

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.

CASE NO. 2025101020

DECISION

APRIL 17, 2026

On October 24, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Temecula Valley Unified School District. On November 24, 2025, OAH continued the matter at the request of the parties. Administrative Law Judge Tiffany Gilmartin heard this matter by videoconference on February 11, 12, 13, 23, 24, 25, and 27, 2026.

Attorneys Wendy Dumlao and Sophie Parker represented Student. Parents attended all hearing days on Student's behalf. Attorneys Cynthia Vargas and Jennifer Oliva represented Temecula Valley. Breck Hilton, Director of Special Education, attended on February 11, 12, 23, 24, 25, and 27, 2026. Steve Israel, Program Specialist, attended on Temecula Valley's behalf on February 13, 2026.

On February 27, 2026, at the parties' request, the matter was continued to March 16, 2026, for written closing briefs. The record was closed, and the matter was submitted on March 16, 2026.

In this Decision, the Individuals With Disabilities Act is referred to as the IDEA, a free appropriate public education is referred to as a FAPE, and an individualized education program is referred to as an IEP.

## STUDENT'S MOTION FOR ISSUE CLARIFICATION

At the January 30, 2026, prehearing conference, the ALJ hearing the prehearing conference clarified the issues with the parties. The order further stated that any party who believed the Order Following Prehearing Conference did not reflect their understanding of the issues identified in the complaint, discussed at the prehearing conference, and determined herein, shall promptly file a written notice, prior to the first day of hearing, stating any discrepancy and referring to supporting portions of the complaint. Student filed a response on February 9, 2026, requesting self-advocacy be included in the listed areas of goals in Student's issue 1d, 2e, and 3b. Both parties were heard on the record, Temecula Valley did not oppose the inclusion of self-advocacy in issues 1d, 2e, and 3b. The issues were confirmed with the parties and the hearing proceeded without issue. Below reflects the issues as confirmed with the parties on the first day of hearing.

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## ISSUES

1. Did Temecula Valley deny Student a FAPE during the 2023-2024 school year beginning October 24, 2023, by failing to:
  - a. Conduct sufficiently comprehensive psychoeducational and speech and language assessments;
  - b. Find Student eligible for special education under the categories of other health impairment and autism;
  - c. Update Student's annual goals;
  - d. Offer goals appropriate to Student's needs in the areas of academics, pragmatics, executive functioning, transition, auditory processing, and self-advocacy;
  - e. Offer appropriate supports and services to address Student's needs in all the areas of academics, pragmatics, executive functioning, transition and auditory processing;
  - f. Facilitate parent participation in the IEP team meetings, and;
  - g. Implement Student's operative IEP dated November 3, 2022, specifically services, accommodations, and modifications?

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2. Did Temecula Valley deny Student a FAPE during the 2024-2025 school year by failing to:
  - a. Consider the independent psychoeducational evaluation at the October 1, 2024 IEP team meeting;
  - b. Consider the independent audiology evaluation;
  - c. Find Student eligible for special education under the categories of other health impairment and autism;
  - d. Update Student's annual goals;
  - e. Offer goals appropriate to Student's needs in the areas of academics, pragmatics, executive functioning, transition, auditory processing, and self-advocacy; and
  - f. Offer appropriate supports and services to address Student's needs in all the areas of academics, pragmatics, executive functioning, transition and auditory processing?
  
3. Did Temecula Valley deny Student a FAPE during the 2025-2026 school year until October 24, 2025, by failing to:
  - a. Update Student's annual goals;
  - b. Offer goals appropriate to Student's needs in the areas of academics, pragmatics, executive functioning, transition, auditory processing, and self-advocacy; and
  - c. Offer appropriate supports and services to address Student's needs in all the areas of academics, pragmatics, executive functioning, transition and auditory processing?

## JURISDICTION

This hearing was held under the IDEA, 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 are to ensure:

- all children with disabilities have available to them a FAPE 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]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student 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 16 years old and in 11th grade at the time of hearing. Student resided within the Temecula Valley geographic boundaries at all relevant times. Student was eligible for special education under other health impairment.

## STUDENT'S EDUCATION HISTORY

Student was first found eligible for special education in 2018. Parents notified Temecula Valley of Student's pediatrician's diagnoses of attention deficit hyperactivity disorder, called ADHD, and central auditory processing disorder in 2018. His eighth grade IEP dated November 3, 2022, noted Student failed his near vision assessment, requiring him to wear glasses. He also required audiology support to understand the teacher's voice in noisy classrooms. Parents raised concerns related to Student's executive functioning skills and Student's difficulty in asking for help. He did not meet his seventh-grade goal in social pragmatic language.

His FAPE offer consisted of 97 percent of the time in a general education placement and 20 sessions over a year at 25 minutes each of group speech therapy. Temecula Valley offered 200 minutes weekly of specialized academic instruction, specifically 100 minutes of weekly English language arts and 100 minutes of math push-in support. Temecula Valley also offered five goals, one each in the areas of

- writing,
- math,
- social pragmatic language,
- organization and being prepared, and
- task initiation.

He also received accommodations such as a

- direct connect FM system,
- educational audiologist consultation,
- consultation between special education teachers and general education teachers,
- class notes,
- digital documents,
- graphic organizers,
- checklists, rubrics,
- extended time on assignments, and
- preferential seating.

Parents consented to this IEP on November 9, 2022.

Student transitioned to high school at the beginning of 2023-2024 school year. In preparation for Student's October 27, 2023 annual IEP, Temecula Valley conducted a triennial reassessment in the areas of psychoeducation and speech and language. At that IEP team meeting, the Temecula Valley members of the IEP team recommended Student no longer required special education. Parents did not agree with this recommendation and refused to consent to the IEP. The eligibility question has been the parties' core dispute over the last three school years.

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## ISSUE 1a: TEMECULA VALLEY DID NOT DENY STUDENT A FAPE FOR FAILING TO CONDUCT A SUFFICIENTLY COMPREHENSIVE PSYCHOEDUCATIONAL AND SPEECH AND LANGUAGE ASSESSMENT IN OCTOBER 2023

Student asserts Temecula Valley denied him a FAPE during the 2023-2024 school year by failing to conduct a sufficiently comprehensive psychoeducational and speech and language assessment. Specifically, Student argues his psychoeducational assessment was deficient because

- Student's cognitive functioning was not assessed,
- it failed to include meaningful Parental participation,
- it did not include sufficient classroom observations,
- misrepresented assessment data, and
- did not address the discrepancies between teacher and Parent input.

Student further asserts the speech and language assessments were not sufficiently comprehensive because the assessor did not utilize all relevant functional, developmental, and academic information including information provided by the Parent. Finally, Student asserts the assessment tools were used in a manner inconsistent with their purpose leading to unreliable or invalid results.

Temecula Valley asserts Student was comprehensively assessed in all areas of identified need. Temecula Valley further asserts it used technically sound instruments to demonstrate Student's cognitive, behavioral, physical, and developmental functioning. Temecula Valley asserts the assessments were conducted by personnel knowledgeable of Student and competent to perform the assessment.

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), 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, 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. 386 [137 S.Ct. 988, 1000-1001].)

The school district must reassess a student eligible for special education at least once every three years; but may not assess more than once a year unless Parents agree. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381(a)(2).) The school district must assess or reassess the educational needs of a child with a disability if requested by Parent, or a teacher; or if the district determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation. (Ed. Code, § 56381(a)(1) and (2).) Assessments are required to determine eligibility for special education, but also the type, frequency, and duration of specialized instruction and related services that are required. The term "assessment" used in the California Education Code has the same meaning as the term "evaluation" in the IDEA. (Ed. Code, § 56302.5.)

