

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

RIVER SPRINGS CHARTER SCHOOL,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2018120978

DECISION

River Springs Charter School filed a due process hearing request with the Office of Administrative Hearings, State of California, on December 26, 2018, naming Student. OAH continued the matter for good cause on January 14, 2019.

Administrative Law Judge Rommel P. Cruz heard this matter in Temecula, California, on March 26 and 27, 2019.

Attorney Jim Sanft represented River Springs. Dr. Kathy Cox, Ph.D., Senior Director of Special Education, attended the hearing on all days on behalf of River Springs.

Mother and Student did not attend the hearing.<sup>1</sup>

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<sup>1</sup> At the March 15, 2019 Prehearing Conference, Mother indicated she would not be attending the hearing. On March 26, 2019, at approximately 8:18 a.m., OAH contacted Mother, left a voice message inquiring if she would be attending the hearing that day. OAH did not receive a response from her and the hearing commenced at 9:45 a.m.

OAH granted a continuance at River Springs' request for the parties to file written closing arguments. River Springs filed a timely written closing argument. Student did not file a written closing argument. On April 22, 2019, the record was closed and the matter was submitted for decision.<sup>2</sup>

### ISSUE<sup>3</sup>

1. Did the June 8, 2018 individualized education program, as amended on November 16, 2018, offer Student a free appropriate public education in the least restrictive environment?
2. May River Springs assess Student pursuant to the September 14, 2018 assessment plan without parental consent?

### SUMMARY OF DECISION

This Decision holds that River Springs did not meet its burden in proving the June 8, 2018 IEP, as amended on November 16, 2018,<sup>4</sup> offered Student a free appropriate public education in the least restrictive environment. The IEP failed to offer placement with supports and services to address Student's social-emotional and behavioral deficits. The level of services offered were inadequate. Further, the placement and services in

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<sup>2</sup> On March 28, 2019, OAH served the parties an Order for Written Closing Arguments, which stated the deadline for filing a written closing argument.

<sup>3</sup> The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.).

<sup>4</sup> This Decision will refer to the June 8, 2018 IEP, even as amended on November 16, 2018, simply as the June 8, 2018 IEP.

River Springs' Homeschool program did not provide Student with the structure and support necessary to meet his needs. The June 8, 2018 IEP was not reasonably calculated to enable Student to make progress appropriate in light of his social-emotional and behavioral challenges. Therefore, River Springs may not implement the IEP without parental consent.

This Decision further holds that River Springs proved by a preponderance of the evidence that it had a right to assess Student and that the assessments proposed in the September 14, 2018 assessment plan were warranted. River Springs' assessment plan was appropriate, its proposed assessors qualified, and the assessments necessary to obtain information regarding Student's present levels of performance in the areas social-emotional functioning, behavior, and adaptive behavior, and to determine the need for educationally related mental health services and the impact his autism was having on his educational performance. Therefore, River Springs may assess Student pursuant to its proposed assessment plan without parental consent.

## FACTUAL FINDINGS

### BACKGROUND

1. Student was 12 years old at the time of the hearing, and resided with Mother within Riverside County at all relevant times. He attended Riverside Unified School District during the 2016-2017 school year for his fifth grade year. Student was eligible for special education under the primary category of Other Health Impairment and a secondary category of Autism. He was placed in a mild-moderate special day class.
2. Student reported he hated attending school. He disliked every aspect of school, especially school work. He avoided doing his school work and failed to follow through with assignments. He ignored teacher instructions and was selective on which

activities to complete. He had a significant history of behavioral and social-emotional problems at Riverside Unified. He yelled, hit, kicked, and attempted to bite others when frustrated and to avoid tasks. His physical aggression towards peers and adults resulted in 17 days of suspension and a total of 18 disciplinary incidents during the 2016-2017 school year.

3. Riverside Unified conducted a psychoeducational evaluation<sup>5</sup> of Student and documented its findings, conclusions, and recommendations in a report dated May 15, 2017. An educationally related mental health services assessment was conducted and found Student had high levels of emotional dysregulation and poor coping skills, particularly when frustrated and angry, leading him to shut down or become aggressive towards others. He lacked the ability to make or maintain peer relationships and harbored feelings of isolation. As a result, he demonstrated internalized feelings of negative self-worth, which further decreased his frustration tolerance and elevated his aggression and task avoidance. Riverside Unified determined that Student's emotional needs impacted his educational performance, to such a significant degree, to warrant educationally related mental health counseling.

4. To address Student's behaviors, Riverside Unified recommended Student be provided, among other things, a highly-structured environment with lessons on coping strategies, appropriate ways of expressing anger, and self-regulation and self-monitoring strategies. Riverside Unified also recommended Student receive educationally related mental health services, to include individual counseling to develop additional coping skills to reduce incidents of aggression. It proposed Student be placed in a nonpublic school.

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<sup>5</sup> The terms "assessment" and "evaluation" are synonyms and are used interchangeably in this Decision. (Ed. Code, § 56302.5.)

## JUNE 6, 2017 COMPREHENSIVE BEHAVIOR INTERVENTION PLAN

5. Riverside Unified developed a comprehensive behavior intervention plan for Student dated June 6, 2017. The plan noted his hitting, punching, kicking and biting of others, hitting and kicking of furniture, and the throwing of objects and verbal threats, as a function of escaping from academic tasks and redirection from adults. To reduce the need for these behaviors, frequent preference assessment would be conducted and fewer demands placed on him in the mornings.

