

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT.

OAH Case No. 2018060196

DECISION

Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings on May 30, 2018, naming Huntington Beach Union High School District. On July 10, 2018, OAH granted the parties' joint request for a continuance.¹

Administrative Law Judge Paul H. Kamoroff heard the matter in Huntington Beach, California, on September 4, 5, 6 and 26, 2018.

Mother represented Student and, as his conservator, held his educational rights. OAH provided a Vietnamese translator to assist Mother during each day of the hearing. Student attended the hearing during the day that he testified. Father attended part of one day of the hearing.

Epiphany Owen, Attorney at Law, represented Huntington Beach. Douglas

¹ Huntington Beach filed its response to Student's complaint on June 8, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir.) 858 F.3d 1189, 1199-1200.)

Siembieda, Huntington Beach's special education director, attended the hearing.

At the request of the parties, OAH continued this matter for closing briefs. The record closed on October 8, 2018, upon receipt of written closing briefs.

ISSUES

1. Did Huntington Beach deny Student a free appropriate public education, from June 2016 to the present, by failing to provide him with an hour a day of speech and language therapy to address his communication needs?

2. Did Huntington Beach deny Student a FAPE by failing to conduct an appropriate speech and language assessment in December 2016, because it failed to properly address his communication needs and deficits?

3. Did Huntington Beach deny Student a FAPE by failing to consider and implement recommendations of his speech and language independent educational evaluation, dated March 28, 2018?

4. Did Huntington Beach deny Student a FAPE by failing to make a decision about the recommendations from Student's speech and language independent educational evaluation at the individualized education program team meeting held on March 28, 2018?

SUMMARY OF DECISION

Student had autism and communication delays. He attended an adult transition program that was designed to assist young adults with disabilities develop functional communication, vocational, and independent living skills.

Student primarily complains that Huntington Beach failed to offer an hour daily, five days per week, of individual speech and language services, as recommended by an independent assessor. Huntington Beach avers that it provided appropriate services as part of its adult transition program, in light of Student's age and need to develop

functional communication and independent living skills.

The Decision finds that Student failed to show that he required an hour daily of speech and language services to receive a FAPE, given the design of the adult transition program and the services embedded in that placement. Additionally, Student did not demonstrate that Huntington Beach failed to appropriately assess him, or to adequately consider Student's independent educational evaluation.

FACTUAL FINDINGS

THE STUDENT

1. Student was a 22-year-old conserved young man who resided with his Parents within Huntington Beach's boundaries during the applicable time frame. Since 2001, Student received special education under the primary eligibility category autism. Through 2016, Student was identified with a secondary eligibility category, intellectual disability. Beginning in December 2016, the secondary category changed to speech and language impairment.

2. Autism is a spectrum developmental disorder characterized by difficulties with social interaction, communication, and behavior. Intellectual disability is a neurodevelopmental disorder characterized by impaired intellectual and adaptive functioning. Speech and language impairment is identified by an articulation or fluency disorder, or abnormal voice, or expressive or receptive language disorder. As a result of his disability, Student demonstrated autistic-like behaviors and cognitive skills in the low range. His disabilities impacted his ability to communicate and relate appropriately with peers and adults, and to meet age-appropriate academic content standards.

3. Since kindergarten, Student received special education and related services through an IEP, including specialized academic instruction and speech and language services. Due to the severity of his disability, Student was placed on a

certificate of completion track, rather than receiving a high school diploma following the regular four years of high school. Consequently, Huntington Beach was required to offer Student special education through the end of the school year that Student turned 22 years of age. For Student, that was the 2017-2018 school year.

4. Student turned 18 years old in March 2014. For the following four school years, Huntington Beach placed Student in adult programs, until he aged out of special education in June 2018. Student first attended an adult program at Edison High School, a Huntington Beach school, during the 2014-2015 and 2015-2016 school years. Student believed the program was too low functioning and often refused to attend school. At Parents' request, in summer 2016, Huntington Beach transferred Student to its Quest adult transition program, located at Westminster Mall. Student attended Quest through the end of his school career.

5. Student's last agreed upon annual IEP was dated December 9, 2015, which preceded the timeframe in dispute. The following people attended the IEP team meeting: Mother; Student; a Regional Center of Orange County representative; a Huntington Beach special education teacher; Huntington Beach administrator; and a Vietnamese interpreter.² At that time, Student avoided others, was not engaged at school, failed to complete work, and rarely spoke. When he did speak, it was only to preferred staff and on a very limited basis. Student refused to speak to peers and normally attempted to avoid others altogether.

6. The IEP team offered Student five goals. The first goal was in expressive language and required Student to communicate that he was present in class by raising

² Student received at-home applied behavior analysis services through the regional center, and it was normal for a regional center representative to attend his IEP team meetings.

his hand or turning to the teacher, making eye contact and nodding “yes,” when his name was called during roll call, on three of five consecutive trial days. Goal two called for Student to use a keyboard to write and send an electronic mail message to family or the teacher. Goal three, in independent living, required Student, when walking off campus, to stop at intersections and check for cars before crossing, in four of five trials. The fourth goal, following directions, called for Student to complete at least one task per day during class, in one of five trials. Goal five was in the area of behavior and required Student to exit the classroom within two minutes of the first request, in nine of 10 trials. The IEP team, including Mother, determined that the goals were commensurate with Student’s abilities and appropriate in light of his disability.

7. To meet the goals, the IEP team offered Student various accommodations and the following services: specialized academic instruction, 250 minutes daily, five days per week; career services, 500 minutes annually; job coaching, 750 minutes annually; an individual transition plan; and extended school year services. Placement was offered in the adult program at Edison High School.

8. On April 25, 2016, Huntington Beach convened an addendum IEP team meeting to transfer Student to the Quest program at Westminster Mall for a diagnostic period, the 2016 extended school year. On July 22, 2016, Huntington Beach amended Student’s IEP to keep Student at Quest for the 2016-2017 regular school year.

9. The 2016-2017 school year began on August 31, 2016. On September 26, 2016, Huntington Beach convened an addendum IEP team meeting to address aggressive behaviors that Student demonstrated in class, and his refusal to talk with peers. Huntington Beach amended the IEP to include five, 30-minute sessions of counseling and guidance, to improve Student’s behavior and communication. Mother consented to the addendum IEP.

10. On October 31, 2016, Huntington Beach presented Parents an assessment

plan for Student's triennial assessments. Parents consented to the plan on November 4, and Huntington Beach timely completed a multidisciplinary assessment on December 6, 2016. Huntington Beach had previously assessed Student in January 2014, so the December 2016 triennial evaluation was a reassessment.

11. Huntington Beach selected school psychologist Dr. Deborah Ward, special education teacher Eric Abbascia, speech and language pathologist Brenna King, and speech and language pathologist and assistive technology specialist Hailey Romero, to conduct the assessment. Huntington Beach conducted the assessment over four days in November 2016. Although Vietnamese was spoken in Student's home, Student spoke English at school and English was his dominant language. Therefore, testing was appropriately conducted in English. The assessors reviewed Student's school records; interviewed Student; interviewed school staff; observed Student during testing and in the classroom; and performed standardized and non-standardized testing. Each assessor was qualified to conduct the testing that he or she was responsible for conducting. For example, Dr. Ward received her Ph.D. in psychology, masters' in psychology, and school psychology. She was a school psychologist since 2008, and regularly assessed and provided counseling services to students with disabilities. Mr. Abbascia was a credentialed mild/moderate special education teacher and was Student's teacher and case manager at Quest. Ms. King held a bachelor's degree in communication disorders and a master's degree in speech pathology. She was a speech and language pathologist for Huntington Beach since 2014, where she conducted evaluations, collaborated with teachers, and provided direct services for pupils ranging from 13 to 22 years old. Ms. Romero had a multiple subject teaching credential, a master's degree in communicative disorders, certified by the American Speech-Language Hearing Association and licensed by the California Speech-Pathology and Audiology Board. She had been a teacher, program specialist, applied behavior analysis therapist, and was an assistive

technology/augmentative and alternative communication specialist for Huntington Beach and a speech and language pathologist for Cornerstone Therapies, a nonpublic agency, at the time of the hearing.

12. Ms. King and Ms. Romero jointly conducted the speech and language and assistive technology testing for Student's triennial assessment. They utilized observations, teacher interview, Student interview, language sample, the Oral Peripheral Examination; Receptive One Word Picture Vocabulary Test, Fourth Edition; and the Expressive One Word Picture Vocabulary Test. Based upon their interviews with Student's teacher Mr. Abbascia and Student, and observations of Student in the classroom, Ms. King and Ms. Romero determined that Student preferred using non-verbal forms of communication in the classroom, including his speech-to-text application on the iPod,³ or pencil and paper. Throughout his education, Student chose to speak minimally at school, and the assessors believed that assistive technology would help Student feel more comfortable communicating in the classroom. At home, Student sometimes spoke to himself orally, but normally used gestures to communicate with his family.

13. During testing, Student demonstrated autistic-like behaviors including self-stimulatory behaviors and movement, made no eye-contact, and hummed to himself. During classroom observations, Student was withdrawn and did not participate. After repeated prompts to respond to questions, Student responded using his iPod.

14. For the language sample, Student responded by using gestures or wrote out his response. Student perseverated on topics but could write sentences of five to seven words in length. Student's vocabulary was age appropriate, but contained syntactical errors. Overall, semantics was an area of strength, while syntax and utterance

³ An iPod is a touchscreen tablet computer.

length were areas of weakness.

15. The Test of Stimulability revealed that Student had vocal weakness and difficulty producing various phonemes. The Oral Peripheral Examination found that Student had normal strength of lips and cheeks, and weakness in his tongue. Additionally, Student presented with articulation errors that were not the result of his Vietnamese dialect. He also demonstrated a high pitch voice and low volume tone.

16. The assessors next administered the Receptive One Word Picture Vocabulary Test, Fourth Edition, which measures English receptive vocabulary. Student scored at the first percentile, the below average range, when compared to same aged peers. Student did better on the Expressive One Word Picture Vocabulary Test, Fourth Edition, which measures English expressive vocabulary. Student scored at the 16th percentile, the average range compared to his same aged peers.

17. In the area of assistive technology, Student had been using notepads to communicate and trialing the iPod touch with communication software and the application Text to Speech. The application produced voice output of Student's typed statements and permitted Student to increase his participation in the classroom.

18. Overall, Student demonstrated challenges in pragmatic language. He preferred to communicate using either notepads or an electronic device. Student had a moderate articulation disorder and unable to produce certain phonemes. He had vocal weakness, a high pitch voice, and was difficult to hear due to low volume. The assessors recommended that Student use a speech-generating device or notepad when interacting with staff and peers and be given opportunities to participate in classroom and small group discussions. Ms. King and Ms. Romero recommended that staff "honor" Student's preferred mode of communication, which might be non-verbal. The assessment determined that Student qualified for special education eligibility under Speech and Language Impaired, due to falling below the seventh percentile on

standardized testing and for displaying inappropriate usage of expressive language as measured by the language sample. Student had a speech and language impairment that adversely affected his educational performance and required special education services.

19. Huntington Beach's speech and language assessment was comprehensive and conducted by two qualified assessors. During hearing, Ms. King and Ms. Romero credibly testified in support of their assessment, and no countervailing evidence regarding the assessment was provided by Student.

20. On December 7, 2016, Huntington Beach held an annual IEP team meeting to review Student's IEP and the triennial assessments. Student was 20 years old. Mother and Student attended the meeting, along with a Vietnamese interpreter and a representative from the regional center. Huntington Beach team members included administrator Andrew Kuhlman; Dr. Ward; Ms. Romero; Ms. King; and Mr. Abbascia.

21. The team first reviewed Student's present levels of performance, including his progress towards his December 2015 goals. Student met goals one, three, and five, in the areas of expressive language, independent living, and behavior, respectively. He made some progress towards goal two, in communication, but made little progress towards goal four, completing tasks. Student had progressed in the areas of functional math and reading. Student still had difficulty communicating, was distracted, nervous, and sometimes aggressive towards another student. However, he had begun participating more in class after being provided assistive technology, including the iPod.

22. The IEP team next reviewed the triennial multidisciplinary assessment. Each assessor presented at the meeting, explained the results of their testing, and answered Mother's various questions regarding the assessments. The team was not surprised by the assessment results, and believed it was consistent with Student's autism disability. Moreover, Ms. King was concerned regarding Student's lack of tongue strength and suggested that Student, when he felt comfortable, should talk more.

23. Based upon the 2016 triennial assessment, the IEP team renewed Student's primary eligibility under autism, and changed his secondary eligibility from intellectual disability to speech and language impaired.

24. The team crafted five new goals to meet Student's unique needs. The first goal was in functional writing and required Student to use a computer to write. Goal two, in independent living skills, called for Student to independently use public transportation. Goal three was in the area of following directions and required Student to complete an assigned task. The fourth goal was in vocational and communication development, and required Student to read and complete a simple employment application. The fifth goal, in speech and language, sought for Student to participate in class using any mode of communication.

25. To meet the goals, Huntington Beach offered accommodations and related services. Accommodations included extra time for exams and assignments; verbal and written directions; options for writing or typing responses; and modified curriculum. Related services included group specialized academic instruction, 180 minutes daily; counseling and guidance services, 30 minutes per session, five sessions per year; college awareness and transition services; and individual speech and language services, 30 minutes per month. Specialized academic instruction was also offered during the extended school year. Student would remain at the Quest adult transition program. Mother did not consent to the IEP.

26. On March 28, 2017, Huntington Beach reported that Student continued making progress towards the December 2015 IEP goals. He had met goals two and four, and had increased his ability to meet goals one, three and five.

27. On May 9, 2017, Huntington Beach convened an addendum IEP team meeting to discuss Parents' concerns related to their refusal to consent to the December 2016 IEP. The same participants to the December 2016 IEP team meeting attended the

addendum meeting. Mother was primarily concerned that Student had failed to progress in his speech and language, despite receiving special education and related service from the age of five. She believed that his speech delay was related to Vietnamese being his primary language and requested that Huntington Beach provide him speech therapy every day. In addition, Mother stated that she disagreed with the results of the Multidisciplinary assessment and requested an independent educational evaluation in the area of speech and language.

28. During the meeting, Ms. Romero shared that Student could talk more than he did, but preferred using non-verbal communication. Mr. Abbascia reported that Student had been verbalizing more in class, and attributed that improvement to his use of assistive technology.

29. In response to Mother's concerns, Huntington Beach agreed to add a speech and language goal, and to increase his speech and language services. The new goal required Student to engage in verbal conversation and to increase his speech intelligibility to 75 percent, while increasing volume and improving pitch. Weekly consultation between the speech and language pathologist and school staff was added as an accommodation, and individual speech and language therapy was increased to 30 minutes per week. Parents did not consent to the IEP.

30. In a letter dated May 9, 2017, and received by Huntington Beach on May 19, 2017, Mother repeated her request for an independent educational evaluation in speech and language. In a letter dated June 5, 2017, Huntington Beach approved Mother's request and provided her a copy of her procedural safeguards.

31. Mother selected private speech and language pathologist Julie Diep to conduct the independent educational evaluation. Huntington Beach agreed to directly fund the independent evaluation and timely contracted with Ms. Diep. By no fault of Huntington Beach, Ms. Diep did not complete her assessment until February 1, 2018,

and did not provide Huntington Beach a written report until March 28, 2018.

32. On December 6, 2017, Huntington Beach convened Student's next annual IEP team meeting. Mother, Student, a Vietnamese interpreter, and a representative from the regional center attended. For Huntington Beach, Mr. Kuhlman, Ms. King, and Mr. Abbascia attended the meeting.

33. Present levels of performance showed that Student had progressed substantially during the 2017-2018 school year. Student continued to make progress on his December 2015 goals, exceeding the proposed aim in each area. He was more communicative in class, actively participated in group discussions, and had created and presented slide presentations to another student. He used his voice to communicate with the speech and language pathologist, his teacher, aides and classmates. He spoke with, and got along with, numerous classmates. Speech and language pathologist Ms. King routinely worked with Student in small groups in the classroom to lower the pitch of his voice and to build his functional communication skills. Student was able to self-advocate using various forms of communication, including assistive technology and by speaking.

34. Based upon his present needs, the IEP team developed four new goals. The first goal was in functional math and required Student to correctly calculate a tip. The second goal, in independent living skills, called for Student to independently use an online bus schedule to plan a route to and from a destination. Goal three was in vocational and communication development and required Student to complete an employment application. The fourth goal was in communication and required Student, during conversation with peers or staff, to increase his speech intelligibility to 75 percent.

35. The December 2017 IEP offered Student similar services to those offered in the May 2017 addendum IEP; including 180 minutes per day of specialized academic

instruction and 30 minutes per week of individual speech and language services. Like prior IEPs, Huntington Beach offered Student an individual transition plan, transportation, and extended school year services. Huntington Beach again provided Parents a Notice of Parent Rights and Procedural Safeguards. During each IEP team meeting, Huntington Beach ensured that Parents were able to attend and fully participate in the IEP team discussion and the development of Student's educational plan.

36. Parents did not consent to the December 2017 IEP. Mother again requested daily speech and language services for Student.

37. Huntington Beach scheduled an IEP team meeting on March 28, 2018, to review the results of Ms. Diep's independent speech and language evaluation. Although Huntington Beach was not provided a copy of the written report until that day, it convened the meeting to permit Ms. Diep an opportunity to share the results of her assessment directly with Student's IEP team. The following people attended the meeting: Ms. Diep; Mother; Student; a legal advocate; a Vietnamese interpreter; Mr. Kuhlman; Mr. Abbascia; Dr. Ward; Ms. King; and Ms. Romero. Along with the Vietnamese interpreter, Huntington Beach provided Mother a copy of the procedural safeguards in both English and Vietnamese.

38. Ms. Diep shared the results of her independent assessment during the IEP team meeting and testified in support of her testing and recommendations during the hearing. Ms. Diep received a master's degree in speech pathology and audiology and was a board certified behavior analyst. She was certified by the American Speech-Language and Hearing Association and had previously worked as a speech and language pathologist for the Garden Grove Unified School District. Since 2007, she had been in private practice at her agency New Hope Therapy Center, where she primarily served the Vietnamese community.

39. Ms. Diep assessed Student in both English and Vietnamese over two days in November 2017. She observed Student one time, for 30 minutes, at Quest in January 2018. In addition, she reviewed Student's records and interviewed Ms. King and Mr. Abbascia. Ms. Diep performed standardized and non-standardized testing for Student.

40. During speech and oral motor testing, Student's oral motor strength, musculature, symmetry, range of motion, and agility, were within normal limits and average for speech and feeding functions. Isolated sound productions were adequate but negatively influenced by poor receptive language skills. Student could produce age appropriate sounds, sound classes and word shapes, with some moderate sound distortion. On the Goldman-Fristoe Test of Articulation, Second edition, a single word vocabulary test, Student could read the target words.

41. Ms. Diep attempted to administer the Vietnamese Articulation Test, but discontinued due to Student's unfamiliarity with the language. English was Student's dominant language for communication, socialization, and instruction.

42. Ms. Diep administered a spontaneous speech and language sample and criterion reference test for verbal imitation to assess Student's voice and fluency. Student had difficulties with initial responses. However, dysfluencies decreased with repetition. Student's vocal quality was tense and breathy. He was minimally verbal at home and school, but that had increased over the past few months. Ms. Diep believed that Student's voice disorder was behavior related.

43. Student's vocal pitch was abnormally high and might have contributed to his reluctance to talk in the classroom. Student could reduce his pitch and increase his vocal volume with cues and prompts.

44. Based upon the Comprehensive Assessment of Spoken Language, Form two, a standardized assessment, Student was average in the area of synonyms but was delayed in grammaticality judgment; nonliteral language; meaning from context; and pragmatics.

45. Ms. Diep recommended that Student be provided individual speech and language for one hour each day, five days per week. Ms. Diep was critical of Student's use of assistive technology in the classroom and believed that this discouraged Student from speaking more. As to assistive technology, Huntington Beach team members disagreed with Ms. Diep, and believed that Student was verbalizing more because of the iPod and related services.

46. Huntington Beach's IEP team members had received Ms. Diep's assessment just prior to the IEP team meeting, and wanted additional time to consider the independent assessment before considering changes to Student's IEP. Huntington Beach proposed, and Mother agreed, to reconvene the IEP team meeting to further discuss the independent evaluation.

47. In the spring of 2018, Student was briefly represented by counsel, and Huntington Beach attempted to work with Student's attorney to schedule the second part of the IEP team meeting. Student's attorney was non-responsive and Huntington Beach, through an interpreter, eventually contacted Mother directly to schedule the meeting.

48. Huntington Beach reconvened the IEP team meeting on May 17, 2018. Student was 22 years old and would be aging out of special education at the end of the school year, June 2018. The following people attended the meeting: Mother; Student; an interpreter; a regional center representative; Mr. Kuhlman; Mr. Abbascia; Dr. Ward; Ms. King; and Ms. Romero. Like prior IEP team meetings, Huntington Beach provided Mother a copy of her procedural safeguards in Vietnamese and English.

49. Student progressed over the 2017-2018 school year. He spoke more often at home and at school. He communicated using both his iPod and conversing verbally with trusted peers and school staff. He participated fully in classroom activities and

community based instruction. Student had made a friend, was liked by his peers, and enjoyed verbally calling roll for the class each morning. He improved in reading, writing, and math, and in the areas of vocational development and independent living. He was no longer withdrawn and aggressive, and often smiled during class, something he had not previously demonstrated.

50. Ms. Diep was not present at the reconvened meeting and Ms. King reviewed Ms. Diep's report and recommendations. In part, the IEP team agreed with Ms. Diep's assessment. Student was speech and language impaired and Ms. Diep's testing results were consistent with Huntington Beach's 2016 assessment. However, Huntington Beach staff, including Ms. King, Ms. Romero, and Mr. Abbascia, disagreed with Ms. Diep's recommendation that Student required an hour daily of speech and language services. The nature and design of Quest was a language rich program that emphasized development of functional communication in a small group setting during a three hour school day. All evidence presented at hearing showed that Student had progressed in that placement. It was contrary to Quest's design to isolate Student from the small group therapy for an hour each day, as proposed by Ms. Diep. Huntington Beach staff also disagreed with Ms. Diep's theory that assistive technology inhibited Student's ability to speak. To the contrary, Student had demonstrated a significant increase in communicating verbally since he was provided assistive technology, and the IEP team was fearful that Student would regress if he was forced to speak all the time; which would result if his assistive technology was taken away.

51. After considering Ms. Diep's independent assessment and Mother's concerns, the IEP team agreed to offer Student a new goal and to increase his speech and language services. The goal was in pragmatic language and required Student, in a small group setting, to initiate conversation with a peer and ask, answer, and comment appropriately, for two conversational exchanges, in four of five occasions. To meet the

additional goal, the IEP team increased speech and language services to two, 30-minute sessions per week, one individual and one session in a small group. Parents did not consent to the IEP offer.

52. Student aged out of special education in June 2018, having earned a certificate of completion from Huntington Beach.

53. Huntington Beach's witnesses, including Mr. Siembieda, Ms. Romero, Dr. Ward, Mr. Abbascia, Ms. King, Mr. Kuhlman, and Christine Werner, universally testified to the appropriateness of Student's IEPs. Primarily, that belief was based upon the Quest program's ability to meet Student's unique needs as an adult student with autism and speech delays, and the progress that Student demonstrated during his time in that placement.

54. Quest was developed in significant part by Huntington Beach's speech and language pathologist Ms. King. Along with Ms. King, the program was overseen by teacher Mr. Abbascia and school psychologist Dr. Ward. They collaborated to develop a language rich adult transition program that intensively taught functional communication, social skills, job training, functional academics, and independent living skills. The speech and language pathologist, school psychologist, and teacher were engaged in the direct and daily development of Student's skills when he attended Quest. Each was a credible witness who persuasively testified that Student progressed socially, emotionally, and in his ability to communicate, while at Quest.

55. Ms. King had assessed Student; frequently observed Student in class; collaborated with teachers and staff in the development of Quest programs and strategies; consulted weekly with Student's teacher to specifically address Student's speech and language needs; pushed in speech and language services for Student and others; taught the whole class each month, focusing on social communication; provided additional small group social instruction for Student and others; and, beginning in

December 2016, offered Student individual pull-out services. Additionally, she worked with Student outside of school to develop job and independent living skills, including functional communication, during community based outings.

56. Mr. Abbascia was a credentialed mild/moderate special education teacher and Student's teacher and case manager at Quest. Along with two aides, he taught Student and approximately 20 other young adults, during the 2016-2017 and 2017-2018 school years. Pupils received specialized academic instruction, specialized vocational training, communication skill development; community based outings for vocational and independent living skill development; small group academic instruction; and small group social skills development, amongst other programs. As an adult transition teacher, Mr. Abbascia's focus was on assisting young adults in obtaining skills necessary to transition from high school to adult living, including developing vocational skills, post-secondary education skills, independent living skills, social skills, and functional communication.

57. Dr. Ward had assessed Student, observed him many times in class, and provided Student direct counseling services. She was familiar with Student, his disability, and its impact on his education.

58. Ms. King, Mr. Abbascia, and Dr. Ward each testified that Student had begun Quest withdrawn, sometimes aggressive, and refused to speak to others. He made great strides at Quest and learned to use various forms of communication, including a notepad, iPod, and verbal speaking. He became non-aggressive and enjoyed class and the many outings, both social and vocational, which made up the Quest program. Each witness was an integral part of the Quest program. It was normal for Ms. King to observe Student in class, directly consult with the teacher and Student regarding strategies to increase Student's speech and language abilities, and to provide Student direct services, usually in a small group in the classroom. She was an active classroom

participant who routinely consulted with Mr. Abbascia, sometimes several times per week, regarding Student's needs. Dr. Ward provided Student direct counseling at the beginning of the year, to improve Student's behavior and communication. Although Student could speak, he often chose not to. Along with Ms. Romero, Huntington Beach's assistive technology specialist, Ms. King, Mr. Abbascia, and Dr. Ward worked with Student using his preferred mode of communication, which sometimes was non-verbal and included writing out questions and/or responses on a note pad or iPod. Student had speech delays, including articulation problems and an abnormal tone of voice. However, Huntington Beach's witnesses persuasively testified that, for Student, it was appropriate to try to remediate those problems within the classroom. Student had received years of direct, pull out speech and language services. In light of his age and disability, the team believed that it was appropriate to focus on building Student's functional communication skills, which were best taught in small groups in the classroom. For Student, the strategy worked. Student went far beyond meeting each IEP goal. When he concluded his tenure at Quest, he was no longer aggressive, enjoyed verbally calling roll for the class each morning, got along with peers, and initiated conversations with peers and adults. For those reasons, the testimony of Huntington Beach's witnesses was afforded significant weight for this matter.

59. Student's expert Ms. Diep was an experienced assessor. Her testimony, in part, was consistent with Huntington Beach's witnesses: Student had receptive, pragmatic and functional communication delays related to his disability as a student with autism and speech and language impairment. Yet, Ms. Diep and Huntington Beach diverged on how to remediate Student's disability. For Ms. Diep, that required an hour of daily, individual speech and language therapy.

60. However, Ms. Diep's testimony was less persuasive than Huntington Beach's witnesses for two primary reasons. First, when examined about her

recommendation for Huntington Beach to provide Student five hours per week of individual speech and language services, she stated that she would have recommended a lower amount of services if she still worked for a school district. This discrepancy weakened the impact of her recommendation as Ms. Diep failed to describe what that lower recommendation would be, or to clarify why she would recommend less services if she was a school speech and language pathologist rather than a private therapist. Secondly, Ms. Diep was not forthright in describing that her agency, New Hope Therapy Center, had been providing Student two hours each week of individual speech and language therapy for some time, paid by Parents' insurance. She initially failed to disclose this fact during testimony, and then was unwilling to describe when Student began receiving her services; his levels of performance when he began; progress or the effect the services had on Student's ability to communicate; or how it impacted her recommendation for Huntington Beach's services. This omission of important data was conspicuous and diminished the overall persuasiveness of her testimony.

61. Mother and Student each testified. Mother is a diligent caregiver who has taken many steps to assist Student, including through insurance, the Regional Center, and Huntington Beach. She was primarily concerned that Student had failed to make substantial progress in his ability to communicate, since he began receiving special education at age five. Mother attributed that perceived lack of progress to the family speaking Vietnamese at home, and because Huntington Beach failed to offer five hours per week of individual speech and language services. She was unwilling to attempt a lower level of services, including the two, 30-minute sessions per week of speech and language services offered by Huntington Beach. However, Mother did not dispute that Quest was a language rich program, or that Student had benefited from the services embedded in that program.

62. Student is a likable and amiable young man. During testimony, he spoke

with a high pitch and low tone, and had poor eye contact. He provided verbal responses to questions, sometimes after writing out the answer on a notepad. His answers were thoughtful, sometimes eloquent, and demonstrated an understanding of the issues presented. For example, Student explained that he preferred to use spoken language to communicate, as it was a faster way to communicate. During testimony, Student made clear that he used assistive devices, such as a pencil and notepad, to assist his verbal communication. While his testimony was compelling and credible, Student presented no criticism of his IEPs or placement.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)⁵; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a 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 (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17;) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, that describes the child's needs, academic and functional goals related to those needs, and specifies the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School Huntington Beach v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school Huntington Beach to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that

despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer Island*) [In enacting the IDEA, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The Supreme Court recently clarified and expanded upon its decision in *Rowley*. In *Endrew F. v. Douglas County School Huntington Beach*, the court stated that the IDEA guarantees a FAPE to all students with disabilities by means of an IEP, and that the IEP is required to be reasonably calculated to enable the child to make progress appropriate in light of his or her circumstances. (*Endrew F. v. Douglas County School District* (2017) 580 U.S. __ [137 S.Ct. 988] (*Endrew F.*.) The Ninth Circuit recently affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535, 536.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6), (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) By this standard, Student had the burden of proof for the issues presented.

6. To assist courts and administrative tribunals, the Supreme Court

established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*Mercer Island, supra*, 592 F.3d at p. 947.) "First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (*Rowley, supra*, 458 U.S. at pp. 206-207.) "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." (*Id.* at p. 207.)

7. A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or caused a deprivation of educational benefits for the child. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

8. The *Rowley* opinion established that as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at pp. 207-208.) Subsequent case law has followed this holding in disputes regarding the choice among methodologies for educating children with autism. (See, e.g., *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*); *Pitchford v. Salem- Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.) As the First Circuit Court of Appeals noted, the *Rowley* standard recognizes that courts are ill equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*Ibid.*) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses his or her basic needs, courts should be loath to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs." (*Roland*

M. Concord Sch. Committee (1st Cir. 1990) 910 F.2d 983, 992 (citing *Rowley*, 458 U.S. at p. 207-208).)

9. Related services include specialized academic instruction for reading, writing, and math, and services for speech and language and occupational therapy services, and other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1527.) Related services shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.” (Ed. Code, § 56363, subd. (a).)

ISSUE 1: DID HUNTINGTON BEACH DENY STUDENT A FAPE BY FAILING TO PROVIDE AN HOUR PER DAY OF INDIVIDUAL SPEECH AND LANGUAGE SERVICES? ⁶

10. Student narrowly argues that Huntington Beach denied him a FAPE by failing to offer him one hour per day, five days per week, of individual speech and language to address his speech and language impairment.

⁶ During prehearing and hearing, Student did not argue that the IEPs were defective because of goals, accommodations, placement, or because of services other than speech and language. Rather, Student specifically complained that he was denied a FAPE because Huntington Beach did not offer him one hour per day, five days per week, of individual speech and language services. The Decision will examine the issue as plead, as it is not the role of OAH to modify Student’s issue, such as to whether Huntington Beach should have offered a greater level of services, but less than the level described in Student’s issue. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir.) 858 F.3d 1189.)

11. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school Huntington Beach's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams, supra*, 195 F.3d at 1149.) School districts need to "offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (*Andrew F., supra*, 137 S.Ct. at p. 999.)

12. There is some merit to Student's claim. Student was speech and language impaired. He had delays in pragmatic and receptive language, a moderate articulation disorder, high pitch, and low voice volume. Huntington Beach does not dispute that Student required special education and related services as result of his disability. Rather, it avers that it was reasonable to attempt to remediate his disability through the Quest adult transition program and services embedded therein. Huntington Beach points out that, in addition to weekly and monthly embedded services and consultation, it offered pull out speech and language services, including 30 minutes per month in December 2016; 30 minutes per week in May 2017; and two, 30-minute sessions per week in May 2018. Overall, a preponderance of evidence cogently showed that Huntington Beach's educational program was reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

13. For example, Student's placement at the Quest adult transition program was a language rich program developed in significant part by Huntington Beach's speech and language pathologist Ms. King. Along with Ms. King, the program was overseen by teacher Mr. Abbascia and school psychologist Dr. Ward. They collaborated to develop an adult transition program that intensively taught functional

communication, social skills, job training, functional academics, and independent living skills. The speech and language pathologist, school psychologist, and teacher were engaged in the direct and daily development of Student's skills when he attended Quest. Each was a credible witness who persuasively testified that Student progressed socially, academically, and in his ability to communicate, while at Quest.

14. Ms. King had assessed Student; frequently observed Student in class; collaborated with teachers and staff in the development of Quest programs and strategies; consulted weekly with Student's teacher to specifically address Student's speech and language needs; pushed in speech and language services for Student and others; taught the whole class each month, focusing on social communication; provided additional small group social instruction for Student and others; and, beginning in December 2016, offered Student individual pull-out services. Additionally, she worked with Student outside of school to develop job and independent living skills, including functional communication, during community based outings.

15. Student had begun Quest withdrawn, sometimes aggressive, and refused to speak to others. He made great strides at Quest and learned to use various forms of communication, including a notepad, iPod, and verbal speaking. He became non-aggressive and enjoyed class and the many outings, both social and vocational, which made up the Quest program. Each witness was an integral part of the Quest program. It was normal for Ms. King to observe Student in class, directly consult with the teacher and Student regarding strategies to increase Student's speech and language abilities, and to provide Student direct services, usually in a small group in the classroom. She was an active classroom participant who routinely consulted with Mr. Abbascia, sometimes several times per week, regarding Student's needs. Dr. Ward provided Student direct counseling at the beginning of the year, to improve Student's behavior and communication. Although Student could speak, he often chose not to. Along with

Ms. Romero, Huntington Beach's assistive technology specialist, Ms. King, Mr. Abbascia, and Dr. Ward worked with Student using his preferred mode of communication, which sometimes was non-verbal and included writing out questions and/or responses on a note pad or iPod. Student had speech delays, including articulation problems and an abnormal tone of voice. However, Huntington Beach's witnesses persuasively testified that, for Student, it was appropriate to try to remediate those problems within the classroom. Student had received years of direct, pull out speech and language services. In light of his age and disability, the team believed that it was appropriate to focus on building Student's functional communication skills; which were best taught in small groups in the classroom.

16. For Student, the strategy worked. Student went far beyond meeting each IEP goal. When he concluded his tenure at Quest, he was no longer aggressive, enjoyed verbally calling roll for the class each morning, got along with peers, and initiated conversations with peers and adults. For those reasons, the testimony of Huntington Beach's witnesses was afforded significant weight for this matter.

17. Student's expert Ms. Diep's testimony was less persuasive than Huntington Beach's witnesses. For example, when examined about her recommendation that Huntington Beach provide Student five hours per week of individual speech and language services, Ms. Diep stated that she would have recommended a lower amount of services if she worked for a school district. This discrepancy weakened the impact of her recommendation as Ms. Diep failed to describe what that lower recommendation would be, or to clarify why she would recommend less services if she was a school speech and language pathologist rather than a private therapist. In addition, Ms. Diep failed to disclose important data regarding the provision of speech services by her private agency, or its impact on Student's disability. For those reasons, Ms. Diep's testimony was afforded less weight than Huntington Beach's witnesses.

18. Mother and Student were credible witnesses. However, Mother did not dispute that Student had benefitted while at Quest, albeit not to the extent that she desired. And Student offered no criticism of his IEPs. The remaining witnesses supported Huntington Beach's offer of placement and services.

19. Consequently, Student failed to meet his burden of proving that he was denied a FAPE because Huntington Beach failed to offer him one hour daily, five days per week, of individual speech and language services.

ISSUE 2: HUNTINGTON BEACH'S DECEMBER 2016 SPEECH AND LANGUAGE ASSESSMENT

20. Student complains that Huntington Beach's December 2016 triennial evaluation failed to appropriately assess him in the area of speech and language.

ASSESSMENT AND REASSESSMENT STANDARDS

21. Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) After the initial assessment, a school district must conduct a reassessment of the special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) Huntington Beach had previously assessed Student. Therefore the assessment in dispute is a reassessment of Student.

22. In conducting a reassessment, a school district must follow statutory guidelines that prescribe both the content of the assessment and the qualifications of the assessor(s). The district must select and administer assessment materials in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. §

1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must also be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent district personnel must administer special education assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.)

23. In performing a reassessment, such as a triennial assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student, and to decide whether modifications or additions in the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).) In performing a reassessment, an educational agency cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability and in preparing the appropriate educational plan for the pupil. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).)

24. Persons who conduct assessments shall prepare a written report, as appropriate, of the results of each assessment. The report shall include, but not be limited to: (a) whether the pupil needs special education and related services; (b) the basis for that determination; (c) the relevant behavior noted during the observation of the pupil; (d) the relationship of that behavior to the pupil's academic and social functioning; (e) educationally relevant health and development, and medical findings; (f) for pupils with learning disabilities, the discrepancy between achievement and ability

that cannot be corrected without special education services; (g) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and (h) the need for specialized services, materials, and equipment for pupils with low incidence disabilities. (Ed. Code, § 56327.)

25. Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and companion state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must: appear in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an individualized education program without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The district must give the parents and/or pupil 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

26. An IEP team meeting to review the results of an assessment must be held within 60 days, not counting days between a pupil's regular school sessions, terms, or days of vacation in excess of five school days, from the receipt of the parent's written consent to the assessment, unless the parent agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (f)(1).)

27. On October 31, 2016, Huntington Beach presented Parents an assessment plan for Student's triennial assessments. Parents consented to the plan on November 4, 2016, and Huntington Beach timely completed a multidisciplinary assessment and written report, including in speech and language, on December 6, 2016. Huntington

Beach timely held an IEP team meeting on December 7, 2016, to review the report with Parents and necessary IEP team members.

28. Huntington Beach's assessors properly included the school psychologist, two speech and language pathologists, and a special education teacher. Each assessor thoroughly reviewed Student's educational records and carefully selected assessment tools which were consistent with his age and disability. Each evaluation was conducted in a way that used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. These assessors did not use any single measure or assessment as the sole criterion for determining whether Student had a disability. Each used technically sound instruments that assessed the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used were selected and administered so as not to be discriminatory on a racial or cultural basis. They were provided in English, Student's spoken language, and in a form most likely to yield accurate information on what Student knew and could do academically, developmentally, and functionally. The assessments were used for the purposes for which the assessments are valid and reliable, were administered by a trained and knowledgeable school psychologist, licensed speech pathologists, and a certified special education teacher, and administered in accordance with any instructions provided by the producer of each assessment. Qualified Huntington Beach assessors, including Ms. King, Ms. Romero, and Dr. Ward, and Mr. Abbascia, properly determined which tests were required based on information known at the time. No single measure, such as a single intelligence quotient, was used to determine eligibility or services. All statutory requirements for a reassessment were dutifully complied with by qualified assessors selected by Huntington Beach. (34 C.F.R. § 300.304(c)(7).)

29. The assessors Huntington Beach selected for the speech and language

assessment were particularly well-qualified. Ms. King held a bachelor's degree in communication disorders and a master's degree in speech pathology. She was a speech and language pathologist for Huntington Beach since 2014, where she conducted evaluations, collaborated with teachers, and provided direct services for pupils ranging from 13 to 22 years old. Ms. Romero had a multiple subject teaching credential, a master's degree in communicative disorders, was certified by the American Speech-Language Hearing Association and licensed by California Speech-Pathology and Audiology Board. She had been a teacher, program specialist, applied behavior analysis therapist, and was an assistive technology/augmentative and alternative communication specialist for Huntington Beach and a speech and language pathologist for Cornerstone Therapies, a nonpublic agency, at the time of the hearing.

30. Ms. King and Ms. Romero jointly conducted the speech and language and assistive technology testing for Student's triennial assessment. Ms. King and Ms. Romero carefully selected their assessment tools based upon Student's disability of autism and delayed functional communication. They utilized observations, teacher interview, Student interview, language sample, the Oral Peripheral Examination; Receptive One Word Picture Vocabulary Test, Fourth Edition; and the Expressive One Word Picture Vocabulary Test. Based upon their interviews with Student's teacher Mr. Abbascia and Student, and observations of Student in the classroom, Ms. King and Ms. Romero determined that Student preferred using non-verbal forms of communication in the classroom, including his speech-to-text application on the iPod, or pencil and paper. Ms. King and Ms. Romero were thoughtful and conscientious assessors who left virtually no area of speech and language need unassessed. Overall, Student presented speech and language delays attributable to his disability of autism, vocal weakness, moderate articulation delays, and a receptive language disorder.

31. Huntington Beach's speech and language assessment was comprehensive

and conducted by two qualified assessors. During hearing, Ms. King and Ms. Romero credibly testified in support of their assessment, and no countervailing evidence regarding the assessment was provided. Although Student's expert Ms. Diep was critical of the level of speech and language services offered in Student's IEPs, she presented no testimony regarding Huntington Beach's speech and language evaluation.

32. For the foregoing reasons, Student failed to meet his burden of showing that he was denied a FAPE because Huntington Beach failed to appropriately assess him in the area of speech and language.

ISSUES 3 AND 4: HUNTINGTON BEACH'S CONSIDERATION OF THE INDEPENDENT EDUCATIONAL EVALUATION

33. Student complains that Huntington Beach failed to consider and implement the recommendations of Ms. Diep's speech and language independent educational evaluation on March 28, 2018, when Huntington Beach first reviewed the assessment during an IEP team meeting.

34. As already found herein, Huntington Beach did not deny Student a FAPE by failing to provide Student an hour daily, five days per week, of individual speech and language services. Consequently, the remaining issue is whether Huntington Beach timely and appropriately considered Ms. Diep's independent assessment.

35. On May 9, 2017, during an addendum IEP team meeting, Mother requested an independent educational evaluation in the area of speech and language. In a letter dated that same day, and received by Huntington Beach on May 19, 2017, Mother repeated her request for an independent educational evaluation in speech and language. In a letter dated June 5, 2017, Huntington Beach approved Mother's request and provided her a copy of her procedural safeguards.

36. Mother selected private speech and language pathologist Julie Diep to conduct the independent educational evaluation. Huntington Beach quickly agreed to

Mother's selection, agreed to directly fund Ms. Diep's independent evaluation, and timely contracted with Ms. Diep to do so. By no fault of Huntington Beach, Ms. Diep did not complete her assessment until February 1, 2018, and did not provide Huntington Beach a written report until March 28, 2018.

37. There is no question that Ms. Diep took more than 60 days to complete her independent evaluation. However, it would be inequitable to hold Huntington Beach liable for delays caused by an independent assessor, over whom they had no direct control. Huntington Beach took reasonable steps to timely contract with Ms. Diep. For these reasons, Huntington Beach did not commit a procedural or substantive violation based upon Ms. Diep's failure to timely complete her independent evaluation.

38. Huntington Beach held an IEP team meeting the same day it received Ms. Diep's assessment, March 28, 2018. Ms. Diep; Mother; Student; Student's legal advocate; a Vietnamese interpreter; Mr. Kuhlman; Mr. Abbascia; Dr. Ward; Ms. King; and Ms. Romero, attended the meeting. Along with the Vietnamese interpreter, Huntington Beach provided Mother a copy of the procedural safeguards in both English and Vietnamese.

39. Ms. Diep fully shared the results of her independent assessment with Mother and qualified Huntington Beach staff, including two school speech and language pathologists, during the IEP team meeting. The team agreed with some of Ms. Diep's findings, but disagreed with Ms. Diep's criticism of Student's use of assistive technology. Huntington Beach's IEP team members had received Ms. Diep's assessment that day, and wanted additional time to consider the independent assessment before considering changes to Student's IEP. Huntington Beach proposed, and Parent agreed, to reconvene the IEP team meeting to further discuss the independent evaluation.

40. Student was briefly represented by counsel at that time, and Huntington Beach attempted to work with Student's attorney to schedule the second part of the IEP

team meeting. Student's attorney was non-responsive and Huntington Beach, through an interpreter, eventually contacted Mother directly to schedule the meeting.

41. Huntington Beach reconvened the IEP team meeting on May 17, 2018. Mother; Student; an interpreter; a regional center representative; Mr. Kuhlman; Mr. Abbascia; Dr. Ward; Ms. King; and Ms. Romero each attended the meeting. Like prior IEP team meetings, Huntington Beach provided Mother a copy of her procedural safeguards in Vietnamese and English. Ms. Diep was not present at the reconvened meeting and Ms. King reviewed Ms. Diep's report and recommendations. The IEP team agreed that Student was speech and language impaired and that Ms. Diep's testing results were consistent with Huntington Beach's 2016 speech and language assessment. However, Huntington Beach staff, including Ms. King, Ms. Romero, and Mr. Abbascia, disagreed with Ms. Diep's recommendation that Student required an hour daily of speech and language services. The nature and design of Quest was a language rich program that emphasized development of functional communication in a small group setting during a three hour school day. Student's present levels of performance indicated that Student had progressed in that placement.

42. Although Huntington Beach did not agree with all of Ms. Diep's recommendations, it diligently considered Ms. Diep's independent assessment during two IEP team meetings. Parents were invited to each IEP team meeting, and Mother was an active participant in the IEP team meeting discussion and the development of Student's educational program. In consideration of Ms. Diep's assessment and Mother's concerns, Huntington Beach added a speech and language goal, in the area of pragmatics, and agreed to increase his speech and language services, from one, 30-minute session per week, to two, 30-minute sessions per week. While that level of services did not match Ms. Diep's recommendation, the increase in services demonstrated that Huntington Beach considered Ms. Diep's assessment and was

responsive to Mother's concerns.

43. Mother and Ms. Diep made clear that their preference was for Student to receive one hour daily, five days per week, of individual speech and language services. However, starting with *Rowley*, courts have held that an educational agency is not held to a standard of parental preference. (*Rowley, supra*, 458 U.S. at p. 197, fn. 21 [the IDEA does not require a potential-maximizing education]; see also *Blackmon v. Springfield R-XII School Dist.* (8th Cir. 1999) 198 F.3d 648, 658; *N.T. v. Garden Grove Unified School Dist.* (C.D. Cal. May 19, 2016, No. SA CV 15-1013-GHK (JPRx)) 2016 WL 2984192, * 5.) An appropriate education under the IDEA need not be "the *only* appropriate choice, or the choice of certain selected experts, or the child's parents' *first* choice, or even the best choice." (*G.D. v. Westmoreland School Dist.* (1st Cir. 1999) 930 F.2d 942, 948 (italics in text).)

44. Here, while five hours per week of individual speech and language services may have been more rigorous than the speech and language embedded in the Quest program and the weekly services offered in Student's IEPs, and therefore more attractive to Parents, the proper focus is on Huntington Beach's offered program. Student failed to show that the level of services offered, in conjunction with the totality of the educational placement, was not reasonably calculated to confer Student with an educational benefit as of spring 2018. (*Rowley, supra*, 458 U.S. at pp. 206-207.)

45. For the foregoing reasons, Student failed to meet his burden of showing that Huntington Beach denied him a FAPE by failing to timely or appropriately consider Student's independent educational evaluation, or by failing to adopt the services recommended therein.

ORDER

Student's claims for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and Decided. Huntington Beach prevailed on all issues heard and decided for this matter.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: November 1, 2018

/s/

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearing