3.

1. Did Palos Verdes Peninsula fail in its child find obligations from July 17, 2017, to the filing of the complaint, by failing to identify and assess Student as a child with possible disabilities requiring special education, based on Student's severe and debilitating anxiety, central auditory processing deficits, attention issues, reading and writing deficits, poor executive functioning skills, poor work habits, and difficulty completing tasks?
2. Did Palos Verdes Peninsula deny Student a free appropriate public education, referred to as a FAPE, during the 2017-2018 school year, by failing to conduct any assessments of Student's unique needs with respect to severe and debilitating

anxiety, central auditory processing deficits, attention issues, reading and writing deficits, poor executive functioning skills, poor work habits, and difficulty completing tasks, prior to assessments conducted for Student's May 24, 2018 team meeting for his IEP?

3. Did Palos Verdes Peninsula deny Student a FAPE in his IEPs completed June 18, 2018, and May 30, 2019, by failing to provide Student appropriate goals, services, accommodations and strategies to help him access the curriculum to achieve educational benefit?
4. Did Palos Verdes Peninsula deny Student a FAPE by denying Parents meaningful participation in the IEP process, by failing to inform Parents that Student was severely frustrated and depressed, and making verbal threats about wanting to harm himself?

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 FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; 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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof on all issues. 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).)

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(j).) Student filed his case on January 16, 2020, but pursued claims commencing July 17, 2017, based upon a December 2019 tolling agreement with Palos Verdes Peninsula. Palos Verdes Peninsula did not object to Student's claims commencing July 17, 2017. There being no explicit prohibition on tolling agreements for claims arising under the IDEA or related sections of the California Education Code, the hearing proceeded on Student's claims as agreed to by the parties. (*Student v. Savanna School Dist.* (November 16, 2017) OAH Case No. 2017100226 (Order Granting in Part and Denying in Part District's Partial Motion to Dismiss); but see *Student v. Long Beach Unified School Dist.* (2019) OAH Case No. 2018050736; orders and decisions

rendered in special education due process hearing proceedings may be cited as persuasive but not binding authority in subsequent proceedings (Cal. Code Regs., tit. 5, § 3085).)

Student was 13 years old and had just finished seventh grade at the time of hearing. Student resided within Palos Verdes Peninsula's geographic boundaries at all relevant times. At an IEP team meeting on May 24, 2018, the IEP team initially determined Student was eligible for special education under the primary category of other health impairment and the secondary category of specific learning disability.

ISSUE 1: SUSPECTING STUDENT OF NEEDING SPECIAL EDUCATION UNDER THE IDEA

Student contends Palos Verdes Peninsula denied him a FAPE from July 17, 2017, through January 16, 2020, by failing to identify, locate, and evaluate him as a child with a disability. Student argues Palos Verdes Peninsula should not have waited until February 2018 to refer Student for assessment for eligibility for special education and related services. Specifically, Student asserts he had developmental issues since he was a toddler and always needed "an array of professionals to help him be more present and to understand his own limitations." Student claims Parents "begged [Palos Verdes Peninsula] for additional help and support" but Palos Verdes Peninsula delayed assessing Student because "the former principal continually discouraged [P]arents from seeking appropriate evaluations and interventions," and that delay caused Student's "steady and progressive decline in both academics and his social/emotional status." Student argues he went without proper interventions the entirety of his third, fourth,

and fifth grade years but acknowledges that through the tolling agreement with Palos Verdes Peninsula, he can only pursue claims dating back to July 17, 2017.

Palos Verdes Peninsula denies it had reason to suspect Student's known attention issues required special education or to suspect other disabilities and refer Student for assessment for eligibility for special education and related services between July 17, 2017, and February 2018. Palos Verdes Peninsula was aware of Student's status as a student with attention deficit hyperactivity disorder. However, through his accommodations plan under Section 504 of the Rehabilitation Act of 1973, and his participation in a general education reading intervention program Palos Verdes Peninsula called Reading Club, Student was steadily making anticipated gains in regular monitoring of that reading intervention. Further, Student was approaching and meeting grade-level standards in all areas, and was being adequately educated in the general education environment through accommodations for his known deficit in attention. Palos Verdes Peninsula asserts when Student did not make anticipated progress through the general education reading intervention program, it convened a Student Study Team meeting to discuss Student's stalled progress and requested Parents' permission to assess Student for eligibility for special education and related services. Palos Verdes Peninsula argues it timely referred Student for assessment for eligibility for special education and related services in February 2018 after appropriate efforts to support Student's reading development with general education interventions produced diminishing returns.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) 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.)

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; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*))

Before any action is taken to place a student with exceptional needs in a program of special education, an assessment of the student's educational needs must be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) The IDEA uses the term "evaluation," while the California Education Code uses the term "assessment." In this Decision the terms mean the same thing and are used interchangeably. An assessment may be initiated by request of a parent, a State educational agency, other State agency, or local educational agency. (20 U.S.C. § 1414(a)(1)(B); Ed. Code, §§ 56302, 56029, subd. (a), 56506, subd. (b).) *Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); Ed. Code, § 56301, subd. (a).) The IDEA defines "child with a disability" as a child with any of 13 categories of disabling conditions, specifically

intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3)(A)(i) & (ii); 34 C.F.R. § 300.8(a).) Similarly, California law defines an “individual with exceptional needs” as a pupil who is identified by an IEP team as “a child with a disability” pursuant to Title 20 United States Code section 1401(3)(A), who requires special education due to his or her disability, and instruction and services cannot be provided with modification of the regular school program. (Ed. Code, § 56026, subds. (a) & (b).)

The obligation extends to children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade. (34 C.F.R. § 300.111(c)(1); Ed. Code § 56301(b)(1).) California specifically obligates school districts to actively and systematically seek all individuals with exceptional needs, from birth to 21 years of age, who reside in a school district or are under the jurisdiction of a special education local plan area or a county office of education. (Ed. Code, § 56300.) This duty is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.)

Violations of the duty to identify, locate, and evaluate children with disabilities who might need special education and related services are procedural violations of the IDEA and of the Education Code. (*Dept. of Education, State of Hawaii, v. Cari Rae S.* (D.Hawaii 2001) 158 F.Supp.2d 1190, 1196 (*Cari Rae S.*); *Park v. Anaheim Union High School Dist., supra*, 464 F.3d at pp. 1031-1033.)

Procedural violations of the IDEA only constitute a denial of FAPE if they:

1. impeded the student's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decisionmaking process; or
3. caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *N.B. v. Hellgate Elementary School Dist., ex rel. Board of Directors, Missoula County, Mont.* (9th Cir. 2008) 541 F.3d 1202, 1208, quoting *Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.)

A school district's obligation to identify, locate, and evaluate a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (*Cari Rae S., supra*, 158 F.Supp.2d at p. 1194.) The threshold for suspecting a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119 (*Timothy O.*)). That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 1121 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist., supra*, 541 F.3d 1202].)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability must be evaluated based on information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F. 3d 1141, 1149, (citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031).)

SECOND GRADE

Student moved to California and entered Lunada Bay Elementary School within Palos Verdes Peninsula in January 2015, in the middle of the 2014-2015 school year. Student had just turned eight years old and was in second grade. The information from his prior school reflected that at the time Student moved, he performed in the above average to excellent ranges in mathematics, science, social studies, reading, and spelling, indicating he was making progress toward and meeting grade-level standards.

At hearing, Mother claimed Student's first grade teacher was concerned about Student's reading abilities and suggested to Parents they retain Student in first grade for academics. However, the teacher did not share the idea with administration of the school, and it was just something she mentioned to Parents as part of Student's academic progress and performance. Parents did not think retaining him in first grade was socially appropriate because he was already the tallest student in his class by a significant difference.

There was no evidence Palos Verdes Peninsula was informed or aware Student's first grade teacher was concerned about Student's reading or thought he was not performing as indicated on his school records.

Student was privately assessed by an educational psychologist in the other state in August 2014. Upon enrollment in Palos Verdes Peninsula in January 2015, Parents informed Lunada Bay's principal Nancy Parsons that Student needed some accommodations like sitting in front for attention. No report or additional information about the August 2014 assessment by an educational psychologist was provided at the due process hearing.

At hearing, Mother asserted she gave Principal Parsons the August 2014 private assessment in January 2015 upon enrolling Student in Palos Verdes Peninsula, but other evidence refuted that claim. Palos Verdes Peninsula did not list that assessment as a record it reviewed during its initial evaluation of Student's eligibility for special education and related services. Parents did not complain about that possible failure to consider all available information during the initial evaluation. Also, during a subsequent independent psychoeducational evaluation Parents obtained in March and April 2018, the private August 2014 assessment was not listed among the information the private evaluator considered.

Student finished second grade in Palos Verdes Peninsula in June 2015 with marks of 4, meaning meeting grade-level standards, in all areas, which were mathematics, listening and speaking, reading, writing, science/health, and history/social studies. He showed satisfactory effort in four subjects, and outstanding effort in reading and in listening and speaking. He demonstrated satisfactory and outstanding performance in the 11 areas that Palos Verdes Peninsula's report card termed "successful learner behaviors (effort)."

THIRD GRADE

In third grade, the 2015-2016 school year, Julie Tarango was the new principal at Lunada Bay Elementary. Mother claimed she asked Principal Tarango for a “full assessment” in fall 2015, but Tarango said no. Mother’s testimony was not credible and no other evidence supported this assertion.

In closing argument, Student asserts he was disadvantaged because Tarango did not testify and could not present his whole case without her testimony. Student’s attorney states Tarango was no longer an employee of Palos Verdes Peninsula and moved out of town. Student’s attorney argues for the first time in closing argument, and without competent support, that she tried to contact Tarango to arrange for telephonic testimony but “her efforts were to no avail.” Without anything other than innuendo, Student claims Tarango was “unavailable to testify” and questions if she was “intentionally unavailable?”.

However, Student did nothing to demonstrate any effort to procure Tarango’s testimony. Student’s June 11 and 16, 2020 Witness Lists did not name Tarango as a witness. The record contains no written or oral motions for a continuance to contact, locate, and serve Tarango with a subpoena. The record contains no indication Student believed Tarango was, as Student claims in closing argument, “an essential witness” and Student required more time to procure her testimony or compel her appearance. That Student’s attorney did not present the testimony of someone she believed was an “essential witness” was through her own failure to use legal process to obtain it.

Parents believed Student was really struggling in third grade and in fall 2015 took Student to Lindamood-Bell Learning Processes to consider whether he should receive

their services. At hearing, Mother claimed Student had not learned to read and had poor reading comprehension, and that someone at Lindamood-Bell told Parents Student needed 120 hours of instruction from Lindamood-Bell just to get to the third-grade level. Mother testified Student's state testing showed he was well below average, but her testimony was not persuasive. The weight of the evidence did not support that there were state tests recently than the end of second grade, and those results were not offered as evidence. Further, Mother's characterization of state testing results was contradicted by state testing results obtained in spring 2016, undermining Mother's contention that Student was patently underperforming and Palos Verdes Peninsula ignored his need for special education much earlier than the contractually stipulated limitations period in this case.

Mother testified Student saw that his peers could read for leisure, go right through tests and quizzes without assistance because they understood how to read and what was requested of them, and he could not. Mother asserted Student knew he was different than other kids, was socially aware of the difference, and it gave Student anxiety. Other evidence refuted Mother's characterization of Student's estimation of his abilities and mood.

Student received services at Lindamood-Bell for support in reading, specifically decoding and phonemic awareness, from January through April 2016, and for a short time during fourth grade at the start of the 2016-2017 school year. Student attended Lindamood-Bell for 10 hours per week and Mother took Student out of school early a few days a week for sessions that were from 3:30 to 5:30 PM daily.

In spring 2016, Palos Verdes Peninsula assessed Student for eligibility for a Section 504 plan of accommodations. The evidence did not establish what lead to

Student being evaluated for a Section 504 plan at that time. Mother claimed that upon enrolling Student, she asked Principal Parsons for either a plan under Section 504 of the Rehabilitation Act of 1973 or an IEP. Further, Principal Parsons told her a Section 504 plan would be sufficient, and Palos Verdes Peninsula just provided him a plan of accommodations under Section 504 immediately upon enrollment in January 2015 without any assessment. Other evidence established Student did not have a Section 504 plan until March 2016, over a year after Student enrolled in Palos Verdes Peninsula. Mother's memory of events more than five years before hearing was not accurate and her testimony was not credible, which negatively affected her overall credibility. Student admitted in his written closing argument that "Student qualified for an initial 504 Plan on March 16, 2016," in the spring of third grade.

As part of the Section 504 eligibility assessment, credentialed special education teacher Angela Disalvo administered the Woodcock-Johnson IV Tests of Achievement to evaluate Student's then-current levels of academic functioning. All of Student's scores were in the average range, in all subtests, and Disalvo did not have concerns regarding Student's academic achievement. The accommodations in Student's Section 504 plan were to support Student's "challenges with focus and attention," and were the following:

- provide auditory cues;
- check for understanding orally with instructional content and directions through redirection and verbal prompts;
- provide frequent breaks and allow for movement and use of devices to promote focus;
- ability to type written assignments;
- provide copy of notes as needed;

- extra time to complete written tasks and take tests; and
- modification of length of homework and assignments as needed.

At some time during third grade that was not specifically established by the evidence, Student began participating in a general education reading intervention. Palos Verdes Peninsula termed it Reading Club, and Student continued to participate in Reading Club through the end of fifth grade. Palos Verdes Peninsula screened all students at each school three times a year with the AIMSweb program for reading fluency and comprehension. AIMSweb nationally averaged children's scores. After the screenings, a team of school staff met to discuss the results and decide which students required additional support based on the screening results and teacher input regarding classroom performance. Student's lower fluency, meaning his rate of correct words per minute read aloud in a grade-level passage, caused Palos Verdes Peninsula to recommend he participate in Reading Club.

Credentialed special education teacher Disalvo provided the general education reading intervention at Lunada Bay from 2015 through December 2019, along with other adults Disalvo supervised as instructional assistants. Reading Club used several approaches. Two formal programs the teacher relied on were Read Naturally and Sonday System, which concentrated more on reading fluency. Reading Club also used an approach called "novel study" or "book talk," to improve reading comprehension by having students read together and talk about any words they did not know such as vocabulary and figurative language, and work on summaries as a way to interact with the text.

During Reading Club, students grouped by grade level were removed from class for 30 minutes during a time Disalvo and the classroom teachers coordinated to avoid

students missing other core instruction. Students participated at the same time each day, usually in the morning, five days per week, unless there was a school assembly or other special activity in the timeslot allotted for non-core instruction per grade level. Disalvo or another adult assessed students in Reading Club at least every other week with AIMSweb, by having a student read a grade-level passage aloud, and the student read the passage aloud while the adult marked on a computer any incorrect or missed words. The fluency assessment was timed and the computer scored students for correct words read aloud per minute. For the comprehension assessment by AIMSweb, a student had three minutes to read a grade-level passage to himself or herself and, every seven words, circle the correct answer from a three-word list of options, so the sentence made sense. The student's selection of the correct word informed the examiner the student could read silently and comprehend the material. Disalvo scored a student's answers if another adult administered the assessment.