6. The plan sought to replace these behaviors by teaching Student strategies to control his anger and to use coping skills. The plan asked him to independently select a coping strategy, such as requesting a break and to apply social skills to control his anger. The behavior intervention plan listed the following teaching strategies: reinforcement when Student appropriately requested breaks; teaching him a self-monitoring system to help him identify his levels of escalation; reinforcing on-task behaviors, providing high quality reinforcers when engaging in academic tasks; demand fading, starting at a level that did not evoke behaviors; and teaching social skills steps of controlling his anger through modeling. The social skills steps involved 1) continuing to listen when a person was talking to him; 2) monitoring his feelings and his breathing; 3) telling himself to relax tense body parts and to incorporate relaxation strategies, such as progressive muscle relaxation, visualization, and deep breathing; 4) speaking in a neutral tone; 5) asking for time alone when he was very upset; and 6) brainstorming for reasons why he was upset. The teacher was responsible for implementing these strategies with the support of a behavior consultant or educationally related mental health services counselor to supervise the intervention each week. To establish, maintain, and generalize the replacement behaviors, the teacher was to conduct a preference assessment daily and establish a behavior contract based on the assessment.

7. If Student's problem behaviors continued, strategies such as prompting him to use a replacement behavior, go to a safe area to calm down, or to take a walk were to be used. If the behaviors persisted, he would be offered alternative tasks, and if physically acting out, the plan specified to move the target interest, keeping a physical distance, and to avoid his hits, bites, and kicks. Two compliance checks were to be used once Student de-escalated. After he calmed down, a positive discussion would be held where he would agree to a written plan on how to turn the day around and be reassured he could have a positive day.

8. The behavior intervention plan's functionally equivalent replacement behavior goal called for Student to independently select coping skills in a calm and complaint state when asked to do an academic task or when redirected by an adult, instead of physically acting out. He was expected to do this in four out of five days in a two-week period, as measured by observations and data collected. Also, the plan required Student to use strategies such as self-monitoring and requesting breaks to reduce instances of physical aggression. The plan sought to reduce instances of physical aggression to no more than one instance per day for 10 consecutive school days, as measured by daily behavior logs.

#### 2017-2018 School Year

9. River Springs Director of Special Education Dr. Kathy Cox, Ph.D., testified and offered a description of River Springs' educational programs. River Springs was an independent study charter school, authorized by the Riverside County Office of Education as a county-wide benefit charter school. As an independent study charter school, River Springs accounted for a student's daily attendance based on the time the student spent on an educational activity and the work produced, as opposed to whether a student was seated in a classroom. River Springs offered several independent study programs. One program was its Homeschool program, in which parents provided the

day-to-day instruction. A credentialed general education teacher, identified as an education specialist, was assigned to the student to oversee the home instruction. The education specialist met with the student and parent a minimum of every 20 days to review the student's work, review the curriculum, and develop the learning plan for the next 20 days. Students in the Homeschool program had the option of attending one of River Springs' "student centers" one or more days a week for enrichment classes. Classes included art, drama, or more intensive instruction in core subjects. Other programs River Springs offered were Academy programs, which resembled more traditional educational settings and Venture Online programs, where students meet with teachers regularly in an online learning environment, a virtual classroom. Academies offered onsite classes three to five days a week, where students received instruction from credentialed teachers. River Springs did not offer a self-contained special day class. Dr. Cox testified that River Springs would need to look outside of its programs and seek out programs from a local school district, a local county office of education, or a nonpublic school to provide a student a more restrictive educational setting.

10. For the 2017-2018 school year, his sixth grade year, Mother enrolled Student at River Springs. She chose to participate in the Homeschool program. Student received instruction by Mother in the home and was to receive specialized academic instruction, speech and language services, and counseling at the student center as part of his IEP. Mother was employed full-time, worked during the day, and had Mondays off. She taught Student in the evenings after returning home from work. During the day, Student was supervised by an adult sibling. Mother's work schedule limited her ability to transport Student to the student center, and Student was reluctant to attend services without Mother. Early in the fall of 2017, the student center services were scheduled on Mondays to accommodate Mother's schedule. However, Student still missed nearly all of his instruction and services at the student center.

11. Lisa Reightley was an educational specialist with River Springs since September 2015. Ms. Reightley held a California clear multi-subject teaching credential. She taught for 12 years as a general education teacher. Ms. Reightley testified at hearing.

12. Ms. Reightley was assigned to Student at the start of the 2017-2018 school year and remained his educational specialist until January 2019, when River Springs assigned another education specialist. As an education specialist, she was the credentialed general education teacher who signed off on the work Mother did in the home with Student. Typically, she met with both the instructor-parent and a student during her home visits. However, she only met Student three times, and during those times he did not speak to her much and often placed his head down in his arms. She and Mother explored offering online programs to Student to work on while Mother was at work during the day; however, Student refused to participate in the online programs when Mother was not present.

13. River Springs special education teacher and case manager Teresa Moran testified at hearing. Ms. Moran had been employed by River Springs for 16 years, the first 14 years as an education specialist and the last two years as a special education teacher. Ms. Moran was a credentialed special education teacher since 1980. She was assigned to Student at the start of the 2017-2018 school year and was responsible for providing him with weekly specialized academic instruction at the student center. However, Student only attended three sessions the entire 2017-2018 school year, all occurring in the fall of 2017. Student had not attended any specialized academic instruction since.

14. River Springs speech-language pathologist Marissa Miller testified at hearing. Ms. Miller was a licensed speech-language pathologist for 19 years and joined River Springs in August 2007. Ms. Miller was assigned to provide Student with weekly



speech and language services stated in his IEP. However, she only met with Student twice during the 2017-2018 school year, both occurring in the fall of 2017. Mother was present at both sessions and in each session Student got upset and refused to answer any of Ms. Miller's questions. Student had not attended speech and language services since.

15. Ms. Aghbashian had been a school psychologist since 2009 and joined River Springs in October 2015. She possessed a master's degree in school psychology. She conducted 60 to 70 psychoeducational assessments each year. Ms. Aghbashian was assigned to provide Student individual counseling two times each month, but only held one counseling session with him during the 2017-2018 school year. Student had not attended any counseling sessions since. In March 2018, Ms. Aghbashian proposed conducting counseling through video conference. Mother responded by email that Student was unwilling to participate and "[i]t would be an all out fight to get him to try." At hearing, Ms. Aghbashian expressed concern about Student not receiving the necessary services due to Mother's inability to meet the expectations placed on her in the Homeschool program.

#### 2018 ACADEMIC AND BEHAVIOR ASSESSMENTS

16. On May 23, 2018, Ms. Moran administered the Kauffman Test of Educational Achievement, Third Edition, to measure Student's academic skills and prepared a report dated May 23, 2018. The Kauffman was a curriculum based instrument that was norm-referenced in the domains of reading, mathematics, written language, and oral language. Student scored in the average range as to reading, below average in math, below average in written expression, and average in spelling and the written language composite. Student's phonological processing and listening comprehension scores fell in the average range. Ms. Moran did not administer any fluency tests, as Mother informed her that he did not like doing timed tests, and Student did not wish to

take the fluency tests. Therefore, no data was obtained related to word recognition fluency, silent reading fluency, math fluency, and association fluency.

17. On May 21, 2018, Ms. Aghbashian assessed Student's behaviors to obtain a current estimate of the severity and intensity of his behaviors, to determine areas of concern, to assist the IEP team to determine if the current placement was appropriate, and to gather information to draft a new behavior intervention plan that addressed behaviors in the homeschool setting. She prepared a report dated June 8, 2018, documenting her findings, conclusions, and recommendation. Ms. Aghbashian did not recommend returning Student to the general education classroom. She opined that Student's externalizing behaviors would return to his previous levels of severity and intensity should he re-enter the general education classroom. She found that many of the supports and accommodations Mother used in the home setting, such as coaxing him to complete an assignment, providing a highly structured day, or offering prolonged breaks when needed, would be difficult to provide in a general education classroom, and his behaviors could return as a result. However, no evidence was offered at hearing as to how Student's day in the home was structured while Mother was at work during the day. Furthermore, no evidence was offered at hearing as to why Ms. Aghbashian only considered a general education classroom as the only alternative educational setting apart from the homeschool setting, and why no consideration was given to more restrictive settings, such as a self-contained special day class or a nonpublic school.

#### JUNE 8, 2018 IEP

18. Student's annual IEP was developed over three days: June 8, 2018, and September 5 and 17, 2018. Mother, Dr. Cox, Ms. Reightly, Ms. Moran, Ms. Miller, and River Springs' attorney Jim Sanft attended in person on all three days. Ms. Aghbashian attended in person on June 8, 2018, and by phone the other two days. Student's

advocate Cecily Marrable participated by phone on June 8, 2018 only. River Springs provided Mother with a copy of her procedural safeguards and rights.

19. The IEP team reviewed the May 23, 2018 academic report and June 8, 2018 behavior assessment report. River Springs IEP team members reported at the meeting that they did not observe any aggressive behaviors from Student. However, Mother stated that Student only behaved because she was present while he received services from River Springs, and he continued to act out aggressively in the home. Mother shared this aggressive behavior was not as significant as before, but he continued to act out about twice a week when he became frustrated with academic assignments. To calm him, she changed the assignment, rubbed his head, and/or restrained him. She was concerned of his inability to complete the amount of work required to meet grade-level expectations. Though he was completing more work at home compared to when he was in a traditional classroom, he still became very angry and frustrated with the work load, to the point of tears. Mother shared that he could retain information in the short-term, but had difficulty retaining information in the long-term.

20. At the meeting, Mother voiced her concern that the behavior intervention plan had not been implemented by River Springs. Mother and Student's advocate also expressed concerns regarding extended school year, the lack of occupational therapy services, and the discontinuation of counseling. However, the evidence offered at hearing established that counseling services remained available for Student during the 2017-2018 school year.

#### Present Levels Of Academic And Functional Performance

21. Student did not achieve any of his prior IEP goals. Student made no progress on his writing goal, and made partial progress on the remaining goals that addressed his deficits in communication, reading, mathematics, anger management, remaining on-task, and using appropriate coping strategies. The prior IEP's "behavior

reduction" goal, numbered "4", called for Student to use social skill steps to control his anger. At the meeting, Mother and Student's advocate indicated Mother was not trained to capture data regarding the behavior reduction goal, and therefore, the goal was described as only partially met because there was no data to support progress in the home environment, and River Springs staff indicated his behaviors were not witnessed at the school setting.

#### ACADEMICS

22. The IEP team reviewed Student's scores on the Kaufman and considered Student's i-Ready reading and math scores collected on September 14, 2018. According to his i-Ready diagnostic testing scores, Student's overall reading grade level was at fifth grade level, with a comprehension of informational text at the fourth-grade level. He was at grade level in comprehension of literature. Student's reading level improved one grade level, from fourth to fifth when comparing his i-Ready score in August 28, 2017, of 561 to his September 14, 2018 score of 578. Student's Kaufman scores in reading were in the average range. The IEP team had no data regarding his reading fluency.

23. Mother reported that Student improved his ability to correctly punctuate his writing. His score on the Kauffman Test of Educational Achievement's written expression subtest was in the below average range, equivalent to a third-grade level. He scored in the average range in spelling. He could write complex sentences and compose one to three paragraphs, demonstrating basic punctuation and capitalization skills.