On August 17, 2023, Temecula Valley presented Parents with an assessment plan that proposed to re-assess Student in the following areas:

- academic,
- social,
- adaptive, behavioral, and emotional, perceptual and motor development,
- communication development,
- health development, and
- post-secondary transition.

As part of the assessment, a records review, confirmation of his FM System, and observations would also be completed. Mother consented to the assessment plan on August 27, 2023.

Temecula Valley completed the assessments and produced a written multidisciplinary report on October 27, 2023. Temecula Valley completed Student's triennial reevaluation within the 60-day timeline. (20 U.S.C. §1414(a)(C)(i)(I); Ed Code § 56043, subd. (c).)

Leslie Archer, school psychologist, Juli Sanchez, speech and language pathologist, and Brock Shannon, education specialist, conducted the triennial reassessment.

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The report confirmed Student received special education and related services under the eligibility category of other health impairment. Student was on track to graduate from high school with a regular high school diploma. The report further indicated that in May 2023, Student's statewide testing determined he met Common Core State Standards for English language arts, literacy and mathematics.

Assessment materials and procedures must be selected and administered so as not to be racially, culturally, or sexually discriminatory, and must be given in the student's native language or mode of communication unless it is not feasible to do so. (Ed. Code, § 56320, subd. (a).) Assessments must also meet the following requirements:

- 1) are provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not feasible;
- 2) are used for purposes for which the assessments or measures are valid and reliable; and
- 3) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments. (Ed. Code, § 56320, subd. (b).)

Assessments must also be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

The personnel who assess the student shall prepare a written report that shall include, without limitation, the following:

- (1) whether the student may need special education and related services;
- (2) the basis for making that determination;
- (3) the relevant behavior noted during observation of the student in an appropriate setting;
- (4) the relationship of that behavior to the student's academic and social functioning;
- (5) the educationally relevant health, development, and medical findings, if any;
- (6) for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services;
- (7) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and
- (8) consistent with superintendent guidelines for low incidence disabilities, the need for specialized services, materials, and equipment. (Ed. Code, § 56327.)

The report must be provided to the parent at the IEP team meeting.

The report included a psychological diagnostic assessment dated July 12, 2023, that demonstrated he had characteristics consistent with autism spectrum disorder level 1. Student's report also documented a diagnosis of central auditory processing disorder. No

formal cognitive evaluation was completed as part of the triennial assessment. School psychologist Archer reviewed Student's previous assessment data and concluded Student was in the average cognitive range. Parents raised concern about the lack of a cognitive report at the October 27, 2023, IEP team meeting about the lack of a new cognitive evaluation. Temecula Valley then completed a cognitive assessment on June 5, 2024. As discussed below, that evaluation determined Student's overall cognitive ability was in the average range.

## 2023 PSYCHOEDUCATIONAL ASSESSMENT

Student argued that the 2023 psychoeducational assessment was not comprehensive because no new cognitive assessment was completed, no parent interview conducted, the classroom observation was insufficient, and discrepancies among raters were not investigated or explained. As explained below, Student's arguments are not persuasive.

Archer held a master's degree in educational psychology and a pupil personnel services credential in school psychology. Archer answered questions calmly, evidenced a willingness to acknowledge other's perspectives, and was consistent with the evidence. Her testimony was afforded great weight.

Archer reviewed Student's records, including past special education evaluations and Student's educational performance. The review revealed Student's cognitive ability to be in the average range, and he was earning A's and B's in general education classes. Additionally, Student's areas of suspected disability were other health impairment and autism. Thus, Archer concluded no new cognitive ability test was needed as part of the triennial evaluation.

Archer assessed Student's social-emotional and adaptive and behavior functioning with the Behavior Assessment System for Children-Third edition, called the BASC-3. Student, Mother and two teachers completed rating scales. Mother rated Student at risk in hyperactivity, attention problems, anxiety and depression. Student also raised similar concerns in these areas. His teachers rated him in the average range in all areas except for one at-risk score in withdrawal.

Temecula Valley also assessed Student for executive functioning and autism. Mother rated Student elevated in executive functioning deficits. Neither teacher rated Student elevated in any areas of executive functioning. Archer also utilized the Autism Spectrum Rating Scales. Mother and teacher's rating scales diverged considerably. Although still only states two, Mother rated Student very elevated in three areas such as unusual behaviors, self-regulation. Whereas the teacher only rated Student very elevated in social and communication. Mother and teacher's rating scales aligned in rating Student elevated in peer socialization, and sensory sensitivity. Based on this assessment, Archer determined Student did not meet the eligibility criteria for autism under the California Code of Regulations, title 5, section 3030 subdivision (1).

Temecula Valley also assessed for anxiety utilizing the Multidimensional Anxiety Scale for Children, Second Edition, called MASC-2. Student and Parent completed rating scales. Parent found Student to be very elevated. Student's rating scales were high average. Student was assessed for depression utilizing the Children's Depression Inventory-2nd edition. His scores were all within the normal range except for a high average range in interpersonal problems.

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Archer observed Student in his English class. She observed him being on-task and attentive to the instruction. He was observed wearing an AirPod in his right ear and engaging with his classmates. However, Parents disagreed with Archer's findings and requested an independent educational evaluation, called IEE, in psychoeducation.

Temecula Valley granted this request. El Paseo Staffing completed the independent psychoeducational assessment of Student on June 24, 2024. However, the assessor did not testify at this hearing, nor was the IEE report offered as evidence. Thus, this Decision makes no finding on the IEE.

Parents raised a concern at the October 27, 2023 IEP team meeting that Student was not evaluated cognitively. Temecula Valley then completed a cognitive assessment of Student on June 5, 2024. Student argued Temecula Valley relied on outdated data in determining his then current cognitive abilities and he required a cognitive assessment to determine eligibility for special education and related services in other health impairment and autism.

Archer completed a supplemental cognitive assessment of Student on June 5, 2024. Archer administered the Kaufman Assessment Battery for Children-Second Edition, Normative Update (KABC-II NU). This is a test that measures the processing and cognitive abilities of children from three to 18 years old. Student was in the average range. Student scored in the average range in all subtests except the word association subtest where he was below average and the story completion subtest where he was lower extreme.

Student argued that the psychoeducational evaluation was not sufficiently comprehensive in October 2023, in part, because no new cognitive test was done.

Student provided no expert witness testifying to such nor did Student present any legal authority that for a Student suspected of eligibility under other health impairment or autism, an updated cognitive assessment was required to be sufficiently comprehensive. Archer explained that for some eligibility categories, like specific learning disability, a comparison between cognitive ability and academic achievement is necessary. Thus, it's common to update cognitive scores as part of a psychoeducational evaluation. Here, however, no such inquiry was necessary. Archer, relying on her education, training, and experience, determined that Student's cognitive ability remained in the average range based, in part, on his age and academic performance. Her opinion on this point was given great weight. Moreover, Student's cognitive scores were reevaluated in June 2024, and Student remained in the average range, as Archer predicted. Thus, Student did not meet his burden that the psychoeducational evaluation was not comprehensive because his cognitive ability was not reassessed in October 2023.

Student further argues Parents were denied participation in the assessment process because Archer did not personally speak to the Parents. Parents were provided with rating scales, Mother completed them, and the evidence supports Mother's rating scales were included in the triennial evaluation report. Assessors are required to use a variety of technically sound assessment tools and strategies to gather relevant information, including information provided by a parent, to assist in determining whether the child has a disability; and, if so, the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors. (20 U.S.C. § 1414 (b)(2) (A and C); Ed. Code, § 56320, subd. (b).) Student provided no legal authority that failing to speak personally to a parent is a fatal flaw in an assessment.

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Student also argues Archer did not conduct sufficient classroom observations. The evidence demonstrates Archer obtained reports from Student's teachers during the assessment period. She also conducted an observation in his English class. As part of any reevaluation the IEP team and other qualified professionals must review existing evaluation data on child including observations by teachers and related service providers. (34 C.F.R § 300.305(a)(1)(iii); Ed Code § 56327 (b)) Student provided no law or authority requiring a specific number of observations or length of time the observation requires. Thus, this Decision is not finding as a matter of law that an observation is required, merely, it was completed.

Student also argues Archer misrepresented the data and did not address the discrepancies between Student's teachers and Mother's input. Archer's report included Mother's rating scales. Archer's report also noted where Mother viewed Student differently than what Student's teacher saw. The rating scales in Student's triennial was consistent with how Mother viewed Student. There is no evidence that Mother's rating scales were misrepresented by Archer. Archer persuasively testified that often a parents' view and teacher views of a student are different because of the setting and nature of the relationships. Those expected differences do not require further testing. No evidence was presented that Mother's rating scales were misrepresented by Archer.

As noted, Archer was knowledgeable of Student, parental concerns, and his education needs. Her testimony was consistent with the evidence and given great weight. Student did not meet his burden that Temecula Valley's psychoeducational evaluation was not sufficiently comprehensive.

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## 2023 SPEECH AND LANGUAGE ASSESSMENT

Temecula Valley also assessed Student in speech and language. Juli Sanchez, the assessor, held a Master of Arts in speech and language pathology with a certificate of clinical competency. Sanchez responded calmly and professionally to all questions, her answers were supported by the evidence, and her testimony given great weight.

Sanchez assessed Student using The Oral Written Language Scales. Student scored in the average range for listening comprehension, oral expression, and oral language composite. Sanchez found he had a slight weakness in figurative language skills.

Sanchez administered the Comprehensive Assessment of Spoken Language, second edition, called CASL-2. The CASL-2 evaluates oral language processing systems, oral expression, word retrieval, and using language on special task requiring higher-level functions. Student was in the average range on the CASL-2.

Student scored in the average range on the Pragmatic Profile from the Clinical Evaluation of Language Fundamentals, fifth edition. Student's scales also reflected his teachers identifying areas where he was slightly below average for age-related social skills. Sanchez linked those weaknesses to maturity.

Sanchez interviewed Student and determined that there were no issues with voice, articulation, and fluency. She also interviewed his teachers, who reported no concerns about Student's behavior, ability to participate in the classroom, or talking over peers. Sanchez presented her findings at the October 27, 2023 IEP team meeting. Sanchez ultimately recommended that Student did not meet the eligibility criteria for special education and related services in speech and language.

Parents disagreed with Sanchez's report and requested an IEE in speech and language. Temecula Valley granted the request. Armando Alvarez, a speech and language pathologist, was hired by Parents to conduct an IEE in speech and language. Alvarez's report dated May 31, 2024, recommended Student be found eligible for special education in the category of speech and language impairment in socio-pragmatic language development. Alvarez presented his findings at the October 1, 2024 IEP team meeting. Alvarez's report was based on faulty data and questionable research methods. His testimony was given no weight.

Alvarez's report was insufficient to support his recommendation. Alvarez testified Student struggled in group settings. Alvarez met with Student one time at school for his assessment. The meeting with Student was in a one-to-one environment. All of Alvarez's assessment data was drawn from this one meeting. Despite conducting the assessment at Student's school, he did not observe Student in any natural or class settings. In some instances, such an omission may not be fatal to the credibility of a report, but that is not the case in this instance as Alvarez's entire recommendation was based on Student's struggles in social and classroom situations. Alvarez's data collection methods are also worthy of scrutiny as he listed an interview with one of Student's general education teachers as a reference, under cross-examination he admitted the interview did not occur and instead he inputted information he received from the general education teacher's email response.

Student failed to meet his burden to demonstrate Temecula Valley failed to comprehensively assess him in speech and language in October 2023.

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## ISSUE 1b AND 2c: TEMECULA VALLEY DID NOT FAIL TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION IN THE CATEGORY OF AUTISM BUT STUDENT REMAINED ELIGIBLE UNDER OTHER HEALTH IMPAIRMENT

Student alleges Temecula Valley denied him a FAPE during the 2023-2024 and 2024-2025 school years by failing to find him eligible for special education in the categories of other health impairment and autism at the October 27, 2023 IEP team meeting.

Temecula Valley contends Student did not prove he was eligible for special education and related services during the 2023-2024 and 2024-2025 school years in the areas of other health impairment. Temecula Valley concedes Student has an auditory processing disorder; however, auditory processing disorders are not a stand-alone category for eligibility for special education services.

“Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) A child with a disability includes a child that qualifies under the special education categories of other health impairment, specific learning disability, and a serious emotional disturbance, and who as a result needs special education and related services. (20 U.S.C. § 1401(3)(A)(i), (ii); 34 C.F.R. § 300.8(a)(1).)

California law, which refers to students with disabilities as individuals with exceptional needs, defines an individual with exceptional needs as one who, because of a disability, requires instruction and services which cannot be provided with modification of the regular school program to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subds. (a) and (b).) A child may have a qualifying disability,

yet not be found eligible for special education if the student does not meet the IDEA eligibility criteria. (See *Hood v. Encinitas Union School Dist.* (9th Cir. 2007) 486 F.3d 1099, 1107-1108, and 1110.)

The IEP team is charged with the duty of reviewing assessment results, determining special education eligibility, determining the IEP contents, and making recommendations regarding a student's program and placement. (Ed. Code, § 56342.)

Parents and school personnel develop an individualized education program 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.)

To qualify as a child with a disability under the IDEA a student must meet the definition of one or more of the categories of disabilities which include intellectual disability, a hearing impairment, a speech or language impairment, a visual impairment, a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and demonstrate a need for special educational and related services as a result of his disability or disabilities. (34 C.F.R. § 300.8 (a)(1).)

Student alleges Temecula Valley failed to find him eligible for special education and related services in both other health impairment and autism. Student also asserts that Temecula Valley incorrectly determined he was no longer eligible under other health impairment and essentially ignored the protections provided under the IDEA other than continuing to implement his eighth grade IEP. As discussed further below,

Student remained eligible at the time of hearing for special education and related services in the category of other health impairment.

Student failed to establish he met his burden establishing eligibility in autism.

## AUTISM

Student argued further Temecula Valley denied him a FAPE for failing to find him eligible for special education and related services under the category of autism. Temecula Valley argues Student failed to demonstrate he was eligible for special education and related services in the category of autism. Temecula Valley further argues Student's medical diagnosis is not sufficient to establish eligibility absent an adverse impact on Student's educational performance.

Eligibility for special education and related services under autism is defined as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030 subd. (b)(1).)

Student did not meet his burden to establish Temecula Valley denied Student a FAPE for failing to find him eligible for special education and related services in autism. As discussed at length above, Student was reassessed on October 27, 2023, for his triennial eligibility determination. As part of his psychoeducational reassessment,

Student was assessed for autism utilizing the Autism Spectrum Rating Scales, called ASRS. The ASRS is designed to measure the behavior in children that are associated with autism spectrum disorders including

- unusual behaviors,
- social communication skills,
- socialization,
- sensory sensitivity,
- behaviorally rigidity, and
- stereotyped behaviors.

Mother and a teacher of Student completed the rating scales.

The triennial reassessment determined Student did not meet the eligibility requirements for eligibility under autism. Parents requested an IEE in psychoeducation which Temecula Valley granted; however, no evidence from that assessment was introduced during the hearing, nor did any assessor testify. Student did not meet his burden of proof to establish Temecula Valley denied him a FAPE for failing to find him eligible for special education and related services under autism during the 2023-2024 and 2024-2025 school years.

Thus, Temecula Valley did not deny him a FAPE on this basis during the 2023-2024 and 2024-2025 school years.

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## OTHER HEALTH IMPAIRMENT

Student argued Temecula Valley incorrectly determined he was not eligible for special education and related services in the category of other health impairment beginning in October 2023. Student argued that Temecula Valley's determination was incorrect.

Temecula Valley asserted that Student was no longer eligible under OHI as of October 2023, and was thus entitled only to "stay put" of his eighth grade IEP. Temecula Valley further asserted that Student needed to have proven at hearing that he was independently eligible for special education and related services under OHI as of October 2023 to prevail on this issue and that Student did not meet his burden.

Eligibility for special education and related services under other health impairment is defined as limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to a chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, fetal alcohol spectrum disorder, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and, adversely affects a child's educational performance (Cal. Code Regs., tit. 5, § 3030 subd. (b)(9).)

Student's IEP team met on October 27, 2023, to review his recent triennial assessments of him and determine if Student continued to be eligible for special education and related services. At this meeting, the Temecula Valley members of the team recommended Student no longer required special education and related services

to access his education. The Temecula Valley team members recommended Student be transitioned to a Section 504 plan pursuant to the Rehabilitation Act of 1973. (34 C.F.R. §104.3). Temecula Valley did not make a new offer of FAPE.

Parents did not consent to the recommendation to exit Student from special education at the October 27, 2023 IEP team meeting. The parties were at an immovable impasse at this juncture since Parents did not want to consent to exiting Student from special education and related services and the Temecula Valley members of the team believed he no longer required special education and related services. Instead, Temecula Valley conducted a war of attrition over three school years to force Parents to consent.

Temecula Valley did not file for a due process hearing to establish its determination to exit Student from special education was legally compliant. Moreover, other than marginally continuing to implement Student's eighth grade IEP, it stopped

- monitoring progress on his goals,
- conducting meaningful annual reviews,
- updating his goals and services,
- considering whether additional assessments were warranted, or
- engaging with Parents in a collaborative way other than to repeatedly request they consent to terminating Student's eligibility.

Temecula Valley's position is not legally supported. As discussed below, Student established that absent Temecula Valley filing for due process to have its decision to exit Student from special education deemed legally correct, Student was and remained eligible for special education under the category of OHI.

## FAILURE TO PROPERLY INITIATE AN EXIT FROM SPECIAL EDUCATION

Title 20 United States Code section 1414(c) outlines the requirements for reevaluating and then exiting a child from special education. It states the child's IEP team and other qualified professionals shall review existing assessment data, including evaluations and information from a child's parents, classroom-based observations, and input from the child's teacher and related service providers. Section 1414(c)(1)(B) goes on to state, the team on the basis of the review and input from child's parents, will identify what additional data, if any, is needed to determine whether the child continues to have such a disability and educational needs, and if the child continues to require special education and related services. California Education Code mirrors these requirements. (Ed. Code § 56381.)

Temecula Valley contends it complied with this requirement. Temecula Valley, however, unable to persuade Parents to consent to exiting Student, failed to act in compliance with the law and seek an administrative determination. (Ed. Code § 56346, subd., (f); 20. U.S.C. § 1415 (f).) Section 56346, subdivision (f) states in relevant part, "if the public education agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing will be initiated."

Temecula Valley's argument is that it was not required to file for due process because it did not believe Student required any special education supports and services. Thus, the legal question presented here is whether the determination a student is no

longer eligible for, and the parent does not consent to the exit, is encompassed in 56346, subd. (f)'s mandatory filing requirement. For the reasons cited below, the undersigned finds that it is.

The IEP is the cornerstone of special education and it sets forth the FAPE that is offered to a child with a disability. (34 C.F.R. § 300.17). The local education agency has an affirmative obligation to review a child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. (34 C.F.R. § 300.324 (b)((1)(i).) The local education agency then has an obligation, in conjunction with the IEP team, to revise the IEP as appropriate and make an offer to parents. (34 C.F.R. § 300.324 (b)((1)(ii).)

The Ninth Circuit determined a school district had an affirmative obligation to initiate a due process hearing when the school district and parents reach an impasse. (*I.R. ex rel. E.N. v. Los Angeles Unified Sch. Dist.*, 805 F.3d 1164, 1169 (9th Cir. 2015)). The Ninth Circuit further determined that Education Code section 56346 subdivision (f) prohibited a school district from artificially prolonging the process by failing to make the necessary determination that the impasse that occurred between parents and the school district was necessary to provide Student a FAPE. (*Ibid.*)

If the IEP is the cornerstone, eligibility is the foundation of which the house that provides all special education supports and services are built upon. Absent eligibility, a local education agency cannot offer special education supports and services. In the instant case, the record is clear, Temecula Valley IEP team members believed strongly Student no longer needed special education and related services to access his education, and thus he should be found ineligible. Brock Shannon, Student's case

manager, grew angry and frustrated with Parents at an IEP team meeting on May 2, 2025. He stepped away to quell his frustration; after telling Parents he believed Student was being harmed by receiving special education services. Justin Evangelist, Student's current case carrier, testified he did not know what else he could do to help Student, essentially arguing Student was unnecessarily receiving supports and services.

Meanwhile, Temecula Valley implemented a stale IEP dating back to Student's middle school years. Student is now about to enter his senior year in high school. He has had the same goals, services, and accommodations since he was in eighth grade. Temecula Valley believed in its position strongly enough to not waiver over the next seven IEP team meetings. By Temecula Valley's own contention Student remained in an inappropriate program. Temecula Valley's failure to seek authority to exit Student over parental objection or make an appropriate offer of FAPE denied him a FAPE during the 2023-2024, 2024-2025 and 2025-2026 until October 24, 2025 school years.

In *IR*, Student's IEP team believed Student required more supports and services to receive a FAPE. Here, it is the opposite. However, the same underlying rationale is applicable.

"If, in the school district's judgement, the child is not receiving a FAPE, the district must act with reasonable promptness to correct the problem by adjudicating the differences with parents. The reason for the urgency is that this is a child who suffers in the meantime ... the obvious point of the 56346 (f) is to minimize the duration of the denial of FAPE by requiring the school district, if it cannot reach agreement with the child's parent to initiate the process to adjudicate the dispute." (*I.R., supra*, 805 F.3d 1164, 1170.).

By all objective measures under statutory and *IR* analysis, Temecula Valley was obligated to initiate a due process hearing. As established, Temecula Valley's IEP team members strongly believed Student no longer met the eligibility criteria for special education and related services. If taken to the logical conclusion, had Temecula Valley filed, two things could have happened. Student would have been determined by an impartial hearing officer to no longer meet the eligibility criteria for special education and Temecula Valley would no longer be obligated to provide him special education and related services. At that point, Student would have not received outdated goals, supports and services developed in eighth grade through his junior year of high school. Or, he would have been determined to continue to meet the eligibility requirements and would be entitled to an annual FAPE offer with updated present levels and goals. In the instant case, neither action occurred. It is inconceivable that IDEA and *IR* stand for a proposition that essentially allows a school district to sit on their hands for almost the entirety of Student's high school career due to an impasse over eligibility.

Moreover, this statutory and case law analysis is further buttressed by the on-going obligation of local education agencies of child find. A school district bears an obligation to assess a child for special education when there is a reason to suspect the child may have a disability, and may need special education and related services. (Ed. Code § 56301, subd. (a).) This obligation to assess remains even if a child is advancing grade to grade. (Ed. Code § 56301, subd. (b)(1).)

Thus, had Temecula Valley properly exited Student from special education, and later Student's performance been adversely impacted by that removal, Temecula Valley would have had a new obligation to assess Student. Instead, he stayed in limbo for three years, receiving services and supports pursuant to a 13-year-old's IEP.