Mother testified she was not certain but thought Student started participating in Reading Club in March or April 2015, in second grade. She acknowledged she could not exactly recall why Student began participating in Reading Club but she thought she was the one who agreed to Reading Club; she recalled when she enrolled Student in January 2015 she told Principal Parsons about Student struggling in reading so Principal Parsons said she would put him in Reading Club. Mother's testimony was oriented around her perception that she could not recall a time Student attended Lunada Bay that he was not in Reading Club. Other evidence did not support her recollection. Again, Mother's memory of events more than five years before hearing was not accurate, which negatively affected her overall.

Student made progress in his reading during his Reading Club participation in third grade. During third grade, Disalvo never thought Student might require special education and related services. She did not see Student exhibit signs of anxiety.

Near the end of third grade, Student participated in state-wide testing, the California Assessment of Student Performance and Progress. The evidence did not establish whether Student's participation in the testing included any accommodations because of his recently developed Section 504 plan. In the subject of English Language Arts/Literacy, Student's overall score was described as "standard nearly met." His scores in the areas of reading and writing were described as "below standard," and his scores in the areas of listening, and research/inquiry, were described as "near standard." In the subject of mathematics, Student's overall score was described as "standard nearly met." His scores in all three mathematics areas – concepts and procedures, problem solving and modeling/data analysis, and communicating reasoning – were described as "near standard."

For the 2015-2016 school year, Palos Verdes Peninsula changed the number and letter designations for report cards in both achievement levels and effort. Student finished third grade with marks of 4, the new highest score, meaning consistent understanding of and ability to apply grade-level standards and expectations, in all areas: mathematics, speaking and listening, reading, writing, language, and social studies. Of 16 sub-areas, he received 4s in 15. In only one sub-area, production and distribution of writing, he received a 3, meaning a partial understanding of and ability to apply grade-level standards and expectations. He showed consistent effort, the new highest score available, in all five subjects. He demonstrated consistent performance in the nine areas termed "essential learner behaviors (effort)."

FOURTH GRADE

In fourth grade, the 2016-2017 school year, a Section 504 plan team meeting was held early in the school year on September 6, 2016, to review Student's Section 504 plan of accommodations. The team agreed to continue the accommodations that had been initially developed just that spring.

Lindamood-Bell personnel told Parents Student worked really hard and did well, and recommended he participate in more hours of Lindamood-Bell services. Student received some services at Lindamood-Bell in August and September 2016 going into fourth grade, then stopped because Parents thought it was a lot for him with full school days. Mother believed the Lindamood-Bell methods had a positive effect for Student for the time he participated in that program, with residual positive effects in the fall of fourth grade, and then the benefits "evaporated" after December of fourth grade.

Throughout fourth grade, Student continued to participate in Reading Club for 30 minutes per day, four to five days per week depending on school activities. Student made anticipated progress and Disalvo never thought Student might require special education and related services. She did not see Student exhibit signs of anxiety.

Student began and ended fourth grade receiving 3s in two of three areas of reading, designated as literature and informational texts. He received 4s in all three reporting periods for a third area of reading, called foundational skills. In the subject of mathematics, Student received 3s and 4s in different areas, finishing the school year with 3s in the areas of operations and algebraic thinking, number and operations in base 10, and geometry, and with 4s in the areas of mathematical reasoning, number and operations in fractions, and measurement and data. In the subject of writing, he

received 4s in all three areas. In the subject of language, he received 4s in both areas: conventions of standard English, and vocabulary acquisition and use. In the subject of speaking and listening, he received 4s in both areas: comprehension and collaboration, and presentation of knowledge and ideas. He received 4s in all three reporting periods of social studies and science. He showed consistent effort in all seven subjects. He demonstrated consistent effort in physical education, visual and performing arts, and core/instrumental music. He demonstrated satisfactory performance in three of the 10 areas of "essential learner behaviors (effort)," and consistent performance in the other seven.

Comments from Student's fourth grade teachers on his report cards indicated success with some areas of functioning Student contends should have instead been areas of suspected disability, and noted some difficulties of which Palos Verdes Peninsula was aware. For example, in the first reporting period, his teacher noted, "Your excellent time management and organization skills are evident. You demonstrate persistence in your ability to stay on task and complete your work." In the second reporting period, the teacher noted, "New math skills sometimes confuse you because you are not always attentive when concepts are being explained." At the third reporting period, just before the relevant commencement date of claims in this case – July 17, 2017 – Student's teacher summarized Student's year-end performance as follows:

[Y]ou consistently demonstrate the ability to read closely and analytically to comprehend a range of literary and informational texts. You use evidence to demonstrate critical thinking in comprehension. You interpret and carry out mathematical procedures with some precision and fluency. Your performance varies in consistency with regards to accuracy and application. More

reinforcement of skills is necessary and you do not always make connections among mathematical concepts or demonstrate your learning without support. In writing, you understand and apply concepts and skills with minimal errors. Application of your skills are demonstrated with consistent accuracy, independence, and supporting evidence.

Near the end of fourth grade, Student again participated in state-wide testing, the California Assessment of Student Performance and Progress. The evidence did not establish whether Student's participation in the testing included any accommodations because of his Section 504 plan. In the subject of English Language Arts/Literacy, Student's overall score was described as "standard not met." His scores in the areas of reading, writing, and research/inquiry were described as "below standard," and his score in the area of listening was described as "near standard." In the subject of mathematics, Student's overall score was described as "standard nearly met." However, his scores in all three areas – concepts and procedures, problem solving and modeling/data analysis, and communicating reasoning – were described as "below standard."

FIFTH GRADE

In fifth grade, the 2017-2018 school year, a Section 504 plan team met again on September 5, 2017, and clarified Student's accommodations, all of which were to address the area of need of attention. Student's accommodations were written to provide:

- Teacher responsible for: provide auditory cues;
- Teacher responsible for: Check for understanding orally with instructional content and directions through redirection and verbal prompts;

- Teacher responsible for: Provide frequent breaks and allow for movement and use of devices to promote focus;
- Teacher responsible for: Provide alternate setting as needed; and
- Parent/Guardian responsible for: Modification of homework and assignments as needed.

Rachel Guest was a Palos Verdes Peninsula school psychologist who attended Student's September 2017 Section 504 plan team meeting. The Section 504 plan team reviewed the initial eligibility assessment done by a different psychologist a year and a half earlier. That assessment had focused on Student's attention, with which there had been concerns, and his social-emotional functioning, with which there were not concerns.

Parents did not request an IEP at the September 2017 Section 504 team meeting. Guest's testimony was credible in this regard. Her testimony aligned with the claims Student actually filed in this case; Student did not allege Palos Verdes Peninsula failed to timely respond to any specific parental request for assessment on or after July 17, 2017, or failed to assist Parents in reducing an oral request for assessment to writing.

Mother's testimony that she asked Principal Tarango during Student's third, fourth, and fifth grades for Palos Verdes Peninsula to evaluate Student for an IEP, and Tarango refused, was not credible. Mother acknowledged she did not make the requests in writing and claimed she only asked in person. Although Mother also insinuated she may have, in emails she sent to Student's teachers during third, fourth, and fifth grades, asked if a Section 504 plan or an IEP would be appropriate, Student failed to produce or introduce into evidence any emails, despite explicitly being given the opportunity to do so. This undermined Mother's assertions that she requested

assessment for special education eligibility or an IEP. Palos Verdes Peninsula did not have knowledge Parents thought Student required special education as of September 2017.

At the fifth grade first reporting period on November 22, 2017, Student received 3s in all areas of reading and writing. He received a 3 in the "conventions of standard English" area of language, and a 4 in the area of vocabulary acquisition and use. He received 4s in both areas of the subject of speaking and listening. He received a 2 in the area of mathematical reasoning, but 4s in the areas of operations and algebraic thinking, and number and operations in base 10. He showed some difficulty with breaking down word problems, impacting his mathematical reasoning. One of his teachers noted the support of reading intervention would be used to continue to work on Student's comprehension skills. The teacher acknowledged Student for working hard to stay organized and taking initiative to ask questions.

In fifth grade, Disalvo was not aware of any anxiety Student might have had, as he never appeared anxious and never told her anything about anxiety, being worried about tests, or anything of that nature.

Palos Verdes Peninsula continued to use AIMSweb to evaluate all students' progress in reading fluency. The average range for students was in the 25th to 75th percentile. Student's progress monitoring scores were inconsistent, with some days higher than others. At the first benchmark testing in fall 2017, Student read aloud 87 correct words per minute in fifth grade passages. At the second benchmark testing in winter 2018, Student read aloud 105 correct words per minute. His highest score was 111 correct words, in 25th percentile, but his average score was 88, between the 10th and 25th percentiles. Although Student made progress in the fall term and his rate

of improvement at one correct word per minute per week was better than 55 percent of students in a national sample that started at a similar level, Student's score was at the 21st percentile, which was below average compared to AIMSweb National Norms Winter Percentiles. Student's biggest struggle was in decoding multisyllabic words, looking at a word and breaking it into components. Student performed better in reading comprehension than reading fluency.

Palos Verdes Peninsula convened a Student Study Team meeting in February 2018 to review and discuss Student's progress and present levels of performance. The team included Parents, Principal Tarango, Disalvo, and school psychologist Guest. The team believed Student showed some progress, but during the school year Student's growth was not commensurate with his effort based on his AIMSweb scores and recent lack of anticipated progress in reading despite his continued participation in Reading Club. Student's winter benchmarks for reading intervention showed he was maintaining performance and had some growth from the fall benchmarks, but not at the rate his teachers expected. At the meeting, Parents and staff voiced their concerns in the areas of reading fluency and reading comprehension. Palos Verdes Peninsula provided Parents an assessment plan dated February 13, 2018, to evaluate Student's academic achievement, health, intellectual development, social-emotional functioning/behavior, and adaptive behavior to consider Student's eligibility for special education and related services. Mother signed consent to the proposed assessments on February 14, 2018, and Palos Verdes Peninsula received the signed assessment plan on February 20, 2018. Parents did not request any additional areas of testing before or after signing consent.

Parents were disappointed Student had been receiving reading intervention for a long time, was in the 24th or 25th percentile and not making better progress, and

Palos Verdes Peninsula only then recommended consideration of eligibility for special education and related services. At Parents' request, Palos Verdes Peninsula completed the assessment in 30 rather than 60 days.

At the second reporting period on March 2, 2018, Student again received 3s in all areas of reading and writing. He again received a 3 in the "conventions of standard English" area of language, and a 4 in the area of vocabulary acquisition and use. He received 4s in both areas of the subject of speaking and listening. He received 3s in the areas of mathematical reasoning and operations and algebraic thinking, a 4 in the area of number and operations in base 10, a 3 in the newly included area of number and operations in fractions, and a 4 in the newly included area of geometry. His teachers acknowledged him for continuing to work hard to keep organized and for asking good questions in class. They stated they were proud of him for his effort that trimester and encouraged him to "keep up the excellent effort."

2018 SPECIAL EDUCATION EVALUATIONS

As part of the special education assessment, Disalvo conducted the academic achievement assessment using the Woodcock-Johnson IV Tests of Achievement in March 2018. Student's reading abilities were evaluated through five subtests. Scores from these five subtests were combined in different groupings to obtain cluster scores in three categories. None of Student's reading area subtest scores were in the range described as "low," and all were within the "low average" and "average" ranges according to the score categories as defined by the test publisher.

In the cluster of broad reading, Student's standard score was 88, in the low average range that began at 89. In the cluster of basic reading skills, his standard score was 93, in the average range. In the cluster of reading fluency, Student's standard score

was 92, in the average range. His percentile ranks in these areas, respectively, were 20, 33, and 30. This data was consistent with or slightly better than information from the AIMSweb scores for reading fluency, on which his recent progress checks showed a score between the 10th and 25th percentile, with a highest score on January 23, 2018, at the 25th percentile. On his five most recent AIMSweb progress checks regarding comprehension, his averages were in the 25th to 50th percentile, with a highest score on March 13, 2018, in the 50th to 75th percentile.

On the Woodcock-Johnson IV Tests of Achievement, Student's written expression abilities were evaluated through three subtests. Scores from these three subtests were combined in different groupings to obtain cluster scores in two categories. Student's standard score on the broad written language cluster was 99, in the average range at the 47th percentile. Student's standard score on the written expression cluster was also 99. These scores were consistent with his report card marks from around the same time, when he had 3s in the writing areas.

On the Woodcock-Johnson IV Tests of Achievement, Student's mathematics abilities were evaluated through three subtests. Scores from these three subtests were combined in different groupings to obtain cluster scores in two categories. Student's standard score on the broad mathematics cluster was 109, in the average range at the 73rd percentile. Student's standard score on the math calculation skills cluster was 110 at the 74th percentile, at the top end of the average range, with "high average" beginning at 111. These scores were consistent with his most recent report card marks of 3s and 4s in mathematics areas.

The Woodcock-Johnson IV Tests of Achievement also has a cluster for broad achievement, based on a combination of nine subtests, to represent a student's overall

performance across the various domains of achievement. Student's standard score in broad achievement was 97, in the average range at the 43rd percentile.

Student's standard scores and percentile rankings on a nationally normed, standardized test were significant because they validated the report card marks Student had received for years and around the time he was assessed for eligibility for special education. Student's scores on the Woodcock-Johnson Tests of Achievement were consistent with what his teachers had reported. Student was in fact achieving within the average range in all academic areas, including reading and writing. The accommodations he received, to whatever degree his teachers implemented them, and the general education reading intervention he participated in for approximately two years, enabled Student to learn grade-level content, and to demonstrate his abilities and achievement in that content within the nationally normed average range compared against children his age or grade level. Based on the weight of the evidence, his academic achievement scores were not connected Lindamood-Bell services, the effects of which Mother claimed had worn off a year before Student's assessment. Nor were they connected to Beth Silver's private academic coaching of Student, because that did not start until at the same time as or shortly after Student took the Woodcock-Johnson Tests of Achievement in 2018.

Disalvo reported on Student's "pre-vocational behavior" in the academic assessment report. Student worked hard and made good use of his class time to do classwork. He was sometimes disorganized and misplaced a few items in the room. He did not write in his agenda regularly, yet he turned in his homework daily. His teacher reported he was sometimes distracted during a class lesson. However, he did ask for help and double checked his work when he was not sure if he understood something.

School psychologist Guest conducted the assessment of Student's intellectual development, social-emotional functioning and behavior, and adaptive behavior, and reported her findings in the March 20, 2018 psychoeducational report. The only copy of the document moved into evidence bore a "draft" stamp across it and there was no evidence that established any changes were made for a final version.

Guest interviewed Student. One topic of the interview was Student's self-concept, feelings, and moods. Student stated what he liked best about himself was that he was kind, and good at science and sports. He stated there was nothing that he did not like about himself or wished he could change. He denied getting angry or sad, but said if he got angry he calmed down by taking deep breaths or taking a break. He said he was not afraid of anything, and denied experiencing worry.