24. In math, Student's i-Ready diagnostic test scores of September 14, 2018 were in the fifth-grade level overall. His scores on the Kauffman all were in the fourth-grade level, within the below average range in both math concepts and application, and math computation. The IEP team had no data regarding his math fluency. At the September 5, 2018 IEP team meeting, Mother reported that Student had received tutoring in math for several months over the summer from Professional Tutors

of America, a nonpublic agency. Student received one hour of math tutoring each week. Student's i-Ready math scores in August 2017 to January 2018 improved only four points, but improved significantly more, 13 points, from January 2018 to September 2018.

#### COMMUNICATION

25. The IEP team relied primarily on Mother's input to determine Student's communication functioning. At the meeting, Ms. Miller asked Mother specific questions, which Mother answered. Mother shared that Student had difficulty inferring what a child was feeling in a story he read. She also reported Student could perform three conversational exchanges with family members, and possibly with others, once he was comfortable with the person. He had difficulty initiating a conversation and was afraid to return to school and having to talk to others.

#### GROSS AND FINE MOTOR SKILLS

26. Student had age-appropriate fine and gross motor skills. His handwriting was legible with appropriate spacing. He could participate in general education physical education.

#### SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING

27. At the September 5, 2018 IEP team meeting, Mother shared that Student did not interact with children his age, and preferred to be alone. He was sensitive to lights and loud noises, and experienced a panic attack while at an amusement park. She also shared that Student could focus for 30 percent of his homeschool day. Over the summer, Student began using self-calming strategies when verbally reminded. When prompted, he continued to listen when spoken to, told himself to relax, and relaxed himself by using strategies such as deep breathing, and spoke in a neutral tone. Student

was working on requesting time alone when he was upset and taking time to think about the reasons why he was angry. Mother reported Student continued to act out, became loud and agitated, and refused to do his work, specifically non-preferred tasks. However, he did not get physically aggressive and his maladaptive behaviors did not happen every day.

#### HEALTH, VOCATIONAL, AND ADAPTIVE/DAILY LIVING SKILLS

28. Student was in good general health, and as of September 2018, completing more assignments independently. At the meeting, Mother explained that most of Student's daily assignments were completed in the evening, with a schedule each day, taking breaks between tasks. He could bathe and dress independently, but Mother shared at the IEP team meeting on September 5, 2018, she had to brush his teeth as he did not like the sensation.

#### Annual Goals

29. The IEP team identified the following areas of need: reading, writing, mathematics, communication, social skills, and social emotional. To address these challenges, the June 8, 2018 IEP offered eight annual goals. The reading goal aimed to strengthen Student's reading comprehension; the writing goal sought to improve Student's ability to write a two-paragraph informative/explanatory text; and the math goal was designed to help Student solve two-step word problems. The specialized academic instruction teacher and general education teacher were responsible for the academic goals, measuring progress using Student's work samples and his performance on tests. Though the goals also listed Student as a responsible person, Ms. Moran explained at hearing that was a typographical error.

30. River Springs developed three goals in the area of communication. The speech-language pathologist was responsible for each goal, using data collected,

progress notes, and observations to measure progress. The first communication goal, identified as "inferencing skills," was designed to strengthen his ability to infer feelings and intent when given a short story, passages, or a video. The second communication goal addressed Student's struggles with conversations, with the goal requiring him to participate in turn-taking conversations by asking questions and making comments on a non-preferred or random topic with his peers or adults. The second communication goal focused on helping Student initiate conversation, by using a conversation starter when presented with a situation or topic during role playing with a therapist or a peer in a therapeutic setting.

31. River Springs developed two goals in the area of behavior. The first behavior goal required student to remain on task for 30 percent of a 60-minute instructional period across three consecutive classes. To meet the goal, Student had to accomplish the objective in three out of four trials. The responsible persons for the goal were the specialized academic instruction teacher, general education teacher, parent, and Student. Charts of data and observations would be used to measure progress.

32. The second behavior goal, identified as "Goal # 5," aimed to improve Student's ability to calm himself. The goal called for Student to deescalate within 15 minutes from maladaptive behaviors, such as raising his voice or refusing to do his work, by using a social skills strategy to control his anger when given verbal and visual prompts. The goal listed strategies, such as listening when spoken to; managing feelings and breathing with exercises practiced with a counselor; managing the tension of his body parts by incorporating strategies, such as deep breathing, visualization, and progressive muscle relaxation; speaking in a neutral tone; asking for time to be alone; and identifying why he was upset and changing his mood by thinking of something funny or taking a short walk. To meet the goal, Student had to demonstrate his ability to use the strategies to manage his anger across all settings over seven consecutive school

days. The special education teacher, "specialists," and general education teacher were responsible for the goal, using a daily behavior log to measure progress. At hearing, Ms. Aghbashian explained that "specialists" were school counselors and psychologists.

#### Supplemental Aids, Services, And Supports

33. To aid Student to achieve his goals, the June 8, 2018 IEP offered him the following supplemental aids, services, and supports from June 8, 2018, to June 8, 2019: consultation between parent-teacher and psychologist once a month for 30 minutes; consultation between parent and specialized academic instruction teacher 15 minutes each month; consultation between the specialized academic instruction teacher and education specialist 15 minutes each month; warnings before transitions to occur daily for three to five minutes per occurrence; frequent breaks throughout the school day for five to 10 minutes each occurrence; additional time to complete assignments and tests up to 50 percent of the assigned time; shortened assignments with re-teaching as necessary, to demonstrate mastery of key standards throughout the school day; assignment modeling for five to 10 minutes for each academic assignment; and modeling of strategies for anger/frustration to reduce maladaptive behaviors for five to 10 minutes per occurrence daily as needed.

34. The Riverside Unified June 6, 2017 Comprehensive Behavior Intervention Plan was attached to the June 8, 2018 IEP and the IEP noted in the Special Factors section that implementation of the previous positive behavior intervention plan would continue. The IEP also noted "Goal(s) # 4, 6" as goals related to the behavior intervention plan, however it was clarified at hearing that it should have indicated "Goal # 5," which Ms. Aghbashian testified was a combination of the previous IEP's goals numbered four and six. The June 8, 2018 IEP offered behavior intervention services for 60 minutes twice a month for a total of 120 minutes monthly. However, that was only written to be in effect through September 17, 2018. The June 8, 2018 IEP offered to



replace the direct behavior intervention service under the Special Education and Related Services section of the IEP with staff consultation to implement the behavior intervention plan, for 60 minutes twice a month under the Supplementary Aids, Services, and Other Supports section of the IEP.

35. Dr. Cox explained at hearing that the purpose of the behavior assessment conducted by Ms. Aghbashian in May 2018 was to determine appropriate behavior interventions that could be put in place in the homeschool setting. Ms. Aghbashian testified that the service was changed due to Student receiving instruction in the Homeschool program. Therefore, the June 6, 2017 Comprehensive Behavior Intervention Plan developed by Riverside Unified, designed to support Student in a mild-moderate special day class, no longer applied. River Springs did not propose any changes to the June 6, 2017 Comprehensive Behavior Intervention Plan as originally written.

#### Special Education And Related Services

36. In addition to the limited direct behavior intervention services offered, the June 8, 2018 IEP also offered group specialized academic instruction eight times a month for 45 minutes each session, for a total of 360 minutes monthly; group speech and language services 120 minutes a month; and individual counseling for 60 minutes twice a month. Mother explained at the September 5, 2018 IEP team meeting that scheduling services was difficult due to her working two jobs in addition to home schooling Student.

37. River Springs did not offer extended school year service as Student did not demonstrate regression over the summer break. However, Student received tutoring from Professional Tutors of America for one hour each week in the area of math over the summer.

## Placement

38. The June 8, 2018 IEP offered Student continued placement in River Springs' Homeschool program. At the September 5, 2018 IEP team meeting, Mother requested Student be placed in River Springs' Magnolia Center, a four-day a week academy program, and on September 17, 2018, she informed the IEP team that she had made a formal request to transfer him to Magnolia Center.

39. Ms. Reightly testified that Mother reported to her that Mother had taken on more responsibilities at her job. At hearing, Ms. Reightly opined that the demands of Mother's work were impacting Mother's ability to instruct Student and it became increasingly taxing on Mother.

## SEPTEMBER 14, 2018 ASSESSMENT PLAN

40. At the September 17, 2018 IEP team meeting, River Springs provided Mother with a proposed assessment plan dated September 14, 2018, in response to Mother's request to change Student's placement from the Homeschool program to an academy, and in light of the information she shared at the IEP team meeting regarding his sensitivity to loud noises, large crowds, sensations while brushing his teeth, and his panic attack.

41. The September 14, 2018 assessment plan was written in English, Mother's native language. The plan described the areas to be assessed and procedures to be conducted such as classroom observations, the use of rating scales, a review of Student's record, and one-to-one testing interviews. It also explained the information being sought through the evaluation of the various areas. The assessment plan was written clearly and in terms understandable by the general public. The plan was clear that no special education services would be provided to Student without a parent's written consent. The September 14, 2018 assessment plan proposed to evaluate Student

in the areas of social-emotional functioning, behavior, adaptive behavior, perceptual and motor development, educationally related mental health services, and autism. A school psychologist and support staff were responsible for evaluating the areas of social-emotional functioning, behavior, adaptive behavior, educationally related mental health services, and autism. An occupational therapist would assess Student's perceptual and motor development.

42. Occupational therapist Corey Whigham provided occupational therapy services for River Springs, including direct services and assessments of students. Mr. Whigham was certified by the National Board of Certification for Occupational Therapy. Both he and Ms. Aghbashian opined at hearing that the proposed assessments were intended to examine the sensory-related concerns Mother shared at the IEP team meetings and to better determine the appropriate placement for Student in light of Mother's request to place him in a more traditional classroom setting.

#### NOVEMBER 16, 2018 IEP AMENDMENT

43. On September 20, 2018, Dr. Cox emailed Mother a corrected version of the June 8, 2018 IEP, noting the following changes in addition to the numbering of the goals:<sup>6</sup> adding Student's name in the Strengths/Preferences section, adding the date to identify the previous IEP, adding the exact date of the i-Ready diagnostic test scores, adding, "See note for additional information" under the Social/Emotional section of the present levels of performance. The corrected version also added start and end dates for the behavior intervention supplemental aide and noted the dates of participation for the

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<sup>6</sup> At the end of the September 17, 2018 IEP team meeting, Ms. Moran had difficulty numbering the goals on the electronic IEP document. Therefore, River Springs offered to send Mother a corrected version of the IEP with the goals numbered following the meeting.

IEP team members for the three meetings to develop the June 8, 2018 IEP.

44. On September 28, 2018, Dr. Cox emailed Mother an authorization for disclosure of information by Professional Tutors of America for Mother to review, sign, and return to River Springs. Dr. Cox also inquired whether Mother had any questions regarding the September 14, 2018 assessment plan, and sought her consent to allow River Springs to start the assessments. Mother replied the next day, indicating she did not agree to all the assessments, only for an assessment to address his sensitivity to noises. Mother requested a revised assessment plan. Mother did not authorize Professional Tutors of America to release information to River Springs.

45. On November 27, 2018, River Springs' attorney emailed Mother a prior written notice denying her request for an amended assessment plan. Attached to the email was an IEP amendment page dated November 16, 2018, with a further change to correct the service dates of the June 8, 2018 IEP to align with the next annual review.

#### MOTHER'S RESPONSE TO THE JUNE 8, 2018 IEP, AND SEPTEMBER 14, 2018 ASSESSMENT PLAN

46. On February 1, 2019, Mother emailed River Springs the unamended version of the June 8, 2018 IEP with her consent, along with an attachment noting her disagreements. Mother disagreed with the date of the IEP, noting it should be dated September 17, 2018. Mother also indicated she did not receive the behavior intervention plan attached to the June 8, 2018 IEP. She also attached to her email tutoring reports from Professional Tutors of America and the May 15, 2017 psychoeducational evaluation report prepared by Riverside Unified. Mother attached to the email a signed copy of an assessment plan. However, the assessment plan with her consent dated January 31, 2019, was to a different assessment plan dated February 28, 2018, an assessment plan she previously consented to the year before. Mother did not provide consent to the September 14, 2018 assessment plan.

47. On February 21, 2019, Mother emailed Dr. Cox indicating she needed time to review the amended version of the IEP and that her consent was only to the IEP provided to her on September 17, 2018. Mother also explained that she previously requested Student attend a regular school to receive services due to her limited availability in scheduling his services. Student had not attended services in the 20 days since Mother provided her consent to the original June 8, 2019 IEP on February 1, 2019. On February 26, 2019, Dr. Cox emailed Mother informing her that River Springs was going to treat Student's unavailability for services as a revocation of Mother's consent to the IEP.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>7</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)<sup>8</sup> et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a 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).)

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<sup>7</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>8</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

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

3. 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.)

4. 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.)

5. 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 that “[a]ny 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.)

6. 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] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, River Springs requested the hearing in this matter, and therefore River Springs has the burden of proof on the issues.

ISSUE 1: DID THE JUNE 8, 2018 IEP, WITH PLACEMENT IN THE HOMESCHOOL PROGRAM, OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

7. River Springs contends it complied with all procedural and substantive requirements of the IDEA in developing the June 8, 2018 IEP. River Springs argues the June 8, 2018 IEP's offer of FAPE was designed to address Student's unique needs, was reasonably calculated to allow Student to meaningfully benefit from his education, and offered placement in the least restrictive environment. No contentions were offered by Student.

8. When a school district seeks to demonstrate that it offered a FAPE, there are two parts to the legal analysis. First, the tribunal must determine whether the district complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to



enable the child to receive educational benefit. (*Ibid.*) Whether a school district offered a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.*, (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*).)

9. Children with disabilities who attend public charter schools and their parents retain all rights under the IDEA and its regulations. (34 C.F.R. § 300.209(a).) A charter school that is a public school of a local educational agency must serve children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools. (*Id.* at subd. (b)(1)(i).)

10. Although charter schools have been granted independence to develop unique educational models, the California Legislature did not intend that the charter school statutes override or conflict with special education law. Education Code section 47646, subdivision (a), provides in pertinent part that a child with disabilities attending a charter school shall receive special education instruction “in the same manner as a child with disabilities who attends another public school of that local educational agency.” It also imposes on the chartering local educational agency the duty to ensure that “all children with disabilities enrolled in the charter school receive special education . . . in a manner that is consistent with their individualized education program” and is in compliance with the IDEA and its regulations. (Ed. Code § 47646, subd. (a).)

#### Procedural Compliance

11. The IEP team is required to include as part of the team one or both of the student’s parents or their representative; a regular education teacher if a student is, or may be, participating in the regular education environment; a special education teacher; and a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is

knowledgeable about the general education curriculum, and is knowledgeable about available resources. (34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (*Ibid.*) Finally, whenever appropriate, the child with the disability should be present. (*Ibid.*)

12. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a free appropriate public education to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).)

13. A school district is required to conduct not just an IEP team meeting, but also a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485; *Fuhrmann, supra*, 993 F.2d at p. 1036.) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 960 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

14. The IEP team meetings to develop the June 8, 2018 IEP were attended by all required team members, including Mother. Mother was an active and welcomed participant at the meeting. River Springs provided Mother with a copy of her procedural safeguards and rights. The IEP team considered her input and concerns. Mother was afforded an opportunity to meaningfully participate in the development of Student's IEP. Hence, the IEP team meeting was conducted in accordance with the IDEA's procedural requirements.

#### Contents Of The IEP

15. 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].)

16. 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).) The IEP must also 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).)

17. 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.) It 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).)

18. Here, River Springs failed to prove the June 8, 2018 IEP's offer of services and placement in its Homeschool program was reasonably calculated to address Student's unique social-emotional and behavioral needs to afford him an opportunity to meaningfully benefit from his education.

INADEQUATE SERVICES AND SUPPORTS TO MEET STUDENT'S SOCIAL-EMOTIONAL AND BEHAVIORAL CHALLENGES

19. 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).) The "educational benefit" to be provided to a child requiring special education is not

limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. 49.)

20. Whenever a child's behavior impedes his learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) The IEP team must consider the use of positive behavioral interventions and supports, and other strategies, but the implementing regulations of the IDEA do not require the team to use any particular method, strategy, or technique. (71 Fed. Reg. 46,683 (Aug. 14, 2006).)

21. The evidence demonstrated that the June 6, 2017 Comprehensive Behavior Intervention Plan Riverside Unified developed could not be successfully implemented by Mother in the home, with monthly consultation services of just twice a month by a counselor as proposed in the June 8, 2018 IEP. Student had significant behavioral problems due to high levels of emotional dysregulation and poor coping skills. He hated school, and he hit, kicked, and screamed when challenged to do school work or when redirected by adults. His social-emotional needs had a significant impact on his educational performance, and warranted a behavior intervention plan supported by intensive educationally related mental health counseling. The June 6, 2017 Comprehensive Behavior Intervention Plan, which River Springs proposed to continue as part of the June 8, 2018 IEP, was well crafted to improve Student's behavior through skill

acquisition and the reduction of problematic behavior in a self-contained special day classroom implemented full-time by trained professionals.

22. Furthermore, the weight of the evidence established that Mother was not equipped to respond to Student's behaviors and to implement the strategies in the behavior intervention plan. Student continued to get angry and refused to comply when asked to perform non-preferred tasks, and Mother responded by changing the subject, rubbing his head, or restraining him. River Springs failed to prove Mother had the necessary training or expertise in implementing the behavior intervention plan and the June 8, 2018 IEP did not offer her daily or weekly support from a qualified educationally related mental health counselor or behavior consultant.

23. Moreover, River Springs failed to prove how the June 8, 2018 IEP's fifth goal – aimed to help Student control his anger, and which the IEP associated with the behavior intervention plan – could be implemented in the Homeschool program. The goal was to be implemented by both the special education and general education teachers, and "specialists," defined as school psychologists and counselors. In addition, data regarding Student's daily behaviors would be collected and used to measure progress. However, the related services offered in the IEP only called for eight sessions of specialized academic instruction each month and just two counseling sessions a month, both to occur outside the homeschool setting. Furthermore, the education specialist was only required to visit the home every 20 days, and behavior intervention services on a consultation basis, not direct service, was offered just twice a month. River Springs failed to demonstrate how the responsible persons would implement the goal and collect daily behavior data with the limited time they were expected to work directly with Student. Mother was not identified as a responsible person for the goal, nor should she have been. The goal and the related behavior intervention plan called for teachers and a trained school psychologist, counselor, or behavior consultant to implement the

goal, and there was no evidence to demonstrate Mother was qualified and able to implement or support this goal in the home based on her work commitments.

24. Furthermore, and more concerning, is the manner in which River Springs determined the level of behavior intervention services it would offer in the June 8, 2018 IEP to support the behavior intervention plan. River Springs did not propose any changes to the June 6, 2017 Comprehensive Behavior Intervention Plan as written by Riverside Unified. Instead, River Springs modified the behavior intervention services from direct service to consultation to fit its Homeschooling program. River Springs erroneously allowed the proposed placement to dictate the behavior intervention services, rather than identifying a placement that offered a combination of qualified personnel and a setting that could effectively implement the behavior intervention plan. The behavior intervention plan as written by Riverside Unified was reasonably calculated to address Student's significant emotional dysregulation and poor coping skills through direct services from a credentialed teacher and highly trained educationally related mental health counselor or behavior consultant on a daily and weekly basis. The June 8, 2018 IEP was inadequate in that regards, failing to offer the necessary time, setting, and qualified personnel to properly implement the behavior intervention plan.

INDEPENDENT STUDY HOMESCHOOL PROGRAM PLACEMENT COULD NOT MEET  
STUDENT'S NEEDS

25. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1.) The IDEA also requires, to the maximum extent

appropriate, that a child with a disability must be educated with children who are not disabled. (*Ibid.*)

26. School districts, as part of a special education local plan area, must have available a continuum of program options to meet the needs of individuals with exceptional needs for special education and related services as required by the IDEA and related federal regulations. (34 C.F.R. § 300.115; Ed. Code, § 56360.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication in the home, hospitals or institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.) In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

27. The Ninth Circuit has stated a four factor evaluation to determine whether a placement is the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.) The four factors are: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of interaction with children who were not disabled; (3) the effect the child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Ibid.*)

28. River Springs' independent study Homeschool program could not meet Student's needs. It was clear by the start of 2018 that the Homeschool program could not serve Student. At no point during the 2017-2018 school year did River Springs consider changing Student's placement outside of the Homeschool program despite



knowing early in the 2017-2018 school year that Mother could not make Student available for services at the student center as called for in his IEP. Even if Mother could regularly transport Student to services, there was no intervention offered in the June 8, 2018 IEP that would consistently address Student's refusal to engage in his speech and language and counseling services, or instruction outside of the home by someone other than Mother. River Springs failed to prove that its Homeschool program was the least restrictive environment for Student, as Student's behaviors presented significant challenges to himself, staff and peers, and limited his ability to benefit from the regular classroom, enrichment classes, and interactions with non-disabled peers. Thus, a highly structured educational setting with behavior supports and counseling services embedded in the program, readily available to Student throughout the school day, to be implemented by qualified staff on-site, should have been considered by River Springs.

29. River Springs' contention that the June 8, 2018 IEP's offer of placement in its Homeschool program would continue to provide Student with an educational benefit as the previous IEP had done during the 2017-2018 school year is unpersuasive. The prior IEP had little to do with any improvements in Student's academics and behavior. Student's improved behaviors while home schooled was expected, since he no longer had to endure attending school and all the things he disliked about it. Instead he was allowed to stay home, was not forced to speak to anyone he did not know or like, and had little to no academic demands placed on him during most of the day. Yet despite being in this seemingly ideal situation, he continued to act out when frustrated and angry, still harbored fears of attending school, lacked the skills and confidence to interact with peers, refused to engage in specialized academic instruction, speech and language services, and counseling without Mother present, did not wish to participate in online programs, and refused to engage in counseling services through video conferencing. Furthermore, River Springs failed to demonstrate how any improvement in

his behavior could not be attributed to the prior IEP, as he attended only one counseling session the entire school year, and no behavior intervention plan was effectuated.

30. As for academics, his refusal to do assignments was the biggest impediment to his educational performance. As his aggression lessened at home, he completed more work, and made some gains academically. However, he made no progress in writing and failed to meet any of his prior academic goals. Moreover, River Springs failed to demonstrate how any progress he made academically could be attributed to the supports, services, and placement offered in the prior IEP, as Student only attended three specialized academic instruction sessions the entire school year. Furthermore, no evidence was offered to demonstrate that Student could participate in, and benefit from, small group specialized academic instruction and speech and language services at the student center, considering his struggles in the mild-moderate special day classroom at Riverside Unified and his known insecurities with interacting with peers. River Springs failed to prove how continuing the same services and placement in the Homeschool program could confer Student an educational benefit that not only addressed his academic needs, but also his social and emotional needs that affected his academic progress, school behavior, and socialization.

31. River Springs had a duty to consider a continuum of placement options beyond the programs it had available, to include a special day class and a nonpublic school. Mother's initial choice for homeschool instruction did not relieve River Springs from its responsibility to consider other placement options outside of its programs, even before Mother made her intentions known to transfer Student out of the Homeschool program. River Springs had a duty to offer a placement that it deemed appropriate, regardless of Mother's preferred program. River Springs did not in this case, but rather negligently tailored its IEP offer to accommodate Mother's placement choice for home schooling.

32. River Springs failed to prove the June 8, 2018 IEP's offer of placement in its Homeschool program and related services were reasonably calculated to meet Student's unique social emotional and behavioral needs to assist him in benefiting from his education. The June 8, 2018 IEP did not offer Student a FAPE in the least restrictive environment, and therefore, River Springs may not implement the IEP without parental consent. Accordingly, it is unnecessary to evaluate every procedural and substantive component of River Springs' June 8, 2018 IEP offer that River Springs had the burden of proof. Even if River Springs had met its burden of proof as to all the other elements of a FAPE, the June 8, 2018 IEP fell short of offering Student a FAPE as it failed to afford Student services and placement to meet his social-emotional and behavioral needs.

#### ISSUE 2: MAY RIVER SPRINGS ASSESS STUDENT PURSUANT TO THE SEPTEMBER 14, 2018 ASSESSMENT PLAN WITHOUT PARENTAL CONSENT?

33. River Springs contends that its September 14, 2018 assessment plan as written was legally sufficient, its proposed assessors competent, and the proposed assessments warranted. Therefore, River Springs argues it is entitled to assess Student pursuant to the assessment plan without parental consent. Student did not offer any contentions.

#### Circumstances Warranting Reassessment

34. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and school district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted if the local educational agency "determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment,

or if the pupil's parents or teacher requests a reassessment." (20 U.S.C. §1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

35. If the parents do not consent to a reassessment plan, the district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(a)(3)(i), (c)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

36. Parents who want their children to receive special education services must allow reassessment by the district. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315; *Dubois v. Conn. State Bd. of Ed.* (2d Cir.1984) 727 F.2d 44, 48.)

37. River Springs' request to reassess Student was warranted. Mother's request to place him in a more traditional classroom setting and her disclosures regarding his anxiety to loud noises and large crowds, his panic attack, and his sensitivity with brushing his teeth, warranted assessments to determine appropriate supports, services, and placement. Student had previously struggled in a mild-moderate special day class at Riverside Unified due to his high levels of emotional dysregulation and poor coping skills, and he had been homeschooled for the past year, with minimal opportunities to participate in instruction and services outside of the home. Assessments were necessary to obtain his current levels of functional performance to determine an appropriate placement in light of his social-emotional and behavioral needs.

#### Noticing Requirement

38. Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental

procedural rights under the IDEA and companion state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must: appear in language easily understood by the public and the native language of the parent; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The district must give the parents and/or pupil 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

39. At the June 8, 2018 IEP team meeting, River Springs provided Mother with a copy of her procedural safeguards, and on September 17, 2018, a copy of the September 14, 2018 assessment plan. Both the assessment plan and the procedural safeguards were written in English, Mother's native language.

40. The proposed assessment plan outlined the areas to be evaluated and identified the titles of the examiners. The plan described the proposed assessments and procedures that may be conducted. It also explained the information being sought through the evaluation of the various areas. The plan was written clearly and in terms understandable by the general public. The plan was clear that no special education services would be provided to Student without parental written consent. All statutory requirements of notice were met, and the assessment plan itself complied with the applicable statutes.

#### Competency Of Persons To Conduct Assessments

41. Reassessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils shall be made in accordance with Education Code section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, §§ 56322, 56324, subd.

(a.)

42. All the assessments proposed by River Springs would be conducted by persons competent to conduct them. A school psychologist would assess Student in the areas of social-emotional functioning, behavior, adaptive behavior, educationally related mental health services, and autism. Furthermore, an occupational therapist was specified to conduct the perceptual and motor development assessments.

43. River Springs proved by a preponderance of the evidence that the September 14, 2018 assessment plan complied with all applicable statutory requirements regarding form, function, and notice. River Springs also established that assessments were warranted and its assessors were competent to perform them. Therefore, River Springs may assess Student without parental consent.

## ORDER

1. River Springs may not implement the June 8, 2018 IEP, as amended on November 16, 2018, without parental consent.

2. River Springs is entitled to assess Student according to the September 14, 2018 assessment plan, without parental consent.

3. Within 10 business days of the date of this order, River Springs shall present Parent with an assessment schedule that details the dates, times, and locations for assessments. Parent must notify River Springs within 72 hours of receiving the assessment schedule if Parent cannot comply with the schedule, and River Springs shall then propose alternative dates and times. Parent shall reasonably cooperate in scheduling the assessments and presenting Student for assessment on the agreed upon dates and times at the identified locations.

4. Parent shall timely complete and return any documents reasonably requested by River Springs as a part of the assessments.

## 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, River Springs prevailed on Issue 2 and Student prevailed on Issue 1.

## 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: May 15, 2019

/s/

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ROMMEL P. CRUZ

Administrative Law Judge

Office of Administrative Hearings