

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**IN THE MATTER OF:  
PARENT ON BEHALF OF STUDENT,**

**v.**

**PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT.  
OAH CASE NUMBER 2019050861**

**DECISION**

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on May 20, 2019, naming Placentia-Yorba Linda Unified School District. The Office of Administrative Hearings is commonly referred to as OAH.

The due process hearing was continued for good cause on July 9, 2019, and July 17, 2019. On August 30, 2019, OAH granted Student's request to amend her complaint. The amended complaint was deemed filed on August 30, 2019.

Administrative Law Judge Rommel P. Cruz heard this matter in Placentia, California, on October 22, 23, 24, and 25, 2019.

Mother represented Student. Student did not attend the hearing.

Attorney S. Daniel Harbottle represented Placentia-Yorba Linda. Renee Gray, Executive Director of Special Education, Northeast Orange County Special Education Local Plan Area, attended the hearing each day on behalf of Placentia-Yorba Linda.

OAH granted a continuance at the parties' request for the parties to file written closing arguments. On November 18, 2019, the record was closed and the matter was submitted for decision.

## **ISSUES**

1. Are Student's claims based on events occurring prior to May 20, 2017, barred by the two-year statute of limitations?
2. Did Placentia-Yorba Linda deny Student a free appropriate public education, referred to as a FAPE, by failing its child find obligation from September 1, 2007, through September 15, 2015?
3. Did Placentia-Yorba Linda deny Student a FAPE during the 2015-2016 and 2016-2017 school years by failing to assess Student under its child find obligation?
4. Did Placentia-Yorba Linda deny Student a FAPE at the March 13, 2018 individualized education program, called an IEP, team meeting by failing to find her eligible for special education?
5. Did Placentia-Yorba Linda deny Student a FAPE by failing to convene an IEP team meeting in April 2018, to reconsider eligibility when Student had an increase in anxiety attacks and failed tests, after Student was found not eligible for special education services and after Section 504 plan accommodations were put in place?
6. Did Placentia-Yorba Linda deny Student a FAPE for the 2019-2020 school year, by offering a May 3, 2019 IEP that failed to:

- a. Appropriately address Student's unique needs in the areas of:
  - i. Pragmatic language;
  - ii. Social emotional functioning;
  - iii. Dyscalculia, including but not limited to logic and reasoning;
  - iv. Executive functioning;
  - v. Cognitive functioning;
  - vi. Visual processing; and
  - vii. Auditory processing;
- b. Offer goals in line with Student's unique educational needs that were:
  - i. Appropriate, and
  - ii. Measureable;
- c. Offer appropriate transition goals and services; and
- d. Offer appropriate remediation services?

The Administrative Law Judge rephrased and clarified with the parties the issues as discussed at the October 14, 2019 prehearing conference, as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made.

## **SUMMARY OF DECISION**

This Decision holds Student did not meet her burden of proving an exception to the two-year statute of limitations. The facts did not support Student's contention that Mother was prevented from filing a timely due process hearing request due to either a misrepresentation by Placentia-Yorba Linda or Placentia-Yorba Linda withholding

information to which Mother was entitled. Mother was made aware of her procedural rights and safeguards in 2006, and thus, had no basis for delaying a request for a due process hearing for claims based on events occurring prior to May 20, 2017. Therefore, Student's claims were limited to those dating back two years prior to May 20, 2019, the date of filing of Student's initial due process hearing request.

In addition, Student did not prove she was eligible for special education on March 13, 2018, or that Placentia-Yorba Linda denied her a FAPE by not holding an IEP team meeting to reconsider eligibility in April 2018. The facts demonstrated that at the time, Student accessed the general education curriculum with accommodations, and benefitted from her education without the need for special education and related services.

Furthermore, the facts did not support Student's contention that she was entitled to an IEP that addressed her pragmatic language, visual processing, or auditory processing. Assessments from both Placentia-Yorba Linda and independent assessors, as well as input from Mother, Student, and her teachers, determined those were not areas of deficits requiring special education and related services.

This Decision further holds that Student did not prove that the May 3, 2019 IEP failed to appropriately address her needs in the areas of social emotional functioning, cognitive functioning, executive functioning, or mathematics. She also did not establish that the transition goals and services offered in the IEP were inadequate. In addition, the facts did not establish the IEP's annual goals were inappropriate or immeasurable. The accommodations and services offered were tailored to provide Student with an educational benefit in light of her unique needs. Furthermore, no persuasive evidence was offered to support Student's contention that she was entitled to remediation services beyond what was offered in the May 13, 2019 IEP to receive a FAPE.

## **FACTUAL FINDINGS**

### **JURISDICTION AND BACKGROUND**

Student was 18 years old at the time of the hearing. She resided with Mother within the boundaries of Placentia-Yorba Linda at all relevant times. She was adopted by Mother and moved to the United States in November 2005, at the age of four and a half.

In the spring of 2006, Placentia-Yorba Linda's preschool assessment team assessed Student at the age of five to determine her possible eligibility for special education and related services. The team was led by school psychologist Diane Wiest and included speech-language pathologist Marie Cimborra. Occupational therapist Nicole Peterson conducted an additional assessment in July 2006, as to Student's sensory processing and fine motor functioning.

Ms. Wiest documented her findings, conclusions, and recommendations in a report dated April 27, 2006. She did not identify a "handicapping condition" due to the overriding fact that Student had been in the United States and speaking English for only six months. Ms. Cimborra also found Student did not meet the eligibility criteria for special education and related services. She attributed Student's language and behavior difficulties to be a result of economic, cultural, or environmental disadvantage and unfamiliarity with the English language. Ms. Peterson found Student to have sensory processing difficulties affecting her tactile, vestibular, proprioceptive, and auditory systems. She opined that these difficulties affected Student's attention, balance, coordination, and body awareness.

On September 14, 2006, Ms. Wiest revised her recommendation and determined Student was eligible for special education services under the "handicapping condition" of "established medical disability." Mother reported that Student's adoption records indicated she may have been exposed to alcohol in utero, so Ms. Wiest opined Student may be a child with Fetal Alcohol Effects or Fetal Alcohol Syndrome. Ms. Wiest did not diagnose Student with Fetal Alcohol Effects or Fetal Alcohol Syndrome. Ms. Wiest cited a 1998 publication entitled, "Assessment and Intervention of Fetal Alcohol Syndrome in School Psychology Practice" and explained the conditions were congenital with a high predictability of requiring special education services. Ms. Wiest recommended that because "established medical disability" was justification for a preschool-aged child to receive special education support, a re-evaluation must be completed before Student entered kindergarten. Mother provided written consent to the IEP on September 14, 2006.

Ms. Wiest retired in 2016. Prior to retiring, she was a school psychologist for 32 years, the last 20 years with Placentia-Yorba Linda. In 2000, Ms. Wiest joined Placentia-Yorba Linda's preschool assessment team. In the six years preceding her assessment of Student in 2006, Ms. Wiest conducted between 75-100 assessments each year as part of the team.

At the hearing, Mother and Ms. Wiest were asked to recall events dating back to 2006. It was evident as they testified that their memory of details from 2006 had significantly faded over the past 13 years. However, Ms. Wiest's recollection was more consistent with the documents entered into evidence than Mother's. When cross-examined, Ms. Wiest testified carefully, openly, and confidently. She explained that when it was necessary to cut corners to facilitate an IEP team meeting, she did so. She explained that at the beginning of a school year, efforts were made to hold IEP team

meetings as early as possible to get services started for students who qualified for an IEP. Ms. Wiest explained that during this busy period, she at times notified parents of an IEP team meeting by phone or email, instead of mailing a notice. This led to an IEP team meeting notice being signed by a parent during the meeting. She imagined that this was the case in this matter. No date, time, or location was identified in the notice of meeting that Mother signed on September 14, 2006, in which she indicated she would attend. That was the same day she provided written consent to the September 14, 2006 IEP. This corroborated Ms. Wiest's theory that the September 14, 2006 IEP team meeting was arranged either by phone or email and Mother signed the notice during the IEP team meeting.

At the hearing, Ms. Wiest explained that the preschool assessment team followed a standard practice of sending each parent whose child was referred to the team for an assessment a packet of documents consisting of a proposed assessment plan, procedural safeguards, and an interview form. Ms. Wiest also testified that an in-person meeting with the parent always occurred when the preschool assessment team developed an IEP. Procedural safeguards were also provided to the parent at the IEP team meetings. In Student's case, the box indicating Parent had received and was given an opportunity for a full explanation of her parental rights or a verbal reading during the IEP team meeting was not checked or initialed by Mother. At the hearing, Ms. Wiest explained that at times, though not frequently, that box on the IEP would not be checked even though procedural safeguards were provided.

Mother's testimony was less persuasive. Her recollection was spotty as to the events surrounding the assessment process in 2006 and the IEP team meeting held on September 14, 2006.

At the hearing, Mother rationalized that she did not currently have in her possession the written notice of procedural rights and safeguards that would have been provided in 2006, and therefore, she concluded she did not receive them. However, Mother also did not remember attending the September 14, 2006 IEP team meeting, even though Mother signed a notice of meeting indicating her intent to attend and provided written consent to the IEP on the day of the meeting. Moreover, she recalled meeting with Ms. Wiest and remembered Ms. Wiest handing her a number of documents for her signature. Her memory of the pertinent events in 2006 was muddled, and thus less reliable.

Throughout her testimony and her examination of the witnesses, Mother repeatedly discussed Fetal Alcohol Syndrome, Fetal Alcohol Effects, and trauma Student may have experienced at an orphanage. She relied on her own review of Student's adoption records, her experiences with Student, and researching and educating herself on the subject to conclude Student had Fetal Alcohol Syndrome and a trauma-related disorder. She shared her opinion throughout the IEP process with the independent and school district assessors. However, Mother did not share the actual records with the assessors. The assessors simply noted Mother's account and made no determination as to the accuracy of Mother's reports. In addition, Student was never diagnosed with Fetal Alcohol Syndrome, Fetal Alcohol Effect, or a trauma-related disorder by a qualified professional. Furthermore, the evidence did not establish Mother was qualified to make any such diagnosis.

On or about August 2007, Mother enrolled Student for kindergarten at Friends Christian, a private school. Student attended Friends Christian for eight years. During that time, Mother did not request Placentia-Yorba Linda evaluate Student for special education services.



## **ENROLLMENT IN PLACENTIA-YORBA LINDA**

On October 6, 2015, Mother enrolled Student in Placentia-Yorba Linda. She was in eighth grade. On the Student Information Enrollment Form dated October 6, 2015, Mother noted Student did not have an IEP and was not receiving any special services. On a separate enrollment form, Mother did not note any serious health issues for Student. Student earned grades of As and Bs throughout the 2015-2016 school year, with the exception of a C in Math Grade 8 and a C in coed physical education, both in the second quarter. She performed worse on tests and quizzes compared to classwork and homework assignments. Her total grade point average was 3.57.

On November 17, 2017, Mother completed a Section 504 Parent Referral form requesting an evaluation pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), referred to as Section 504. On the form, she noted Student was struggling in her algebra and Spanish classes. Mother identified attention deficit hyperactivity disorder, an inability to focus and learn appropriately, and anxiety as impairments or suspected impairments. Parent wrote Student was previously diagnosed with attention deficit hyperactivity disorder in 2009 and received neurofeedback therapy periodically for years. Mother taught Student adaptive behaviors to help her plan, organize, and compensate for the issues associated with her attention deficit hyperactivity disorder. Mother noted on the form that Student lived in an orphanage for the first four and a half years of her life. Mother opined the lack of nurturing impacted her brain development resulting in developmental trauma and attention deficit hyperactivity disorder. However, no evidence was offered to establish that Mother had the expertise through education, training, or experience to make that determination.

For the first semester of the 2016-2017 school year, Student earned two As, two Bs, and two B minuses. In the second semester, she earned one A, one B plus, two Bs, and two B minuses. The B minuses were in Spanish and algebra.

A Section 504 plan multidisciplinary team meeting was held on December 5, 2017. Among those who attended were Mother and school psychologist Desiree Parsons. The team noted Mother's report of Student's academic and social challenges throughout elementary and middle school. She reported Student had difficulty with connection, articulation, logic, and anxiety. The team agreed to proceed with an evaluation under the Individuals with Disabilities Education Act, commonly referred to as the IDEA, in lieu of an assessment under Section 504.

Ms. Parsons possessed a master's degree in education. She held two pupil personnel service credentials, one with advanced specialization in school psychology and another with specialization in child welfare and attendance. She was also certified in applied behavior analysis in educational settings. She received training in trauma-focused cognitive behavior therapy, which focused on significant traumas that typically resulted from sexual or emotional abuse.

At the time of hearing, Ms. Parsons had been employed by Placentia-Yorba Linda for 15 years, the past 12 years as a school psychologist in the high school setting. She conducted approximately 60 psychoeducational assessments each year for the past 12 years. She was thoughtful and measured in her testimony. Her training and experience were relevant and substantial. Accordingly, her testimony was given substantial weight.

On December 6, 2017, Mother emailed Ms. Parsons a lengthy message outlining a number of her concerns. Mother stated the difficulty in diagnosing Student's disability, which she opined closely resembled post-traumatic stress disorder. She spent a significant amount of time teaching her how to plan and organize to compensate for forgetting. Mother noted problems with anxiety in math and Spanish; struggles with focus and recalling information; panic when reading out loud; thinking literally; tactile defensiveness; being distracted in noisy rooms; and rolling different letter sounds.

On December 6, 2017, Ms. Parsons emailed Mother reinforcing the need to assess Student, and emphasizing the importance of figuring out what Student needed to access the curriculum and to make educational progress. She pointed out that the assessment process was not intended to diagnose Student's medical conditions.

On December 7, 2017, Ms. Parsons emailed Mother an assessment plan, procedural safeguards, and an explanation of the assessment process and timeline. The assessment plan proposed to assess Student in the areas of academic achievement, health, intellectual development, language and speech communication development, motor development, and social emotional functioning. Mother provided written consent to the plan on January 5, 2018.

### **MARCH 10, 2018 MULTIDISCIPLINARY ASSESSMENTS**

Placentia-Yorba Linda's assessment team consisted of Ms. Parsons, special education teacher Erin Lang, and speech-language pathologist Lori Jacob. Their findings, conclusions, and recommendations were presented in a written report dated March 10, 2018.

Both Ms. Lang and Ms. Jacob testified. Ms. Lang was a credentialed special education teacher for 18 years. She had a master's degree in special education. She had been a resource specialist teacher in the high school setting since 2011. At the high school, she taught special education classes and provided push-in services in general education classrooms as part of the collaborative teaching program, to support students with IEPs. She conducted over 100 academic assessments in her career.

Ms. Jacob had been a speech-language pathologist with Placentia-Yorba Linda for 20 years. She received a certificate of clinical competence from the American Speech-Language-Hearing Association. She conducted hundreds of speech and language assessments while working in the high school setting for 15 years. She also attended hundreds of IEP team meetings.

Ms. Parsons assessed Student's cognitive and social-emotional functioning. She considered Mother's report of alcohol use by Student's biological mother during pregnancy with Student. Mother also shared Student spent the first four and half years of her lifetime in an orphanage. On the developmental health history questionnaire, Mother identified a family history of learning disorders, specifically challenges in math.

Ms. Parsons administered the Weschler Intelligence Scale for Children, Fifth Edition to assess Student's overall intellectual ability and specific cognitive abilities. The testing took place over two days. Student was willing and cooperative during the testing, and Ms. Parsons opined that Student put forth her best effort, and considered the results to be a valid description of her current abilities.

Assessment standard scores had a mean of 100, with a standard deviation of 15. Standard scores between 85 and 115 were considered in the average range, with standard scores of 30 or more below 100 indicating a significant delay. Student's full

scale intelligence quotient score was 89, within the low-average range. Her verbal comprehension and non-verbal visual spatial skills were in the average range. Her fluid reasoning, which is the ability to problem solve, was in the low-average range.

Student's area of relative weakness was in the ability to hold and work with short-term memory information, also known as working memory. Working memory is the ability to actively maintain information in conscious awareness, perform some operation or manipulation of information, and produce a result. It requires the individual to be mentally alert, focused, and to have a good short-term memory facility, as well as to be cognitively flexible, meaning to have the ability to transition one's thinking from one concept to another. Student's working memory composite standard score on the Weschler Intelligence Scale was 75, in the very low range. As a result, Student would not be expected to handle tasks involving working memory as well as an average student her age. Students with attention disorders often struggle with working memory tasks due to the demand on memory and attention.

Ms. Parsons assessed Student's processing speed. The speed of processing information is considered vital to reading performance and development, as well as learning in general. An individual is required to learn new and unfamiliar tasks, as well as exercise cognitive flexibility and efficiency. Good attention, concentration, and handwriting skills are needed. Her scores on the Weschler Intelligence Scale demonstrated good hand-eye coordination. Her visual scanning, tracking, and discrimination skills were fine. Student's cognitive ability was in the average range, and thus she could be expected to access the general education curriculum. Ms. Parsons opined that Student's weakness in working memory was a possible cause of why she performed well on assignments but struggled on tests, as tests placed more demand on her ability to actively maintain information.

Ms. Parsons identified symptoms of anxiety that occurred when Student was under pressure, such as testing in school. Some evidence of difficulty associated with attention deficit hyperactivity disorder was also seen. However, it was not clearly evident across all educational settings. Ms. Parsons opined that the attention deficit hyperactivity disorder and anxiety did not severely impact Student's ability to learn and access the curriculum.

In her interview, Student reported feeling more anxious that school year than the year before, despite feeling the prior school year had been more difficult. She enjoyed school, liked her teachers for the most part, and believed she was getting a good education. She reported getting frustrated because she studied hard, knew the material for the most part, felt prepared for exams, but did not perform as well as she wanted to on exams. She explained that time limits and the order of questions on exams threw her off. She reported math and Spanish were difficult subjects, with math having been a struggle in the past. She understood the material being tested but got lost, distracted, and overwhelmed when it came to taking exams.

Ms. Lang conducted an academic assessment using the Woodcock-Johnson IV Tests of Achievement. Student scored in the low-average range, but within the normal limits in basic reading skills. She scored in the high-average range in reading comprehension, vocabulary, and reasoning. She also scored in the high-average range in written expression, which measured meaningful written expression, fluency, and cognitive processing speed. She was able to write accurate and detailed sentences that depicted a picture or prompt. She could also quickly formulate complete sentences using appropriate words on a timed test.

Student scored 84 in math calculation, and 89 in math fluency, with a cluster score of 86, which fell in the low-average range, but still within normal limits. The test of math calculation measured her ability to perform mathematical computations from simple addition to calculus operations. Student could add and multiply integers and solve problems with decimals. She struggled with problems involving fractions, percentages, and more advanced algebraic concepts. Math fluency measured the speed of computation or the ability to solve simple addition, subtraction, and multiplication facts quickly. The test was timed. These scores represented Student's computational skills and automaticity with basic math facts and provided a measure of her basic mathematical skills.

Ms. Lang also interviewed Student. Student reported wanting to study business after high school. She planned on continuing her education at a four-year university, with the possibility of first attending a community college.

Ms. Jacob assessed Student's speech and language skills over four days. Ms. Lang observed Student to be attentive, but at times became distracted, got off topic and forgot the question. Student's pragmatic and social language skills were not formally evaluated as it was not identified as an area of suspected disability. However, Ms. Jacob opined Student's social language and pragmatic skills were within normal limits based on reports from her teachers.

Student's semantics, syntax, morphology, and language-based critical thinking skills fell in the low-average to average ranges. Semantics is a system of language dealing with word meaning and word relationships. Syntax is a system of language dealing with the understanding and use of rules governing word order and the combinations of words in sentences. Morphology is the system of language dealing with the understanding and use of word forms such as root words, prefixes, and suffixes.

Student scored in the average range when tested on her ability to make inferences. Making inferences requires one to go beyond the information given and to fill in the information that is missing.

Ms. Jacob found Student's overall test scores to indicate her receptive and expressive language skills were in the low-average to average range. She administered the Clinical Evaluation of Language Fundamentals – 5 and found Student's overall expressive language abilities were in the low-average range. The Clinical Evaluation of Language Fundamentals was designed to evaluate receptive and expressive language skills, semantics, memory, word-finding and word retrieval skills. Student's receptive language score suggested an area of weakness, with a composite standard score of 75.

At the hearing, Ms. Jacob explained that she followed up in that area by administering the Comprehensive Assessment of Spoken Language. The test is a norm-referenced oral language assessment battery of tests. Student's standard score on the Receptive Language Index of the Comprehensive Assessment of Spoken Language was 96, within the normal range. Ms. Jacob opined that Student's difficulty in working memory may have impacted her performance on the Clinical Evaluation of Language Fundamentals. Student struggled to answer the test's questions that involved verbally presented information that required her to understand time, location, and sequence concepts. She also struggled with answering the test's comprehension questions based on verbally presented paragraphs. However, these difficulties were not reported by any of her teachers. Ms. Jacob opined that Student's difficulties could be supported by repeating classroom instruction when needed, breaking instruction down into smaller parts, frequent checks for understanding, as well as visuals and graphic organizers to support instruction. She concluded Student did not meet the legal criteria for a speech and language impairment for special education eligibility.



Ms. Parsons found that Student also did not meet special education eligibility under the categories of specific learning disability or other health impairment based on anxiety or attention deficit hyperactivity disorder. She explained that though Student had symptoms of attention deficit hyperactivity disorder across the home and school settings, and had symptoms of anxiety, she was succeeding in the classroom. Her teachers reported that while she was hyperactive and could be impulsive, she did not exhibit behaviors that disrupted learning for herself or others. She was highly organized, well prepared in class, usually attended to instructions, consistently completed all classwork and homework, was on task in class, generally performed well on assignments, and earned average or better grades, despite her issues with timed tests.

### **MARCH 13, 2018 IEP TEAM MEETING**

An IEP team meeting was held on March 13, 2018, to determine Student's eligibility for special education. Among those present were Mother, Student, Ms. Parsons, Ms. Lang, Ms. Jacob, and Student's Spanish, English, and biology teachers.

Student's Spanish teacher shared that tests and quizzes were harder for Student. Mother suggested Student be allowed to listen to music while testing. The Spanish teacher agreed to try it in class. Student requested extra time on Spanish tests as she felt rushed.

Student's English teacher shared Student participated well in discussion, did all her assignments, and did fairly well on essays. He did not observe the weekly quizzes to be challenging for Student. He did notice that she at times worked too quickly and failed to follow all the steps.

Student's biology teacher reported Student was doing great, and earning a high grade. Student had needed additional time to complete a quiz. She did well on teacher-generated quizzes, but struggled on multiple choice questions on bigger tests that were computer generated. The biology teacher believed reading the items to Student or clarifying the questions could help her.

The IEP team reviewed the March 13, 2018 multidisciplinary assessment report. At the meeting, Ms. Lang shared her academic assessment and noted Student's math calculation score was low-average but her ability to problem solve was average. Ms. Lang pointed out this was consistent with past performances where Student's math foundational skills were weak on standardized test measures, but her actual ability to apply math was strong. Ms. Lang reported Student's overall math problem solving skills were in the average range.

Ms. Jacob opined that though testing showed some areas of weakness, Student's performance on standardized speech assessments was attributable to her working memory difficulties. Ms. Jacob reported her findings and confirmed her conclusion that Student did not meet the criteria for speech and language impaired.

Ms. Parsons shared that Student compensated well, but her areas of weakness suggested the need for modest accommodations. She opined that Student's hyperactivity, impulsivity, and anxiety did not impact her behavior or classroom performance. However, they were relevant in considering supports for testing.

Placentia-Yorba Linda did not recommend eligibility for special education and related services. Instead, it recommended a referral to its Section 504 team to consider an accommodation plan under Section 504. Parent provided written consent to all parts of the March 13, 2018 IEP.

## **SECTION 504 PLAN**

On March 16, 2018, Student was found eligible for a Section 504 plan. The 504 Eligibility Determination form identified attention deficit hyperactivity disorder as the impairment that substantially limited her ability to concentrate. The Section 504 plan offered eight accommodations. The accommodations allowed for:

- Additional time for tests and quizzes;
- Additional time to complete homework;
- A quiet place, away from distractions, to complete tests and quizzes;
- Preferential seating;
- Test and quiz questions to be read to Student or reworded in her biology class;
- The use of 3x5 handwritten note card for math exams;
- The use of a calculator for math assignments, homework, and during tests and quizzes; and
- Teacher notes to be provided when available.

Mother consented to the Section 504 plan.

### **MARCH 17, 2018, THROUGH APRIL 2018**

On April 24, 2018, Student was caught by her math teacher with her phone out during a math test. Student got upset and cried for fear of being disciplined for suspected cheating.

Ms. Parsons met with Student immediately to console her and discuss what happened. Student was afraid she would get an F for math and expelled from school. Ms. Parsons assured her that was not going to happen. Student was able to calm

herself down and proceeded through the school day without any further incidents. No episodes of anxiety by Student were reported to Placentia-Yorba Linda for the remainder of the 2017-2018 school year.

On April 25, 2018, Mother emailed Ms. Parson and Student's math teacher regarding the events the previous day. Mother explained Student was concerned about her grade and very stressed the previous morning. Mother noted Student was more anxious than usual, and would resume neurofeedback therapy. Mother also shared that Student was disappointed in herself for lying and starting to search something on the internet with her phone. Mother reported Student tended to be hard on herself.

The following are the percentage of Student's correct responses on quizzes and tests from March 17, 2018, through April 2018:

Algebra1B:

- March 27, 2018 72.2 percent
- April 24, 2018 81.2 percent
- April 11, 2018 63 percent

Language Arts 2

- March 20, 2018 84 percent
- March 28, 2018 88 percent
- March 30, 2018 65 percent
- March 30, 2018 93.3 percent
- April 17, 2018 84 percent

## Spanish 2

- March 16, 2018 81.2 percent
- March 21, 2018 50.5 percent
- March 23, 2018 0 percent

## World History

- March 29, 2018 76.9 percent
- April 27, 2018 72.2 percent

## Biology

- March 30, 2018 100 percent
- April 16, 2018 100 percent
- April 19, 2018 83 percent
- April 19, 2018 80 percent
- April 27, 2018 75 percent

## **2018-2019 SCHOOL YEAR**

For the first semester of the 2018-2019 school year, Student continued to do well on classroom and homework assignments, but struggled with tests. For example, in geometry, Student was earning marks of B minus in homework and classwork, but an F on tests and quizzes for the first six weeks of the semester. Similarly, in earth science, Student was earning a grade of A plus on homework and classwork, but a D minus on tests for the first six weeks of the semester.

In October 2018, Mother informed Placentia-Yorba Linda of her concerns regarding Student's academic performance in language arts, science, and math. Mother notified Placentia-Yorba Linda of her disagreement with the findings of the March 10, 2018 multidisciplinary assessments and requested independent educational evaluations in the areas of psychoeducation and speech and language. Placentia-Yorba Linda agreed to fund the independent educational evaluations.

On December 10, 2018, Placentia-Yorba Linda offered an assessment plan to conduct an occupational therapy assessment of Student. Mother provided written consent to the plan on December 17, 2018.

In the spring of 2019, Student took the California Assessment of Student Performance and Progress. Student's scores demonstrated she had not meet 11th grade standards in the areas of English language arts and mathematics. She performed below standard in understanding written stories and information, and understanding spoken information. Student performed near standard in her ability to communicate in writing and to find and present information about a topic. In the area of mathematics, she performed below standard in her ability to use mathematical rules and ideas, demonstrate problem-solving skills, and think logically and express thoughts to solve a problem. However, no evidence was offered explaining what impact, if any, Student's test-taking anxiety had on her performance.

### **Independent Psychoeducational Evaluation**

Licensed psychologist Perry Passaro, Ph.D., conducted a psychoeducational assessment of Student at the request of Mother. Dr. Passaro was assisted by postdoctoral psychological assistant Jeannette Morgan, Ph.D., and education specialist Claire Passaro. Dr. Passaro assessed Student's cognitive abilities, fluid reasoning,

working memory, and long-term memory. He also assessed her visual motor processing, auditory processing, communication, academic achievement, and social, emotional, and behavioral functioning. He administered testing over a period of three days, noting her emotions and behavior during testing. He warned that the results of her test results should be cautiously interpreted due to Student's varied effort level throughout the evaluation. He documented his findings, conclusions, and recommendations in a report dated March 12, 2019. Dr. Passaro did not testify at the hearing.

As part of the evaluation process, Dr. Passaro considered input from Student, Mother, and five of her teachers. Mother reported Student was diagnosed with Cerebral Palsy and Fetal Alcohol Syndrome. However, no records to support those diagnoses were provided to Dr. Passaro or offered into evidence at the hearing.

Dr. Morgan observed Student at school for one hour. Student was on task, and followed routines and directions without difficulty or prompting. Her peer interactions appeared appropriate.

Dr. Passaro determined Student's full scale intelligence quotient to be in the average range, with a score of 93. Her working memory standard score was 89, in the low-average range.

Dr. Passaro administered a set of standardized tests to assess higher-level cognitive functions, referred to as executive functions. Executive functions draw upon an individual's fundamental or primary cognitive skills, such as attention, language, and perception, to generate higher levels of creative and abstract thought. Dr. Passaro found Student's scores to range from deficit to high average. He opined the high

variability between measures often indicated an attention processing disorder, specifically executive functioning involving planning and organization, as well as attentional vigilance, meaning the ability to maintain attention over time.

Dr. Passaro found no significant discrepancy between Student's performance on the Woodcock-Johnson Tests of Achievement Form A and her cognitive ability, meaning she did not have a specific learning disability. He noted that her scores on the Woodcock-Johnson in the area of mathematics were lower compared to her scores from 2018. However, he noted that those lower scores were likely due to her behaviors during his testing. Student worked quickly and often inaccurately, and did not persist with difficult tasks. She also seemed distracted with her own thoughts and sarcastic sense of humor. Nonetheless, Dr. Passaro determined she did meet the clinical criteria for a math disorder, also known as dyscalculia. He based this finding on a one-standard-deviation discrepancy between her cognitive ability and math assessment performance, in conjunction with her history of difficulties in math and anxiety associated with mathematics. He reported that the one-standard-deviation discrepancy was "not considered significant per education code." However, he opined the score to be "a borderline deficit score" indicative of a learning disorder.

Mother's report endorsed symptoms of anxiety and depression. Though Student reported some degree of anxiety and depression, Student did not endorse significant problems with anxiety or an anxiety disorder. In addition, her teachers did not endorse a neurodevelopmental, behavior, or mood disorder, and none endorsed criteria for attention deficit hyperactivity disorder, anxiety, or depression. Dr. Passaro opined the discrepancy between reports and observations of Student's behaviors in different settings precluded a diagnosis of attention deficit hyperactivity disorder or autism spectrum disorder, as those disorders are pervasive neurodevelopmental disorders that



are present across all settings. Dr. Passaro recommended cognitive-behavioral strategies and relaxation training, such as progressive muscle relaxation, breathing exercises, and relaxing imagery to address Student's anxiety.

From a clinical standpoint, Dr. Passaro diagnosed Student with a mood disorder with mixed features, anxiety; frontal lobe executive functioning disorder; and mathematics disorder, referred to as dyscalculia, specifically in calculation and application.

Dr. Passaro recommended direct small-group instruction to address Student's math difficulties. He proposed a strategy to teach Student to:

1. Read the problem,
2. Reread the problem to identify what information is given and to decide what she is trying to find out,
3. Identify the operation to use and then use objects to solve the problem,
4. Write the numeric representation of the problem, and
5. Solve the problem. Student should be provided a cue card that outlined the five steps.

Dr. Passaro proposed the following accommodations:

1. Extended time on in-class and homework assignments and tests;
2. Reduced workload as appropriate;
3. Access to additional support through the use of student resources upon request, such as study skills training;
4. A quiet room for test taking with no time limit, at her discretion;
5. A calculator on classwork and tests;
6. The use of math notes during tests;

7. When possible, written notes and worksheets associated with lecture to be provided to Student by the teacher before the class begins; and
8. Individualized tutoring for mathematics.

Dr. Passaro found Student demonstrated deficits in attention processing and executive functioning, which limited her vitality and alertness. Therefore, he determined her eligible for special education services under the category of other health impairment. He did not find deficits warranting special education and related services in the areas of social pragmatics, working memory, visual processing, or auditory processing.

Dr. Passaro proposed a number of goals to address Student's struggles in math, which included giving her a mixture of 15 math problems that required both single- and multi-step solutions. She would be required to determine how and when to break a problem into simpler parts.

As to attention processing and executive functioning, Dr. Passaro proposed a goal for Student to check her work for errors by referencing a list of common errors and to complete her work correctly. In addition, he recommended the use of cognitive behavioral relaxation strategies such as relaxation breathing and progressive muscle relaxation, with a prompt or reminder, to improve her coping skills and frustration tolerance when facing a situation, or engaging in a task, that triggered anxiety.

## **Independent Speech and Language Evaluation**

Speech-language pathologist Brock Tropea assessed Student to determine her current level of language functioning and communicative ability. Mr. Tropea did not testify at the hearing. Mother reported concerns that Student was a very literal thinker, had difficulty with inferencing and interpreting nonverbal cues during conversations, and at times had difficulty understanding directions given verbally.

Mr. Tropea found Student's receptive and expressive language skills were average. She displayed the ability to use words and construct sentences of adequate length to convey a message. However, her narrative ability lacked content and organization. In regards to pragmatics, Student had adequate skills in the areas of understanding and use of social language.

Mr. Tropea found through standardized and non-standardized assessments that Student's social skills and critical thinking skills were average. She demonstrated the following conversational skills:

- Recognizing communication breakdown or making repairs;
- Attempting coordination of topic, turn taking, and interests in conversation with peers or adults;
- Adequate problems solving through the use of language; and
- Interpreting others' comments literally.

Student's articulation, voice, and fluency skills were within normal limits. Mr. Tropea determined she did not meet the legal requirements for special education eligibility under the category of speech and language impaired.

## **MAY 3, 2019 IEP**

An IEP team meeting was convened to review the independent educational evaluation reports prepared by Dr. Passaro and Mr. Tropea, and to develop an initial IEP and individualized transition plan, called an ITP. The review of the independent educational evaluations occurred on April 8, 2019. The development of the IEP occurred on May 3 and June 3, 2019. The IEP was identified as the May 3, 2019 IEP. Audio recordings of the meetings were offered into evidence and the IEP team meeting notes accurately captured the pertinent discussions of the meetings. Among those present at the first meeting were Student, Mother, Ms. Jacob, and Student's teachers Noelle Toxqui and Kevin Shanahan. Dr. Passaro participated by phone and Mr. Tropea attended in person. Dr. Passaro and Mr. Tropea did not attend the May and June meetings. Student turned 18 years old between the first and second meetings. Student attended each of the meetings, but did not remain throughout the meetings. Ms. Parsons only attended the June meeting. Mother attended all the meetings.

Student was distraught and cried at times during the April 8, 2019 meeting. She was frustrated and upset with the school's lack of effort. She felt the school failed to teach her in the way her brain worked. She shared her experience of the events in her math class on April 24, 2018, which she described as an out-of-body experience. She reported her anxiety at school had worsened. She explained that pop quizzes made her anxious and when anxious, letters on paper came together making it difficult for her to read directions.

She also reported being distracted in class, and it was difficult for her to pay attention. Her inability to focus had gotten worse. Drawing helped her feel better by taking her mind off of what was making her anxious. Throughout the meetings, Mother

and Student expressed their frustration regarding the lack of follow-through of the Section 504 plan, accusing Placentia-Yorba Linda of failing to consistently provide the accommodations.

Dr. Passaro and Mr. Tropea presented their findings, conclusions, and recommendations at the April 8, 2019 IEP team meeting. At the meeting, Dr. Passaro and Mr. Tropea discussed their differing results on one of the assessment tests. Student performed significantly better in Mr. Tropea's assessment. Mother reported Student was very comfortable and had good rapport with Mr. Tropea. The IEP team theorized that Student performed differently for different people and differing testing results could be due to her issues with attention and anxiety.

As to anxiety and depression reported by Student, Dr. Passaro opined her scores were elevated but not clinically significant in those areas. The scores did suggest some concerns with anxiety and mood, but Dr. Passaro did not consider it to be an extremely high level. He indicated that it was not overwhelming evidence. He reported that Student had a frontal lobe disorder, a mood disorder, and a math disorder. He made no diagnosis of Fetal Alcohol Syndrome or Fetal Alcohol Effects.

At the first meeting, Mother questioned the need to review Placentia-Yorba Linda's occupational therapy assessment report, arguing that she had already arranged for an independent occupational therapy evaluation. At the second meeting, the IEP team planned again to discuss Placentia-Yorba Linda's occupational therapy assessment, but Mother insisted the presentation of the occupational therapy assessment report be limited to five minutes, with another five minutes for Mother to present her views of the assessment. The occupational therapist reported her findings. Mother dismissed the occupational therapy assessment report due to what she believed was an inaccurate account of Student's history and Mother's reported concerns.

Student's independent occupational therapy evaluation was not completed until July 2019. Placentia-Yorba Linda's occupational therapy assessment report was not offered into evidence.

American history teacher Ms. Toxqui testified. Student received a B in her class in both the fall and spring semesters of the 2018-2019 school year. Ms. Toxqui did not observe Student to be anxious in her classroom. Academically, Student outperformed some of her peers. Ms. Toxqui described Student as friendly, with good self-advocacy skills. Student had some challenges with inferences, taking things more literally, however, she was aware of this trait and sought clarification from Ms. Toxqui and others.

English teacher Mr. Shanahan testified. Student received an A for the fall semester and an A plus for the spring semester of the 2018-2019 school year. He also did not observe Student to be anxious. He described her as creative, and she participated in class more than her average peer. He thought Student was an excellent communicator, with good self-advocacy skills, and she was comfortable seeking him out with questions and for guidance.

Academically, the IEP noted that Student was earning As and Bs, completed her high school math requirement, and was on track to graduate from high school on time. It also indicated that further information was in the March 13, 2018 multidisciplinary report and the independent psychoeducational assessment report. The IEP also noted Student had increased difficulties with coping skills and frustration tolerance, which resulted in increased anxiety and impulsive behavior.

Based on the discussions at the IEP team meetings, the information contained in the independent psychoeducational evaluation report, and Student's increased anxiety and declining ability to focus in class, the May 3, 2019 IEP identified Student eligible for

special education and related services under the category of other health impairment. The IEP noted that Student's increased anxiety and attention processing deficit limited her vitality and alertness. The IEP identified social-emotional functioning, executive functioning, and math reasoning as areas of need. The IEP offered three annual goals to address these needs.

The first annual goal addressed Student's social-emotional needs. The goal aimed to improve Student's coping skills and increase her frustration tolerance by using relaxation strategies and other strategies developed in counseling sessions when faced with a situation that caused anxiety. To meet the annual goal, Student would have two or fewer episodes of elevated anxiety and avoidance for each class per quarter. Progress would be measured by teacher notes, counseling notes, and consultations between the case carrier and staff. Three short term objectives were proposed, with each objective seeking to reduce the episodes of elevated anxiety and avoidance from five, then four, and then three, until reaching the annual goal of two. This goal was developed in line with Dr. Passaro's recommendation.

The second annual goal focused on executive functioning. The goal sought to improve Student's ability to discern important versus unimportant information when studying. She would demonstrate success by completing a 3-by-5 inch, two-sided note card for use on tests and quizzes and only require one prompt or direction to the 3-by-5 card by staff over three consecutive instances. Three short-term objectives were offered. The first short-term objective allowed for individual assistance and correction by staff in completing the note card. The second short-term objective reduced the support to only individual assistance with no correction. The third short-term objective was limited to two prompts or card-checks. Progress would be measured by teacher notes, observations, counseling notes, and consultation with the case carrier.

The third annual goal sought to improve Student's math reasoning. Student was required to determine how and when to break a math problem into simpler parts when given a mixture of 15 math problems across content areas. The math problems would require single- and multi-step solutions. To achieve the annual goal, Student had to be 85 percent accurate in two or more trials. The three short-term objectives sought to improve Student's accuracy from 60 percent to 80 percent. Ms. Lang testified that achieving the math goal would provide Student with generalized skills to multi-step problem solve across settings. Though the math reasoning goal did not specifically state how it was to be measured, a fair reading of the goal provided that the goal would be measured based on her performance on assignments involving 15 math problems.

The ITP offered three transition goals. The goals were developed based on input from Student and Mother at the June 6, 2019 IEP team meeting. Student expressed an interest in attending a community college, then transferring to a university to study business. Each transition goal was linked to the first annual goal, which targeted the area of social-emotional functioning.

The first transition goal was, ultimately, for Student to apply to a community college or trade school of her preference in preparation for transfer to a four-year university. She was to research the application requirements to a school of her choosing and talk to her counselor and case carrier to help facilitate the process. She would also visit a community college. Specialized academic instruction was offered to help her with this task.

The second transition goal called for Student to apply for a part-time job in an area of interest to her to help further explore career options. She would research jobs online and submit applications. She would also work with the Department of



Rehabilitation to work on job-related skills and support. Ms. Lang testified that the Department of Rehabilitation provided job skills training. Specialized academic instruction was also offered to support this goal.

The third transition goal addressed independent living. The goal was for Student to live with her family for a few years then move into on-campus housing. She would participate in the On Your Own project in her economics class and research on-campus university living options online.

The IEP offered 11 accommodations to support Student throughout her school day:

1. Up to 50 percent additional time to complete quizzes and tests. The time and place of the extended time accommodation would be arranged by Student, teacher, and the case carrier in advance. Tests would be completed on the same day given.
2. Additional time to complete homework assignments. She would be provided one extra day for one-day assignments and time-and-a-half for long-term assignments.
3. A separate setting for test taking.
4. Ability to listen to music using headphones to help her focus during tests and independent work.
5. Preferential seating in the best location for optimal classroom instruction. The teacher would consult with Student to determine optimal seating.
6. Questions to be read aloud or reworded on tests and quizzes if requested by Student.
7. Concrete examples, clarification of directions, and frequent checks for comprehension on tests and quizzes to be provided.

8. The use of a 3-by-5-inch handwritten note card for tests. The appropriateness and content of the note card was to be determined in advance by the teacher based on the test. The note card would be reviewed by the teacher prior to Student sitting to take the exam.
9. Teacher notes or PowerPoints to be provided upon Student's request.
10. Short breaks when feeling overwhelmed. Student was to signal teacher to request permission or to delay due to upcoming instruction.
11. Use of a calculator.

To help Student achieve her IEP goals, specialized academic instruction and individual counseling were offered. The IEP offered 55 minutes, twice each day for a total of 110 minutes of specialized academic instruction in a group setting in her collaborative language arts and social studies regular classrooms. In addition, the IEP offered another 55 minutes each day of group specialized academic instruction in a separate classroom. The pull-out instruction would take place in the academic performance strategies program.

It was explained at the June 3, 2019 IEP team meeting that the academic performance strategies class supported students with executive functioning deficits. The class had between 10 to 12 students, each with an IEP. At the hearing, Ms. Lang explained that the academic performance strategies class focused on learning study skills, with instruction on executive functioning, such as note taking and memorization strategies.

To help Student transition into her senior year, individual counseling would be offered, once a week for 50 minutes until November 1, 2019. Thereafter, individual counseling would be reduced to 50 minutes, 12 times a year for a total of 600 minutes yearly. Individual counseling would fade to twice a month or as needed, after the first

two months of the 2019-2020 school year, until the next annual IEP review. Counseling services would be provided by the school psychologist, a psychologist intern, or a psychological support staff. At the hearing, Ms. Parsons clarified that she would be providing the individual counseling and the intern and support staff would be available "as needed." Ms. Parsons explained there could be times when she would be unavailable when Student sought counselling without an appointment. In those instances, an intern or support staff would be available for Student.

At the meeting, Mother questioned Ms. Parsons' qualification to provide counseling services to Student. Mother expressed concern that Placentia-Yorba Linda's IEP team members did not understand what Mother reported to be Student's underlying trauma and how it impacted her at school. Placentia-Yorba Linda requested Student sign a release of information to allow it to communicate with Student's private therapist. Placentia-Yorba Linda also suggested the therapist provide recommendations to help school personnel support Student at school. Placentia-Yorba Linda also suggested the therapist write a letter for Placentia-Yorba Linda to consider. Student and Mother refused to provide consent to allow Student's therapist to share information with Placentia-Yorba Linda, as Mother did not trust the school district. The therapist never provided a letter to Placentia-Yorba Linda.

On July 11, 2019, Student executed a written authorization for Mother to make any and all decisions for her regarding her entitlement to a FAPE. On July 13, 2019, Mother emailed a letter dated July 10, 2019, giving Placentia-Yorba Linda notice of her rejection of the May 3, 2019 IEP. Mother further requested Student be placed full-time in a home study program for the 2019-2020 school year. The letter also advised that Student would be participating in a program to address the areas of visual processing, auditory processing, mathematics, and cognition, to begin in August 2019. In addition,

Student would continue to receive one to two hours of counseling from a psychologist to address post-traumatic stress disorder and anxiety disorder, and a psychiatrist to work on fetal alcohol exposure-related concerns. Mother stated she wanted reimbursement from Placentia-Yorba Linda for these services, to include transportation to and from the services. However, Student presented no evidence to support reimbursement, such as the type, amount, time, and duration of the services that were provided to Student and paid for by Mother.

In July 2019, the Stowell Learning Center conducted a functional academic and learning skills assessment of Student to identify any weakness in her underlying learning and basic skills that were impeding her from learning and functioning as comfortably and independently as she could. The assessment also sought to determine appropriate steps to improve or correct any weaknesses. Stowell Learning Center's findings, conclusions, and recommendations were presented in a written report dated July 2, 2019. Jill Stowell, Executive Director of the Stowell Learning Center testified. She explained that Student began receiving services at the Stowell Learning Center in July 2019. Neither the assessment report, nor Ms. Stowell's opinions, were available to the IEP team to consider in developing the May 3, 2019 IEP.

Licensed marriage and family therapist Noelle Vestre-Schmid testified. She began providing therapy to Student in July 2019. Neither she, Student, nor Mother shared any information regarding Student's therapeutic needs, goals, and progress with Placentia-Yorba Linda prior to her testimony.

## **LEGAL AUTHORITIES AND CONCLUSIONS**

### **INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

This hearing was held under the IDEA, 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.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of the issue decided below. All references to title 34 Code of Federal Regulations are to the 2006 version.

The main purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
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).)

Under the IDEA and California law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE is defined as appropriate special education, and related services, that are available to the pupil at no cost to the parent or guardian, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Ed. Code, §§ 56031 & 56040; Cal. Code Regs., tit. 5, § 3001, subd. (o).)

“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’s unique educational needs are to be broadly construed to include the child’s academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer ex rel. Schaffer v. Weast* (2005) 546 U.S. 49, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

“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. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, § 56345, subd. (a).) The IEP describes the child’s needs, as well as the academic and functional goals related to those needs. (20 U.S.C. § 1414(d)(1)(A)(i)(I), (II); Ed. Code, § 56345, subd. (a)(1), (2).) The IEP also contains a statement of 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. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).)

In *Board of Education of the Hendrick Hudson Central School District 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 district 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 [In enacting the IDEA 1997, 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. 951, fn. 10.)

In *Andrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000] (*Andrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstances.” “[E]very child should have a chance to meet challenging objectives.” (*Ibid.*) *Andrew F.* explained that “[t]his standard is markedly more demanding than the ‘merely more than de minimis’ test . . . . [¶] . . . The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in *Andrew F.*, as the Court was “[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE

since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case." (*Id.* at p. 1001.) The Court noted, "Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed that its FAPE standard comports with *Andrew F. (E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

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.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student requested the hearing in this matter, and therefore Student had the burden of proof as to each of the issues.

**ISSUE 1: ARE STUDENT'S CLAIMS BASED ON EVENTS OCCURRING PRIOR TO MAY 20, 2017, BARRED BY THE TWO-YEAR STATUTE OF LIMITATIONS?**

The two-year statute of limitations was addressed at the beginning of the hearing. At the hearing, Student contended Mother was denied notice of her procedural rights and safeguards in 2006, and thus, Mother was not aware of her rights



to pursue a timely due process hearing request. Placentia-Yorba Linda contended Mother received her notice of procedural rights and safeguards in 2006, and therefore, neither of the exceptions to the two-year statute of limitations applied.

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (j); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (j), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

In *Avila v. Spokane Sch. District 81* (9th Cir. 2017) 852 F.3d 936, the Court found that the IDEA's statute of limitations barred claims filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id.* at pp. 937, 945.) The Court held that in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Id.* at pp. 939-945.)

California implements the IDEA through its special education law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Consistent with the IDEA, California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (j).) Knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (*M.M. & E.M. v.*

*Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, \*\* 17 – 19, *affd. in part & revd. in part* (9th Cir. 2014) 767 F.3d 842, 858-859.)

The facts did not support Student’s contention that Mother was not provided notice of procedural safeguards and therefore was prevented from filing a timely due process hearing request. Placentia-Yorba Linda’s preschool assessment team provided parents whose children were to be evaluated by the team a packet containing a proposed assessment plan, notice of procedural rights and safeguards, and an interview form. The weight of the evidence established, more likely than not, that Mother was provided notice of her procedural rights and safeguards in 2006. Furthermore, the facts did not demonstrate the need for notice of procedural safeguards to be provided to Mother after Student enrolled in Placentia-Yorba Linda in October 2015 and prior to May 20, 2017. Student’s enrollment forms did not identify a need for special education services, nor did her overall performance at Placentia-Yorba Linda, academically, socially, or emotionally, prior to May 20, 2017, suggest she may have had needs that required special education services.

Student failed to establish by a preponderance of the evidence any exception to the two-year statute of limitations. The evidence did not prove that Placentia-Yorba Linda made a specific misrepresentation of having solved a problem. In addition, the evidence did not establish that Placentia-Yorba Linda withheld information, such as notice of procedural rights and safeguards, from Mother to prevent her from filing a timely due process hearing for claims based on events occurring prior to May 20, 2017. Therefore, Student’s claims based on events prior to May 20, 2017, are barred by the two-year statute of limitations.

At the hearing, the ALJ orally ruled and found Student had failed to meet her burden in proving either of the exceptions to the two-year statute of limitations applied. As a result, Student's Issue 2 was dismissed as barred by the statute of limitations and Issue 3 was reframed to reflect a period of May 20, 2017, to the end of the 2016-2017 school year. At the hearing, Student withdrew Issue 3 as reframed. The hearing proceeded on Issues 4, 5, and 6 only.

### **ISSUES 4 AND 5: WAS STUDENT ELIGIBLE FOR SPECIAL EDUCATION ON MARCH 13, 2018, AND IN APRIL 2018?**

Student contends she should have qualified for special education on March 13, 2018, and in April 2018 due to her anxiety and poor testing performance. She also argues Placentia-Yorba Linda ignored her history of trauma and exposure to alcohol use in utero in concluding she was not eligible for special education.

Placentia-Yorba Linda contends Student did not meet eligibility requirements for special education services on March 13, 2018, nor did circumstances warrant an IEP team meeting to be convened to reconsider her eligibility for special education in April 2018.

Only children with certain qualifying disabilities are eligible for special education. For purposes of special education eligibility, the term "child with a disability" means a child with:

- an intellectual disability;
- a hearing impairment, including deafness;
- a speech or language impairment;
- a visual impairment, including blindness;
- a serious emotional disturbance;

- an orthopedic impairment;
- autism;
- traumatic brain injury;
- an other health impairment;
- a specific learning disability;
- deaf-blindness; or
- multiple disabilities;

and who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3)(A)(i), (ii); 34 C.F.R. § 300.8(a)(1).)

In California, special education is required for individuals who are defined in part as individuals whose “impairment . . . requires instruction, services, or both, which cannot be provided with modification of the regular school program.” (Ed. Code, § 56026, subd. (b).) “Special education” means specially designed instruction to meet the unique needs of individuals with exceptional needs. (Ed. Code, § 56031, subd. (a).)

Nothing, however, in the IDEA requires children to be classified by their disabilities. (20 U.S.C. § 1412(a)(3)(B)). As long as a child remains eligible for special education and related services, the IDEA does not require that the child be categorized in the most accurate disability category. (*Ibid.*)

An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Student did not meet special education eligibility requirements on March 13, 2018. The information available at the time demonstrated Student did not require special education to access her education. The purpose of the March 13, 2018

multidisciplinary assessments was to determine how Student was functioning academically, socially, and emotionally and how any areas of deficits were impacting her academic and functional performance at school. The assessments were not intended to diagnose Student's medical conditions. Furthermore, the purpose of an IEP is to provide special education instruction, related services, and supports to address the impact a child's disability has on his or her academic and functional performance in school and to help the child progress towards meeting the IEP's academic and functional goals, not to treat a child's underlying medical conditions. (20 U.S.C. §1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).)

The facts did not establish Student had Fetal Alcohol Effects or Fetal Alcohol Syndrome. The facts also did not support the assertion that Student had a trauma-related disorder due to her experiences in an orphanage. The assessments conducted by Placentia-Yorba Linda in 2018 were not intended to make any such diagnosis. Instead, the assessments revealed Student had symptoms of attention deficit hyperactivity disorder and anxiety. However, she was accessing the curriculum and succeeding in the classroom setting. She did not exhibit behaviors that disrupted learning for herself or others. Though she struggled on tests, the evidence did not demonstrate a need for specialized instruction or services. The facts demonstrated that the Section 504 plan accommodations to support Student's ability to access the curriculum despite her anxiety were reasonably calculated to support her needs at the time. She was highly organized, well prepared in class, usually attended to instructions, consistently completed all classwork and homework, was on-task in class, generally performed well on assignments, and earned average or better grades.

In addition, the facts do not support Student's contention that an IEP team meeting should have been held to revisit special education eligibility in April 2018. Student's anxiety during a math exam on April 24, 2018, was not triggered from testing, but rather for fear of discipline and receiving an F grade in math due to her conduct in accessing a cell phone during the test. No further anxiety episodes were reported to Placentia-Yorba Linda in April 2018, or the remainder of the 2017-2018 school year. Furthermore, no persuasive evidence was offered to suggest that an IEP had become necessary in the five weeks since the Section 504 plan had been in place. No new information had come to light to warrant reconsidering the March 13, 2018 determination that Student did not qualify for special education. The facts did not demonstrate Student's school-related anxiety had worsened or that the accommodations offered in the Section 504 plan were inadequate to support her needs in test taking. She had mixed quiz and test results in the latter part of March 2018 and in April 2018, which did not demonstrate a decline in testing to suggest accommodations alone were inadequate.

Moreover, the law requires that general education interventions be considered and used before a student is referred for special education. (*Panama-Buena Vista Union School Dist. v. A.V.* (E.D. Cal., Dec. 5, 2017, No. 1:15-cv-01375-MCE-JLT) 2017 WL 6017014, \*\*5-6.) Student demonstrated the ability to function well in the classroom with general education interventions through a Section 504 plan. Furthermore, even assuming the Section 504 plan was not faithfully implemented on the part of the school district, resulting in poor test performance, a lack of implementation alone was not a basis to find Student then eligible for special education.

Placentia-Yorba Linda's assessments credibly concluded Student did not qualify for special education and related services under the categories of specific learning disability, other health impairment, or speech and language impaired. Furthermore, no persuasive evidence was offered to support special education eligibility in any other disability category either in March or April 2018. Accordingly, Student did not meet her burden of proving she was eligible for special education services on March 13, 2018, or that she was denied a FAPE when an IEP team meeting was not held to reconsider eligibility in April 2018.

**ISSUES 6(a)(i), (vi), AND (vii): DID STUDENT HAVE NEEDS IN THE AREAS OF PRAGMATIC LANGUAGE, VISUAL PROCESSING, AND AUDITORY PROCESSING THAT THE MAY 3, 2019 IEP WAS REQUIRED TO ADDRESS?**

Student contends the May 3, 2019 IEP failed to address all her deficits. Student's closing argument identified her difficulty in making inferences, her visual-spatial ability, and deficits related to fetal alcohol exposure as areas of need that required special education and related services.

Placentia-Yorba Linda contends Student did not present with deficits in the areas of pragmatic language, visual processing, and auditory processing that would warrant special education and related services based on the information available at the time the May 3, 2019 IEP was developed.

The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the "modus operandi" of the IDEA, "a comprehensive statement of the

educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Bd. of Educ.*, (3d Cir. 1993) 993 F.2d 1031.)

The facts do not support Student's contention that the May 3, 2019 IEP should have identified and addressed Student's pragmatic language, visual processing, or auditory processing. Neither Placentia-Yorba Linda's 2018 multidisciplinary assessments, nor Student's independent psychoeducational and speech and language evaluations, concluded Student had deficits in making inferences or in her visual-spatial ability that impeded her education. The assessors also did not find areas of need related to fetal alcohol exposure that warranted special education and related services. No persuasive evidence demonstrated that any of those areas impeded Student's ability to receive an educational benefit. Even assuming there were impediments to her education, Student offered no evidence describing what, if any, goals, services, and supports should have been offered in the May 3, 2019 IEP to address those areas. Her



teachers described her as having strong self-advocacy skills and being a good communicator. She performed well academically compared to some of her peers. She had average cognitive abilities. Both Dr. Passaro and Ms. Parsons found no significant discrepancy between Student's academic performance on assessments and her cognitive ability to suggest a specific learning disability. Mr. Tropea found no deficits in pragmatic language. This was consistent with Ms. Jacob's findings in her 2018 speech and language assessment. Student scored in the average range when tested by Ms. Lang on her ability to make inferences.

No further information available to the IEP team at the time the May 3, 2019 IEP was developed supported Student's contention that she had deficits in pragmatic language, visual processing, or auditory processing. Similarly, Student's independent occupational therapy evaluation and the July 2019 Stowell Learning Center functional academic and learning skills assessment were not available during the development of the IEP and therefore, could not be considered by the IEP team. In light of the information available at the time, the May 3, 2019 IEP properly identified Student's needs to be related to anxiety, executive functioning, and mathematics. The facts did not establish any other areas of deficits. Accordingly, Student failed to prove she was denied a FAPE because the May 3, 2019 IEP did not address needs in the areas of pragmatic language, visual processing, and auditory processing.

**ISSUES 6(a)(ii), (iii), (iv), (v), 6(b)(i), (ii), 6(c), AND 6(d): DID THE MAY 3, 2019 IEP APPROPRIATELY ADDRESS THE AREAS OF SOCIAL EMOTIONAL FUNCTIONING, DYSCALCULIA, COGNITIVE FUNCTIONING, EXECUTIVE FUNCTIONING, AND TRANSITION FOR THE 2019-2020 SCHOOL YEAR, INCLUDING OFFERING APPROPRIATE AND MEASURABLE GOALS AND SERVICES?**

Student contends the May 3, 2019 IEP failed to provide a qualified school psychologist to support Student's social-emotional needs. In closing argument, Student also argues that the IEP failed to appropriately address cognitive functioning, which she identified as working memory. Student further argues that the executive functioning goal was inadequate and did not address her struggles to learn in the classroom and her distractibility. She also claims the accommodations were lacking to support her executive functioning needs. In addition, Student argues that the math goal failed to address her foundational math deficits. Furthermore, she contends the transition goals failed to focus on improving her academic and functional skills to prepare her for life after high school, such as post-secondary education, vocational education, and employment.

Placentia-Yorba Linda contends the May 3, 2019 IEP properly identified all of Student's unique needs and offered appropriate, measurable goals and services to address those needs.

The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general

education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).)

Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

In California, related services are called designated instruction and services, and must be provided "as may be required to assist an individual with exceptional needs to benefit from special education . . . ." (Ed. Code, § 56363, subd. (a).) In determining the appropriate method of instruction, the choice of methodology is left to the expertise of the school and its employees. (*R.P. ex rel. C.P v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122 ["The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit."]); *G.D. ex rel. Dien Do v. Torrance Unified School Dist.* (C.D. Cal. 2012) 857 F.Supp.2d 953, 965.)

The IEP must also contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities, as well as a statement of any individual appropriate accommodations necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments. (20 U.S.C. § 1414(d)(1)(A)(i)(V), (VI); 34 C.F.R. § 300.320(a)(5), (6); Ed. Code,

§ 56345, subd. (a)(5), (6).) Furthermore, the IEP must contain the projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

Transition services means a coordinated set of activities that is designed to improve the academic and functional achievement of a child with exceptional needs to facilitate the movement of the child from school to post-school activities. (20 U.S.C. § 1401(34)(A); Ed. Code, § 56345.1, subd. (a)(1).) Post-school activities include post-secondary education, vocational education, integrated employment including supported employment, continuing and adult education, adult services, independent living, or community participation. (*Ibid.*) Transition services are based on the individual needs of the child, taking into account the child's strengths, preferences, and interests. (20 U.S.C. § 1401(34)(B); Ed. Code, § 56345.1, subd. (a)(2).) Transition services include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. (20 U.S.C. § 1401(34)(C); Ed. Code, § 56345.1, subd. (a)(3).)

The May 3, 2019 IEP offered goals, instruction, related services, and accommodations that appropriately addressed Student's unique needs and were reasonably calculated to enable her to make progress in light of her circumstances. The goals were measurable and the services and supports offered were sufficient based on her deficits in the areas of mathematics, social-emotional and executive functioning. The goals were measurable through Student's performance on math assignments, teacher notes and observations, consultation between the case carrier and staff, and counseling notes.

Academically, Student accessed the math curriculum, learned the lessons, and performed well on assignments at home and at school. Based on assessments, Student's foundational math skills were not an area of weakness. Ms. Lang's academic assessment found Student's math calculation and math fluency skills were in the low-average range, but still within the normal limits. Dr. Passaro's assessment findings were less persuasive due to the lack of reliability of Student's scores as a result of her testing behaviors. Nevertheless, the IEP acknowledged Student's weakness in math and offered a math goal designed to strengthen her math reasoning skills by teaching her how to break down math problems into simpler steps across settings. Student would learn to break down mathematical problems into simpler steps, with 85 percent accuracy over two or more opportunities. The amount and frequency of the instruction was appropriate in light of Student's level of math deficit.

The social-emotional goal aimed to reduce Student's anxiety by teaching her coping skills and strengthening her frustration tolerance. Her struggles focused on testing, as she often felt rushed and anxious. The goal was measurable in that Student was expected to reduce her level of anxiety and avoidance to two or fewer elevated episodes for each class per quarter. The IEP's proposed accommodations offered adequate supports to assist her in that area, which included additional time to complete a test, a separate testing area, and breaks as needed.

Student reported getting lost, distracted, and overwhelmed when it came to exams. Accordingly, the executive functioning goal appropriately sought to improve her ability to organize her ideas by helping her figure out important versus unimportant information. The goal was measurable. She was expected to improve her ability to discern important versus unimportant information, from requiring individual assistance and correction from school staff to needing only one prompt. The facts did not support

Student's contention she needed a goal and service to specifically address her relative weakness in working memory. Regardless, Placentia-Yorba Linda offered accommodations to support Student's working memory, including:

- Test and quiz questions to be read aloud or reworded;
- Concrete examples, clarifying directions, and frequent checks for comprehension to be provided to her during tests and quizzes;
- Additional time to complete tests and homework;
- The use of 3-by-5-inch note card for tests;
- Teacher notes or PowerPoints to be provided to Student; and
- The use of a calculator.

To address Student's social-emotional functioning, executive functioning, and academic needs, the IEP offered an appropriate level of specialized academic instruction and counseling. The specialized academic instruction in the general education classroom of 110 minutes each day adequately addressed Student's needs in the areas of executive functioning and mathematics. The 55 minutes of daily specialized academic instruction in the academic performance strategies class was also a proper response to Student's needs in the area of executive functioning. Student presented with anxiety; therefore, the counseling services offered in the IEP to be provided by the school psychologist and a team of psychological interns and support staff was reasonably calculated to support Student's anxiety associated with testing taking. Ms. Parsons was qualified to provide Student with individual counseling.

In addition, the ITP in the May 3, 2019 IEP offered appropriate transition goals and services for the 2019-2020 school year. The transition goals adequately covered Student's plans to attend a community college, then to transfer to a four-year university. She wanted to obtain a part-time job and to live at home for a few years before moving to on-campus housing at a four-year university.

The IEP provided opportunities for Student to research community colleges and universities, to explore career paths, to obtain job skills training and work experience, and to explore housing options while in college. Those opportunities, coupled with specialized academic instruction, were adequate to help her meet her transition goals. No persuasive evidence was offered to demonstrate otherwise. Accordingly, Student did not meet her burden of proving that the transition goals offered in May 3, 2019 IEP denied her a FAPE.

No persuasive evidence was presented that called into question the appropriateness of the goals and services offered in the May 3, 2019 IEP. Furthermore, Student failed to establish what, if any, additional goals or remediation services were required in the IEP to provide Student a FAPE based on information available at the time the IEP was developed. Accordingly, Student failed to meet her burden of proving the May 3, 2019 IEP failed to offer appropriate, measurable goals and services in the areas of social-emotional functioning, dyscalculia, cognitive functioning, executive functioning, and transition.

## **ORDER**

All relief sought by Student is 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. Here, Placentia-Yorba Linda was the prevailing party on each of the issues presented.

## **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: December 5, 2019

ROMMEL P. CRUZ  
Administrative Law Judge  
Office of Administrative Hearing