Guest obtained comments and rating scales from Student's fifth grade math and science teacher, Anne Goggin, and Angela Rush, Student's English language arts and social studies teacher, who had also been his third grade teacher. Student's strengths were being kind and respectful, wanting to do well and putting effort into school, and noticeable effort into staying organized. The teachers reported Student's auditory comprehension of material read aloud to him was strong. He was a strong leader and participated in class regularly. Teachers' concerns included their awareness his reading fluency impacted his independent reading comprehension and understanding of multi-step math word problems. Writing production was a weakness, and Student benefited from adult support in organizing his ideas.

The teachers reported Student was distracted by the visual, auditory, and proximal environment, and also when trying to figure out expectations. His distraction impacted his success at following written directions. He had a hard time staying on task.

Student did not ask for breaks, but after being instructed to take a short break, he was able to return to task with increased focus and attention. Rush noted Student required breaks less frequently in fifth grade than he had required in third grade.

Guest observed Student during math, English language arts, and on the playground using the Behavior Assessment Scale for Children's Student Observation System. Guest observed, coded, and recorded Student's adaptive and maladaptive behaviors using momentary time sampling during three-second intervals spaced 30 seconds apart.

During math class, the lesson was teacher-directed with whole group, small group, and independent tasks built into the instruction. Student frequently responded to Goggin and the lesson. He raised his hand to ask a clarifying question once. He also raised his hand to volunteer an answer. After answers were written on the board, Student referred to the board and checked his answer. He frequently worked at his workstation and completed seat work. He sometimes appeared inattentive, staring off. He engaged in peer interactions at appropriate times during opportunities provided to share with his peers. During transition times, he engaged in some off-task peer interaction in which he spent approximately one minute showing his peers his watch and its many functions. Overall, Student demonstrated on-task, ready-to-learn behaviors approximately 87 percent of the time. When compared to his peers, Student's behavior did not differ or stand out in any significant way. Goggin reported Student's behaviors observed by Guest were typical and representative of a typical day.

During English language arts, Student initially was seated at the front of the classroom, facing forward, sharing a book with a female peer. Rush stood in front of Student's table as she read aloud, and Student followed along with the teacher as she

read. On approximately five occasions, Rush stopped reading and asked the class comprehension questions. Student raised his hand three times and Rush called upon him twice. Both times, Student gave a correct, on-topic answer. At times, a classmate moved near or around Student's desk, which distracted Student as he watched that peer move by, or he stared off. When it was time to transition to the social studies lesson, Student transitioned appropriately, changing his seat to another assigned position. He frequently listened to Rush and followed along with the text at his workstation. Overall, Student demonstrated on-task, ready-to-learn behaviors approximately 80 percent of the time. Compared to his peers, Student's behavior did not stand out in any significant way. Rush reported Student's behaviors observed by Guest were typical for Student at that time of day and type of activity.

On the playground during recess, Student and approximately 13 male peers began a game of touch football. Student demonstrated an understanding of the rules and the game. Student played with his peers, talked to them, and made contact with them appropriately. Student demonstrated adaptive social interactions 100 percent of the time. When the bell rang, Student and his peers continued playing until redirected by a nearby adult who blew a whistle. Then Student and his peers ran over, put the ball away, and lined up with their class.

Student's math and science teacher Goggin completed the teacher rating scale form of the Behavior Assessment System for Children. The Behavior Assessment System for Children facilitates the diagnosis and classification of a variety of emotional and behavioral disorders in children and young adults by gathering information from a variety of sources through completion of rating scales. The rating scales solicit information from the perspective of the informant completing the form, and are a subjective measure that generates scores based upon the observations and experiences

of the informant relative to the student. Each informant's response to the questionnaire will exhibit variability in a student's performance across informant environments.

Subscale areas that fall within the "average" range indicate that the informant notes appropriate functioning within the home or school environment where the informant has interacted with the student. "Clinically significant" scores suggest a high level of maladjustment and may require immediate interventions. Scores that fall within the "at risk" classification signify there may be a noteworthy problem in the particular area or setting but it is not presenting as severe; instead, parents, teachers, and professionals who work with the student determine the necessary intervention or strategies that can be used to assist the student and should monitor the at-risk behavior.

Compared against other males Student's age, Goggin rated Student as average in all five composite categories of externalizing problems, internalizing problems, school problems, adaptive skills, and the behavioral symptom index. In 14 individual categories, Goggin rated Student as average compared to other males his age: hyperactivity, aggression, conduct problems, depression, somatization, attention problems, learning problems, atypicality, withdrawal, adaptability, social skills, leadership, functional communication, and study skills. In 13 of these domains, Goggin's T-scores for Student were squarely in the average range, and only in the area of learning problems was the score, while average, two points away from the threshold for being classified as "at risk," with a score of 58. Goggin's T-scores rated Student as "at risk" only in the area of anxiety, with a score of 60, exactly at the starting point of the at-risk classification.

The Behavior Assessment System for Children asks informants to rate whether a child has never, sometimes, often, or almost always exhibited certain behaviors or characteristics. Guest conducted item examination to obtain additional information on

areas that were rated as at-risk and reported on these items in her psychoeducational assessment report. With respect to the subscale for anxiety, which measured Student's feelings of nervousness, worry, and fear as well as tendency to feel overwhelmed by problems, Goggin responded Student sometimes was fearful, sometimes appeared tense, sometimes worried about things that cannot be changed, sometimes was nervous, sometimes was easily stressed, sometimes said "I'm afraid I will make a mistake," and sometimes said "I get nervous during tests" or "tests make me nervous."

Two other "sometimes" responses from Goggin were for "has panic attacks" and "says, 'I hate myself.'" At the IEP team meeting to review the assessment results, Parents wanted more information about Goggin's responses to these items and Guest investigated with Goggin. Goggin explained that because "never" meant zero times, "sometimes" was the correct response if something happened even one time. Goggin's "sometimes" responses to those two critical items both stemmed from a single event when Student cried when he was sent to the principal's office as he believed he was being disciplined. These responses, and their impact on the overall score in the anxiety category, did not indicate Student had "severe and debilitating anxiety" or that Palos Verdes Peninsula was aware of Student having "severe and debilitating anxiety" or anything approaching what Student alleges Palos Verdes Peninsula ignored since July 17, 2017. The evidence did not support Mother's assertion Goggin ever indicated, either in writing or orally at an IEP team meeting, Student said he wanted to harm himself or thought about harming himself.

In closing argument, Student asserts for the first time he was disadvantaged because Goggin did not testify. However, as with Tarango, Student's attorney did nothing to demonstrate any effort to procure Goggin's testimony. The record contains no indication that Student believed, as claimed in closing argument, Goggin was

"an essential witness" and Student required more time to procure her testimony. Student's failure to obtain Goggin's testimony was the result of his failure to use legal process to obtain it.

Scores from informants' ratings on the Behavior Assessment System for Children are also grouped into five broader categories: overall executive functioning index; problem solving index; attentional control index; behavioral control index; and emotional control index. Goggin's ratings resulted in scores that were classified as "not elevated" in all five indices.

On the Behavioral Assessment System for Children responses, Goggin noted Student's strengths as a hard-working and dedicated student and positive person who advocated well for himself when he needed help. Goggin noted Student's behavioral and/or emotional concerns as, "[He] has great difficulty processing anything that requires reading. This includes word problems in mathematics which is usually an area of strength for him."

The Conners Behavior Rating Scales, Third Edition, is a set of behavior rating scales used to assist school and medical professionals in identifying behavioral problems in children. Both home and school versions are available so that a well-rounded picture of a student's behavior in both settings can be obtained. Any T-score that is two or more standard deviations above the mean can be considered indicative of behavioral difficulties. There are five content scales for the teacher form: inattention; hyperactivity/impulsivity; learning problems/executive functioning, which on the teacher form has separate subscales each for learning problems and for executive functioning; defiance/aggression; and peer relations. Across all content scales, Student's teacher rated him in the average range, indicating typical levels of concern. One subscale was

reported in the high average range, for learning problems. A high average score revealed that Student was presenting with slightly more concerns than are typically reported. This pattern of responses was relatively similar to Goggin's rating on the Behavioral Assessment System for Children.

Results from the Conners teacher ratings suggested requirements were not met for any of the following diagnoses in the American Psychiatric Association's Diagnostic and Statistical Manual, version 5, referred to as DSM-5: ADHD Predominantly Inattention Presentation; ADHD Predominantly Hyperactive-Impulsive Presentation; or ADHD Combined Presentation. School psychologist Guest interpreted the results of the teacher's rating and concluded through the implementation of supports and services provided in the Section 504 plan of accommodations, Student's behaviors consistent with ADHD within the school setting appeared to be minimal. Guest believed the teacher's Conners ratings indicated the interventions in place were appropriately accommodating Student's attentional challenges and needs within the school setting.

IEP TEAM MEETING TO REVIEW THE ASSESSMENT RESULTS

On or about March 20, 2018, Palos Verdes Peninsula provided Parents a draft health and development report, academic assessment report, and psychoeducational report, which incorporated information from the health and academic reports, and invited Parents to an IEP team meeting to review and discuss the results of the assessments. Parents declined an immediate IEP team meeting and delayed it to privately pursue independent educational evaluations. These were a psychoeducational evaluation by clinical psychologist Corinne Hickson, Ph.D., and an auditory processing evaluation by Cydney Fox, Au.D.

The IEP team met on May 24, 2018, after Parents obtained the two independent evaluations and agreed to an IEP team meeting. The team included Parents, Student's attorney, the two independent evaluators and an education therapist from whom Student recently had started receiving services, and various Palos Verdes Peninsula staff. The IEP team reviewed and considered Palos Verdes Peninsula's initial assessments and the independent evaluations of Dr. Hickson and Dr. Fox, and determined Student was eligible for special education and related services.

By the end of fourth grade in June 2017, Palos Verdes Peninsula did not have knowledge of, or reason to suspect that, Student had a disability that required special education and related services. There was nothing Palos Verdes Peninsula was aware of in Student's background, educational records, or performance that should have caused Palos Verdes Peninsula to refer Student for assessment for IDEA eligibility until that time. At the commencement of the contractually agreed upon limitations period in this case, July 17, 2017, Palos Verdes Peninsula was aware Student had a disability in the area of attention, and had provided him a plan of accommodations under Section 504. Student was at the bottom end of the average range in reading fluency, and sometimes scored below average, but made progress with reading fluency and comprehension, and writing, through a general education reading intervention. While Student had below average performance on statewide testing at the end of fourth grade, just before the limitations period began, his classroom grades and effort indicated adequate achievement in grade-level content and standards in all areas. The validity of his grades was proven in early March 2018 based on his average scores on a nationally normed, standardized test of grade-level academic achievement. Student's attention issues could be connected with executive functioning skills, work habits, and task completion, but his "Essential Learner Behaviors (Effort)" marks in the "some of the time" and

"consistently" ranges reflected Student was making satisfactory progress in the general education curriculum and academic and social skill development without special education and related services at the end of fourth grade.

At the first reporting period after the limitations period commenced, on November 22, 2017, while Palos Verdes Peninsula knew Student had attention deficits and received Section 504 accommodations, Student was making satisfactory progress in the general education curriculum and academic and social skill development without special education and related services. Student received grades of 3s and 4s in all areas, except a 2 in the area of mathematical reasoning. In response to assessment forms a few months later, Student's teachers reported Student's auditory comprehension of material read aloud to him was strong. Student was "consistently" showing effort in all categories of "Essential Learner Behaviors."

Palos Verdes Peninsula's obligation to assess Student was first triggered in February 2018. Student's progress in reading continued during the second trimester but not at the pace he had progressed before. While Disalvo had not previously thought Student might need special education related services, Student's results on the AIMSweb winter 2018 benchmark testing caused her concern and Palos Verdes Peninsula convened a Student Study Team meeting in February 2018 to discuss Student's slower progress. Palos Verdes Peninsula offered Parents an assessment plan to evaluate Student for eligibility for special education and related services.

Student relies on the fact that the results of the assessment led to Student being identified as eligible for special education and related services as evidence that Palos Verdes Peninsula should have assessed him sooner. However, the evidence did not reflect that, as Student contends, he had or that Palos Verdes Peninsula had reason

to suspect he had “severe and debilitating anxiety” before February 2018, nor that Palos Verdes Peninsula had reason to suspect Student had central auditory processing deficits, nor that the other areas may have required special education. Further, anxiety and central auditory processing deficits were not the reasons Student ultimately was found eligible for special education. As detailed more specifically in Issue 3, below, Palos Verdes Peninsula’s school psychologist believed Student only qualified under the category of specific learning disability related to Student’s deficits in attention and association. Student’s independent evaluators, Parents, and attorney persuaded Palos Verdes Peninsula to identify Student’s primary eligibility as based on other health impairment related to Attention Deficit Hyperactivity Disorder.

The ultimate outcome of the assessment process is not determinative of when Palos Verdes Peninsula should have reasonably suspected Student had a disability as defined under the IDEA and, by reason thereof needed special education and related services, also described as instruction and services that cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A)(i) & (ii); 34 C.F.R. § 300.8(a); Ed. Code, § 56026, subds. (a) & (b).) While there is a low threshold for suspecting that a student has a disability, and Palos Verdes knew Student had a disability related to attention that required accommodations under Section 504, there was never a reason to suspect other disabilities as Student alleges. Student’s overall average performance, despite his known attention issues and plan of accommodations, meant Palos Verdes Peninsula did not have knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability until, in winter 2018, Student’s reading progress seemed very slow. (See *Panama-Buena Vista Union School Dist. v. A.V.* (E.D. Cal. Dec. 5, 2017, No. 1:15-cv-01375-MCE-JLT) 2017 WL 6017014, **5, quoting *D.K. v. Abington School*

Dist. (3d Cir. 2012) 696 F.3d 233, 252 [“schools need not rush to judgment or immediately evaluate every student exhibiting below-average capabilities”].) Student failed to prove that prior to February 13, 2018, when Palos Verdes Peninsula provided Parents with assessment plan, it had an obligation to evaluate Student for special education eligibility.

In summary, Student did not carry his burden of proof that between July 17, 2017, and February 13, 2018, Palos Verdes Peninsula delayed in identifying that Student, who was known to have a disability in the area of attention and to exhibit related performance issues in executive functioning skills, work habits, and task completion, might have needed special education and related services, and referring him for assessment for eligibility. Student also did not prove by a preponderance of the evidence that between July 17, 2017, and February 13, 2018, Palos Verdes Peninsula should have suspected Student had severe and debilitating anxiety, or central auditory processing deficits. And Student did not prove by a preponderance of the evidence that between July 17, 2017, and February 13, 2018, Palos Verdes Peninsula should have suspected Student’s low average to below average performance in reading or writing was the result of a disability for which he may have needed special education and related services to make satisfactory progress in the general education curriculum.

Additionally, Student alleges Palos Verdes Peninsula failed in its child find obligation after February 13, 2018, through the filing of the complaint on January 16, 2020. However, once Palos Verdes Peninsula referred Student for assessment for eligibility under the IDEA in February 2018, Student was “found,” fulfilling the identified and located requirements, and the assessments were completed within 30 days, fulfilling the evaluated requirement. Student was determined to be eligible for

special education and related services, and Palos Verdes Peninsula's child find responsibility to Student had been fulfilled.