Moreover, school districts routinely initiate due process hearings with OAH seeking permission to exit students from special education. For example, the following OAH cases are where school districts sought authority to exit student from special education and related services:

- OAH case number 2021120575 *Ventura Unified School District v. Parent on Behalf of Student*,
- OAH case number 2016100527 *Los Angeles Unified School District v. Parent on Behalf of Student*, and
- OAH case numbers 2021110493 and 2021110347, the consolidated matters of *Parents on Behalf of Student and Saddleback Valley Unified School District*.

Thus, the greatest harm inflicted in the instant case is Temecula Valley's failure to properly exit Student from special education as this inaction resulted in Student spending the vast majority of his high school career in an inappropriate placement. At this juncture, Student need not independently prove his eligibility under OHI going back to October 2023. As Temecula Valley never filed to defend its offer to exit Student from special education, he remained eligible for special education and related services, entitled to all the protections of the IDEA.

Accordingly, Student met his burden of proof that due to Temecula Valley's inaction, he was denied a FAPE by Temecula Valley's decision he was no longer eligible under OHI during the 2023-2024, 2024-2025, and 2025-2026 school years through October 24, 2025.

ISSUE 1c, d, AND e: TEMECULA VALLEY DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BEGINNING OCTOBER 24, 2023, BY FAILING TO UPDATE STUDENT'S ANNUAL GOALS; OFFER GOALS APPROPRIATE TO STUDENT'S NEEDS IN THE AREAS OF ACADEMICS, PRAGMATICS, EXECUTIVE FUNCTIONING, TRANSITION, AUDITORY PROCESSING, AND SELF-ADVOCACY; OFFER APPROPRIATE SERVICES AND SUPPORTS TO ADDRESS STUDENT'S NEEDS IN THE AREAS OF ACADEMICS, PRAGMATICS, EXECUTIVE FUNCTIONING, TRANSITION, AND AUDITORY PROCESSING

As discussed above, Temecula Valley did not make a new FAPE offer to Student for the 2023-2024 school year at the October 27, 2023 IEP team meeting. Parents declined to exit Student from special education.

### ANALYZING A PROCEDURAL VIOLATION

Not all procedural violations are of legal consequence. A due process decision shall be based on substantive grounds whether the child received a FAPE. (20 U.S.C. § 1415 (f)(3)(E)(i); Ed. Code, § 56505, subd. (j) [decision cannot be based solely on a non-substantive error unless the error resulted in the loss of an educational opportunity or interfered with parental participation in the IEP process].) A procedural violation results in a denial of FAPE only if the violation impeded a child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2)& (j); *W.G. v. Board of Trustees of Target Range School Dist.* No. 23 (9th Cir. 1992) 960 F.2d 1479, 1484,

superseded in part on other grounds by 20 U.S.C. § 1414(d)(1)(B); *L.M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 910.) The Ninth Circuit has held that a procedural error that causes a loss of an educational opportunity denies Student a FAPE. (*Doug C. v. Hawaii Depart. Of Education* (9th Cir. 2013) 720 F.3d 1038, 1047.) "A procedural error results in the denial of educational opportunity, where absent the error, there is a 'strong likelihood' that the alternative educational possibilities for the student 'would have been better considered.'" (*Ibid* at p. 1047, quoting concurring opinion of Judge Gould in *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 657.)

After the October 27, 2023 IEP team meeting, Temecula Valley held three more IEP team meetings during the 2023-2024 school year where it reaffirmed its position that Student was no longer eligible for special education.

Student's IEP team met on February 23, 2024. Temecula Valley reaffirmed its position Student was no longer eligible and made no new offer. Parents again declined consent to exit Student.

Student's IEP team met on April 26, 2024. Temecula Valley again did not provide a FAPE offer. Parents again declined to consent to exit Student from special education.

The IEP team met for a final time during the 2023-2024 school year on June 5, 2024. Temecula Valley did not provide a FAPE offer as it argued Student did not require special education and related services. Parents declined to consent to exit Student.

Temecula Valley was obligated to file to defend its decision to exit Student, or offer him a new IEP. It did not. This take it or leave it approach deprived Parents of the opportunity to meaningfully participate in the decision-making process regarding Student's educational benefit.

Thus, Student proved the failure to offer updated goals, services, and supports, denied him a FAPE. However, it is unnecessary to reach a conclusion on each discrete area as the remedies for the failure would not change.

ISSUE 2d, e AND f: TEMECULA VALLEY DENIED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR, BY FAILING TO UPDATE STUDENT'S ANNUAL GOALS; OFFER GOALS APPROPRIATE TO STUDENT'S NEEDS IN THE AREAS OF ACADEMICS, PRAGMATICS, EXECUTIVE FUNCTIONING, TRANSITION, AUDITORY PROCESSING, AND SELF-ADVOCACY; OFFER APPROPRIATE SERVICES AND SUPPORTS TO ADDRESS STUDENT'S NEEDS IN THE AREAS OF ACADEMICS, PRAGMATICS, EXECUTIVE FUNCTIONING, TRANSITION, AND AUDITORY PROCESSING

As established above, after the October 27, 2023 IEP team meeting, Temecula Valley concluded Student no longer qualified for special education. And, as established above, Temecula Valley took no affirmative efforts to properly exit Student from special education. Instead, Temecula Valley held three more IEP team meetings.

Temecula Valley held an IEP team meeting on August 23, 2024. This meeting was scheduled to review the IEEs in psychoeducation and speech and language. The assessor who conducted Student's psychoeducational IEE did not appear at this IEP team meeting. Alvarez, the IEE speech and language assessor, was present and presented his findings instead. Temecula Valley made no offer of FAPE at this meeting.

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Temecula Valley held an IEP team meeting on October 1, 2024. This meeting was scheduled to allow the psychoeducational IEE assessor to present her findings. Neither the IEE assessor's report nor any corroborating testimony was admitted during this hearing. The report will be discussed further under section 2a. Temecula Valley did not make a FAPE offer at this meeting.

Temecula Valley held another IEP team meeting on February 11, 2025. At this meeting, the team continued to review Student's speech and language IEE and heard Parents concerns regarding Student struggling socially and with executive functioning. The team also heard from Dr. Amanda Levy, the audiologist hired to conduct Student's audiology IEE. Levy's participation will be discussed more fully below. Temecula Valley did not update present levels or goals, nor did it make an offer of FAPE to Student.

The final IEP team meeting of the 2024-2025 school year was held on May 2, 2025. At this meeting, the Temecula Valley IEP team members reiterated they had considered all assessments, both district and independent and determined Student no longer met the eligibility criteria for special education. The IEP team recommended Student transition to a 504-accommodation plan. Temecula Valley did not update present levels or goals, nor did it make an offer of FAPE to Student.

For the same reasons discussed above, Student met his burden to establish Temecula Valley denied him a FAPE during the 2024-2025 school year for failing to update goals, offer appropriate goals, and offer appropriate supports and services.

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ISSUE 3a, b AND c: TEMECULA VALLEY DENIED STUDENT A FAPE DURING THE 2025-2026 SCHOOL YEAR, UNTIL OCTOBER 24, 2025, BY FAILING TO UPDATE STUDENT'S ANNUAL GOALS; OFFER GOALS APPROPRIATE TO STUDENT'S NEEDS IN THE AREAS OF ACADEMICS, PRAGMATICS, EXECUTIVE FUNCTIONING, TRANSITION, AUDITORY PROCESSING, AND SELF-ADVOCACY; OFFER APPROPRIATE SERVICES AND SUPPORTS TO ADDRESS STUDENT'S NEEDS IN THE AREAS OF ACADEMICS, PRAGMATICS, EXECUTIVE FUNCTIONING, TRANSITION, AND AUDITORY PROCESSING

The last IEP team meeting Temecula Valley convened during the period at issue in this matter was May 2, 2025. No further IEP team meetings were convened. Thus, Student met his burden to establish Temecula Valley denied him a FAPE during the 2025-2026 school year until October 24, 2025, for failing to update goals, offer appropriate goals, and offer appropriate supports and services.

ISSUE 1f: TEMECULA VALLEY FAILED TO FACILITATE PARENT PARTICIPATION IN THE IEP TEAM MEETINGS

Student alleged Temecula Valley treated Parents as less than valuable team members and stymied their ability to participate in Student's educational process. Temecula Valley contends it facilitated parental participation at all IEP team meetings.

The IDEA requires school districts to ensure that the parents of disabled children are members of any group that makes decisions about their child's educational placement. (34 C.F.R. § 300.327 (2006); 34 C.F.R. § 300.501, subd. (c)(1)(2006). Federal and State law require that a district must afford parents of a child with a disability the

opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The IEP team must consider the concerns of the parent for enhancing the student's education, as well as information provided by the parent about student's needs. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C) (2017); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] ["[T]he informed involvement of parents" is central to the IEP process.]) Parental participation in the IEP process is considered "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

A school district is required to conduct, not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485, superseded on other grounds by statute); *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.) "Participation must be more than a mere form; it must be *meaningful*." (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 (emphasis in original).) A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Fuhrmann, supra*, 993 F.2d 1031, 1036.)

From October 27, 2023, until October 24, 2025, Temecula Valley convened seven IEP team meetings. Temecula Valley contends it listened to Parents' concerns, provided

them an opportunity to ask questions, and participate in Student's education. The evidence does not support such a contention. Both Parents testified to difficult IEP team meetings. Father testified to an altercation involving Student's case carrier. Tempers and emotions were heated, especially at the May 2, 2025 IEP team meeting where case carrier Brock Shannon left the meeting early out of frustration.

The parties came to an impasse over Student's continued eligibility for special education and related services. Temecula Valley continued to hold IEP team meetings with zero evidence the Temecula Valley team members could be persuaded to change their position. Once the Temecula Valley members of the IEP team decided Student was no longer eligible for special education during his freshman year, the team rested on that decision. As established above, the team took no steps to legally effectuate Student's exit from special education.

Temecula Valley's approach in this matter is akin to predetermination. The evidence demonstrated Temecula Valley members of the IEP team arrived at the IEP team meetings with an outcome already determined. Established case law requires school districts not to arrive at IEP team meetings with a take it or leave it offer, not be impermissibly wedded to a single course of action, and demonstrate evidence it has an open mind and might possibly be swayed.

As discussed above the IEP team met at least three times to review IEE's granted by Temecula Valley for Student. Despite appearing open to receiving the information from the IEE assessors, the IEP team's willingness to listen did not overcome the take it or leave it approach the Temecula Valley members of Student's IEP team had to the question of Student's eligibility for special education.

Both Parents testified to the extensive efforts they made to work with Student to ensure he made progress in his education. Father testified persuasively to the multiple hours he spent each night going over Student's assignments and grades in the classroom management system. Both Parents were active participants in all seven of the IEP team meetings. They asked questions, advocated for their son, and sought to understand. Despite this, Temecula Valley made no changes to the IEP designed and implemented for an eighth grader. Instead, Temecula Valley team members were impermissibly wedded to the exit determination, and reiterated at every opportunity that it did not believe Student was eligible for special education. Yet, it took no action as required by law to effectuate any change. This is a procedural violation. Student established that this take it or leave approach deprived Parents of meaningful participation. Additionally, it had an adverse impact on Student's educational program as he received services from an IEP that was designed for an eighth grader.

In most cases, providing parents an opportunity to attend IEP team meetings, listen to their concerns, and an opportunity to ask questions might be sufficient to ensure parental participation. In this instance, Student met his burden to demonstrate that Temecula Valley denied Student a FAPE by failing to facilitate parental participation.

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ISSUE 1g: STUDENT PROVED TEMECULA VALLEY FAILED TO IMPLEMENT STUDENT'S OPERATIVE INDIVIDUALIZED EDUCATION PROGRAM, CALLED IEP, DATED NOVEMBER 3, 2022, SPECIFICALLY SERVICES, ACCOMMODATIONS, AND MODIFICATIONS

Student contends that Temecula Valley failed to implement his IEP services and accommodations. Temecula Valley argues it implemented Student's November 3, 2022 IEP.

When a student alleges the denial of FAPE based on the failure to implement an IEP, the student must prove any failure to implement the IEP was "material." "Material" means the services provided to a disabled child fall "significantly short of the services required by the child's IEP. (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 822. There is no statutory requirement for perfect adherence to the IEP nor is there a requirement to view minor implementation failures as a denial of FAPE. (*Id.* at p. 821.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (*Id.* at p. 815.)

Student's November 3, 2022 IEP provided him with 100 minutes per week of push-in math support and 100 minutes per week of push-in English support. Student argues in his closing brief that the logs produced at hearing demonstrated he was denied 3,200 minutes of missed service time. Student's math is wrong. What Student is not wrong about is the logs demonstrating that he did not receive all his specialized academic instruction provided for in his IEP.

The evidence demonstrated Student received only 100 minutes of specialized academic instruction in the following weeks:

- November 13, 2023 - November 17, 2023
- December 4, 2023 - December 8, 2023
- December 11, 2023 - December 15, 2023
- January 8, 2024 - January 12, 2024
- January 15, 2024 - January 19, 2024
- January 22, 2024 - January 26, 2024
- January 29, 2024 - February 2, 2024

Based on the logs, Student was denied 700 minutes of specialized academic instruction during the above weeks when he only received half of his allotted time.

The evidence demonstrated Student received no specialized academic instruction during the following weeks:

- October 30, 2023 - November 3, 2023
- November 6, 2023 - November 10, 2023
- November 27, 2023 - December 1, 2023
- May 20, 2024 - May 24, 2024
- May 27, 2024 - May 31, 2024
- June 3, 2024 - June 7, 2024

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The evidence demonstrated Student was denied 1,200 minutes of specialized academic instruction during the above weeks when he received none of his allotted time. Student met his burden to demonstrate Temecula Valley failed to implement 1,900 minutes of specialized academic instruction during the 2023-2024 school year from October 24, 2023.

There were 180 days of school over the 2023-2024 school year. From October 24, 2023, until June 7, 2024, there were 26 weeks of instruction. To that end, Student was entitled to 5,200 minutes of specialized academic instruction. The evidence demonstrated that he did not receive 1,900 minutes of instruction or 36 percent of his allocated specialized academic instruction. This is much more than a minor implementation issue. Student met his burden to demonstrate he was denied a FAPE for materially failing to implement his specialized academic instruction.

Student further argues an FM System, known as a frequency modulation system, was part of Student's accommodations. Temecula Valley argues it never precluded Student from utilizing the FM System. An FM System is sound-field amplification system where the teacher's voice is transmitted from a microphone to speakers mounted in the classroom. Student was not comfortable using the Temecula Valley provided FM System during eighth grade and would not use it.

Student's November 3, 2022 IEP provided him with an accommodation of direct connect FM system or other assistive technology for the entire school day. The evidence demonstrates the IEP team knew at the October 27, 2023 IEP team meeting, Student's FM system was unavailable to Student. Father testified persuasively that when he learned Student was not using the FM system, he sought an alternative that Student would use. Father found the Live Listen application and installed it on Student's phone.

Student was willing to utilize the Live Listen because it allowed Student to use his AirPods and I-phone for hearing assistance. Parents provided the Live Listen and AirPods to Student. Karen Igo, an audiologist with Temecula Valley testified she spoke to Father about the Live Listen system and determined it would meet Student's audiology needs. However, Temecula Valley took no steps to provide Student a device, application, or alternative listening system to meet Student's needs. Instead, Temecula Valley was aware Student was utilizing a parentally provided commercial product to access his education.

Student also proved Temecula Valley materially failed to implement his program accommodations and modifications, specifically, his FM System. Student's last consented to and implemented IEP, dated November 3, 2022, provided that Student received a direct connect FM system or other assistive technology for all day use in the classroom. Temecula Valley failed to provide any assistive technology to Student.

Father testified he found the Live Listen, installed it on Student's I-phone and taught him to utilize it. Igo confirmed this during her testimony. Temecula Valley cannot simply hand-waive their obligation to provide Student with assistive technology because Parents had the means to provide an alternative method. (34 C.F.R. § 300.17(a).)

Moreover, Temecula Valley's failure to provide school-issued technology created issues for both Student and teachers as the evidence supports teachers, such as Lauren Davis, Student's science teacher, raised concerns about Student's I-Phone use being a distraction to others and Student engaging in off-task behavior with it. Once it was established that the technology worked for Student, Temecula Valley was obligated to amend his IEP. There is no evidence Temecula Valley took the steps to provide Student

with a public device that could have utilized the platform. Temecula Valley shifted its responsibilities to provide Student an enhanced listening device pursuant to this IEP to Parent.

The evidence established this was a material failure to implement Student's IEP. Student met his burden he was denied a FAPE for failing to implement his assistive technology.

## ISSUE 2b: TEMECULA VALLEY DID NOT FAIL TO CONSIDER THE INDEPENDENT AUDIOLOGY EVALUATION

Student contends Temecula Valley denied him a FAPE by failing to meaningfully consider the recommendations of independent educational evaluator Dr. Amanda Levy at the IEP team meeting held on February 11, 2025. Temecula Valley contends it meaningfully considered Dr. Levy's recommendations. Student failed to meet his burden of proof on this issue.

When presented with a private expert's evaluation report or independent educational evaluation at public expense, a school district must consider the results of the assessment, in any decision made with respect to the provision of FAPE to a student. (34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329, subd. (c).) The district is not required to adopt the conclusions of such an evaluation. (*Ibid.*; *Michael P. v. Dept. of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066 (fn. 9); See *T.S. v. Board of Education of Town of Ridgefield*, (2nd Cir. 1993) 10 F.3d 87.)

Evidence that district IEP team members have considered a private evaluation include factors such as a lengthy discussion of the evaluation at an IEP team meeting or

alteration of IEP provisions in response to suggestions made by the private assessor. (Michael P., *supra*, at p. 1066 (fn. 9).); *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.* (C.D. Cal., Aug. 1, 2007, No. SACV06847CJCLGX) 2007 WL 9719115, at \*3–4) [nonpub. opn.]

The IEP team is required to consider the expert’s input. However, it is not required to follow the outside expert’s recommendations. (*Capistrano Unif. Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1134.)

Dr. Levy reviewed her report with the IEP team on February 11, 2025. Dr. Levy provided her recommendation that Student met the criteria for Auditory Processing Disorder. She gave a diagnostic opinion and made recommendations for accommodations for Student. The team recognized the thoroughness of Dr. Levy’s report.

Student failed to meet his burden on this issue.

## ISSUE 2a: TEMECULA VALLEY DID NOT FAIL TO CONSIDER THE INDEPENDENT PSYCHOEDUCATIONAL EVALUATION AT THE OCTOBER 1, 2024 IEP TEAM MEETING

Student contends Temecula Valley denied him a FAPE by failing to consider the independent psychoeducational evaluation at the October 1, 2024 team meeting. Temecula Valley contends it considered the psychoeducational IEE.

As discussed above, the law requires an IEP team to consider the results of the assessment, in any decision made with respect to the provision of FAPE. In this instance, the evidence demonstrated that the assessor was invited, presented an opportunity to

present her findings, and members of the team were given an opportunity to ask questions. No evidence from this IEE was presented at hearing nor did the assessor testify.

Student failed to meet his burden of proof on this issue.

## 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 1a:

Student failed to meet his burden of proof that Temecula Valley denied Student a FAPE by failing to conduct sufficiently comprehensive psychoeducational and speech and language assessments in October 2023.

Temecula Valley prevailed on Issue 1a.

### ISSUE 1b:

Student failed to meet his burden of proof that Temecula Valley denied Student a FAPE by failing to find Student eligible for special education under the category of autism. Student established Temecula Valley denied him a FAPE by

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failing to find Student eligible under other health impairment because Temecula Valley failed to take steps to properly exit Student from special education.

Temecula Valley partially prevailed on Issue 1b and Student partially prevailed on Issue 1b.

#### ISSUE 1c:

Student proved that Temecula Valley denied him a FAPE for failing to update Student's annual goals during the 2023-2024 school year beginning October 24, 2023.

Student prevailed on Issue 1c.

#### ISSUE 1d:

Student proved that Temecula Valley denied him a FAPE for failing to offer goals appropriate to Student's needs in the areas of academics, pragmatics, executive functioning, transition, auditory processing, and self-advocacy during the 2023-2024 school year beginning October 24, 2023.

Student prevailed on Issue 1d.

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### ISSUE 1e:

Student proved that Temecula denied him a FAPE for failing to offer appropriate services and supports to address Student's needs in the areas of academics, pragmatics, executive functioning, transition, and auditory processing during the 2023-2024 school year beginning October 24, 2023.

Student prevailed on Issue 1e.

### ISSUE 1f:

Student proved that Temecula Valley denied him a FAPE for failing to facilitate parent participation in IEP team meetings during the 2023-2024 school year beginning October 24, 2023.

Student prevailed on Issue 1f.

### ISSUE 1g:

Student proved that Temecula Valley denied him a FAPE for failing to implement Student's operative individualized education program, called IEP, dated November 3, 2022, specifically services, accommodations, and modifications during the 2023-2024 school year beginning October 24, 2023.

Student prevailed on Issue 1g.

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### ISSUE 2a:

Student failed to meet his burden that Temecula Valley denied Student a FAPE by failing to consider the independent psychoeducational evaluation at the October 1, 2024 IEP team meeting.

Temecula Valley prevailed on Issue 2a.

### ISSUE 2b:

Student failed to meet his burden that Temecula Valley denied Student a FAPE by failing consider the independent audiology evaluation.

Temecula Valley prevailed on Issue 2b.

### ISSUE 2c:

Student failed to meet his burden of proof that Temecula Valley denied Student a FAPE by failing to find Student eligible for special education under the category of autism. Student established Temecula Valley denied him a FAPE by failing to find Student eligible under other health impairment because Temecula Valley failed to take steps to properly exit Student from special education.

Temecula Valley partially prevailed on Issue 2c and Student partially prevailed on Issue 2c.

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#### ISSUE 2d:

Student proved that Temecula Valley denied him a FAPE for failing to update Student's annual goals during the 2024-2025 school year.

Student prevailed on Issue 2d.

#### ISSUE 2e:

Student proved that Temecula Valley denied him a FAPE for failing to offer goals appropriate to Student's needs in the areas of academics, pragmatics, executive functioning, transition, auditory processing, and self-advocacy during the 2024-2025 school year.

Student prevailed on Issue 2e.

#### ISSUE 2f:

Student proved that Temecula Valley denied him a FAPE for failing to offer appropriate services and supports to address Student's needs in the areas of academics, pragmatics, executive functioning, transition, and auditory processing during the 2024-2025 school year.

Student prevailed on Issue 2f.

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### ISSUE 3a:

Student proved that Temecula Valley denied him a FAPE for failing to update Student's annual goals during the 2025-2026 school year, until October 24, 2025.

Student prevailed on Issue 3a.

### ISSUE 3b:

Student proved that Temecula Valley denied him a FAPE for failing to offer goals appropriate to Student's needs in the areas of academics, pragmatics, executive functioning, transition, auditory processing, and self-advocacy during the 2025-2026 school year, until October 24, 2025.

Student prevailed on Issue 3b.

### ISSUE 3c:

Student proved that Temecula Valley denied him a FAPE for failing to offer appropriate services and supports to address Student's needs in the areas of academics, pragmatics, executive functioning, transition, and auditory processing during the 2025-2026 school year, until October 24, 2025.

Student prevailed on Issue 3c.

## REMEDIES

Student partially prevailed on Issues 1b and 2c and prevailed on issues 1 subsections c, d, e, f and g, Issue 2 subsections d, e, and f, and Issue 3 in its entirety.

In his due process complaint Student requested a finding he remained eligible for special education, compensatory education through tutoring, speech and language support, executive functioning coaching, and transition services all through a non-public agency. He requested direct remediation in auditory rehabilitation, auditory training sessions, and funding for appropriate assistive technology applications. He requested in-service staff training for all staff members at Great Oak High School by a provider selected by the Parents. He finally requested an IEP team meeting be ordered where Student's present levels are updated, goals are introduced, and services in the areas of specialized academic instruction, speech and language, mental health counseling, and social skills be provided to Student.

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for a FAPE denial. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385].) In remedying a FAPE denial, a student is entitled to relief that is "appropriate" in light of the IDEA purposes, specifically providing student with a FAPE which emphasizes special education and related services to meet student's unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006).) "Equitable considerations are relevant in fashioning relief" under the IDEA. (*Burlington*, *supra*, 471 U.S. 359, 374.) Courts may rectify FAPE denials by providing compensatory education, an equitable remedy that aims to bring the student "to the point he would have been, had he received a FAPE all along." (*R.P. ex rel. C.P. v. Prescott Unified. Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).) An award of compensatory education is not required to provide day-for-day or hour for hour compensation. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489,

1497 (*Puyallap*.) By its nature, equitable relief is a fact-specific inquiry in which “the conduct of both parties must be reviewed to determine whether relief is appropriate.” (*Id.* at p.1496.)

Here, Student established he was denied a FAPE from October 24, 2023, until October 24, 2025, for failing to update Student’s annual goals, offer goals appropriate to Student’s needs, and offer appropriate supports and services to address Student’s needs.

In remedying a FAPE denial, a student is entitled to relief that is “appropriate” considering the IEP purposes. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Puyallup, supra*, 31 F.3d. at p. 1497.)

Student did not submit any evidence that addressed reimbursement or compensatory services. This requirement is listed in the Order Following Prehearing Conference. Absent meeting this requirement, the undersigned relied on equitable judicial discretion to craft an appropriate remedy. The undersigned considered all of Student’s request for remedies to include

- tutoring,
- speech and language services,
- coaching,
- audiology services, and
- mandatory training for staff at Student’s high school.

Student established he required assistive technology accommodations to access his education. Parents and Temecula Valley personnel settled on a privately purchased application incorporated into Student's personal cell phone. This Decision makes no finding on the appropriateness of Live Listen as an audiological service. The record is clear this is the device Student is willingly using to access his education. However, relying on Parents to provide the accommodation Student required undermines the intent of the IDEA. Temecula Valley will acquire and issue to Student technology that supports the Live Listen service and any ancillary devices required such as ear buds.

Father testified he obtained private math tutoring to ensure Student could access his education. Parents will be reimbursed for math tutoring obtained during the period of October 24, 2023-October 24, 2025, subject to proof of payment.

Temecula Valley will arrange a bank of 20 hours, in the amount not to exceed \$150 per hour, for Student to access in any educationally related service, such as tutoring, speech and language support, executive functioning coaching, and transition services. Student will have access to this bank of hours until exhausted or he graduates from high school whichever is first.

Nothing precludes Temecula Valley from properly seeking to exit Student from special education. However, Student remains eligible for special education and as child under the IDEA is entitled to an IEP offer.

Finally, staff training in this case is paramount. Many of the issues in this case could have been resolved with a better understanding of both legal obligations and legal terms of art. For example, Temecula Valley convened an IEP team meeting on

February 23, 2024, to address services in Student's IEP calling it a stay put IEP team meeting. Student was informed by Temecula Valley personnel at multiple IEP team meetings and correspondence that his IEP offer was in "stay put."

The stay put provision is intended to protect students from disrupting their education during the pendency of dispute. Stay put entitles a student to remain in their current placement, often seen as the last agreed upon and implemented IEP, unless parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518 (a)(2006); Ed. Code § 56505.)

Stay put is not triggered until an administrative or judicial proceeding is initiated. It is further not triggered by a refusal to act. There is no evidence Parents filed for due process prior to the October 24, 2025 filing in the instant case. Further, there is no evidence, Temecula Valley filed for due process in this case. Thus, the stay put provision was not triggered until October 24, 2025.

Instead, Temecula Valley conflated its responsibilities to implement parts of the IEP not consented by Parents under Education Code 56346 subdivision (e) with the legal obligations of stay put. This failure stems from a fundamental lack of understanding of stay put on the part of Temecula Valley personnel and its purpose under the IDEA. The evidence demonstrated stay put became a weapon and a shield wielded against Parents. Which is all the more disappointing when the entire time Temecula Valley had an option available -- seek an administrative determination to exit Student.

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The next area in need of remediation is the proper procedure to exit a student from special education. Temecula Valley decided on October 24, 2023, Student no longer required special education and related services. As this Decision is being written, Temecula Valley still has not moved to properly exit Student from special education. Instead, Temecula Valley spent three school years conducting IEP team meetings to nowhere. This is a disservice to Student, his Parents, and the faculty members of the IEP team who carve out time from already overstretched schedules to support students with disabilities.

Training for school district personnel is also an appropriate remedy, as the IDEA does not require compensatory education services to be awarded directly to a student. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific student involved, or to remedy procedural violations that may benefit other students. (*Ibid.*)

The evidence in this case established that training is warranted for Temecula Valley's special education personnel who promulgated and perpetuated the stay put myth and failed to properly supervise an IEP team that was clearly flummoxed. The training should include all special education specialists, program specialists, administrators, and the special education directors who at any time oversaw Student's case. At Temecula Valley's discretion special education providers such as school psychologists and speech and language pathologists may also participate in this training.

Temecula Valley shall provide a minimum of two hours of training to the above personnel from an independent third party unaffiliated with Temecula Valley. The training shall address the legal requirements and best practices for properly exiting a student from special education, and the distinction between stay put and Education Code section 56346 subdivision(e).

## ORDER

1. Within five days of this Decision, Temecula Valley shall obtain and issue to Student a device and all ancillary accessories that will allow Student to access his assistive technology accommodation utilizing Live Listen.
2. Within 30 days of this Decision, Parent shall provide to Temecula Valley receipts and proof of payment of all privately obtained math tutoring, or outside mathematics support, obtained from October 24, 2023, until October 24, 2025. Within 45 days of receiving proof of payment, Temecula Valley will reimburse Parents the cost of the math tutoring.
3. Temecula Valley must fund 20 hours of services to be used at Parents' election in tutoring, speech, coaching, or transition assistance on a reimbursement model. The rate will not exceed \$150 per hour. These services will be available to Student until he graduates from high school or the hours are exhausted, whichever is first.
4. Within 60 days of this Decision, Temecula Valley shall contract with an independent third party with special education expertise, unaffiliated with Temecula Valley, to conduct two, one-hour trainings to all special education specialists, program specialists, administrators, and the special

education directors who at any time oversaw Student's case. The training shall address the procedures to properly exit a student from special education and the law and policy behind stay put, and the distinction of implementation requirements in Education Code section 56346 subdivision(e).

5. All other requests for relief are denied.

## 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.

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings