

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

SIMI VALLEY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024080102

DECISION

OCTOBER 2, 2024

On August 2, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Simi Valley Unified School District naming Parents on behalf of Student. Administrative Law Judge Theresa Ravandi heard this matter by videoconference on August 27, and 28, 2024.

Attorney Lusine Nadzharyan represented Simi Valley. Sean Goldman, assistant superintendent of student support services, attended both hearing days on Simi Valley's behalf. Parents and Student did not attend the hearing.

At Simi Valley's request, the matter was continued to September 23, 2024, for written closing briefs. The record was closed, and the matter was submitted on September 23, 2024.

ISSUE

May Simi Valley exit Student from special education without parental consent based upon its determination at Student's September 28, 2023 individualized education program, called IEP, team meeting, continued to October 31, 2023, that Student is no longer eligible for special education?

JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511(2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, Simi Valley requested this hearing and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 11 years old and in sixth grade at the time of hearing. Student resided within Simi Valley's geographic boundaries at all relevant times. Simi Valley initially found Student eligible for special education under the category of autism in October 2020, when she was a second grader. At the October 31, 2023 IEP team meeting, Simi Valley members of Student's IEP team determined Student no longer qualified for special education. Parents disagreed with this determination.

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ISSUE: MAY SIMI VALLEY EXIT STUDENT FROM SPECIAL EDUCATION WITHOUT PARENTAL CONSENT BASED UPON ITS DETERMINATION AT STUDENT'S SEPTEMBER AND OCTOBER 2023 IEP TEAM MEETINGS THAT STUDENT IS NO LONGER ELIGIBLE FOR SPECIAL EDUCATION?

Simi Valley contends it appropriately assessed Student in all areas of suspected disability through its October 2023 multidisciplinary assessment. It further asserts the assessment showed Student no longer qualified for special education under the category of autism and did not meet eligibility criteria for speech or language impairment or a specific learning disability. Simi Valley contends it presented its assessment findings at the October 31, 2023 IEP team meeting which included all required participants, afforded Parents meaningful participation, and correctly determined Student was no longer eligible for and did not require special education.

Parents disagreed with Simi Valley's determination of non-eligibility and did not consent to the October 2023 IEP. Mother believed Student was doing well because of her IEP services and was concerned Student would not succeed in middle school without the continued support of an IEP.

A FAPE means special education and related services that are available to an eligible child at no charge to the parent and that meet state educational standards. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17(2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); 34 C.F.R. §§ 300.320 (2007), 300.321 (2007), & 300.501(2006); see Ed. Code, §§ 56032, 56341, 56345, subd. (a) and 56363 subd. (a).) 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 Sch. Dist. RE-1* (2017) 580 U.S. 386, 402-403 [137 S.Ct. 988, 1000].)

SIMI VALLEY ASSESSED STUDENT IN ALL AREAS OF SUSPECTED DISABILITY

Once a child is found eligible for special education, unless specific statutory exceptions apply, a school district is required to re-evaluate the educational needs of a student with a disability before determining the student is no longer eligible for special education. (20 U.S.C. § 1414(c)(5)(a); 34 C.F.R. § 300.305(e)(1)(2007); Ed. Code, § 56381, subd. (h).) The IDEA uses the term evaluation, while the California Education Code uses the term assessment. (20 U.S.C. § 141414; Ed. Code, § 56302.5.) The two terms have the same meaning and are used interchangeably in this Decision. The district must provide proper notice of its request to assess, obtain parent consent, and follow legal requirements that dictate both the components of the assessment and report and the qualifications of the assessors.

Here, there was no challenge to the legal sufficiency of Simi Valley's multidisciplinary assessment. Although no findings are made as to the legal compliance of the assessment or report, the information contained therein and presented to the IEP team is considered in reaching the conclusion regarding whether the exit was proper.

Simi Valley sent Parents an assessment plan dated June 2, 2023, seeking consent to assess Student in all suspected areas of need. Simi Valley proposed to assess Student's academic achievement, social-emotional and behavioral functioning, self-help and adaptive skills, language, speech and communication development, intellectual development, and to review Student's health status through a records review. School psychologist Sayra Escobedo determined the assessment plan identified all the areas Simi Valley was required to assess based on Student's initial eligibility and history of math difficulties. Parent consented to the proposed assessments on September 8, 2023.

The assessors who completed Student's multidisciplinary assessment were knowledgeable of Student's disability and competent to perform their respective assessments. All three testified at hearing. Escobedo was a credentialed school psychologist with five years of experience. She conducted more than 50 special education assessments each year, most of which involved students with autism and specific learning disabilities. Escobedo conducted Student's cognitive, social-emotional, behavioral, and adaptive functioning assessments. For the assessment, Escobedo completed a thorough record review, interviewed Parent, teachers, and Student, and administered Parent and teacher rating scales. She completed three observations of Student both in class and on the playground and conducted one-to-one testing with Student over two sessions.

Laurie Portillo was a credentialed special education teacher with Simi Valley for the past 20 years, working as an inclusion specialist and a specialized academic instructor. She held an education specialist teaching credential which allowed her to teach students with mild to moderate disabilities and had obtained additional authorizations in the areas of autism and assessment. Portillo was familiar with Student

as she was Student's special education teacher for English language arts and math during the 2023-2024 school year. Over her career she completed more than 240 special education academic assessments. Portillo conducted Student's fall 2023 academic achievement assessment. She reviewed Student's past IEPs and goal progress, spoke with Student's general education teacher, observed Student in class and on the playground, and administered a standardized test instrument over six different testing sessions.

Erin Dieny was a California licensed speech language pathologist and held a national Certificate of Clinical Competence in this specialty for the past 12 years. She was a speech language pathologist with Simi Valley for the past seven years during which time she identified, assessed, and treated students with speech and language disorders. She completed more than 20 special education speech and language assessments each year. Dieny provided Student's speech consultation IEP services during the 2022-2023 and 2023-2024 school years. She conducted Student's 2023 speech and language assessment. Dieny reviewed Student's education records, observed her on the playground twice, obtained an informal language sample, and administered standardized test measures.

Simi Valley gathered relevant functional, developmental, and academic information about Student. Simi Valley's assessors selected test instruments based on Student's profile, such as age and language, and which would provide relevant and reliable data as to her strengths and weaknesses in all areas of suspected disability. For instance, Escobedo administered the Wechsler Intelligence Scale for Children, Fifth Edition, as this would yield good information on Student's cognitive processing and intellectual abilities. She also selected the Test of Auditory Processing Skills, Fourth

Edition, to learn more about Student's phonological processing as well as listening comprehension and auditory memory. Escobedo administered three different rating scales to assess Student's adaptive skills, social-emotional and behavioral functioning, and any autism characteristics. Portillo and Dieny similarly chose measures to comprehensively assess Student's academic ability, intelligibility, and all areas of language, namely expressive, receptive, and pragmatic. The multidisciplinary assessment evaluated Student's academic, cognitive, adaptive, social, emotional, behavioral, and communication needs and provided relevant information to assist the IEP team in determining Student's eligibility.

The IDEA and California state law require that a school district assess a student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4)(2006); Ed. Code, § 56320, subd. (f) [must assess all areas related to the suspected disability].) A district must ensure the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services, whether or not commonly linked to the identified disability category. (34 C.F.R. § 300.304(c)(6)(2006).)

Simi Valley initially found Student eligible for special education under the category of autism. For eligibility purposes, autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) Accordingly, Simi Valley properly identified Student's speech and language as an area of suspected disability. Student's educational records noted some math difficulties which suggested a possible specific learning disability. Given these factors, Escobedo reasonably determined that autism, speech

or language impairment, and specific learning disability were Student's suspected disabilities. Simi Valley's October 2023 multidisciplinary assessment comprehensively assessed Student in each of these areas.

The IEP team has the duty to determine whether a student is eligible for special education and related services. (20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. § 300.306(a)(1) (2017); Ed. Code, §§ 56329, subd. (a)(1), 36342, subd. (a).) To aid the IEP team in determining eligibility, an assessor must produce a written report that includes information addressing whether the student may need special education and related services, along with the basis for that determination. (Ed. Code, § 56327, subds. (a) & (b).)

Escobedo drafted and compiled a thorough multidisciplinary assessment report which included her assessment results, Portillo's academic findings, and Dienny's speech and language test results and conclusions. The report detailed eligibility criteria for each category considered and included a determination of whether Student may be eligible for special education and the basis for that determination. Specifically, the multidisciplinary report concluded Student no longer met eligibility criteria under the category of autism and was not eligible under the categories of speech or language impairment or specific learning disability.

PARENTS MEANINGFULLY PARTICIPATED IN THE IEP PROCESS

Once the district completes the reassessment, it is required to develop an appropriate IEP or disqualify the student if the reassessment demonstrated that the student was no longer eligible for special education services. (See *V.S. ex rel. A.O. v. Los Gatos-Saratoga Joint Union High School Dist.* (9th Cir. 2007) 484 F.3d 1230, 1233.) The

assessment must be completed, and an IEP team meeting held, within 60 days of receiving consent, exclusive of school vacations in excess of five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subd. (f)(1), 56302.1, subd. (a), and 56344, subd. (a).) A district must provide parents notice of an IEP team meeting sufficiently in advance to afford them the opportunity to attend, indicating the purpose, time and location of the meeting, who will be attending, and informing them of their right to invite other individuals. (34 C.F.R. § 300.322 (a) & (b); Ed. Code, § 56341.5, subd. (b) & (c).) Upon completion of an assessment, the district shall provide the parent a copy of the evaluation report and documentation of the eligibility determination. (20 U.S.C. § 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2)(2017); Ed. Code, § 56329, subd. (a)(3).)

Simi Valley properly noticed Parents of its intent to convene Student's annual IEP team on September 28, 2023, and provided them a copy of their procedural safeguards explaining their rights under the IDEA. Parent signed and returned the meeting notice stating she would attend. Simi Valley convened part one of Student's annual IEP team meeting on September 28, 2023. It had not completed Student's triennial assessment at that time. Simi Valley properly noticed and convened part two of the IEP team meeting on October 31, 2023, to review the assessment results. Simi Valley timely convened Student's IEP team to review the multidisciplinary assessment within 60 days of Parent's consent to assess. It provided Parent a copy of the October 31, 2023 multidisciplinary report upon completion and reviewed the results at part two of Student's annual IEP team meeting.

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Each meeting to develop, review, or revise the IEP of an individual with exceptional needs must be conducted by an IEP team. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(2007); Ed. Code, § 56341, subd. (a).) The IEP team generally must include

- the parent;
- a regular education teacher if the student is participating in the regular education class;
- a special education teacher or special education provider to the student;
- a qualified district representative knowledgeable about the general education curriculum and available district resources; and
- an individual who can interpret the instructional implications of any assessment. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a) (2007); Ed. Code, § 56341, subd. (b).)

The IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent assessment of the child, and the child's academic, developmental, and functional needs. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a)(2017); Ed. Code, § 56341.1, subd. (a).)

All required IEP team members attended Student's September and October 2023 IEP team meeting sessions. Mother attended part one, and both Parents attended part two.

Special education law places a premium on parental participation in the IEP process. A district must ensure a student's parent has "meaningful participation" in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-

1132, superseded by statute on other grounds; *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485, superseded by statute on other grounds; *Fuhrmann v. East Hanover Board of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) Parents participate meaningfully in the IEP process when they are informed of the child's problems, have an opportunity to discuss a proposed IEP, express disagreement and suggest changes, and have their concerns considered by the IEP team. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693, 695; see *Fuhrmann, supra*, 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP, suggest changes, and have their concerns considered by the IEP team has participated meaningfully in the IEP development process].)

At the September 2023 IEP team meeting, the team discussed Student's progress on goals. Parent freely shared her opinions on Student's needs and provided feedback during the IEP team meeting. Dieny informed Parent she was assessing Student's speech and language and asked Parent if she had concerns in this area. Parent reported that Student made grammatical errors but had no difficulty communicating.

At part two of the IEP team meeting on October 31, 2023, Simi Valley provided Parents a copy of the multidisciplinary assessment report. Escobedo, Portillo, and Dieny reviewed their assessments in detail with the IEP team, explained the significance of the results, and solicited questions. To facilitate Parent participation, Portillo presented her results on a large Smartboard. Simi Valley considered Parents important team members and afforded them the opportunity to fully participate. The assessors asked Parents if the multidisciplinary assessment report accurately captured Student's areas of strength. They agreed it did. During the meeting, Father asked clarifying questions. Mother shared her view that Student was doing well because of her IEP.

Simi Valley assessors reviewed eligibility criteria with Parents. These criteria are discussed in the next section. Based on Student's assessment results, Simi Valley IEP team members recommended that Student be exited from special education as she no longer met eligibility requirements. Parents disagreed with this recommendation. Mother shared her concern that Student would not successfully transition to middle school in the 2024-2025 school year without the support of an IEP. Simi Valley team members listened to Parents and responded to their questions and concerns. Simi Valley team members acknowledged the importance of a successful transition to middle school but explained that Student no longer met special education eligibility criteria, and the data showed she no longer required an IEP.

In response to Parent concerns, Simi Valley offered to convene a Section 504 meeting to develop a Section 504 Plan for Student. A Section 504 plan is an educational program for children with an impairment that substantially limits a major life activity, such as learning, and is created pursuant to the federal anti-discrimination law known as Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et seq. (2000).) Simi Valley informed Parents that a Section 504 Plan with accommodations like extended time for assignments and tests could assist Student as she transitioned to middle school.

On November 17, 2023, Parents signed the IEP with one exception, noting they did not agree to exit Student from special education.

Simi Valley timely convened a properly constituted IEP team meeting that reviewed Student's multidisciplinary assessment and considered her strengths and all relevant information. Simi Valley provided Parents a copy of the assessment report and afforded them meaningful participation in the decision-making process.

ASSESSMENT SHOWED STUDENT DID NOT MEET ELIGIBILITY CRITERIA

Escobedo described her role in the assessment process as putting together all the information from the many different sources and tools like a puzzle, making sense of and reconciling the data, and telling a story about Student's educational functioning. Many common themes emerged from Student's multidisciplinary assessment.

By all accounts, Student was happy, kind, and respectful. She made sure to greet adults and to get their attention to say goodbye. Student had friends and demonstrated age-appropriate socialization when approached, though she rarely initiated peer interactions. She maintained good personal boundaries, joined in group play, smiled, and laughed with peers. Every 15 minutes Student engaged in repetitive, periodic motor behaviors that lasted a few seconds. These behaviors, called "stereotypy," included snapping her fingers, flapping her hands, and rubbing or shaking her leg. Portillo observed Student hum to herself on tasks that required greater concentration. These behaviors helped Student self-regulate and did not adversely impact her education. Student was accepted by her classmates and well-liked. However, she preferred to be alone. She was an avid reader and frequently spent her lunch recess reading a book on her favorite bench under a tree. Student was reserved, quiet, and a slow mover who was the last to gather her belongings and leave the classroom.

All assessors confirmed that Student willingly participated in the assessments, followed test instructions, and put forth her best effort. She showed age-appropriate energy, concentration, and perseverance. The assessment results accurately reflected Student's strengths and weaknesses and were consistent with her class performance.

Not every student with a disability qualifies for special education. For a child to be eligible for special education in California, the child must have a disability as defined by state and federal law. (20 U.S.C. § 1401(2)(A); Ed. Code, § 56026, subd. (d); 34 C.F.R. § 300.8 (2017).) Section 3030 of Title 5 of the California Code of Regulations defines the various eligibility categories under California law. In determining eligibility, the IEP team shall consider all the available, relevant material about the student. (Cal. Code Regs., tit. 5, section 3030(a).) An ALJ has the authority to determine whether a student is eligible for special education and related services under the IDEA. (*Hacienda La Puente Unified Sch. Dist. of Los Angeles v. Honig* (9th Cir.1992) 976 F.2d 487, 492-493.)

An eligibility determination is a two-step inquiry. The first question is whether the student has a qualifying disability which adversely impacts their education. Here, Simi Valley reasonably determined Student's suspected disabilities were autism, speech or language impairment, and specific learning disability.

AUTISM

Under California law, autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) Characteristics often associated with autism are repetitive activities, stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (*Ibid.*)

Student initially qualified for special education in September 2020 under the category of autism. At the time of her initial eligibility assessment, Student was struggling to keep up in class and meet state standards. She was not completing her

work in a timely manner. Student had difficulty socializing with peers and making friends. Teacher and Parent noted clinically significant concerns with her communication, withdrawal, atypical behaviors, and emotional regulation. They found she had many autism characteristics and noted that these negatively impacted Student's education. Her pragmatic language was significantly impaired. For her initial 2021 speech assessment, Student scored two standard deviations below her 2023 average score on the same social language development measure.

Student's educational functioning significantly improved by the time of her 2023 triennial reassessment. Escobedo administered social, emotional, and behavioral rating scales to Parent and teacher. These revealed no clinically significant concerns. Overall, Student demonstrated age-appropriate adaptive skills despite Parent's concern that Student did not independently complete homework. She self-regulated and was independent at school. Student did not have impaired verbal or nonverbal communication and did not display communication deficits typically associated with autism. Rather, Escobedo observed Student made a point of appropriately getting staff attention, made eye contact and greeted them, and wished them a good day as she was leaving. Student had matured. Escobedo noted Student's self-awareness and maturity level exceeded her years.

On an autism scale, Parent rated Student as elevated, or having some difficulty, in only two of 12 areas, namely, attention and self-regulation. Student's general education teacher rated Student as elevated in social-emotional reciprocity, stereotypy, and social communication, and very elevated in peer socialization. Teacher responses indicated Student was reluctant to initiate peer interactions. On another rating scale, Student's teacher found Student's social skills were average. Parent rated Student's social skills above average. The evidence showed that while Student had limited peer interactions,

she had friends, appropriately responded to peer overtures, and demonstrated age-appropriate socialization skills. Student was more of an introvert; this was her personality makeup, not an impairment.

Despite identifying some behaviors associated with autism, Parent and teacher rated Student in the typical range on the overall autism scale. The evidence established that Student did not display characteristics associated with autism to a significant degree at school. Moreover, eligibility does not rest on a disability alone. Here, Simi Valley proved Student's characteristics associated with autism did not impact her educational performance or social interactions. She readily accessed the general education curriculum and met or made progress towards all grade-level academic standards. Simi Valley met its burden of proving Student no longer met autism eligibility criteria.

SPECIFIC LEARNING DISABILITY

A student may be eligible for special education under the category of specific learning disability if the student has:

"... a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The basic psychological processes include

attention, visual processing, auditory processing, phonological processing, sensory-motor skills, and cognitive abilities including association, conceptualization, and expression.”

(Cal. Code Regs., tit. 5, § 3030, subd. (b)(10); see 20 U.S.C. §1401(30); 34 C.F.R. § 300.8 (c)(10)(2017); Ed. Code, § 56337, subd. (a).) Each state must adopt and use criteria for determining whether a child has a specific learning disability. (34 C.F.R. § 300.307(a) & (b) (2006).) California law provides for at least three methods to determine eligibility under the category of specific learning disability. (Cal. Code Regs., tit. 5, § 3030, subd (b)(10)(B)&(C).) However, a district may not rely on any of these methods as the sole basis for determining whether a student has a specific learning disability. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) & (C).)

One method to determine a specific learning disability is to evaluate whether a student has a “pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.” (Cal. Code Regs., tit. 5, § 3030 (b)(10)(C)(1) & (2)(ii).); 34 C.F.R. §§ 300.309 (a)(1) & (2)(ii)(2017).) Simi Valley used the pattern of strengths and weaknesses method for determining whether Student was eligible under the category of specific learning disability.

At the time of the October 2023 assessment, Student was performing at grade level in all core academic subjects in the general education classroom. She was a capable student who demonstrated age and grade-level appropriate work habits and kept up with the pace of instruction. This was confirmed by teacher and assessor

observations and reflected in Student's report cards. Escobedo emphasized the importance of cross-referencing Student's standardized test scores with her classroom functioning.

On a normed cognitive measure, Student scored in the average range in fluid reasoning or problem solving, crystalized intelligence or the ability to understand and apply verbal concepts, auditory processing, and short-term memory. Student tested below average in the area of long-term memory which consisted of timed subtests. Student was a slower performer and struggled with timed tasks. Standing alone, the score reflected a cognitive deficit. Escobedo cross-referenced this result with Student's class performance and teacher report, which established that Student was able to remember, retrieve, and apply previously learned skills. Student's strong cognitive skills in fluid reasoning and crystalized intelligence allowed her to compensate for her weakness in long-term memory. As such, Student's cognitive weakness did not adversely impact her academics. Escobedo credibly established, based on all available information, Student's below average long-term memory score did not reveal a cognitive deficit.

Student's visual processing and processing speed scores on standardized testing were low average, still within the broad average range. These scores indicated a normative weakness as compared to same age peers. Even so, Student demonstrated average ability on challenging subtests in these areas. Further, Student's grade-level reading skills showed she was able to process visual information. Escobedo established Student's processing speed score was not a true deficit given her average auditory processing score on another measure.

Overall, Student's cognitive functioning was average. The assessment results showed Student did not have a cognitive deficit or processing disorder. While testing revealed some cognitive weaknesses, these did not adversely impact Student's educational performance because of her ability to compensate. Student displayed age-appropriate comprehension and academic work skills in the general education classroom.

In reviewing Portillo's academic results, Escobedo noted that Student tested well overall and better than expected for her age in many academic areas. Student's academic achievement testing showed strong academic skills consistent with her class performance. At hearing, Portillo proudly shared how well Student performed on the Wechsler Individual Achievement Test, Fourth Edition. Student's total achievement composite score was in the high average range, better than 75 percent of same age peers. Her reading and written expression composite scores were above average. Student scored higher than 95 percent of same age peers in reading comprehension. On a sentence building subtest which included grammar and punctuation, Student scored in the superior range. Student's dyslexia index score indicated no evidence of dyslexia.

Student's overall mathematics composite score on the Wechsler was average. Student scored in the high end of low average on a math problem-solving subtest and on a supplemental mathematics fluency composite composed of timed subtests. These were areas of relative weakness, but they were not correlated to a cognitive processing deficit. Portillo was not concerned by these scores as she knew Student understood and was capable of completing the math problems and timed calculations. Rather, the scores indicated Student needed more math practice and memorization. Portillo was an experienced special education teacher and familiar with Student's class performance.

She credibly opined the math fluency tests also reflected Student's personality in that Student physically moved at a slower pace and was a slower thinker. Student's cognitive scores on timed tests and Escobedo's testimony corroborated Portillo's opinion.

While Student had a natural strength in English language arts, she needed some support in math. Portillo re-taught math concepts and gave Student extra time, practice, and encouragement during her specialized math instruction. With this support, Student independently demonstrated the skills taught. Student learned, applied, and remembered grade-level math concepts, and made progress towards meeting math standards. She met one annual math goal and made progress on the other. The assessment results, Student's class performance, and her goal progress supported Portillo's opinion that Student did not have a math deficit. Portillo's opinion was persuasive and given significant weight.

To qualify for a specific learning disability, Student needed to have a psychological processing disorder that impacted her academic functioning or ability to listen, think, or speak. The multidisciplinary assessment did not identify any such disorder. Student's assessment results did not show a correlated pattern of strengths and weaknesses in cognitive and academic skills such as a fluid reasoning deficit that impaired her math skills. While she had many academic strengths, Student did not have any significant academic weaknesses. Based on class performance and academic testing, Student had strong, above average reading and writing skills and overall average math skills. Simi Valley met its burden of proving Student was not eligible under the category of specific learning disability.

SPEECH OR LANGUAGE IMPAIRMENT

A student is eligible for special education and related services under the category of language or speech impairment if the student demonstrates difficulty understanding or using language, under specified criteria, and to such an extent that it adversely affects their educational performance, and which cannot be corrected without special education. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).) To qualify under this category, a student must have either:

- an articulation disorder characterized by reduced intelligibility with sound production below that of same age peers and which adversely affects educational performance;
- abnormal voice;
- a fluency disorder; or
- an expressive or receptive language disorder characterized by a score below the seventh percentile on at least two standardized tests in specified areas of language development, or one such score if the student also displays inadequate language as determined by a 50-utterance language sample. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

On a standardized language assessment, Student scored in the average range on all index, core language, and subtest scores indicating she had no deficits in expressive, receptive, or pragmatic language skills. Student received average scores on a separate social language development test with one above average score on a subtest that measured her skill in supporting peers. Dieny's assessment established that Student's

voice quality, fluency, and sound production were all age appropriate. Student demonstrated 95 percent intelligibility despite one sound substitution error which Student corrected when prompted. Student's teachers reported no speech or language concerns impacting Student's education, and minimal social impact related to her reluctance to initiate peer interaction and preference to keep to herself.

Based on her speech and language assessment, Student did not qualify as having an articulation disorder, and she displayed appropriate voice quality and fluency. Student's receptive, expressive, and pragmatic language skills were all typical, and her testing percentiles far exceeded those indicative of a language disorder. Simi Valley met its burden of proving Student did not meet eligibility criteria for speech or language impairment.

As determined above, Simi Valley conducted a multidisciplinary assessment that comprehensively assessed Student in all areas of suspected disability. All three assessors testified in support of their assessment results and Simi Valley's determination of non-eligibility. They were all well-qualified to do so. Their testimony was detailed, showed thorough familiarity with Student and her records, and reflected a thoughtful evaluation of her abilities and needs. Their testimony was given substantial weight. Simi Valley established that Student did not meet eligibility criteria for any of the suspected disability categories.

STUDENT DID NOT REQUIRE SPECIAL EDUCATION AND RELATED SERVICES

Even if Student had met criteria for having a qualifying disability, the second inquiry in determining eligibility is whether she required specialized instruction and related services to receive educational benefit. A student is entitled to special education

and related services if the student has a qualifying disability, and who, "by reason thereof, needs special education and related services." (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1).) Under California law, a student is eligible for special education and related services if an IEP team determines, based on appropriate assessment, that:

- the child has a qualifying disability; and
- the degree of the child's impairment requires instruction and services for the child to receive FAPE; and
- these services cannot be provided with modification of the regular school program. (Ed. Code §§ 56026, subd. (a) & (b); Cal. Code Regs., tit. 5, §3030, subd. (a).)

When determining if a student needs special education, courts consider whether the student can receive educational benefit in, or with modification to, the general education setting. (*Hood v. Encinitas Union School Dist.* (9th Cir. 2007) 486 F.3d 1099, 1106-1107 [decided under former Ed. Code, § 56337].)

Simi Valley introduced persuasive evidence that Student did not require specialized instruction and related services to receive educational benefit. At the time of the multidisciplinary reassessment, Student was receiving specialized academic instruction pursuant to her September 2022 IEP. Portillo provided Student 60 weekly minutes of specialized English language arts instruction and 90 weekly minutes of math. Portillo continued to provide this instruction through the 2023-2024 school year. The 2022 IEP did not offer Student direct speech services. Student's speech and language were not impacting her education, so she did not require speech services to receive educational benefit. Dieny provided 30 monthly minutes of speech consultation to

Student's teachers. Student's general education teacher supported Student in initiating peer interactions within the regular class setting. The teacher did not need speech consultation services to support Student.

Student's second, third, and fourth-grade reports cards showed she met or made progress towards meeting all grade-level academic standards. At the time of the September 2023 IEP team meeting, Student met four of her five annual goals. She met her reading comprehension, written expression, math, and social-emotional problem-solving goals. She made progress on but did not meet a multiplication goal. Student's excessive absences the final quarter of fourth grade hindered her progress on this math goal. Also, the final goal review period was early in the school year, so Portillo was measuring progress on a math skill that Student likely had not been practicing over the summer. Portillo continued to work with Student on the multiplication goal as well as other grade-level standards during her specialized academic instruction. Student met her multiplication goal and was performing division following the October 2023 IEP team meeting.

Student was doing well in her fifth-grade general education class. Portillo candidly testified that Student no longer needed her. Student kept trying to move ahead in the small group special education English class. Portillo had to slow her down for the sake of the group. This impeded Student's progress. Student was a strong reader. She demonstrated age-appropriate comprehension in broad reading, math, and writing on standardized testing. Portillo persuasively opined that continuing to pull Student out of class two and a half hours each week for specialized academic instruction was not benefitting Student. With some re-teaching, extra time, practice, and validation, Student showed she understood and could independently apply grade-level math

concepts. Student's teachers were confident Student could succeed in the general education math class with these supports. She was completing her work and keeping up with the general education classes.

Neither Portillo nor Student's general education teacher believed Student required the specialized instruction being provided pursuant to her fourth-grade IEP. Student possessed and demonstrated the skills to independently complete grade-level work and succeed in general education without specialized instruction, not because of it. Student did not require special education and related services to receive a FAPE.

A student's success cannot be viewed in a vacuum. Eligibility teams must consider the impact of provided services and determine whether a student's educational improvements resulted from the student receiving specialized instruction. (*L.J. v. Pittsburg Unified Sch. Dist.*, (9th Cir. 2017) 850 F.3d 996, 1006 [district court erred in finding a student with qualifying disabilities ineligible when evidence showed he made educational progress only because of the specialized services he received].). Otherwise, "disabled students who are making progress in an appropriate program could be automatically disqualified from receiving the very services enabling their success." (*N.G. v. District of Columbia* (D.C.C. 2008) 556 F.Supp.2d 11, 35.)

Simi Valley appropriately considered the special education services Student was receiving in determining she was no longer eligible for and did not require special education. Student was being pulled out of her general education classroom for a substantial amount of time each week to receive specialized instruction. Student was functioning at a higher level than the other students in the special education English

class. While Student was likely an asset to Portillo's students, the specialized English instruction was holding Student back and keeping her from reaching her full potential. Student did not have a math deficit for which she required specialized instruction. Rather, she benefitted from additional practice, time, and support to shore up her weakness in this area. Student's general education teacher could provide these supports in the regular education classroom. This would allow Student to be fully included and have the opportunity to engage full-time with her peers.

Simi Valley proved Student did not meet eligibility criteria for any potentially applicable category of special education. Even if she did meet those criteria, eligibility also turns on whether Student needed special education to receive a FAPE. Simi Valley introduced persuasive evidence that she did not. Valid, current assessments in all areas of suspected disability by qualified assessors supported Simi Valley's October 2023 IEP recommendation to exit Student from special education. Simi Valley met its burden of proof that Student did not need special education or related services to receive educational benefit. Simi Valley is entitled to exit Student from special education based on its October 31, 2023 determination of non-eligibility.

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.

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ISSUE:

Simi Valley's October 2023 IEP appropriately determined Student was no longer eligible for special education.

Simi Valley may exit Student from special education absent Parents' consent. Simi Valley prevailed on the sole Issue.

ORDER

1. Simi Valley's October 31, 2023 IEP appropriately determined that Student was no longer eligible for special education.
2. Simi Valley may exit Student from special education absent Parents' consent.

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.

THERESA RAVANDI

Administrative Law Judge

Office of Administrative Hearings