ISSUE 2: FAILING TO ASSESS STUDENT IN ALL AREAS OF UNIQUE NEED BEFORE MAY 24, 2018 IEP TEAM MEETING

In Issue 2, Student contends Palos Verdes Peninsula denied him a FAPE during the 2017-2018 school year by "failing to conduct any assessments of Student's unique needs with respect to severe and debilitating anxiety, central auditory processing deficits, attention issues, reading and writing deficits, poor executive functioning skills, poor work habits, and difficulty completing tasks, prior to assessments conducted for Student's May 24, 2018" IEP team meeting. During the prehearing conference, Student had difficulty explaining the distinction between Issues 1 and 2 as stated in his complaint and prehearing conference statement. Since Issue 1 was framed as the failure to refer Student for assessment for eligibility under the IDEA, Issue 2 addresses the failure to assess Student in all areas of suspected disability prior to May 24, 2018, resulting from the February 2018 referral. Student did not state anything about this issue in his written closing argument, addressing only Issues 1, 3, and 4. Apart from the allegations in the complaint and Student's assent to the framing of Issue 2 during the prehearing conference, it is unclear what Student contends in Issue 2.

Palos Verdes Peninsula contends its March 9, 2018 Initial Health and Developmental Assessment, March 20, 2018 Academic Assessment Report, and March 20, 2018 Psychoeducational Report Initial Evaluation appropriately assessed Student in all areas of suspected disability.

A request for an initial evaluation to determine whether a student is a child with a disability in need of special education and related services can be made by either a parent or a public agency, such as a school district. (34 C.F.R. § 300.301(b).) Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. (20 U.S.C. § 1414(a); 34 C.F.R. § 300.303; Ed. Code, §§ 56043(k), 56381, subd. (a).) In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).)

A school district's failure to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d at pp. 1031-1033.)

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).)

Student's initial assessment for eligibility for special education and related services was premised on Student's recent lack of anticipated progress in reading despite his participation in Reading Club, which also impacted his achievement in mathematics presented as word problems, and was made with Palos Verdes Peninsula's awareness of Student's attention deficits and related performance issues in executive functioning skills, work habits, and task completion.

At the winter 2018 Student Study Team meeting, Parents participated in the development of the February 13, 2018 initial assessment plan. Palos Verdes Peninsula proposed to assess Student's academic achievement to measure reading, arithmetic, oral and written language skills, and general knowledge. It also proposed to assess Student's health by gathering health information at testing to determine how Student's health affected school performance. It proposed evaluation of Student's intellectual development, to measure how well Student thought, remembered, and solved problems. Palos Verdes Peninsula also proposed to assess Student's social-emotional functioning/behavior, to identify how Student felt about himself, got along with others, and took care of personal needs at home, school, and in the community. It also proposed to assess Student's adaptive behavior, also to identify how Student took care of personal needs at home, school, and in the community. Parents did not request assessments in any other areas of suspected disability.

Palos Verdes Peninsula in fact assessed Student in all the areas on the February 13, 2018 assessment plan to which Mother consented, and about which Student now complains. As framed by the June 16, 2020 Order Following Prehearing Conference, and without objection, correction, or clarification by Student thereafter, Issue 2 concerns whether Palos Verdes Peninsula assessed Student regarding attention issues, executive functioning skills, work habits, task completion, reading and writing deficits, central auditory processing deficits, and allegedly severe and debilitating anxiety. Student's complaint alleged as Issue 2 that Palos Verdes Peninsula did not "evaluate Student's deficits as identified in Issue 1," specifically and only attention issues, executive functioning skills, work habits, task completion, reading and writing deficits, central auditory processing deficits, and severe and debilitating anxiety.

HEARING AND VISION

Another part of Student's complaint claimed Student had "hearing loss in the left year [sic]. Dr. Corrine Hickson's [sic] audiological testing revealed that Student meets criteria for an auditory processing deficit. Additionally, Student is farsighted which causes him difficulty with sustained silent reading and fact searching in certain areas. . . . By failing to assess Student in all areas of suspected disability, Student's vision issues, hearing loss, and central auditory processing disorder all went unrecognized and therefore unaddressed."

At hearing, Student presented the April 14, 2018 Auditory Processing Test Results report from Cydney Fox, Au.D. That report indicated Student's hearing was within normal limits in the right ear, and his left ear had "mild level sensori-neural hearing loss" within specific frequencies for pure tone stimuli. Clinical psychologist Hickson performed a psychoeducational evaluation of Student in March and April 2018, not audiological testing as stated in Student's complaint.

As part of the health assessment a school nurse conducted, Palos Verdes Peninsula conducted an auditory acuity test using a Maico Pure-tone Sweep at 25 decibels, which Student passed in both ears. At the time of Palos Verdes Peninsula's assessment in February and March 2018, and until Parents gave Palos Verdes Peninsula Dr. Fox's evaluation on May 24, 2018, hearing loss was not an area of suspected disability for Student; but as part of the normal routine for a health assessment, Palos Verdes Peninsula conducted a hearing screening and Student passed. Based on Student's failure to assert during or after the prehearing conference that Issue 2 in any way related to hearing loss, and his failure to present evidence related to hearing loss as an area of suspected disability "prior to assessments conducted for Student's

May 24, 2018 [IEP] team meeting," Student abandoned his claim that Palos Verdes Peninsula failed to assess Student's hearing loss.

Student produced no evidence at hearing related to Student's vision. Based on Student's failure to assert during or after the prehearing conference that Issue 2 in any way related to vision, and his failure to present evidence related to vision at hearing, Student abandoned his claim that Palos Verdes Peninsula failed to assess Student's vision.

CENTRAL AUDITORY PROCESSING

Central auditory processing was not an area of suspected disability for Student. During the assessment process, Mother completed a written interview questionnaire on which she reported Student had been assessed for "school related problems" in the past and stated "several professionals in the past believe [Student] has auditory processing challenges, which affect his continued difficulty and struggle decoding words, fluency, and comprehension."

As part of the intellectual development and academic achievement assessments documented in Palos Verdes Peninsula's March 20, 2018 psychoeducational report, Palos Verdes Peninsula administered the Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition, the Comprehensive Test of Phonological Processing, Second Edition, and the Wide Range Assessment of Learning and Memory, Second Edition. Each of these instruments included components evaluating Student's auditory functioning and processing. These tests are authorized for use by psychologists to evaluate cognitive and functional abilities and psychological processes, including auditory processing.

On the Woodcock-Johnson Tests of Cognitive Abilities, school psychologist Guest found Student's overall general cognitive abilities had a standard score of 90, at the bottom end of the average range, with a 95 percent confidence interval that his true score was somewhere between 83 and 98, in the low average to average ranges. His auditory processing cluster score was 101, with a 95 percent confidence interval that his true score was somewhere between 91 and 110, all within the average to high average range. The Woodcock-Johnson Tests of Cognitive Abilities auditory processing cluster measured Student's ability to encode, synthesize, and discriminate auditory stimuli, including the ability to employ auditory information in task performance. This is a broad ability that subsumes many of the abilities referred to as phonological awareness, phonological processing, phonological sensitivity, and phonological decoding.

Palos Verdes Peninsula evaluated Student's auditory skills with the Comprehensive Test of Phonological Processing, Second Edition. Student's Phonological Awareness Composite score was in the average range, and his performance on the tasks for this test was similar to his performance on the Woodcock-Johnson Tests of Cognitive Abilities subtests for similar tasks. Student's Phonological Memory Skills score was in the below average range. This measure is composed of two subtests, for which Student's score on one was in the below average range, and another on which his score was in the average range and matched his performance on a similar subtest of the Woodcock-Johnson Tests of Cognitive Abilities. Student's Rapid Symbolic Naming skills score was in the low average range for all three types of tasks included in this measurement. His consistently low average performance in this type of phonological processing suggested Student's reading fluency might be impacted to a greater degree than his same-age peers. His performance on this task

was consistent with his performance on similar subtests of the Woodcock-Johnson Tests of Cognitive Abilities, where he also scored in the low average range.

Palos Verdes Peninsula also evaluated Student's auditory processing using the Wide Range Assessment of Memory and Learning, Second Edition. Some subtests rely on auditory tasks. The Story Memory subtest measured Student's auditory memory of extended meaningful verbal material, like what is associated with listening to a conversation or lecture, as well as reading text in newspapers or books. Student was read a story and following the story was asked to retell all or parts of the story he could remember. He performed within the average range on the subtest. His score on a similar task in the Woodcock-Johnson Tests of Cognitive Abilities was in the low average range.

The Verbal Learning subtest evaluated Student's auditory memory of meaningful verbal information that is without context or language structure. The task evaluated Student's ability to actively learn new, relatively unrelated verbal information. He was read the same list of 16 words four times; after hearing the list of words he was asked to recite, in any order, all the words he could remember. The number of words Student remembered increased with each trial, indicating Student would respond well to repeated directions or multiple opportunities for exposure when presented with new information. He performed within the average range.

One subtest for the Attention/Concentration Index assessed Student's ability to remember sequential, rote auditory information using the familiar digit-span format, although this task on the Wide Range Assessment of Memory and Learning uses letters as well as digits. Student could verbally recite a sequence of up to five letters and numbers in the order they were presented and scored within the average range.

The Working Memory Index, consisting of the Verbal Working Memory subtest and the Symbolic Working Memory subtest, required Student to listen to lists of nouns that were animals and non-animals, numbers that were random, and numbers and letters that were random, and recall the words, numbers, and letters in specified orders. Student scored in the low average range on the two subtests, and on the Index.

The Verbal Recognition Index, consisting of the Story Memory Recognition subtest and the Verbal Learning Recognition subtest, estimated how well Student recognized specific verbal information presented previously during the testing session, about 15 to 20 minutes earlier. As noted above, Student scored in the average range on the Story Memory Recognition subtest, but scored in the "mild developmental delay" range, lower than the below average range, on the Verbal Learning Recognition subtest. This resulted in an Index score in the low average range. The March 20, 2018 psychoeducational report stated that based on Student's performance, he would benefit from being provided contextual verbal information.

In total, through the Woodcock-Johnson Tests of Cognitive Abilities, the Comprehensive Test of Phonological Processing, and the Wide Range Assessment of Memory and Learning, Palos Verdes Peninsula assessed Student's auditory processing within the domain of psychological processes. Overall, Student demonstrated auditory processing skills in the low average to average range. Before conducting the initial assessment for IDEA eligibility, Palos Verdes Peninsula had no information that provided a basis to suspect Student had deficits in auditory processing, or in central auditory processing, within the domain of audiologists. And the results of Palos Verdes Peninsula's psychometric testing did not suggest Student required evaluation by an audiologist for auditory processing disorder/central auditory processing disorder.

At hearing, Student presented the April 14, 2018 Auditory Processing Test Results report from Dr. Fox, who concluded Student met diagnostic criteria for Auditory Processing Disorder, also known as Central Auditory Processing Disorder. However, those results were contradicted by Student's other independent evaluator, Dr. Hickson.

Clinical psychologist Hickson performed a psychoeducational evaluation of Student in March and April 2018. Dr. Hickson's April 9, 2018 report documented her conclusions that Student "demonstrates strengths with regards to his performance in auditory processing," and had scores relating to word discrimination, phonological deletion, phonological blending, auditory number memory forward and reversed, auditory word memory, auditory sentence memory, and processing oral directions all within the average range or starting point of the high average range, with his standard scores between 95 and 110, an auditory memory index standard score of 94, a phonological processing index score of 105, and a listening comprehension index standard score of 110. Dr. Hickson reported Student "was able to successfully process auditory information" and "was successfully able to comprehend auditory information," with an overall percentile rank in the 55th percentile for an auditory perceptual quotient of 102, "which falls within the average range of functioning." These results were consistent with Palos Verdes Peninsula's assessment.

ATTENTION ISSUES AND EXECUTIVE FUNCTIONING

Palos Verdes Peninsula assessed Student's attention and executive functioning using a standardized, objective evaluation tool, the Woodcock-Johnson Tests of Cognitive Abilities. Student's fluid reasoning cluster score was 105, with a 95 percent confidence interval that his true score was somewhere between 97 and 113, all within the average to high average range. The Woodcock-Johnson Tests of Cognitive Abilities

fluid reasoning cluster measured Student's ability in a complex a multitude of mental operations such as identifying relations, drawing inferences, recognizing and forming concepts, identifying conjunctions, and recognizing the disjunctions, a process that requires deliberate and flexible control of attention to solve novel problems.

On the Woodcock-Johnson Tests of Cognitive Abilities, Student's cognitive processing speed cluster score was 85, in the low average range, with a 95 percent confidence interval that his true score was somewhere between 75 and 95, in the below average to average range. Cognitive processing speed is the ability to quickly perform both simple and complex cognitive tasks, particularly when measured under pressure to sustain controlled attention and concentration. Cognitive processing speed is an aspect of cognitive efficiency. Student scored in the below average range on the letter-pattern matching subtest because he did not complete very many of the tasks required, instead working slowly and carefully, matching only the correct letter-patterns with no errors. Student scored in the average range on the pair cancellation subtest, which provides information about executive processing, attention/concentration, processing speed abilities. As an executive processing test, pair cancellation provides information about interference and inhibition control. As a measure of attention/concentration, it provides information about sustain attention, as the test required Student to stay on task in a vigilant manner under time constraints.

On the Woodcock-Johnson Tests of Cognitive Ability, Student's short-term working memory cluster score was 100, in the average range, with a 95 percent confidence interval his true score was somewhere between 90 and 110, in the average to high average range. The short-term working memory cluster measured Student's cognitive efficiency, specifically assessing his ability to apprehend and hold information in immediate awareness and use or manipulate it to carry out a goal, reflecting both the

capacity to hold and manipulate information as well as efficiency of attentional control during the process. On the verbal attention subtest, Student performed in the average range. This subtest looks at attentional control, or what is often called controlled executive function, a critical ability necessary for efficient working memory. Student also performed in the average range on the numbers reversed subtest, which measured his short-term working memory, or attentional capacity.

On the Woodcock-Johnson Tests of Cognitive Ability, Student's cognitive efficiency cluster score was 83, in the low average range, with a 95 percent confidence interval his true score is somewhere between 71 and 94, in the below average to average range. The cognitive efficiency cluster includes controlled attention, capacity to hold information in conscious awareness, the ability to perform automatic tasks rapidly and accurately, and skill in mentally manipulating information to solve task or achieve a goal.

Palos Verdes Peninsula also evaluated Student's attention/concentration using the standardized, objective instrument of the Wide Range Assessment of Memory and Learning, Second Edition. Some subtests rely on brief attentional demands and/or immediate rote recall abilities. Student performed in the average range on the Attention/Concentration Index, comprised of two subtests involving visual and auditory sequential information, with average scores on both subtests.

The Working Memory Index, consisting of the Verbal Working Memory subtest and the Symbolic Working Memory subtest, required Student to listen to lists of nouns that are animals and non-animals, numbers that are random, and numbers and letters that are random, and recall the words, numbers, and letters in specified orders. Both

subtests required memory, attention, and executive skills. Student scored in the low average range on the two subtests, and on the Index.

Palos Verdes Peninsula also used subjective evaluations of Student's attention and executive functioning, with the Behavior Assessment Scale for Children, Third Edition, and the Conners Behavior Rating Scales, Third Edition, collecting rating scales from Parents and Student's teacher to measure their perception of Student's attention and executive functioning, as well as structured observation by school psychologist Guest during class and recess. On the Behavior Assessment Scale for Children, normed against males Student's age, Mother's scores rated Student as average for hyperactivity but in the "at-risk" range for attention problems. Mother's scores rated Student as "not elevated" on the Overall Executive Functioning Index, Problem Solving Index, Behavioral Control Index, and Emotional Control Index. Mother's scores only rated Student as "elevated" in the Attentional Control Index. The Attentional Control Index measured Student's ability to sustain attention and attend to the current task. Mother's elevated score suggested Student was likely to be easily distracted, unable to focus on any one task for a viable period of time, and to frequently move unpredictably from task to task unproductively. Mother reported Student sometimes listened to directions and listened carefully, and often paid attention, he also often had a short attention span. And while he almost always paid attention when being spoken to, he almost always had trouble concentrating and was easily distracted.

On the teacher version of the form, Student's teacher's scores rated Student as average for both hyperactivity and attention problems. The teacher's scores rated Student as "not elevated" on all groupings, the Overall Executive Functioning Index, Problem Solving Index, Attentional Control Index, Behavioral Control Index, and Emotional Control Index.

During school psychologist Guest's observations of Student using the Behavior Assessment System for Children's Student Observation System for Children, Guest noted Student to sometimes be inattentive, staring off, engaged in some off-task peer interaction, distracted by a peer's movement near his desk, or daydreaming. Student demonstrated on-task, ready to learn behaviors approximately 87 percent of the time during a math lesson, and 80 percent of the time during an English language arts and social studies lesson.

On the Conners, Mother's scores rated Student as "very elevated" in the area of inattention, but the teacher's scores rated Student as "average" for inattention. Both rated Student as average in the area of hyperactivity. Mother's scores rated Student as "very elevated" as to learning problems and executive functioning. The teacher's scores rated Student as average in the area of executive functioning, and high average as to learning problems. For "Symptom Count requirements" of the DSM-5, Mother's scores probably met the diagnostic criteria for ADHD Predominately Inattentive Presentation within the home setting, and probably did not meet the diagnostic criteria for ADHD Predominately Hyperactive-Impulsive Presentation, or ADHD Combined Presentation. As noted under Issue 1, above, the teacher's scores probably did not meet the diagnostic criteria for any of the three disorders within the school setting.

To summarize, through the Woodcock-Johnson Tests of Cognitive Abilities, the Behavior Assessment System for Children, and the Conners, Palos Verdes Peninsula assessed Student's attention and executive functioning. Overall, Student demonstrated attention deficits and executive functioning challenges to some degree, which was consistent with what Palos Verdes Peninsula already knew to be the basis for Student's Section 504 plan of accommodations. Palos Verdes Peninsula assessed Student in these areas of suspected disability.

WORK HABITS AND TASK COMPLETION

Palos Verdes Peninsula assessed Student's work habits and task completion. The academic achievement assessment conducted by special education teacher Disalvo included information about Student's pre-vocational behavior, including the fact that Student was sometimes disorganized and misplaced a few items in the room, and did not write in his agenda regularly but turned in his homework daily. Palos Verdes Peninsula continuously assessed Student and reported three times per year on his report cards about Student's work habits and task completion. In doing so, it documented Student consistently worked independently, asked for help when needed, made productive use of class time, completed and returned homework on time, actively participated in class, solved problems using a variety of resources, organized himself and his materials and belongings, took responsibility for his choices and actions, used technology responsibly and ethically, demonstrated respect to peers, adults, and property, exercised self-control, and followed rules/expectations.

Aspects of Student's assessment with the Behavior Assessment System for Children and Conners also explored Student's work habits and task completion, as reported by Mother and Student's teacher. Palos Verdes Peninsula assessed Student's performance, which are not in and of themselves areas of suspected disability but could be symptoms of other disabilities.

READING AND WRITING DEFICITS

Palos Verdes Peninsula assessed Student's abilities and challenges in reading and writing. As part of the special education assessment, in March 2018, Disalvo conducted the academic achievement assessment using the Woodcock-Johnson IV Tests of Achievement. This assessment and its results were discussed in Issue 1.

SEVERE AND DEBILITATING ANXIETY

Palos Verdes Peninsula assessed Student's social-emotional functioning and behavior and found no evidence of the "severe and debilitating anxiety" Student alleged. Guest interviewed Student, who stated there was nothing he did not like about himself or that he wished he could change. He said he did not get angry or sad but explained that when he did get angry, he calmed down by taking deep breaths or taking a break. He reported he was not afraid of anything and did not experience worry.

During the assessment process, Mother completed a written interview questionnaire on which she reported that when Student was three years old, he had been diagnosed with sensory processing disorder, and Student then participated in twice weekly occupational therapy for three years. Mother reported Student had always needed additional tutoring, and his testing was "super inconsistent and always has been due to attention issues." Mother believed Student did not learn as quickly as his classmates and received low test scores. She was concerned with his distractibility, shifting focus from one activity to another. There was no evidence Parents provided spontaneous information about Student having "severe and debilitating anxiety," "poor executive functioning skills," "poor work habits," or "difficulty completing tasks" as part of the parent interview.

Part of Palos Verdes Peninsula's March 2018 initial eligibility assessment included the Behavior Assessment System for Children, which facilitated the diagnosis and classification of a variety of emotional and behavioral disorders in children and young adults by gathering information from a variety of sources through completion of rating scales. Mother completed a parent rating scale and open-ended response form for the Behavior Assessment System for Children. Mother described Student as "a kind,

compassionate, considerate, well mannered, polite, positive, funny, relaxed, outgoing 11 year old boy who wants to please and is extremely observant of his environment and other people's feelings." Her concerns regarding behavior and social-emotional issues were that Student's "focus and attention are inconsistent throughout the day. He has a difficult time decoding words, which affects his ability to follow instructions, and then it is compounded with his attention issues. [Student] processes information at a very slow rate and does not have a fluid or consistent level of output from what he has taken in. [Student] is not always alert. He is unable to retain information. He has received six years of reading tutoring and is still at the 25th percentile for reading nationally." There was no evidence Parents provided spontaneous information about Student having "severe and debilitating anxiety," "poor executive functioning skills," "poor work habits," or "difficulty completing tasks" as part of the open-ended prompts on the Behavior Assessment System for Children. In fact, as noted above, Mother identified one of Student's strengths as that he was "relaxed."

On the parent rating scale form as compared against other males Student's age, Mother rated Student as average in all four composite categories on the form, for externalizing problems, internalizing problems, adaptive skills, and the behavioral symptom index. In 11 individual categories, Mother rated Student as average compared to other males his age: hyperactivity, aggression, conduct problems, depression, somatization, learning problems, atypicality, withdrawal, adaptability, social skills, leadership, and functional communication. In all these domains, Mother's T-scores for Student were squarely in the average range.

Mother's T-scores rated Student as "at risk" in three areas. First, anxiety, with a score of 60, exactly at the starting point of the at-risk classification. Next, attention problems with a score of 63. Finally, activities of daily living, with a score of 37, where

scores heading down from 40 to 31 are in the at-risk range, based on Student never cleaning up after himself or organizing chores or other tasks well, often avoiding exercise or other physical activity, often needing to be reminded to brush his teeth, sometimes having trouble following regular routines, and sometimes having nocturnal enuresis.

As part of the eligibility assessment, Student's math and science teacher Goggin completed the teacher rating scale for the Behavior Assessment System for Children. All of Goggin's ratings fell in the average range with the exception of one category on the borderline between average and at risk. Goggin's responses did not indicate Student had "severe and debilitating anxiety" or that Palos Verdes Peninsula was aware of Student having "severe and debilitating anxiety" or anything approaching what Student alleges. The evidence did not support Mother's assertion Goggin ever indicated, either in writing or orally at an IEP team meeting, Student said he wanted to harm himself or thought about harming himself.

Student did not meet his burden of proving Palos Verdes Peninsula failed to assess him in any area of suspected disability, and Palos Verdes Peninsula did assess Student in the areas specifically itemized in Issue 2.

STUDENT'S ATTEMPT TO EXPAND ISSUE 2 TO INCLUDE LANGUAGE AND SPEECH AS AN UNASSESED AREA OF SUSPECTED DISABILITY

During hearing, Student attempted to expand Issue 2 beyond the areas itemized to include language and speech, asserting he failed to speak until he was almost three years old and that was critical information Palos Verdes Peninsula overlooked or ignored. This line of argument was supported by Leah Ellenberg, Ph.D., a neuropsychologist Student consulted shortly before the hearing and who testified for

Student concerning information Parents had never shared with Palos Verdes Peninsula before or during its initial eligibility assessment and her opinion Student had “subtle language deficits.” This Decision does not address this topic because it was not alleged in the complaint, it was not itemized in the Prehearing Conference Order, and it was not one of the issues agreed to by the parties during the hearing. (Ed. Code, § 56502, subd. (i).)

ISSUE 3: DENIAL OF FAPE IN JUNE 18, 2018 AND MAY 20, 2019 IEP OFFERS

MAY 24, 2018 IEP AS AMENDED ON JUNE 18, 2018 WAS APPROPRIATE

In Issue 3, Student contends Palos Verdes Peninsula denied him a FAPE in the June 18, 2018 and May 30, 2019 IEPs by failing to offer appropriate goals, services, accommodations, and strategies to access the curriculum to achieve educational benefit. Palos Verdes Peninsula contends it offered Student appropriate goals, placement, related services, and accommodations in each of the IEPs to meet his unique needs, and therefore it did not deny Student a FAPE.

The “educational benefit” to be provided to a child requiring special education is not limited to addressing the child’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.) A child’s unique needs are to be broadly construed to include the child’s academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106 (reversed in part on other grounds by *Schaffer, supra*, 546 U.S. 49, 56-58).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP team need not draft IEP goals in a manner that the parents find optimal, if the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress]; *Virginia S. ex rel. Rachael M. v. Department of Educ.* (D.Hawaii Jan. 8, 2007, Civil No. 06-00128 JMS/LEK) 2007 WL 80814, *9.)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE: "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer . . . a meaningful benefit." (*Adams v. State of Oregon, supra*, 195 F.3d at p. 1149.)

School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); Ed. Code, § 56031.)

The continuum of program options includes, but is “not necessarily” limited to, in increasing order of restrictiveness:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication, and instruction in the home, in hospitals, or other institutions.

(Ed. Code, § 56361.)

In determining the educational placement of a child with a disability, a school district must ensure that:

- the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;
- placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home;
- unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(34 C.F.R. § 300.116.)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of such placement;

3. the effect the student has on the teacher and children in the regular class; and
4. the costs of mainstreaming the student.

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)].)

While the law requires the IEP team to consider the specific school campus a student will attend with attention to how close the campus is to the child's home and what school the child would attend if he or she was non-disabled, the law does not require that a school district place a child at his neighborhood school if there is no program available there to meet his needs. (See, e.g. *McLaughlin v. Holt Public School Board of Education* (6th Cir. 2003) 320 F.3d 663, 672 [least restrictive environment provisions and regulations do not mandate placement in neighborhood school]; *Hudson v. Bloomfield Hills Public School* (6th Cir.1997) 108 F.3d 112 [IDEA does not require placement in neighborhood school]; *Urban v. Jefferson County School Dist.* (10th Cir. 1996) 89 F.3d 720, 727 [IDEA does not give student a right to placement at a neighborhood school]; *Wilson v. Marana Unified School District No. 6 of Pima County* (9th Cir. 1984) 735 F.2d 1178 [school district may assign the child to a school 30 minutes away because the teacher certified in the child's disability was assigned there, rather than move the service to the neighborhood school].) No one factor is determinative in placement, and parental preference cannot be either the sole or predominant factor in placement decisions. (See, e.g., *Letter to Burton* (OSERS March 20, 1991); *Letter to Anonymous* (OSEP April 20, 1994); *Letter to Bina* (OSERS November 5, 1991).)

An IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with educational benefit appropriate in light of the student's circumstances, in the least restrictive environment. (*Ibid.*; *Endrew F., supra*, 580 U.S. ____ [137 S.Ct. at p. 1000.] Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon, supra*, 195 F.3d at p. 1149, citing *Fuhrman v. East Hanover Board of Education, supra*, 993 F.2d at p. 1041.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA did not provide for an "education . . . designed according to the parent's desires."].) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) A school district has the right to select the program offered, if the program is able to meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards* (OSEP January 7, 2010).) The Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S. ex rel G. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Palos Verdes Peninsula convened an IEP team on May 24, 2018, to review Palos Verdes Peninsula's initial assessment for eligibility. Parents and their attorney

attended, along with academic coach Silver who had just started working with Student, Dr. Hickson, and Dr. Fox. Principal Tarango, special education coordinator Nathan Levy, general education teacher Rush, special education teacher Disalvo, and school psychologist Guest attended for Palos Verdes Peninsula.

DR. HICKSON'S PSYCHOEDUCATIONAL EVALUATION

During the May 24, 2018 IEP team meeting, Dr. Hickson reviewed her completed independent evaluation the IEP team discussed the evaluation results. Palos Verdes Peninsula's initial assessment had estimated Student's General Intellectual Ability to be 90, at the bottom of the average range and with a confidence interval between 83 and 98. Dr. Hickson used the Weschler Intelligence Scale for Children, Fifth Edition, and similarly Student scored a Full Scale Intelligence Quotient of 87, in the low average range, with a confidence interval that his true score was somewhere between 82 and 93, in the low average to average ranges.

Dr. Hickson documented in her April 9, 2018 report that she noted difficulties with Student's attention and processing throughout the evaluation and that she believed the results of the evaluation underestimated Student's current level of functioning. However, Dr. Hickson also reported that she administered to Student the five subtests comprising the General Ability Index, an ancillary index score that provides an estimate of general intelligence and is less impacted by working memory and processing speed, relative to the Full Scale IQ. Dr. Hickson noted Student's Full Scale IQ and General Ability Index scores were not significantly different, indicating that reducing the impact of working memory and processing speed resulted in little or no difference on his overall performance.

Dr. Hickson used the Weschler to assess Student's verbal comprehension, meaning his ability to access and apply acquired word knowledge, specifically his ability to verbalize meaningful concepts, think about verbal information, and express himself with words. Student was required to describe a similarity between two words that represented a common object or concept, name depicted objects and/or defined words that were read aloud, answer questions about a broad range of general knowledge topics, and answer questions based on his understanding of general principles and social situations. Student's scores on all four subtests were in the average range and typical for his age, and indicated an age-appropriate ability to acquire, remember, and retrieve knowledge about the world around him and an age-appropriate understanding of practical knowledge and ability to verbalize meaningful concepts.

The Weschler's Visual Spatial Index measured Student's ability to evaluate visual details and understand visual spatial relationships to construct geometric designs from a model, a skill that requires visual spatial reasoning, integration and synthesis of part-whole relationships, attentiveness to visual detail, and visual-motor integration. Student's score was 89, in the low average range.

The Weschler's Fluid Reasoning Index measured Student's ability to detect the underlying conceptual relationship among visual object and use reasoning to identify and apply rules, requiring inductive and qualitative reasoning, broad visual intelligence, simultaneous processing, and abstract thinking. Student's score was 91, in the average range. Dr. Hickson administered a total of four subtests to evaluate Student's fluid reasoning and his performance was similar to other children his age, and the additional subtests suggested Student had age-appropriate categorical reasoning skills in Picture Concepts, and age-appropriate numerical reasoning and applied computational ability in Arithmetic.

The Wechsler's Working Memory Index measured Student's ability to register, maintain, and manipulate visual and auditory information in conscious awareness, which requires attention and concentration, as well as visual and auditory discrimination. Student's performance was similar to other children his age, and his score was 103, in the average range.

The Wechsler's Processing Speed Index measured Student's speed and accuracy of visual identification, decision-making, and decision implementation, which are related to visual scanning, visual discrimination, short-term visual memory, visuomotor coordination, and concentration. The Processing Speed Index assessed Student's ability to rapidly identify, register, and implement decisions about visual stimuli. Student's overall processing speed performance score was 89, in the low average range. Dr. Hickson administered an additional processing speed subtest, Cancellation, to gain a more detailed understanding of Student's processing ability. On this timed subtest, Student scanned two arrangements of objects, one random and one structured, and marked target objects. Cancellation measured speed, scanning ability, and visual discrimination. Student scaled score on Cancellation was 5, "weak compared to other children his age."

Dr. Hickson administered subtests contributing to several ancillary index scores, to provide additional information about Student's cognitive profile. She administered the four subtests comprising the Verbal Expanded Crystallized Index, which provides a broad measure of a child's ability to access and apply acquired word knowledge and general knowledge, which involves verbal concept formation expression, abstract verbal reasoning, and long-term retrieval. Student's score was 99, in the average range, indicating crystallized abilities, fund-acquired general factual and practical knowledge,

word knowledge acquisition, information retrieval skills, and a verbal reasoning system that were as expected for his age.

Dr. Hickson administered the four subtests comprising the Expanded Fluid Index, which provides a broad measure of a child's ability to detect underlying conceptual relationships, extract important information, and use reasoning to identify and apply rules, requiring inductive and quantitative fluid reasoning, simultaneous and special processing, and abstract thinking. Student's score was 89, in the low average range.

The Quantitative Reasoning Index measured Student's quantitative reasoning skills, closely related to general intelligence and indicating a child's capacity to perform mental math operations and comprehend aspects relationships. Student's score was 91, in the average range.

Dr. Hickson reported Student's Auditory Working Memory Index score, which consists of two subtests requiring Student to listen to numbers and letters presented verbally, then recall or sequence them aloud, measuring Student's ability to register, maintain, and manipulate verbally presented information. Student's score was 92, in the average range, indicating his overall auditory working memory performance was typical for his age.

Dr. Hickson administered the four subtests for the Cognitive Proficiency Index, drawn from the working memory and processing speed domains. Student's score was 94, in the average range, indicating he demonstrated average efficiency when processing cognitive information in the service of learning, problem solving, and higher-order reasoning. Dr. Hickson noted the Cognitive Proficiency Index is most informative when interpreted as part of the comprehensive evaluation, together with its counterpart, the General Ability Index. Dr. Hickson documented that Student's General

Ability Index and Cognitive Proficiency Index scores were relatively similar, suggesting that his general ability was commensurate with his cognitive proficiency.

Finally, Dr. Hickson documented complementary index scores, specifically the Naming Speed Index, Symbol Translation Index, and the combination of those two, the Storage and Retrieval Index. In contrast to all the other Weschler Indices on which Student performed in the generally average range, Student's scores here were at the very bottom of the low average range and in the below average range. Specifically, Student's score on the Symbol Translation Index, a broad estimate of visual-verbal associative memory, was 80. Student's score on the Naming Speed Index, a broad estimate of the automaticity of basic naming ability, was 75. Dr. Hickson's report noted "his [Naming Speed Index] score should be interpreted with caution because the number of errors that [Student] made is rare compared to his same aged peers." Dr. Hickson reported the Storage and Retrieval Index provides a broad estimate of Student's long-term storage and retrieval accuracy and fluency; the ability to store and accurately retrieve information from long-term memory impact reading, writing, and math performance. Dr. Hickson indicated the Storage and Retrieval Index "is based on the sum of scores for the Naming Speed Index and the Symbol Translation Index, each measuring the unique aspects regarding the storage and retrieval of information from long-term memory." Although Student's Naming Speed Index score was 75 and his Symbol Translation Index score was 80, Dr. Hickson reported his Storage and Retrieval Index score was 73, below average.

Dr. Hickson administered the Test of Variable Attention, Visual and Auditory Continuous Performance Tests, a computerized test that assesses a child's level of attention, impulsivity, response time, and variability through the use of a microswitch; the child responds to either visual or auditory stimuli by clicking of the microswitch

when he or she sees the target response. On this test the normal range is 85 to 115; scores above 115 are better than average, and scores below 85 are less than average.

On the Visual Continuous Performance Test, Student's standard score was 101, in the 53rd percentile. Student was not impulsive, as his commission scores were within the average range at a standard score of 100. However, his response time to visual information was below the average range, with a standard score of 44, below the 1st percentile. His variability score was also below the average range, with a standard score of 63, in the 1st percentile. His standard score for inhibitory control was high and his standard score for response time was low. Despite being instructed to balance speed and accuracy, Student adopted a cautious response strategy that minimized errors, resulting in a slow response time.

On the Auditory Continuous Performance Test, Student was unable to attend to the information presented, with a standard score of 40, below the 0.1 percentile. He was impulsive, as his commission scores were outside the average range with a standard score of 40, below the 0.1 percentile. His response time to auditory information was below the average range, with a standard score of 49, below the 0.1 percentile. His variability of scores was below the average range, with a standard score of 61, below the 0.1 percentile. Behavioral observations revealed Student became restless and frustrated during auditory tasks that required him to be alert and focused for a prolonged length of time.

Dr. Hickson administered the Test of Visual Perceptual Skills, Fourth Edition, to determine Student's visual-perceptual strengths and weaknesses based on non-motor visual-perceptual testing, assessing eight processing skills. Student demonstrated strengths and weaknesses in his visual processing abilities in the seven individually

reported areas, with standard scores of 80, 85, 100, 95, 120, 110, and 100. Student's Overall Visual Perceptual Quotient, indicating how well Student was able to integrate all the visual perceptual skills for successful visual learning to occur, was 99, in the average range, at the 47th percentile.

Dr. Hickson administered the Developmental Test of Motor Integration to assess the extent to which Student could integrate visual and motor abilities. On the Developmental Test of Motor Coordination, which assessed Student's ability to trace the geometric stimulus forms with a pencil without going outside the double lined path, Student's standard score was 77, in the 6th percentile, low performance. On the Developmental Test of Visual Perception, which assessed Student's ability to identify a target shape within the context of similar stimuli, Student's standard score was 86, in the 18th percentile, which Dr. Hickson reported was below average. However, Student's standard score on the Test of Visual Motor Integration was 90, in the 25th percentile, which Dr. Hickson reported was average.

Dr. Hickson administered the Test of Auditory Perceptual Skills, Fourth Edition, which is used to diagnose auditory-perceptual difficulties that interfere with learning by assessing nine processing skills:

- auditory word discrimination, meaning the ability to understand and be sensitive to the meaning of words, such as same and different; this measures the ability to discriminate paired words with phonemically similar consonants or vowel differences;
- phonological deletion, the ability to manipulate phonemes within words;
- phonological blending, the ability to synthesize a word given the individual phonemes;

- auditory number memory forward and reversed, evaluating the ability to recall rote, nonsensical, sequential auditory information; and the ability to learn by rote sequential memory; the ability to attend to rote, sequential, non-meaningful auditory matter and to recall and maintain the digits and sequence as given, to reorganize, and re-manipulate the number structure, tapping the child's ability to concentrate and requiring mental control;
- auditory word memory, meaning the ability to recall a series of single words that are not meaningful, and the ability to hear one-syllable words, two-syllable words, and compound words;
- auditory sentence memory, which is the ability to remember for immediate recall not only rote auditory matter but also to recall the auditory matter in sequence, therefore measuring two processes; this gives diagnostic clues regarding if the child is omitting words, substituting words, distorting words, omitting letters, and changing the sequence of some of the words;
- auditory comprehension, meaning the ability to comprehend, understand, and interpret meaningful auditory matter well enough to verbally express that the child does understand and can follow spoken information; and
- processing oral directions, which is the ability to hear a short scenario that contains a direction and then respond to what a person in the scenario is supposed to do.

The variability of Student's scores in these areas ranged from average to above average when comparing his results to the population of his peers. Student's standard scores were, respectively, 100, 110, 105, 95, 100, 90, 95, 125, and 95, with an Auditory Perceptual Quotient of 102, in the average range of functioning, with his overall rank in

the 55th percentile. In conclusion, Dr. Hickson said Student “demonstrates strengths with regards to his performance in auditory processing.”

Dr. Hickson administered the Clinical Evaluation of Language Fundamentals, Fifth Edition, which uses parent and teacher rating scales to assess problems a child may have at home or at school in the areas of listening, speaking, reading, and writing. Dr. Hickson administered seven subtests, which get combined in different ways to develop a Core Language Score and four different Index scores. The Core Language Score is a measure of general language ability and provides an easy and reliable way to quantify a student’s overall language performance level. All scores and Indices of the Clinical Evaluation of Language Fundamentals have a mean of 100 and a standard deviation of 15; a score of 100 on this scale represents the performance of the typical student of a given age. Student’s Core Language Score was 89, placing him in the average range of language functioning.

The Receptive Language Index measured Student’s receptive aspects of language including comprehension and listening. His Receptive Language Index score was 89, in the average range of language functioning. The Expressive Language Index measured Student’s expressive aspects of language including oral language expression. His Expressive Language Index score was 85, in the “borderline/marginal/at-risk range” of language functioning. The Language Content Index measured Student’s vocabulary and word knowledge. His Language Content Index score was 98, in the average range of language functioning. The Language Memory Index measured Student’s memory-dependent language tasks. His Memory Language Index score was 91, in the average range of language functioning.

Dr. Hickson administered Hunter's Self Perception Profile, a self-report measure, to assess judgments of competence as well as global perception of esteem as a person on six subscales of scholastic, behavioral, appearance, physical, social, and global self-esteem. Overall, student perceived himself in a positive light. He had a high sense of self-concept in terms of thinking of his own behavior and the decisions he made. Student viewed his appearance in a positive way and believed he was "good looking." Student had confidence in his social competence. Student also had confidence in his academic ability. He perceived himself as being "as 'smart' as others," often remembering what he learned, being "quick" when it came to finishing his work, "do[ing] well" in his classwork, and he felt "confident" about his ability to complete assignments.

These results contradicted Mother's testimony that characterized Student as disappointed in himself, discouraged, and self-conscious he did not perform as well as others, and as anxious and depressed. Mother's testimony was also contradicted by her responses on the Behavioral and Emotional Rating Scale Dr. Hickson administered. Parents reported student had self-confidence, could identify his own personal strengths, had enthusiasm for life, talked about the positive aspects of life, and smiled often, while also having the ability to acknowledge painful feelings, accept disappointment in a calm manner, and use anger management tools. Parents reported school functioning was a weaker domain for Student, and that he was unable to complete what was asked of him in a timely manner, unable to use notetaking and listening skills in school, and functioned below grade level in reading but at grade level in math. Parents reported he completed his homework regularly and studied for his tests.

Palos Verdes Peninsula had just administered the Conners Rating Scales to Parents and Student's teacher approximately one month earlier, but Dr. Hickson

administered it again. Dr. Hickson did not report T-scores for the Parents' or teacher's ratings and only provided some narrative explanation. Dr. Hickson stated Parents' ratings corresponded with the DSM-5 diagnostic criteria for "Attention Deficit Hyperactivity Disorder, Combined Type," noting Student's symptoms of inattentiveness did not fall within the average range. Dr. Hickson reported Student's teacher expressed significant concerns regarding Student's difficulties with focusing and fidgeting, and added that Student needed support on longer assignments, but double checked directions with his teachers.

Dr. Hickson diagnosed Student with Attention Deficit Hyperactivity Disorder, Combined Type. Her summary noted Student had strengths in his auditory processing skills, and strengths as well as weaknesses in his visual processing. She reported emotionally he perceived himself in a positive light, but without foundation in her report, in another place, inexplicably she stated Student "displays specific academic and emotional weaknesses, which contribute to his inconsistent academic performance at school." She concluded by saying Student had "a strong intellectual profile. However, a supportive and encouraging environment must be provided for [Student] to support his academic development. The recommendations of this report should be followed closely to facilitate the treatment that has been cognitively and emotionally demonstrated as needed by [Student] in this assessment."

Dr. Hickson recommended Parents work with a psychiatrist "with regards to A.D.H.D. medication [and] [] the benefits of a high protein diet . . . and a high-quality Omega-3 (500 mg)." She recommended Student "participate in weekly individual therapy in order to help him monitor, evaluate, and reinforce himself with respect to target behaviors. Behavioral and cognitive strategies should be implemented to help eliminate his stress. Treatment can focus on reducing his lack of confidence, which is

affecting his ability to attend and stay focused.” Dr. Hickson’s recommendations for therapy were not supported by the results or summary of her evaluation. Dr. Hickson did not testify at hearing to explain why she recommended treatment to address a lack of confidence when her report indicated Student was very confident and thought very highly of himself. Nothing in Dr. Hickson’s report supported any inference that any lack of confidence affected his ability to attend and stay focused.

Dr. Hickson recommended specific approaches to support Student, such as “one-on-one reading intervention in reading, such as Read Naturally,” allowing Student to sit near instruction, keeping him close to the teacher, providing “extra time (1.5X) for all exams and in class assignments,” and giving clear, concise instructions, among other strategies.

With respect to academic instruction, Dr. Hickson noted student’s Full Scale IQ score was in the low average range, and although this ability level is considered average, children with this level of functioning may experience academic difficulties when compared to same-age peers. She stated Student may learn new information at a rate that is somewhat slower than other children his age, and may have a particular difficulty with abstract thinking. She therefore recommended that adults support his academic progress using multiple interventions; pre-teaching and re-teaching lessons learned in school would give him additional exposure to new concepts and might facilitate his comprehension and recall of important information. She stated it might be helpful to present new content material in multiple modalities, using relatively simple vocabulary and sentence structure.

DR. FOX'S AUDIOLOGICAL ASSESSMENT

Dr. Fox explained her audiological assessment at the May 24, 2018 IEP team meeting, and what a central auditory processing deficit is. Dr. Fox noted Student was less attentive than his peers during the assessment process. She reported he had mild hearing loss in his left ear, but Dr. Fox compensated for that during her testing by increasing the volume of the headphones. Dr. Fox reported scores for the instruments she administered in terms of "normal" or "abnormal" for a child Student's age. While Student had some "normal" scores, most results were in the "abnormal" range for both ears. The number of "abnormal" results strongly suggested involvement of Student's brain cortex. Neither Dr. Fox's report nor testimony at hearing clearly explained the distinction she attempted to draw between auditory processing as a "bottom up or input disorder" as distinct from problems in the auditory cortex and/or linguistic cortex, cortical disorders, a "top-down disorder." Dr. Fox reported Student "definitely meets the criteria for Auditory Processing Disorder," but noted he displayed temporal processing problems evidencing a link between hearing loss in his left ear and right brain hemisphere inabilities. This conclusion did not make sense because she said she accounted for the mild hearing loss during her testing by increasing the volume. She further attributed the "temporal processing problems" to the ADHD Dr. Hickson diagnosed, for which he was not taking any medication or receiving behavioral therapy to help him manage.

The IEP team tried to get Dr. Fox to clarify her findings regarding the impact of ADHD on her evaluation and interpretation of the results, but her explanation at the IEP team meeting did not resolve the ambiguities in her report. Her testimony at hearing also did not clarify matters.

Dr. Fox recommended Student's teacher use a lapel microphone and Student wear in each ear a receiver that looks like a Bluetooth phone earpiece, to increase the volume and clarity of the teacher's voice above background noise in the classroom. Dr. Fox also recommended Interactive Metronome therapy by an occupational therapist to address Student's "severe temporal processing inability," and a sensory evaluation because Student had been diagnosed with sensory problems when he was three years old. Based on this recommendation and other considerations, Palos Verdes Peninsula offered Parents an assessment plan for evaluation by an occupational therapist, which Parents never signed. Further, Dr. Fox recommended Parents discuss Student's ADHD "with a psychiatrist who specializes in ADHD to understand the reason for ADHD and what can be done to correct the brain hormones causing this."

The IEP team meeting notes documented that Dr. Hickson stated Student had a healthy self-esteem. After the IEP team meeting, Student's attorney requested the IEP team meeting notes document that Dr. Hickson's report suggests Student has school-based anxiety. Palos Verdes Peninsula staff changed the May 24, 2018 IEP team meeting notes to reflect Student's attorney's request, although Dr. Hickson's report itself did not contain statements regarding any school-based anxiety.

Following the presentations of Student's independent evaluators, school psychologist Guest and special education teacher Disalvo presented their reports, the details of which are recounted above in Issues 1 and 2. At the IEP team meeting, Parents requested more information regarding Goggin's responses on the Behavior Assessment System for Children rating scale regarding Student having panic attacks and saying he hated himself. Goggin was not at the meeting and Guest committed to follow up with Goggin and provide Parents with more information.

OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

ELIGIBILITY

The IEP team then discussed Student's eligibility for special education and related services. Guest's psychoeducational assessment report detailed her analysis of whether Student was eligible under the categories of specific learning disability, and other health impairment. Guest concluded Student met eligibility under specific learning disability, but not other health impairment. Her report detailed the bases for her conclusions.

Guest's analysis of whether Student was eligible under other health impairment concluded that although Student had a documented health impairment limiting his strength, vitality or alertness due to chronic or acute health problems, and demonstrated many behaviors is characteristically associated with ADHD, these symptoms did not adversely impact his academic performance to the degree that he required special education services. Significant variability was observed between the behaviors at home and at school, with Parents reporting very elevated or significant levels of concern with attention focus and learning, while rating scales completed by Student's teacher did not indicate significant attentional concerns within the school setting. Palos Verdes Unified was able to address many of Student's challenges with focus and attention at school through a Section 504 plan.

At hearing, the neuropsychologist who conducted only a records review shortly before the hearing, Dr. Leah Ellenberg, agreed with Guest's analysis. Dr. Ellenberg believed the documents she reviewed were inadequate to definitively conclude Student had ADHD, but she also could not rule it out. Although Student showed some difficulties in executive functioning, Dr. Ellenberg did not see enough to support a

determination that Student qualified for special education under the eligibility category of other health impairment. Dr. Ellenberg testified Dr. Hickson did not have enough information to diagnose Student with ADHD.

Based on input from Dr. Hickson and Parents, the IEP team decided Student's ADHD symptoms did adversely impact his academic performance to the degree that he required special education services. Therefore, the IEP team concluded Student qualified for special education and related services with a primary eligibility of other health impairment due to ADHD, and a secondary eligibility of specific learning disability.

At Student's attorney's request, the IEP team met again on June 18, 2018. Parents, Student's attorney, Disalvo, intermediate school special education teacher Lisa Nicolello, and special education coordinator Levy attended. Parents excused general education teacher Rush's attendance in writing. Levy informed Parents of Goggin's explanation for her responses about panic attacks and Student saying he hated himself related to him crying when he was sent to the principal's office.

PROPOSED GOALS WERE APPROPRIATE

The IEP team identified Student's areas of need as reading fluency, editing and revising writing, writing conventions, and organization and executive functioning skills. The IEP team discussed draft goals in these areas, and they were revised based on input from Parents and Student's attorney. Student's attorney requested additional goals in social-emotional functioning to address anxiety reduction and self-worth/self-esteem. Palos Verdes Peninsula members of the IEP team believed they were not appropriate because Student was very confident and resilient. Student's attorney insisted,

describing him as an “internalizing kid,” even though no assessment data suggested that was accurate.

Ultimately, Palos Verdes Unified offered the following goals. For reading fluency, Student’s most recent progress monitor check on May 23, 2018, showed he was able to read 103 words per minute with 97 percent accuracy, which was below average. On his most recent progress monitor check for comprehension, he scored at 20 answers correct, with 83 percent accuracy, which was average. This information established Student’s baseline, and the goal was for Student, by May 2019, to read a sixth grade AIMSweb fluency measure at 131 words per minute with 98 percent accuracy, in the 25th percentile, in the average range, according to AIMSweb National Norms in sixth grade during the winter reporting period, on three trials as measured by student work samples or teacher charting. Special education and general education teaching staff would work with Student on this goal. This goal addressed Student’s educational needs resulting from his disability. It addressed one of Student’s areas of need, was measurable, and appropriate.

In the area of editing and revising writing, on an independent writing assignment in class in April 2018, Student was able to write four paragraphs with five, four, ten, and four sentences in each paragraph in the writing. He used a similar sentence structure throughout the writing, starting half of his sentences with the words “the” or “they.” Some of his sentence structure was awkward. He mostly used correct punctuation. Student would have benefited from guidance in editing and revising to ensure his writing was more coherent and that he used appropriate punctuation, grammar, and writing conventions. The goal was for Student, by May 2019, to complete a writing assignment with guidance and support from adults such as a rubric or editing checklist, a sample reference example, and writing convention lessons, to plan, revise, edit, rewrite,

or try a new approach to develop and strengthen his writing by making at least five edits or corrections to include at least five paragraphs with at least five sentences per paragraph, including varied sentence structure, spelling, appropriate punctuation, grammar, and writing conventions as measured by work samples or teacher charted records on three trials with 80 percent accuracy to the rubric. Special education and general education teaching staff would work with Student on this goal. This goal enabled Student to be involved/progress in a specified general curriculum/state standard and addressed other educational needs resulting from his disability. It addressed one of Student's areas of need, was measurable, and was appropriate.

Regarding writing conventions, Student was able to write multiple paragraphs with multiple sentences in each paragraph. In two recent writings, Student wrote an average of five sentences per paragraph with an average of five punctuation, grammatical, convention, or spelling errors, an average of one error per sentence. The goal was for Student, by May 2019, on a writing assignment such as a response to reading or a writing assignment, to do pre-writing activities such as previewing the writing rubric, a sample reference example, writing convention lessons, and a graphic organizer, and then write five sentences with only one punctuation, grammatical, spelling, or convention error per five sentences with 80 percent accuracy as measured by student work samples or teacher charted records. General and special education teachers would work on this goal with Student. This goal addressed other educational needs resulting from his disability. It addressed one of Student's areas of need, was measurable, and appropriate.

The proposed goal regarding organization and executive functioning skills was relabeled as a pre-vocational goal. Parents and a teacher reported Student did not always ask for help when he did not understand the task at hand, and Student needed

to improve his self-advocacy skills so he felt comfortable asking for help. The goal was for Student, by May 2019, to increase his self-advocacy skills by using a comfortable method to seek feedback from his teacher by asking a question before or after class or sending an email to request assistance with 100 percent accuracy in four of five situations, as measured by observation and charting. The general and special education teaching staff would work with Student on this goal. This goal addressed other educational needs resulting from his disability. It addressed one of Student's areas of need, was measurable, and appropriate.

Student's attorney urged goals in the areas of "managing stress" and "self-esteem." She asserted Parents and Dr. Hickson reported Student could be tense, anxious, and worried, and that was adopted as the "baseline" data for Student in both of these "areas of need." Student's attorney relied on a portion of Dr. Hickson's report regarding visual-spatial skills, completely out of context, to assert Dr. Hickson recommended support to manage stress. Student's attorney extrapolated generic information that the rest of the assessment results did not otherwise show was applicable to Student and concluded Student was anxious and required counseling to address stress management.

Palos Verdes Peninsula accommodated Parents' request and proposed goals for stress management and self-esteem. For stress management, by May 2019, Student would practice positive, proactive problem solving/de-escalation strategies to manage his stress by demonstrating knowledge of four steps – calm, listen, brainstorm solutions, decide – in completing a flowchart independent of adult support across four out of five recorded opportunities in a structured environment. For self-esteem, by May 2019, when provided a direct verbal or written cue, Student would verbally respond or write

three positive self attributes, accomplishments, or events that occurred that day or the day before that he felt he contributed to and/or felt responsible for, in three out of three opportunities independent of adult support as measured by student work samples and teacher observations/reporting. Counseling staff or a school psychologist would work with Student on these goals. These goals were marked as addressing other educational needs resulting from Student's disability. They did not address areas of need, but were measurable. In that the IEP team agreed to these unnecessary goals at Parents' request, they were appropriate.

PLACEMENT OFFERED WAS APPROPRIATE

Palos Verdes Peninsula proposed placing Student in general education classes for all his core subjects, but having the English language arts and math classes be collaboratively taught by both a general education and special education teacher in the same classroom, along with an instructional aide. Palos Verdes Peninsula also proposed Student's elective class period be a support class in which Student could receive pre-teaching/front loading, re-teaching, organization/executive functioning support, and other attention from a special education teacher. During the regular school year for sixth grade, Student would be included in the general education environment 87 percent of the time. The goals in Student's May 24, 2018 IEP as amended on June 18, 2018, could be implemented in the placement Palos Verdes Peninsula offered. The placement offered was appropriate to enable Student make progress in the general education curriculum.

Palos Verdes Peninsula offered extended school year service in the intensive reading program, using a variety of research-based strategies including Orton Gillingham to focus on phonics, fluency, and comprehension. That program was

four hours per day, five days per week, for 20 days. Parents rejected extended school year services. The extended school year placement offered was appropriate to enable Student to improve his reading and writing skills.

RELATED SERVICES OFFER OF COUNSELING WAS APPROPRIATE

Palos Verdes Peninsula offered 30 minutes a week of individual, school-based counseling by a school psychologist to address the social-emotional functioning goals Parents requested to reduce anxiety and increase self-esteem. Parents did not want school-based counseling by a school psychologist. The related service of individual, school-based counseling by a school psychologist once a week for 30 minutes was reasonably calculated to enable Student to work on the social-emotional goals Parents requested and benefit from his general and special education instruction.

ACCOMMODATIONS AND STRATEGIES OFFERED WERE APPROPRIATE

The IEP team discussed accommodations for Student. Palos Verdes Peninsula offered Student:

- multiple or frequent breaks;
- overlearning opportunities for review and repetition;
- checking for understanding orally with instructional content and directions through redirection and verbal prompts;
- teacher check-ins for understanding from Student;
- teacher providing preview/front loading of upcoming material to Student;
- using word banks for fill-in-the-blank assessments; and
- only teacher assistance with editing/revising, no peer editing.

Palos Verdes Peninsula also offered additional items labeled as "supports":

- staff providing feedback to Student on completed assignments;
- seating within the classroom that took into account Student's learning needs;
- alternate settings and extended time for testing;
- "chunking" assignments by structuring assignments/materials into a series of small steps; and
- a second set of textbooks for Student to keep at home.

The accommodations and supports in the May 24, 2018 IEP as amended on June 18, 2018, were appropriate to enable Student to benefit from his general and special education instruction.

Parents never signed the May 24, 2018 IEP as revised on June 18, 2018, even to agree in writing to the determination that Student was eligible for special education and related services.

In total, the goals, placement, related services, and accommodations and strategies in the May 24, 2018 IEP as amended on June 18, 2018, were reasonably calculated to enable Student to receive educational benefit in the general education curriculum appropriate in light of his circumstances as a student with low average to average cognitive abilities, overall ability to learn and make progress in the general education curriculum, and some challenges with attention and association. The extended school year intensive reading intervention program, the collaborative English language arts class, and the support class were all reasonably calculated to improve Student's low average to below average reading fluency and low average to average reading comprehension, which was also reasonably likely to improve his already average

achievement in mathematics, specifically in the form of word problems. Student did not meet his burden of proof that Palos Verdes Peninsula did not offer Student a FAPE in the May 24, 2018 IEP as amended on June 18, 2018.

MAY 30, 2019 IEP OFFER WAS APPROPRIATE

PENINSULA HERITAGE

By letter dated August 24, 2018, Student's attorney asserted Palos Verdes Peninsula had failed to offer Student a FAPE and Parents were placing Student at Peninsula Heritage School on September 4, 2018.

During the 2018-2019 school year, Student attended Peninsula Heritage private school. Head of School Cindy Chun stated Peninsula Heritage's mission was to have students feel empowered to learn to their best ability, to be their best selves, by providing a small learning environment in a loving and caring community. Peninsula Heritage wanted to make sure children love learning and learn how to learn best for themselves, which could be different for every child.

Student was in Eileen Mahoney's sixth grade classroom for language arts and social studies, with a total of 14 students and one instructional assistant. Chun recalled that when Student arrived at Peninsula Heritage, he was anxious, and did not like to speak up in group sessions but he asked questions about "every single thing." Chun said Student did not try to figure things out himself, he just raised his hand and asked question after question and needed one-to-one help in the beginning to understand how he could really count on himself to do things rather than have someone's approval to move on to the next step. Mahoney testified when she gave the class instructions, Student got up out of his seat, came right up to her, and needed clarification. Mahoney

heard Student did the same things with his math and science teacher, for a total of 20 times a day. Mahoney believed Student had processing problems and that what he heard was not what he thought he needed to do, so he wanted clarification. Student went from occasionally asking questions at Lunada Bay and, in Parents' opinion, not always asking for help when he did not understand the task at hand, to constantly asking for clarification, to the point that he appeared anxious to staff at Peninsula Heritage.

However, over time, Student reduced his dependence on asking questions and by May 2019, no longer came across to Peninsula Heritage staff as anxious. Mahoney said it took half of sixth grade to "deprogram him" and get him to relax. Mahoney provided what she thought were accommodations like having him sit near her and checking in with him about his understanding of expectations, which reduced his frequent questions. Student sat right in front Mahoney. She checked that he could recite instructions she gave so she could review for him what the instructions were, if necessary. Through book club and literature discussion groups, Student had discussions with classmates and began to enjoy reading. Mahoney believed when Student arrived at Peninsula Heritage he was only reading to say words to please his teacher, not reading to understand, or reading to enjoy.

Upon entering Peninsula Heritage, Mahoney observed Student had challenges with reading. She did not believe Student was a full grade level behind in reading, but that he had different abilities in different areas. In fluency and writing, Mahoney estimated Student was maybe a half a grade behind, at least. Peninsula Heritage did not do any testing to determine Student's abilities or how far behind he was when he began attending school there.

Student left words out of his written sentences. Mahoney knew what he was trying to communicate through his writing, but he left out the middle of the sentence. Mahoney could see his thought process, but his hands did not always follow his thought process. He sometimes switched verb tenses, or shifted from first to third person, and had a hard time with spelling. Student needed to constantly revise his work, because when he wrote his thoughts went all over the place. He knew what he wanted to say but his writing was scattered. In contrast to his writing, Student did not add or subtract words when he spoke. Mahoney addressed some of Student's challenges during individual reading and writing conferences with him, once a week for 20 minutes.

Mahoney believed, at the time of hearing, Student had come a long way in his reading abilities, and she credited academic coach Silver for his progress. At the end of sixth grade, Mahoney estimated Student was at grade level. There were still some things she wanted to work on with Student like sentence structure, but he could write essays. He got As and Bs in her class, was performing well on assessments, turned in his work, and was conversant in his conferences with her.

During sixth grade, Mahoney had no concerns regarding Student's verbal communication, saying she talked to him all day long. He was right in front of her, she came by to check in, and he never had a hard time communicating orally. Mahoney did not have any concerns about Student's sensory processing and Student never seemed averse to any audio or visual input. In fact, Mahoney said that was how she explained things, with students singing, dancing, and standing on chairs if they had to. Mahoney did not think Student sought audio, visual, or proprioceptive input more than other students.

Mahoney occasionally noticed Student was not paying attention, sometimes looking glazed over. She fixed that with a quick tap on a desk, or by asking him a quick question, and because he was seated near her, she could easily redirect him. Student wanted to do well and wanted to please his teachers.

Student did not have problems interacting with peers at Peninsula Heritage. Some children complained he tattled on them too much, as he was a rule follower and told adults if other kids did not comply. He liked to play basketball and had good camaraderie with others.

Palos Verdes Peninsula Director of Special Education Emiko Chapman and special education teacher Chloe Schofield observed Student at Peninsula Heritage in preparation for an annual IEP team meeting, even though Parents had never signed consent to Student's initial IEP, or to eligibility. They observed Student in class for 30 minutes, noted some attention issues, but saw Student doing his work and completing his work as directed. He did not get up out of his seat, and showed positive behavior reading with the class and participating. At hearing Student complained Palos Verdes Peninsula did not do a fair observation because Mahoney was out and a substitute teacher taught her class the day of the observation, but Student failed to show how any information Palos Verdes Peninsula learned was misleading or lead to an inappropriate offer of goals, placement, related services, or accommodations/supports in the May 30, 2019 IEP.

MAY 2019 OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

Palos Verdes Peninsula convened Student's annual IEP team meeting on May 30, 2019. Those in attendance included, Parents, Student's attorney, Mahoney, Chun, general education teacher McMahon and special education teacher Schofield

from Palos Verdes Intermediate School, a school psychologist, and Palos Verdes Peninsula's Director of Special Education Chapman, its attorney, and assistant principal.

PROPOSED GOALS WERE APPROPRIATE

Palos Verdes Peninsula did not have a draft IEP at the meeting because they had no information about Student's present levels of performance and required information from Mahoney, Chun, and Parents. Mahoney and Chun reported to the IEP team Student had high anxiety at the beginning of the school year, but his anxiety decreased. During an adjustment period Student sometimes got overwhelmed, shut down, and welled up with tears, but after his adjustment period he was no longer having any other shutdowns in class. Student did best if his materials were chunked together for him to work. He was doing well with his executive functioning skills and turned in his work. He had good attention and was sitting in the front of the class.

Mahoney and Chun told the IEP team Student had made great strides in reading and writing. They said he enjoyed reading and did better with math, in which he had a B. He needed more practice with reading and writing. He was involved in a book club, which helped with him wanting to be immersed in the class. He was well-liked by his peers.

Peninsula Heritage did not use the same assessment tools as Palos Verdes Peninsula and it was difficult to compare Student's baselines from the year before with his present levels of performance at Peninsula Heritage. Peninsula Heritage could not provide information about Student's reading fluency, other than to report Student "scored 99 [percent] accuracy of first 100 words in running record reading fluency and comprehension probe."

In writing, with respect to the 2018 IEP's goal in the area of editing and revising, Mahoney stated Student was able to catch smaller edits in writing and she believed Student had met the previous goal with scaffolding and the support of writing conferences. As related to the 2018 IEP's goal in writing conventions, Peninsula Heritage reported there were some "positive outlooks" and Student met the goal, but most of his mistakes were spelling errors and he corrected them during writing conferences.

In the pre-vocational goal related to self-advocacy, Mahoney said he met that goal, as he was good with self-advocacy and able to ask for additional support as needed with adults in the classroom.

In the social-emotional functioning goal related to self-esteem, Peninsula Heritage reported Student had a positive outlook and was doing well, had not demonstrated any behaviors listed in the baseline since November 2018, and demonstrated strong self-esteem in the classroom. The self-esteem goal was met.

In the social-emotional functioning goal related to managing stress, noted in the May 30, 2019 IEP team meeting notes as "coping strategies," Peninsula Heritage reported Student was doing well, that Mahoney had good communication with Parents, and there was no stress related to failing. The managing stress goal was met. Mahoney shared that Student had not needed to use the listed coping skills in class, but she was confident he would be able to do so if needed.

The IEP team developed new goals by gathering information from Peninsula Heritage and Parents about areas in which they felt Student needed continued support. There were no disputes regarding proposed goal areas. New goals were developed from the baseline information Peninsula Heritage provided. Mahoney reported Student

was within the average range in her class for inferencing in reading and she was introducing the concept of theme to students in preparation for seventh grade. The new reading goal was in the area of conceptualization with theme. By May 2020, Student was expected to read a grade-level literary text and with the support of a graphic organizer and a teacher model, determine the theme of a text and identify at least two details to support the theme with 80 percent accuracy in three out of four opportunities based on student work samples. The general education and special education teachers would work with Student on this goal. This goal would enable Student to be involved/progress in a specified general curriculum/state standard. It was in one of Student's areas of need, measurable, and appropriate.

In writing, Mahoney reported Student struggled with sentence structure and spelling when writing independently. The new goal for sentence structure and spelling was, by May 2020, Student would receive instruction on sentence structure and a pre-revision activity, and then independently revise his writing to expand, combine, and/or reduce sentences for meaning, reader interest, and/or style and revise any spelling errors in four out of five opportunities based on student work samples and teacher records. The general education and special education teachers would work with Student on this goal. This goal would enable Student to be involved/progress in a specified general curriculum/state standard. It was in one of Student's areas of need, measurable, and appropriate.

Mahoney reported Student struggled with planning long-term assignments and had a hard time knowing independently what to start first when presented with multiple tasks. The new goal for long-term planning/task prioritization was, by May 2020, Student would receive instruction in long-term planning and task prioritization and be able to use a visual method, such as color coding or a visual schedule, to plan his

independent/homework schedule for the next week in four out of five opportunities based on student work samples/agenda. The general education and special education teachers would work with Student on this goal. This goal would enable Student to be involved/progress in general curriculum/state standards, and address other educational needs resulting from his disability. It was in one of Student's areas of need, measurable, and appropriate.

PLACEMENT OFFERED WAS APPROPRIATE

Parents told the IEP team they wanted Student to continue attending Peninsula Heritage and requested that placement be stated in Student's IEP and paid for by Palos Verdes Peninsula. Palos Verdes Peninsula explained to Parents that private schools not certified by the State Department of Education as nonpublic, nonsectarian schools are not on the continuum of placement options and by law cannot be offered as a placement in an IEP. Palos Verdes Peninsula IEP team members believed it had a placement in the public school that would afford Student educational benefit appropriate in light of his circumstances because Student was making progress in the general education curriculum but needed some specialized supports to enable him to access the curriculum, which Palos Verdes Peninsula could provide him.

Palos Verdes Peninsula again offered Student placement at Palos Verdes Intermediate School, the school he would attend based on residence, in general education classes with English language arts and math collaboratively taught by a general education teacher and a special education teacher, with an instructional assistant. Palos Verdes Peninsula again offered Student the support class with a special education teacher, in which Student could receive pre-teaching/front loading, re-teaching, organization/executive functioning support, and other attention from a

special education teacher. Student would be included in the general education environment 85 percent of the time.

The goals in Student's May 30, 2019 IEP could be implemented in the placement Palos Verdes Peninsula offered. The placement offered was appropriate to enable Student to make progress in the general education curriculum.

ABSENCE OF RELATED SERVICES WAS APPROPRIATE

Palos Verdes Peninsula staff asked Mahoney if she thought Student needed additional support through counseling. Mahoney said Student was doing well and a happy child. The IEP team determined Student did not need any additional supports unless there was an additional transition. Palos Verdes Peninsula did not offer Student related services. Student did not require related services to enable him to benefit from his general and special education instruction.

ACCOMMODATIONS OFFERED WERE APPROPRIATE

Palos Verdes Peninsula staff reviewed the accommodations offered in the May 2018 IEP with Mahoney and Chun to see what still worked and what did not work.

Palos Verdes Peninsula offered Student accommodations of:

- overlearning opportunities for review and repetition;
- checking for understanding orally with instructional content and directions through redirection and verbal prompts;
- checks for understanding during and after a lesson;
- preview/front loading of upcoming material to Student;
- using word banks for fill-in-the-blank assessments;

- teacher feedback on the first draft of writing;
- access to multi-modal instruction when possible;
- access to up to 100 percent additional time for assessments as needed;
- access to a separate, smaller setting for testing as needed;
- seating near instruction;
- chunking assignments into smaller steps;
- an additional day to turn in homework assignments without penalty; and
- an additional set of textbooks to be kept at home at the beginning of the school year.

The accommodations in the May 30, 2019 IEP were appropriate to enable Student to benefit from his general and special education instruction.

Palos Verdes Peninsula reviewed with Parents the offer of placement and accommodations, and reviewed the meeting notes with the IEP team. Parents never signed the IEP, or agreed in writing that Student was eligible for special education and related services.

In total, the goals, placement, and accommodations in the May 30, 2019 IEP were reasonably calculated to enable Student to receive educational benefit in the general education curriculum appropriate in light of his circumstances as a Student with low average to average cognitive abilities, overall ability to learn and make progress in the general education curriculum, and some challenges with attention and association. The collaborative English language arts class and the support class were reasonably calculated to improve Student's reading and writing, which at the time of the May 30, 2019 IEP were reported to be improved from his prior performance, with his

abilities average in his class and at grade level. Student did not meet his burden of proof that Palos Verdes Peninsula did not offer Student a FAPE in the May 30, 2019 IEP.

ISSUE 4: SIGNIFICANTLY IMPEDING PARENTS' PARTICIPATION BY FAILING TO INFORM PARENTS STUDENT WAS SEVERELY FRUSTRATED AND DEPRESSED AND WANTED TO HARM HIMSELF

In Issue 4, Student contends Palos Verdes Peninsula denied him a FAPE by denying Parents meaningful participation in the IEP process by failing to inform them Student was severely frustrated and depressed and made verbal threats about wanting to harm himself. Student asserts Parents were "kept in the dark about the severity and complexity" of Student's needs and thereby denied meaningful participation in the May and June 2018 IEP team meetings.

Palos Verdes Peninsula contends there was no credible evidence Student was frustrated, depressed, or threatened to harm himself. Palos Verdes Peninsula asserts all references to anxiety in the IEPs including goals in the areas of self-esteem and stress management, were requested and provided by Student's attorney at the IEP team meetings Parents attended. Palos Verdes Peninsula acknowledges Student's teacher Goggin's scores on the Behavior Assessment System for Children teacher rating scale rated Student at the cut-off score for "at-risk" for anxiety, as did Mother's scores. But Palos Verdes Peninsula argues Student did not prove he ever demonstrated severe and debilitating anxiety or depression or ever indicated he thought about harming himself, or that Palos Verdes Peninsula was aware of any of these things and concealed it from Parents.

The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Ibid.*) Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.*, *supra*, 267 F.3d at p. 882.) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 892.)

Procedurally, the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b) & (c); Ed. Code, §§ 56304, 56341.) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).)

States must establish and maintain certain procedural safeguards to ensure each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483 (*Target Range*) [superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 939.]) To fulfill the goal of

parental participation in the IEP process, the school district is required to conduct a meaningful IEP meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Board of Education, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

As determined in Issue 1, above, Student did not prove he had anxiety or depression, and did not prove teacher Goggin ever indicated, either in writing or orally at an IEP team meeting, Student said he wanted to harm himself or thought about harming himself.

Student failed to meet his burden of proving Palos Verdes Peninsula denied him a FAPE by denying Parents meaningful participation in the IEP process, by failing to inform Parents that Student was severely frustrated and depressed, and making verbal threats about wanting to harm himself.

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: Palos Verdes Peninsula did not fail in its child find obligations from July 17, 2017, to the filing of the complaint by failing to identify and assess Student as a child with possible disabilities requiring special education, based on Student's severe and debilitating anxiety, central auditory processing deficits, attention issues, reading and writing deficits, poor executive functioning skills, poor work habits, and difficulty completing tasks. Palos Verdes Peninsula prevailed on Issue 1.

Issue 2: Palos Verdes Peninsula did not deny Student a FAPE during the 2017 to 2018 school year, by failing to conduct any assessments of Student's unique needs with respect to severe and debilitating anxiety, central auditory processing deficits, attention issues, reading and writing deficits, poor executive functioning skills, poor work habits, and difficulty completing tasks, prior to assessments conducted for Student's May 24, 2018 IEP team meeting. Palos Verdes Peninsula prevailed on Issue 2.

Issue 3: Palos Verdes Peninsula did not deny Student a FAPE in his IEPs completed June 18, 2018, and May 30, 2019, by failing to provide Student appropriate goals, services, accommodations and strategies to help him access the curriculum to achieve educational benefit. Palos Verdes Peninsula prevailed on Issue 3.

Issue 4: Palos Verdes Peninsula did not deny Student a FAPE by denying Parents meaningful participation in the IEP process, by failing to inform Parents that Student was severely frustrated and depressed, and making verbal threats about wanting to harm himself. Palos Verdes Peninsula prevailed on Issue 4.

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/

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings