

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019090362

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ALTA LOMA SCHOOL DISTRICT

v.

PARENT ON BEHALF OF STUDENT.

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DECISION

JUNE 4, 2020

On September 10, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Alta Loma School District, naming Student. Administrative Law Judge Clifford H. Woosley heard this matter in Rancho Cucamonga, California, on February 11, 12, 13, 18, 19 and 21, 2020.

Attorneys Jonathan P. Read and Julie C. Coate represented Alta Loma. Director of special education, Beth Freer, attended all hearing days on Alta Loma's' behalf. Program manager, Royal Lord, attended on behalf of West End Special Education Local Plan Area.

Attorneys Maureen R. Graves and John G. Nolte represented Student. Student's mother, called Parent in this Decision, attended all hearing days on Student's behalf. Father attended one hearing day.

The parties agreed the matter was continued until March 30, 2020, for submission of written closing briefs. OAH granted, for good cause, Student's unopposed continuance requests on March 23 and April 28 2020 and the matter was continued to May 15, 2020, at which time the briefs were filed, the record closed, and the matter submitted for decision.

## ISSUE

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

Did Alta Loma's IEP, developed at IEP team meetings on May 17 and August 6, 2019, offer Student a FAPE in the least restrictive environment?

The IEP created at these two team meetings is called the 2019 IEP in this Decision.

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006); Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Alta Loma, as the filing party, had the burden of proof by a preponderance of the evidence in this matter. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. sec. 1415(h)(4); Ed. Code, sec. 56505, subd. (e)(5).)

Student attended first grade at Carnelian Elementary School for the 2016-2017 school year. Early in second grade, Parents withdrew Student from public school and provided Student with services from Lindamood-Bell Learning Processes, and other providers for the 2017-2018 school year. On April 23, 2018, Parents and Alta Loma

signed a Settlement and Release Agreement that resolved all issues related to the provision of FAPE through Student's third grade school year, to July 31, 2019. As part of the settlement, the parties agreed:

- Student would remain a private school child with a disability (34 C.F.R. § 300.130) and was not entitled to special education, related services, and the development of an IEP, through July 31, 2019.
- The parties would meet in an IEP meeting prior to the end of the 2018-2019 regular school year to develop an annual IEP for the 2019-2020 school year.
- Alta Loma had the right to assess Student in all areas of suspected disability before the IEP meeting, as identified in the assessment plan that was included in the agreement. These assessments would be considered Student's triennial assessments. Alta Loma was authorized to communicate, exchange information, and observe Student with his private assessors and service providers. Parents would execute any necessary authorizations for release of information.
- The parties mutually released and discharged each other of all claims arising from or related to Student's education, through July 31, 2019.

Student received services for third grade from Lindamood-Bell Learning Processes, Lindamood-Bell Academy, and other service providers.

Parent did not accept Alta Loma's 2019 IEP offer for the 2019-2020 school year, developed at the May and August 2019 IEP team meetings. Parent thereafter enrolled Student in fourth grade at Carnelian on August 15, 2019, and requested that Alta Loma provided the services Student received before Parent removed Student almost two years earlier. Alta Loma agreed to implement Student's last agreed upon IEP, which was dated December 19, 2016, and amended on January 11, February 16, April 13, and

April 25, 2017, as Student's "stay put" placement pending resolution of Alta Loma's due process request. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d); *Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.). Alta Loma implemented Student's services and goals in his current fourth grade general education class, but the stay put IEP was developed when Student was in first grade. In November 2019, Parent agreed to allow Alta Loma to implement the 2019 IEP goals, only. Alta Loma implemented the remainder of Student's first grade IEP.

For the 2019-2020 school year and at the time of hearing, Student was a 10-year-old fourth grader in a general education class at Carnelian, supported by a full-time aide and special education services. Student was eligible for special education as a student with the primary eligibility category of autism and secondary eligibility of speech and language impairment. He resided within Alta Loma's geographic boundaries at all relevant times.

**ISSUE: DID ALTA LOMA'S IEP, DEVELOPED AT IEP TEAM MEETINGS ON MAY 17 AND AUGUST 6, 2019, OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?**

Alta Loma contended that the IEP developed at two IEP team meetings, on May 17, 2019 and August 6, 2019, offered Student a FAPE in the least restrictive environment for the 2019-2020 school year. Alta Loma asserted that its 2019 IEP offered Student placement, related services, and supports reasonably calculated to ensure that Student made appropriate educational progress in light of his circumstances.

Student claimed that Alta Loma failed to assess Student in all areas of suspected disability, that Alta Loma's assessments were defective and unreliable, and that the 2019 IEP misstated Student's present levels of performance and did not provide measurable, challenging goals. Student contended that the special day class placement offer was not the least restrictive environment and that his educational needs could be met in a general education classroom with an appropriate aide and special education supports. Student also stated that Alta Loma failed to offer appropriate and sufficient speech and language services.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000] (*Endrew F.*).

The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the school cannot "be judged exclusively in hindsight ... an IEP must

take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*)).

When a school district seeks to demonstrate that it offered a FAPE, the legal analysis has two prongs. First, it must be determined whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp 206-207.) Second, the district must show that 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.*)

Procedural violations that do not result in a loss of educational opportunity or which do not constitute a significant infringement of parents' opportunity to participate in the IEP process are insufficient to support a finding that a student has been denied a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992), superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B).) A due process hearing decision cannot be based solely upon a nonsubstantive procedural error unless it is also found that the error resulted in the loss of educational opportunity to the pupil or interfered with the opportunity of the parent to participate in the formulation process of the IEP. (Ed. Code § 56505(j).)

## ALTA LOMA'S PROCEDURAL COMPLIANCE

### ASSESSMENT

The IEP process must include a comprehensive assessment of the Student in all areas of suspected disability. (34 C.F.R. § 300.303(b)(1); Ed. Code, § 56381(a)(2).) The

results of the assessments must be documented in writing and shared with the parents. (Ed. Code, §§ 56327, 56329.)

If an assessment is conducted to develop an IEP, the parent of the student must be given a written proposed assessment plan. (Ed. Code, § 56321(a).) Notice of a proposed assessment consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion State law. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a).)

Here, Parent contractually consented to comprehensive assessments of Student in the April 23, 2018 settlement agreement. The purpose of the assessments was to develop an IEP for Student for the 2019-2020 school year. Accordingly, the usual steps a school district must take to give notice to parents and obtain consent to an assessment did not apply here. (See *Elk Grove Unified School Dist. v. E.G.* (E.D. Cal., Sept. 12, 2019, No. 2:15-cv-02312-TLN- KJN) 2019 WL 4318572.)

On February 5, 2019, associate superintendent Loren Thompson sent Parent a letter to start the assessment process and schedule the IEP meeting pursuant to the settlement. She asked Parents to inform Alta Loma of Student's placement and services for the 2017-2018 and 2018-2019 school years. Thompson attached a copy the assessment plan from the April 2019 agreement and blank authorizations for release of information by Student's providers. Parent provided signed authorizations for Lindamood-Bell Academy, Justine Sherman & Associates, a private agency providing speech and language services, and optometrist Doug Stephey.



## MAY 17, 2019 MULTIDISCIPLINARY ASSESSMENT REPORT

Alta Loma contends it conducted a comprehensive assessment of Student's needs in all areas of suspected disability, which gathered relevant functional, developmental, and academic information for the IEP team. That information was documented in the 54-page, May 17, 2019 Multidisciplinary Assessment Report.

For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessments used must be:

- selected and administered so as not to be discriminatory on a racial or cultural basis;
- provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
- used for purposes for which the assessments are valid and reliable;
- administered by trained and knowledgeable personnel; and

- administered in accordance with any instructions provided by the producer of such assessments.

(20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

The personnel who assess the student shall prepare a written report that shall include the following:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during observation of the student in an appropriate setting;
- the relationship of that behavior to the student's academic and social functioning;
- the educationally relevant health, development and medical findings, if any;
- a determination of the effects of environmental, cultural, or economic disadvantage; and
- consistent with superintendent guidelines for low incidence disabilities, the need for specialized services, materials, and equipment. (Ed. Code, § 56327.)

The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) A procedural violation results in liability for denial of a FAPE only if the violation: impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20

U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Alta Loma assessed Student in March, April, and early May 2019. The assessment team consisted of school psychologist Brianna Peregoy, credentialed special education teacher Jemma Rogers, speech and language pathologist Christine Openshaw, occupational therapist Elizabeth Ragaza, adapted physical education teacher Jenna Escareno, and school nurse Erin Stevens. All were competent and well-qualified to conduct Student's triennial assessments. They used more than 20 assessment tools and employed multiple strategies to obtain relevant functional, developmental, and academic information. They gathered information from Parent, Student's Lindamood-Bell clinicians, Student's private speech pathologist, and Student's private audiologist Dr. Bea Braun. Alta Loma's assessors conducted multiple observations of Student on different days and at different times at Lindamood-Bell and Student's private pathologist, and carefully summarized their observations in the report. They also observed and documented their observations of Student during formal testing and informal interactions, throughout the assessment process.

The multidisciplinary evaluation report contained detailed summaries of past assessment results. Alta Loma assessors considered this information in forming their opinions and making recommendations.

#### IDENTIFICATION AND ASSESSMENT IN AREAS OF NEED

Student claimed that Alta Loma failed to conduct a central auditory processing disorder assessment of Student, noting that this area of need had previously been identified. However, Peregoy reviewed Dr. Braun's February 2017 independent educational central auditory processing evaluation. She talked to Dr. Braun, who

reported that Student completed a central auditory processing disorder online therapy program and had a central auditory processing retest in March 2018. Student had improved in some areas and had some deficits in others. The evidence did not indicate it was an area of disability that needed to be again assessed for purposes of Student's triennial reassessment. The mere fact that Student had previously been evaluated and received therapy in the area of central auditory processing did not support a finding that Student needed to be again evaluated for a triennial assessment. Peregoy correctly determined that central auditory processing disorder was not an area of need.

Student claimed that Alta Loma should have assessed Student to determine his need for vision therapy. Stevens administered a vision screening, which Student failed because he had a difficult time clearly seeing objects at a distance and appeared to have myopia (nearsightedness). Student's near-point vision was appropriate. Optometrist Stephey found in an April 2017 evaluation that Student had vision deficits in a number of areas, including convergence. However, Stevens used a screening device that supported the American Academy of Pediatrics guidelines for early detection for amblyopic risk factors, commonly referred to as lazy eye. Student had smooth eye movements and did not demonstrate amblyopic risk. This was consistent with Dr. Jerry Turner's 2016 independent educational evaluation, which found Student's visual-motor integration to be average. Other than possible nearsightedness, Student's vision was not an area of suspected disability that required a vision therapy assessment for purposes of Student's triennial reassessment.

Alta Loma offered to conduct central auditory processing disorder and vision therapy assessments at the IEP meetings. Parent declined to sign the assessment plan. Parent did, however, sign the April 2018 settlement agreement and contractually agreed to the attached Student's assessment plan for the triennial IEP. This assessment plan

identified the assessment evaluation areas, which did not include central auditory processing disorder and vision therapy. Alta Loma procedurally complied with the IDEA by assessing Student in the areas designated by the signed assessment plan through the settlement agreement. Alta Loma proved it comprehensively assessed Student in all areas of suspected disability for the May 2019 triennial IEP.

The assessment tools were selected and administered so as not to be discriminatory on a racial or cultural basis. They were provided in a language and form most likely to yield accurate information on what Student knew and could do academically, developmentally and functionally. The assessors used technically sound testing instruments that demonstrated the effect that cognitive, behavioral, physical, and developmental factors had on Student's functioning. Other than a scoring error on one speech assessment tool, which did not substantively affect the evaluation, all assessment tools were used for their intended purpose, were valid and reliable, and administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.

#### HEALTH AND DEVELOPMENT

Health examinations must be performed by a credentialed school nurse or physician. (Ed. Code, § 56324, subd. (b)).

Registered school nurse Stevens assessed Student's health and development. A review of records and Parent input did not reveal any current significant health concerns. Student passed his hearing screenings. Stevens reported that Parent stated Student had diagnoses of autism, delayed communication skills, and apraxia of speech.

## COGNITIVE AND ACADEMIC FUNCTIONING

Psychological assessments of pupils must 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).) Ms. Peregoy assessed Student. She held a bachelor's degree in psychology and an education specialist master of arts degree in school psychology. She was a credentialed and nationally certified school psychologist and a licensed educational psychologist. Peregoy had assessed students with disabilities for seven years as a school psychologist and was employed as a school psychologist with Alta Loma since 2018. Peregoy's education, credentials, and experience qualified her to conduct Student's psychoeducational assessment, administer standardized tests, interpret the results, and prepare the report. She testified at the hearing.

## BACKGROUND INFORMATION

Peregoy gathered information from Parent. She reviewed and summarized Dr. Braun's reports, private progress reports, and independent educational assessments by Dr. Turner, optometrist Stephey, and pathologist Abby Rozenberg. She summarized Student's cumulative educational records and Alta Loma's past assessments, Student's prior triennial and annual IEPs, and Student's special education program and goals from when he previously attended public school. Student's special education services and goals had addressed the broad categories of receptive language, expressive language, articulation, fine motor, gross motor, social skills and pragmatics, attention, and core academics.

Peregoy observed Student at Lindamood-Bell Learning Center in Upland, California, on April 19, 2019, which was an office building. Peregoy was escorted down a

hallway to a separate room, about 20 by 20 feet in size, with three partial fabric dividers sectioning off the four corners. Parent soon joined Paregoy. Student was in one section, seated next to his clinician, facing a laptop computer. An adult clinician was working with a younger girl in another corner while a teenage female student was working on a computer in a different sectioned corner of the room. Paregoy found the environment to be notably loud, with conversations occurring in all three instructional corners of the room. The pupils did not interact with each other. Student worked with his clinician and the computer for science lessons during the observation.

Student completed and submitted answers to a multiple-choice quiz, which a computer program scored. The clinician reviewed a few incorrect answers with Student, during which Student was easily prompted to hand over an item he was playing with. Student watched a video on the laptop regarding electric chargers. The clinician added some additional explanation or paused the video to check on understanding. Student then read an article on electricity and the clinician asked questions. When Student could not answer a question, the clinician had Student reread part of the article out loud. This occurred a number of times. The clinician then took Student to a hallway electrical closet, had Student turn a switch off and on, and explained open and closed circuits. Student independently used the bathroom and returned to the instruction room. He tried to use a balloon to generate static electricity. The clinician gave a 3-2-1 countdown to get Student to return the balloon. Student sat down and started playing with a ruler, which required another countdown to hand the ruler over. Student timely complied with both countdowns.

The clinician read Student questions and multiple-choice answers. Paregoy could not hear Student's answers because of the noise in the room. Student wanted a break, but the clinician had him continue. The observation ended and Student was allowed a

break. He went into the lobby and sat down to eat pizza that Parent brought for lunch. Peregoy talked to the clinician. Peregoy counted eight prompts and redirections to help Student refocus during the 56-minute observation.

A few weeks after the observation, Lindamood-Bell center director Gabbi Gravatt provided Peregoy additional requested information about the program. While at Lindamood-Bell, Student had one-on-one instruction with one clinician for each subject. Student participated in some group activities during the lunch hour, such as crafts or yoga. Lindamood-Bell Academy was using the Pearson curriculum for Student's English, science and social studies and some pieces of Pearson in his math time. Student continued in Lindamood-Bell's On Cloud Nine math program. For the remainder of school year, Lindamood-Bell's goal was to work on Student's fourth-grade readiness skills like fractions and decimals in math and grade level reading fluency and comprehension.

Peregoy observed Student with his private speech therapist Rebecca Miller, at Justine Sherman & Associates, on April 18, 2019. Parent was present. Student worked on target words' synonyms and antonyms, followed by a game focusing on maintaining a topic in conversation. Miller prompted and reinforced Student to use full and complete sentences. Student twice asked how much longer the session was to last, but otherwise seemed to enjoy the session with Miller. Peregoy generally observed that Student required substantial prompting and redirection, even in a one-to-one setting.

## COGNITIVE EVALUATION

Alta Loma's February 2013 multidisciplinary preschool assessment found Student's cognitive capability to be in the below average range. Alta Loma's January 2016 triennial psychoeducational assessment reported Student's cognitive capability to



be in the average range. Dr. Turner attempted to administer the Cognitive Assessment System, in Spring 2016, but did not report an overall cognitive score.

Peregoy reported her observations of Student during testing. Because Student struggled with attention and effort, she established a schedule for Student to work on test activities for 10 minutes and then take an approximate three-minute break. Student typically played the Angry Birds video game during breaks. He was cooperative and easily transitioned between testing tasks and breaks. Student worked slowly and carefully, on occasion self-correcting when he realized there was a better answer. He did not wear glasses during testing and did not have difficulty seeing the test material. Due to Student's level of cooperation, compliance, and apparent effort, Student's test results were valid measures of their intended purposes and a fair representation of Student's abilities.

Peregoy used multiple instruments in assessing Student's cognition and determined that Student consistently demonstrated below average cognitive abilities. She administered the Kaufman Assessment Battery for Children, Second Edition, Normative Update, measuring Student's processing and cognitive abilities. She selected the Kaufman's Nonverbal Index score as the most fair and valid measure of Student's overall cognitive abilities because of Student's known speech-language impairments. Student scored in the below average range on four of the five scale indexes and far below average on the Sequential index, which measured his short-term memory and ability to keep information in sequential order. Student scored in the below average range in the Kaufman Nonverbal Index. This differed from Student's 2016 Weschler average range cognitive score. Therefore, Peregoy again administered the Weschler Nonverbal Scale.

Student's full-scale cognitive score on the Weschler Nonverbal was in the below average range. This was consistent with Student's full-scale on the Kaufman. Peregoy noted that the significant variability in Student's Weschler subtest scores indicated a pattern of personal strengths and weaknesses. The Weschler manual stated the variability occurred in about 10 percent of the test takers and did not invalidate the full-scale result. Consistent with the test's protocols, Peregoy interpreted and integrated the subtests with her later findings from a variety of sources.

The Developmental Test of Visual Perception, Third Edition, assessed visual perception and visual-motor integration. Student was in the below average range on the visual perception test, which did not require any manual motor ability. The visual-motor integration test required varying degrees of complex motor responses and Student scored within the far below average range. Student's visual perception performance was consistent with his cognitive ability.

The NEPSY-II assessed neuropsychological development across six functional domains. Peregoy administered subtests from the NEPSY-II to investigate Student's attention, phonological auditory processing, and executive functioning. Student was in the far below average range on the auditory attention subtest, comprehension of instructions subtest, and phonological auditory processing. Student's auditory processing and attention deficits on the NEPSY were lower than his cognitive performance but consistent with prior assessments and his autism diagnosis.

Peregoy noted that Student's 2016 average nonverbal ability cognitive score was significantly higher than his other cognitive scores, including those in her own testing. She opined that Student was five years old in 2016 and that young children might not demonstrate consistent and reliable scores. Dr. Turner reported in Spring 2016 that

Student had significant difficulty with large portions of the cognitive testing and was unable to complete any items on multiple subtests. Dr. Turner did not know if this was due to Student's lack of ability or lack of comprehension, but noted weaknesses in working memory, attention, organization, task completion, and shifting. He found Student's processing abilities were in the below average range, which was consistent with Peregoy's findings.

Student's personal strengths were in his average-range performance on subtests of spatial thinking and problems solving, indicating he was likely to work well with clear and engaging visual information or hands-on tasks. Student was far below average and had the most difficulty on tests of attention, auditory and phonological processing, visual perception, and short-term memory. Student's cognitive assessment reliably found below average general cognitive abilities. Peregoy determined that Student would benefit from accommodations and supports to reduce visual and auditory distractions, breaking instructions and tasks into smaller parts, and providing additional time.

#### ACADEMIC EVALUATION

Rogers conducted the academic portion of the assessment. She held a bachelor's degree in human services and a master of arts degree in education. She had a mild-to-moderate special education credential and was working toward graduating as a board-certified behavior analyst within a year. Rogers was a resource specialist teacher for Alta Loma for eight years, conducting academic testing, developing IEP goals, working with general education teachers, and providing special education to students in a pullout classroom. She previously was a general education teacher for eight years.

Roger's education, credentials, and experience qualified her to administer standardized tests and conduct Student's academic assessment. She testified at the hearing.

Rogers reviewed Student's past assessments and records and obtained information from Parent. She observed Student at Lindamood-Bell in a cubicle setting like that seen by Peregoy. Student was working on a multiplication math sheet with a clinician who provided one-to-one assistance and instruction. Student appeared distracted and off task while working on his worksheet. The clinician needed to prompt Student to refocus and used the prospect of a break to urge Student to continue to work.

Rogers observed Student during the three academic testing sessions. He was happy and willing to attend. Student's level of conversation was limited, answering questions when asked but not starting a conversation with Rogers. Student needed regular prompting to not rush or attempt unfamiliar tasks. Student received frequent breaks for his preferred task of playing Angry Birds.

Rogers administered the Woodcock-Johnson Tests of Achievement, Fourth Edition, Form A, to assess Student's academic skills. Student took a series of subtests, in three separate sessions, which were then used to measure various academic clusters. For example, Student's reading cluster score was in the low range and consisted of the letter-word identification and the passage comprehension subtests. His academic fluency cluster score and his academic application cluster score were in the very low range. Student's broad achievement score was in the low range.

Rogers compared her testing scores with prior academic assessments from Student's December 2015 triennial assessment and a March 2017 academic assessment update. Student slightly improved on some academic tests, like basic reading skills

cluster went from low to low average. His performance decreased in other subtests, like the academic achievement went from low to very low. Student's subtest in math calculation remained a comparative strength with scores in the average range but his math applied problems subtest remained in the very low range. The two tests employed different math skills. Calculation used rote skill memorization of math facts. Applied problems used more advanced analysis to figure out what needed to be determined and then how to do the determination. Similarly, Student had strong skills related to word-decoding but greater difficulty when he had to apply reading to more complex, language-based scenarios. Student's overall academic abilities generally fell within the low range.

#### LANGUAGE AND COMMUNICATION SKILLS

Alta Loma used multiple measures to assess Student's language and communication skills. Rogers administered the Woodcock-Johnson, Fourth Edition, Tests of Oral Language. She found Student's oral language, broad oral language, and listening comprehension skills to be in the very low range, while his oral expression was in the low range. Roger's findings were consistent with the 2015 and 2017 administrations of the same test. She found that Student could follow one-step directions, but struggled with multiple step directions. Student had extreme difficulty listening to information and completing a passage based on that information.

Openshaw assessed Student's communication abilities. She had bachelor and master of arts degrees in speech language pathology and had been a licensed and credentialed speech language pathologist for 30 years. Openshaw had conducted assessments of children in both medical and school settings and worked for Alta Loma since 2018. Openshaw's education, credentials, and experience qualified her to

administer standardized tests and conduct Student's language assessment. She testified at the hearing.

## BACKGROUND AND OBSERVATIONS

Openshaw reviewed Student's past assessments and records and obtained information from Parent. Student's January 2016 triennial speech and language evaluation found Student to lack oral motor skills, which impacted his articulation and conversational speech. He struggled understanding meanings of words, expressing his thoughts, understanding basic concepts, following directions, staying focused, and maintaining basic social language with others. The 2016 triennial IEP team determined Student should remain eligible for special education as a student with a speech language impairment. Pathologist Abby Rozenberg found in a May 2016 independent speech language evaluation that Student had significant deficits in both receptive and expressive domains of language.

Openshaw observed Student on May 9, 2019, at his speech therapy session with Miller. The initial activity focused on grammatical sound utterances without double negatives, including accurate use of pronouns and present progressive. The game "Uno Attack" was used as a reinforcer. Student was very animated during the game portion of the activity. During informal conversation, Student used six-to-seven-word, grammatically incomplete sentences. Student successfully transitioned between tasks with a single verbal prompt.

Openshaw also observed Student on May 14, 2019 during his language arts session with clinician Nicole Fowler at Lindamood-Bell. Student was in a cubicle setting, like that seen by Peregoy and Rogers. Openshaw noted that the clinician essentially gave Student answers through increased cueing. The final lesson covered vocabulary

words associated with an article from the previous day. Student required repetition and was questioned multiple times before he answered.

Openshaw first met Student during her March and May 2019 assessments. Since the 2019-2020 school year started, she had been providing speech services to Student. Openshaw therefore was well acquainted with Student by the time she testified, describing him as a lovely, kind, and friendly boy. During the assessments, Student was quiet and cooperative, responding to questions but using little spontaneous language. Student was not impulsive but would become distracted, which required regular redirection. Openshaw estimated Student had a five-minute break after every 10 to 15 minutes of testing.

#### LANGUAGE ASSESSMENTS

Openshaw's clinical observation of Student's speech indicated his oral motor skills were intact. His conversational speech was free from excessive disruption in fluency. His vocal quality, pitch, and volume were age appropriate. On the receptive and expressive one-word picture vocabulary tests, Student scored in the below average range for his. This was consistent with other assessments, like that of Rozenberg who found that Student had significant expressive language deficits related to specific word use, grammar markers, and complex sentence formation.

Openshaw administered two oral language tests from the Oral and Written Language Scales, Second Edition. She scored Student in the deficient range on the listening comprehension scale and in the below average range on the oral expression scale. However, when reviewing Student's score sheets during her testimony, Openshaw realized that she had erred in scoring the tests by not adding the basal number – the question number before which the test taker was assumed to be able to correctly

answer – to the number of correct answers for the raw scores. She recomputed the scores and reported that Student’s listening comprehension scale was within the average range, by a point, and oral expression scale was within the average range.

This procedural error in the language scales’ standard scores was not substantive. Openshaw persuasively testified that the scoring mistake did not affect her opinion or recommendation in the multidisciplinary report or at the two 2019 IEP team meetings because other instruments and assessments confirmed that Student had a deficit in receptive language. Rozenberg’s May 2016 independent educational evaluation, Student’s 2015 multidisciplinary assessment, and his 2013 initial assessment identified Student’s receptive language as an area of need. Rogers’s testing confirmed that Student struggled with following multistep directions, consistent with Student’s “very low” scores in 2015 and 2017. The scoring misstep did not impede Parent’s opportunity to participate in the decision-making process, did not impede Student’s right to a FAPE or deprive him of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2)). Other sources provided considerable data that identified and confirmed Student’s receptive language deficits as an area of need.

On the Test for Auditory Comprehension of Language, Fourth Edition, Student’s vocabulary score was average. However, his understanding of function words and inflections was in the borderline impaired range. Similarly, his understanding of word relations and elaborated phrase and sentence construction was borderline impaired. Overall, Student’s auditory comprehension of language was borderline impaired or delayed. The Test of Expressive Language measured Student’s expressive spoken language. Here, Student was in the below average range for his vocabulary and grammatical use of function words and inflections. He was borderline impaired in his understanding and use of more elaborate phrases and sentence structure. Student’s



expressive language performance was borderline impaired and delayed. Openshaw would later use these formal language assessments in developing proposed goals in the area of receptive and expressive language.

## PRAGMATICS

Openshaw used a recognized pragmatic skill protocol to inventory and evaluate Student's language and communication skills. Student's overall profile of interpersonal communication skills showed strengths and weaknesses across the communicative act categories. Student exhibited relative strengths in speech intelligibility, vocal intensity, and physical proximity when speaking with others. He demonstrated emerging skills for speed checks, including the ability to take both speaker and listener roles, maintain eye contact, turn taking, and topic maintenance, when provided with structure and cues. Student was delayed in many responses, requiring repetition of a question or comment before answering. Openshaw determined that Student's autism spectrum disorder caused unique challenges with various communicative acts. Openshaw considered the data gathered by the skill inventory with the other evaluation data in later drafting proposed goals to address Student's pragmatic language.

Openshaw had experience in both the educational and medical settings and considered whether Student demonstrated apraxia. She determined he did not. Openshaw knowledgeably testified that apraxia was a very specific neurological motor planning deficit and that childhood apraxia was characterized by distinct, observable behaviors. She noted that children do not outgrow childhood apraxia like speech delay. Children with apraxia might also show difficulties with chewing, eating, and motor planning. Openshaw's review of Student's prior assessments did not indicate that Student exhibited these behaviors. When she first met Student, he did not demonstrate

apraxia-like behaviors. Instead, Student's speech was clear and intelligible, with appropriate volume and physical proximity.

Student did not introduce credible, persuasive evidence to refute Openshaw's determination. Two of Student's experts opined that Student had apraxia. Lilly Alejandra Flores-Fiumara was a board-certified behavior analyst, called a BCBA, who had not met Student until two days before the hearing. Clinical psychologist Caroline E. Bailey, Ph.D., had not observed Student until January and February 2020. Both admitted they were not qualified to diagnose apraxia. Nevertheless, they both testified that Student had or was diagnosed with apraxia based on their review of Dr. Rozenberg's report. Flores-Fiumara and Dr. Bailey testified they could understand Student and had no difficulty with his intelligibility. When presented with Dr. Rozenberg's report during her testimony, Dr. Bailey acknowledged he had not diagnosed Student with apraxia. In contrast, Openshaw's determination was based upon her expertise, assessments, and observations. Alta Loma adequately assessed Student for apraxia.

#### SOCIAL AND EMOTIONAL FUNCTIONING

Parent reported that Student was artistic, loved to draw, do science experiments, read Captain Underpants books, and play with action figures. Lindamood-Bell clinician Salarpi stated Student asked questions when confused or upset, was generally happy, liked to play on his own, but would include other pupils who wanted to play. The Alta Loma assessors agreed Student was easy going, polite, cooperative, and easily transitioned. Student did not demonstrate maladaptive behaviors.

Peregoy used a variety of instruments to assess Student's social and emotional functioning. She provided Parent with a questionnaire. Parent reported that Student

was compliant at home and had no difficulty with other children, but required specific instruction. Student had no history of trauma, loss, or counseling services. The family used an applied behavior analysis approach for discipline at home, when needed. Student's responses on a sentence completion exercise indicated that Student had positive relationships with his family and friends and loved playing and toys. Student said he did not like school, but loved science. He referred to Lindamood-Bell as his "second school," not his "real school" where he made friends. Student's performance on the NEPSY social perception subtest were consistent with his autism. He was far below average in reading social cues and perceiving others' points of view.

The Behavior Assessment System for Children, Third Edition, was designed to yield information about Student's social and emotional adjustment, behavior, academic functioning, and attention, at home and in a school environment. Peregoy had Parent and clinician Salarpi complete the assessment's rating scales of about 180 questions. All of the clinician's and Parent's responses were in the average range, indicating that Student did not demonstrate emotional or behavior challenges. Clinician Salarpi indicated that Student was easily distracted.

## AUTISM

Peregoy had Lindamood-Bell clinician Fowler and Parent complete the Autism Spectrum Ratings Scales to evaluate Student's autism. Parent's responses were in the average range, reporting few behavioral characteristics associated with children diagnosed with autism spectrum disorder. In contrast, Fowler had worked one-to-one with Student in multiple programs and subjects and she reported many autism characteristics. She provided responses in the very elevated range for Student's overall symptoms of autism. Student learned simple tasks but would quickly forget, struggled

paying attention when doing homework or chores, and had difficulty listening when spoken to. Fowler observed Student to strongly react when routine changed, insist on keeping certain objects with him at all times, and to overreact to loud noises. Overall, the autism spectrum ratings scores fell into the autism classification.

Peregoy administered the Autism Diagnostic Observation Schedule, Second Edition, Module 3, to assess Student's communication, reciprocal social interactions, interests, and behaviors associated with autism. Student exhibited a high level of autism spectrum related symptoms, when compared with other children of the same age and language ability who have autism. The primary factor in Student's elevated score was his frequent need to be prompted to engage in tasks and verbal exchanges with Peregoy. He did not engage in self-stimulatory behavior or behavior challenges during the testing.

#### ATTENTION

Parent's responses on the behavior assessment rated Student to have average levels of attention. Clinician Salarpi commented that Student was easily distracted in class. Another Lindamood-Bell clinician noted that Student needed redirection and that his desk was always unorganized. Fowler reported on the autism spectrum rating scales that Student's difficulty with attention in the instructional setting was elevated. Student's NEPSY subtest responses also indicated that he had attention challenges. Overall, the evidence demonstrated that Student struggled with sustained attention and could be easily distracted in an instructional setting. However, Student's inattention was not at a level that indicated an attention deficit disorder.

## ADAPTIVE DEVELOPMENTAL SKILLS

Student's adaptive skills were those needed to effectively and independently care for himself, respond to others, and meet environmental demands at school, home, and in the community. Ascertaining Student's adaptive skill strengths and struggles in his daily living environment would identify areas of need for intervention. Parent did not have concerns related to Student's adaptive skills. Parent reported that Student routinely took care of his personal needs, such as dressing, taking care of his clothes and shoes, and packing his backpack. His homework was typically done one-on-one. Similarly, Lindamood-Bell clinician Amy Estrada reported on the Adaptive Behavior Assessment System, Third Edition, that Student's overall adaptive skill performance was in the average range.

## OCCUPATIONAL THERAPY AND ADAPTED PHYSICAL EDUCATION

Occupational therapist Elizabeth Ragaza and adapted physical education teacher, Jenn Escareno, reported their observations of Student during assessment. Ragaza also observed Student at Lindamood-Bell. Her observations were consistent with those by Peregoy, Openshaw, and Rogers. Student's clinician expressed concerns about Student's attention skills and handwriting.

The parties stipulated at hearing that Alta Loma did not have to prove whether the 2019 IEP offered a FAPE in the least restrictive environment related to adapted physical education or occupational therapy. Therefore, Alta Loma need not prove procedural and substantive compliance with the IDEA and California law as to adapted physical education and occupational therapy in establishing that the 2019 IEP offered Student with a FAPE. These areas are not further analyzed or evaluated in this Decision.

## SUMMARY AND RECOMMENDATIONS

The assessors summarized their findings and analyzed various eligibilities in their report. The team found that Student met the criteria for autism, speech language impairment, and specific learning disability. Student did not qualify for other health impairment, intellectual disability, or any other special education eligibility category.

Peregoy listed a series of recommendations to the IEP team for supports and accommodations consistent with her findings. These included additional time for directions and responses, with frequent reteaching and checks on understanding. She proposed accommodations to support Student's deficits in attention, working memory, auditory processing, and visual processing. She suggested leveraging Student strengths in visual-spatial problem solving and working hands-on with materials. Peregoy noted that Student had learned to work well with reinforcers that included breaks, preferred activities, and favored items, but this also meant that Student did not have sustained and extended educational focus. She suggested that Student be supported to build his stamina, independence, and attention during learning opportunities and independent work.

Student claimed that Alta Loma did not properly assess Student's academic performance. Student argued the assessors disregarded the Lindamood-Bell evaluations that reported Student was functioning close to grade level in many of his core academics. Brendan Marshall was the director of Lindamood-Bell's offices in Upland, California. He reviewed Student's evaluation summaries during his testimony at hearing. Marshall was employed by Lindamood-Bell for four years, joining after receiving his bachelor's degree. He did not hold a professional license or teaching credential of any kind. All of his training had been with Lindamood-Bell. As a director,

he daily managed the center, which included interacting with parents and hiring personnel. He started as a clinician, which he still did about four hours a week. Clinicians worked directly with pupils on the various Lindamood-Bell programs and were not credentialed teachers. Marshall had known Student since 2016, had worked with him directly, and oversaw Student's instruction. The California Department of Education no longer certified Lindamood-Bell Processing Services as a nonpublic agency.

Lindamood-Bell's Learning Ability Evaluation Summary merely listed Student's test scores on various tests in September 2017, March 2018, June 2018, and January 2019. A separate summary listed April 2019 testing scores. Marshall did not administer, supervise, or see any of the reported testing. Because the assessor did not testify, the testing results were only admissible if corroborated by direct evidence and information and the assessment results could be considered reliable. (Cal. Code Regs., tit. 5, § 3082, subd. (b).). Here, several of the test instruments were outdated, such as prior versions of the Detroit Test of Learning Aptitude and Gray Oral Reading Test, and the Lindamood Auditory was not normed. The evaluation summaries did not report if the standardized tests were administered pursuant to protocols, given for the purpose for which the tests were designed, and done by properly trained and experienced educators. Marshall could not identify the assessors. The report failed to include any clinical observations of Student during testing and did not explain or analyze the results, other than to say Student improved and would benefit if Parent paid for 10 to 15 more weeks of Lindamood-Bell services, four hours a day, five days a week. If the Lindamood-Bell evaluation summaries were school district assessment reports, they would not be in compliance with state and federal requirements for a legally appropriate assessment, upon which a school district could rely in designing a pupil's IEP. (20 U.S.C. § 1414

subds. (b) & (c)(5); Ed. Code § 56320, subds. (a) & (b).). Perogoy and Rogers both reviewed the Lindamood-Bell's evaluation summaries and correctly determined that the summaries were not reliable.

Student asserted that Alta Loma disregarded his grade-level performance in a recognized general education curriculum. Student also attended Lindamood-Bell Academy, a private school, in addition to receiving Lindamood-Bell Learning Processes services. The Academy used the Pearson curriculum. Student received a Lindamood-Bell Academy report card in June 2019, showing his third-grade first and second semester grades as A or A minus for Language Arts and Science and a B minus and B in Social Studies. The grade report had multiple comments about Student's performance, but did not identify a teacher, instructor, clinician, or the author.

Marshall explained that the Lindamood-Bell Academy started in 2016 but was not available where Student received Lindamood-Bell services until second semester of the 2017-2018 school year. The Academy was not certified as a nonpublic school. The Academy used a differentiated, individualized curriculum designed for Student. There were five Academy students and the Student was the only pupil in his grade. Student's Pearson program was overseen by consultations with a curriculum advisor, who was located at another Lindamood-Bell campus. Marshall did not know if the advisor was a credentialed teacher.

Student's Lindamood-Bell Academy participation and grades provided little useful educational information upon which Alta Loma assessors or IEP team members could rely in fashioning Student's IEP and placement. Clinicians worked one-to-one with Student. His grade reports were conspicuously anonymous. Evidence did not indicate how his Academy curriculum was differentiated and individualized. Alta Loma's



assessors properly relied upon the multidisciplinary assessments for dependable, current, and accurate comprehensive information on Student's academic performance to guide them and the IEP team.

Student's expert psychologist, Dr. Bailey, was critical of the manner in which some test protocols were administered and surmised that other protocols could have been given. However, Dr. Bailey did not administer any standardized assessment of Student and had not done formal testing for five years. She was not a credentialed teacher. Her testimony was vague as to how other tests or protocols would have garnered more accurate and necessary information. She observed Student at his brother's Chuck E. Cheese birthday party, at his fourth-grade general education class at Carnelian, and at a home-based private applied behavioral analysis therapy session in the public library. She issued an 11-page consultation report, which primarily consisted of a review of records and summaries of her observations and interviews, with recommendations.

Dr. Bailey opined that Alta Loma's assessments of Student did not accurately report Student's capabilities and academic performance, which Dr. Bailey maintained was "close" to fourth-grade standards. Dr. Bailey did not observe Student at Lindamood-Bell and primarily relied upon Lindamood-Bell's evaluation summaries and her interviews with Marshal and a Lindamood-Bell "interventionist" in forming an opinion about Student's academic capabilities.

The California Evidence Code sets legal guidelines for admitting and considering expert opinion evidence, including careful scrutiny of matter that was not a proper basis for such an opinion or that was based in whole or in part upon the opinion or statement of another (Evid. Code, §§ 803 and 804). Here, Marshall was not a credentialed educator and Lindamood-Bell's evaluation summaries were not reliable. Since Dr. Bailey did not

assess Student, her expert opinion was substantially based upon unreliable evaluation data and the opinion and statement of another, Marshall, whose own testimony insufficiently supported his statements regarding Student's performance. Though Dr. Bailey had an admirable educational and professional background, her testimony in this regard was unpersuasive. The assessments correctly determined that Student was not academically performing at or near the fourth-grade level.

Sheila Juan was an applied behavior analysis supervisor from Student's private provider, Behavioral Autism Therapies. She testified at hearing, summarizing her May 15, 2019 Applied Behavior Analysis In-Home Progress Report for the period of October 2018 to April 2019. She also testified that Student was reading at the fourth-grade level. She supervised the registered behavior technicians who provided in-home therapy services to Student, for two hours a day Monday through Friday, and three hours on Saturday. Juan worked for autism therapies for four years, had been a supervisor for two years, and was studying for her BCBA exam at the time of her hearing testimony. She was not a licensed or credentialed educator.

Autism therapy's goals for Student were primarily in expressive and receptive communication and social pragmatics. Juan viewed these goals from the perspective of a behaviorist, not as a pathologist or educator. Yet, Juan testified that Student could independently complete worksheets from the fourth grade Journey curriculum. However, Student's attorney provided these worksheets for Student to do just two weeks before the hearing. Juan observed the therapist and Student go through the worksheets, which were linked to a story in the Journey's manual. The therapist verbally prompted Student, but Juan claimed that Student was able to do the majority on his own.

Juan was not qualified to provide an opinion regarding Student's grade-level performance; she was a behaviorist, not an educator. Student's attorney chose the worksheet assignment, which was not an educationally sound means to measure Student's reading abilities. Juan was uninvolved in Student's education services and program. Behavioral Autism Therapies' progress report was not for Parent or educators but, instead, was for Parent's insurance company. The insurance carrier paid for the Student's private in-home therapy and the progress report recommended that the carrier pay for an additional six months of therapy. As a result, Juan's testimony and progress report did not provide reliable, meaningful evidence of Student's educational capabilities. Finally, Parent did not identify and supply an authorization for Behavioral Autism Therapies before Alta Loma's assessment, as required in the settlement agreement. Therefore, Alta Loma assessors did not have proper access before the 2019 IEP.

Alta Loma's assessors produced a 54-page multidisciplinary team evaluation report, dated May 17, 2019, and updated August 6, 2019, that provided the IEP team with accurate and sufficiently comprehensive information on Student's functional, developmental, and academic performance to identify all of Student's special education and related service needs. The test instruments were technically sound, and demonstrated the effect that cognitive, behavior, physical and developmental factors had on Student's functioning. Alta Loma proved it considered pertinent data necessary to identify Student's unique educational needs. The assessments fully identified Student's educational needs. The 2019 IEP team had reliable and comprehensive assessment information to develop an IEP for Student.

## THE IEP DOCUMENT

An annual IEP must contain a statement of the child's present levels of academic achievement and functional performance, including the manner in which the child's disability affects involvement and progress in the general education curriculum. (34 C.F.R. 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1)(a).)

An IEP must contain a statement of the special education, related services, supplementary aids and services, and program modifications, accommodations, or supports to be provided to the student. It must also specify the frequency, duration, and location of those services. (20 U.S.C. § 1414(d)(1)(A)(i)(IV) & (VII); 34 C.F.R. § 300.320(a)(4) & (a)(7); Ed. Code, § 56345(a)(4) & (a)(7).) It must contain an explanation of the extent to which the student will not participate with nondisabled children in the regular class. (20 U.S.C. 1414(d)(1)(A); 34 C.F.R. §300.320(a)(5); Ed. Code, §56345, subd. (a)(5).)

An IEP must contain a statement of appropriate accommodations necessary to measure the student's academic achievement and functional performance on State and district wide assessments. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. 300.320(a)(6); Ed. Code, § 56345, subd. (a)(6). An IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).)

If a child's behavior interferes with his or her learning or the learning of others, the IDEA requires that the IEP team, in developing the IEP, "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

An IEP team must document its rationale for placement in other than the pupil's school and classroom they would otherwise attend if not disabled. (34 C.F.R. § 300.116; 71 Fed. Reg. 46, 588 (August 14, 2006); Cal. Code Regs., tit. 5, § 3042.) The IEP must indicate why the student's disability prevents their needs from being met in a less restrictive environment even with the use of supplementary aides and services. (*Ibid.*) The IDEA does not confer on the student an absolute right to placement in his neighborhood school, but the IEP must explain why the neighborhood school may not be properly suited to address the student's educational needs as identified by the IEP. (*Ibid.*)

The IEP is not required to include information under one component of a student's IEP that is already contained under another component of the IEP. (Ed. Code, § 56345, subd. (h).) An IEP need not include additional information not expressly required by statute. (Ed. Code § 56345, subd. (i).)

An IEP is not required to include the particular instructional methodologies that will be utilized in instruction. (34 C.F.R. § 300.320(d)(1); 71 Fed. Reg. 46,665 (Aug. 14, 2006).) As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) This rule is applied in situations involving disputes regarding choice among methodologies for educating children with autism. (See *Adams, supra* 195 F.3d at 1149; *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84 (T.B.).) Courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*T.B., supra*, 361 F.3d at p. 84.) A parent's disagreement with a school district's educational methodology is insufficient to establish an IDEA violation. (*Carlson v. San Diego Unified School Dist.* (9th Cir. 2010, unpublished) 380 F. App'x 595; see also, *Lachman v. Illinois State Board of Education* (7th Cir. 1988) 852 F.2d 290, cert.

denied at 488 U.S. 925 [holding that parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing for the education of a student with a disability].)

The IEP document must fulfill the IDEA's explicit requirement of written prior notice to parents when a school district proposes, or refuses, to initiate or change the educational placement of a disabled child. (See 20 U.S.C. § 1415(b)(1)(C); 34 C.F.R. § 300.503(a).)

The procedural requirement of a formal IEP offer creates a clear record and eliminates troublesome factual disputes years later about what placement and services were offered. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*).) A formal written offer is therefore more than a mere technicality, and this requirement is vigorously enforced. (*Ibid.*) The formal IEP offer may be clarified by a prior written notice letter in conformity with Title 34 of the Code of Federal Regulations, section 300.503. (See 20 U.S.C. § 1415(b)(1)(C); 34 C.F.R. § 300.503; *Union, supra*, at 15 F.3d p. 1526 [permitting a prior written notice letter to clarify placement offer].)

A school district may have two or more equally appropriate locations that meet the child's special education and related service needs, and school administrators have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement. (71 Fed. Reg. 46588 (Aug.14, 2006).) The IDEA does not remove from school authorities control over decisions as to where to allocate resources and locate instructional facilities. (*Letter to Angelo* (OSEP) 213 IDELR 168A (September 13, 1988).) However, special classes that serve students with similar and more intensive educational needs must be made available. (Ed. Code, § 56364.2, subd. (a).)

## ELIGIBILITY AND PRESENT LEVELS OF PERFORMANCE

The IEP document identified Student's primary special education eligibility category as autism and secondary eligibility as speech and language impairment. The 2019 IEP also recognized Student to be eligible as a child with a specific learning disability because Student had a severe discrepancy between intellectual ability and his listening comprehension, based on valid standardized tests. Student's 2019 IEP properly identified Student's special education eligibilities, having met the statutory criteria.

Student's present levels of academic achievement and functional performance as reported in the multidisciplinary assessment, including the manner in which his autism and language impairment would affect his ability to access the general curriculum within a general education classroom, were accurately summarized in the 2019 IEP. Relevant portions of that information were also included in the IEP as present levels of performance and baselines used to fashion and measure Student's progress on annual goals.

Based on the assessment results and present levels of academic achievement and functional performance, the IEP team identified the areas of educational need to be in reading, reading comprehension, math applied problems, written expression, fine motor/handwriting, gross motor, expressive and receptive language, pragmatics and attention.

## STATEMENT OF IEP OFFER OF PLACEMENT AND RELATED SERVICES

The IEP team could not complete a full review of Student's multidisciplinary report at the May 17, 2019 IEP meeting. The IEP team reconvened on August 6, 2019, completed the assessment review and reviewed present levels of performance,

accommodations, and goals. Alta Loma IEP team members reviewed the spectrum of possible placements. Before the meeting ended, Alta Loma made its IEP offer of FAPE in the least restrictive environment for the 2019-2020 school year. The 2019 IEP contained a clear statement of the special education and related services offered, including the frequency, duration, and location of those services, as follows:

- Specialized academic instruction for 1,280 minutes per week, in a mild-to-moderate special day class, with opportunities to participate in general education setting for lunch, recess, physical education music science, assemblies, special programs and activities, and field trips. 31 percent of Student's day would be with typical peers.
- Special education transportation would be provided because the offered mild-to-moderate special day class was at Jasper Elementary School and not available at Student's home school of Carnelian.
- Group language and speech services for fifty-five 30-minute weekly sessions.
- Individual occupational therapy for thirty 30-minute sessions per year.
- Group occupational therapy for thirty 30-minute sessions per year.
- Group adapted physical education for twenty-five 30-minute sessions per year.

Parent did not agree to the mild-to-moderate special day class. Parent requested that Alta Loma put the offer in writing. The August 2019 IEP meeting concluded.

On August 12, 2019, Director of Special Education Beth Freer provided Parent with Alta Loma's written IEP offer, and a copy of the multidisciplinary report. On August 29, 2019, Freer sent Parent a prior written notice letter, restating Alta Loma's 2019 IEP



offer and responding to Parent's inquiries. Freer detailed Student's schedule of time outside of the proposed special day class with general education peers at Jasper. Freer assured Parent that a classroom aide would accompany Student to general education classrooms for art, music, and science.

On September 17, 2019, Freer responded to Parent's September 10, 2019 email of IEP concerns with another prior written notice. Freer included a copy of the 2019 IEP, which corrected a misstatement in the August 6, 2019 meeting notes regarding the teams' discussion. Freer also provided Parent with a copy of the May 17, 2019 multidisciplinary report, as updated August 6, 2019. The updated report included information that was requested by Parent or Christopher Russell, described as Student's advocate, at the May 2019 IEP team meeting. The additions to the multidisciplinary report and correction to IEP notes did not alter any of the assessors' findings or Alta Loma's recommendations and offers. Alta Loma's IEP offer for Student's 2019-2020 academic year, as set forth in the IEP documents and discussed in Alta Loma's subsequent prior written notices, created an unambiguous record, which satisfied the IDEA requirements for a written, formal, and explicit offer. (20 U.S.C. § 1415(b)(1)(C); 34 C.F.R § 300.503(a).)

#### ACCOMMODATIONS, SUPPLEMENTARY AIDS, MODIFICATIONS AND SUPPORTS

The IEP included multiple accommodations, supplementary aids, and other supports, such as:

- Read aloud reading passages that were longer than 50 words so Student could hear text as well as read it himself;

- Near-point visual model for copying notes or information projected on the board;
- Visual schedule;
- Positive behavior support with a token economy board, used to work towards a preferred activity;
- Option of using a quiet area to work or take a test;
- Frequent breaks, both scheduled and earned;
- Use of a multiplication chart and “100s chart” during all math activities;
- Use of manipulatives for math and science;
- Access to graphic organizers and/or story maps to support reading comprehension and pre-writing activities;
- Option to use paper or folder to cover and block extraneous visual information worksheets or reading materials;
- Clear and concise verbal instructions; and
- Repeated and consistent checks for understanding.

The IEP specified the start date, end date, and frequency of program accommodations and personnel supports, which would be provided in the classroom. The IEP team meeting notes included additional details of the offer of services, accommodations, and supports. The IEP stated that the team discussed and determined that program modifications were not needed. The IEP provided that Student would participate in age-appropriate statewide testing, with identified supports and accommodations.

Other support included the classroom teacher’s collaboration with Student’s pathologist, occupational therapist, school psychologist, and adaptive physical education teacher to assist with educational supports and strategies for Student in the

classroom, once a week for 10 minutes. Student claimed that the description was too vague and therefore did not benefit Student. Student argued that the IEP did not state how the collaboration would occur, such as personal meetings or emails, and whether the teacher must talk with all of Student's support personnel every week. Such criticisms were unpersuasive because Parents did not have a right to compel Alto Loma to provide a specific program or employ a specific methodology. The purpose of the classroom teacher's collaboration with others was to assure that Student's teacher had regular access to Student's providers and school psychologist to build classroom strategies and supports. The manner in which, and the professionals with whom, Student's teacher would weekly consult depended on the evolving needs of Student. The 2019 IEP description sufficiently defined the teacher's support to enable educational benefit to Student.

Similarly, Student generally criticized the accommodations because they did not circumscribe exactly when an accommodation would be provided. This argument was also unpersuasive and for the same reason. The accommodations addressed the method for delivering instruction. The IEP team intended that the accommodations would be used when needed. For example, the 100s chart and manipulatives would not be necessary during English language arts. Reading aloud passages more than 50 words would not be necessary if the purpose of an exercise was to measure Student's ability, or Student had demonstrated the ability, to read and comprehend the passage. The accommodations were included to assure that Student could access and benefit from his education. Use of the accommodations depended upon Student's circumstances and Student's evolving needs, as continually evaluated by educators and professionals. The IEP sufficiently described accommodations, which were appropriate

to enable Student to advance toward attaining his goals and make progress in his curriculum. (Ed. Code, § 56345, subd. (a)(4); 34 C.F.R. § 300.320(a)(4) (2006)).

#### EXTENDED SCHOOL YEAR

IEPs must be reviewed at least annually (20 U.S.C. § 1414(d)(4)(B); 34 C.F.R. § 300.324(b)(1)(i); Ed. Code, §56341.1, subd. (d)). The 2019 IEP offers Student's services from May 17, 2019 through May 17, 2020, beginning the 2019-2020 school year. Student's next annual review would be held by May 17, 2020.

The 2019 IEP did not offer an extended school year program for Summer 2019, prior to the commencement of the 2019-2020 school year, because Alta Loma was not legally obligated to provide special education services per the settlement agreement. Also, the 2019 IEP did not offer an extended school year program for Summer 2020, because an annual review of Student's IEP would take place before May 17, 2020. The IEP team agreed to determine whether Student would receive extended school year services in Summer 2020 at the next annual review.

#### SOCIAL-EMOTIONAL AND BEHAVIOR

Peregoy assembled extensive information on Student's behavior and social-emotional status from Student's Parent, personal and written communications with Student's Lindamood-Bell clinicians and Lindamood-Bell director Gravatt, and multiple observations of Student by her and the other assessors at Lindamood-Bell, the private pathologist, and during assessment. She used Student's NEPSY subtests and several rating scales, completed by Parent and three different Lindamood-Bell clinicians, to further evaluate Student's behavior and social-emotional status.

The autism related scales confirmed Student's autism. Student did not engage in self-stimulatory behavior. Student struggled with sustained attention and could be easily distracted in an instructional setting. He needed frequent prompting to engage in tasks and verbal exchanges. Student was far below average in reading social cues and perceiving others' points of view, which was consistent with his autism diagnosis. Also, Student had average adaptive skills and was able to take care of his personal needs, entertain himself, and functionally communicate with others.

Peregoy presented and discussed her findings with the IEP team. Student was calm, polite, cooperative, and easily transitioned. He did not exhibit maladaptive behaviors. Student did not demonstrate emotional or behavior challenges that required a behavior intervention plan but, instead, could be appropriately supported with goals, services, and accommodations. The IEP team considered the use of positive behavioral interventions, supports, strategies, and accommodations and included them in the 2019 IEP. For example, Student had two receptive language goals, a pragmatics goal, and an attention goal. Student's accommodations included a token economy, structure and routine, frequent breaks, and various visual supports to stay on task and maintain attention. Accordingly, the IEP identified and contained appropriate positive behavioral supports and services to address the behaviors resulting from Student's disability. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

## PLACEMENT

The 2019 IEP identified Student's placement as a mild-to-moderate special day class at Jasper, which Freer subsequently confirmed in prior written notices of August 29 and September 17, 2019. Student's home school of Carnelian did not have a mild-to-moderate special day class that met Student's educational needs. Student

contends that Alta Loma failed to include all necessary elements of the placement in the IEP because the IEP did not identify the curriculum to be used in the classroom and why a special day class was necessary.

The IDEA had no requirement that a specific curriculum be identified. However, the IEP's first page clearly identified Student's disability and deficits in communication, perspective taking, and attention to non-preferred tasks and that these autism spectrum disorder characteristics impacted Student's ability maintain attention and learn abstract language and concepts. Student's academic goals made reference to State standards, which were part of the general education curriculum, and which the assessors and Freer persuasively testified were the curriculum standards that Alta Loma sought to have Student achieve. Student was several years behind in his core academic skills and therefore required the extra support of a credentialed special education teacher and small group instructional setting. The 2019 IEP properly documented that Student was not functioning on a fourth-grade level and required the special day class setting.

The 2019 IEP met all IDEA procedural documentation requirements. It clearly stated the special education and related services, placement, and other program components, offered at the 2019 IEP team meetings.

## IEP TEAM MEETING

Once a student has been referred for an initial assessment to determine whether the student has a disability and by reason thereof needs special education and related services, an IEP team meeting must be held to determine eligibility, and to develop an IEP if the student is found eligible. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, § 56302.1, subd. (a).)

The Ninth Circuit has emphasized that the parental participation safeguard was an important IDEA procedural safeguard, and procedural violations that interfere with parental participation in the IEP formulation process “undermine the very essence of the IDEA.” (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 892.). Accordingly, the Ninth Circuit held that delays in meeting deadlines did not necessarily deprive the student of educational benefit (see *A.M. v. Monrovia* (9th Cir. 2010) 627 F.3d 773, 779) and found that an agency’s decision to prioritize strict deadline compliance over parental participation was not reasonable.

#### TIMELINESS OF MEETING

The settlement agreement required that an IEP team meeting be held before the end of the 2018-2019 regular school year. Alta Loma contends it met all applicable timelines in scheduling Student’s 2019 IEP meeting. The first IEP team meeting was held on May 17, 2019, and lasted about three and a half hours. Alta Loma therefore met the agreement’s time requirements. The IEP team could not complete review of the assessments and development of the 2019-2020 IEP. The May 2019 IEP team meeting was adjourned to be reconvened.

During the May 2019 IEP team meeting, IEP team members asked Parent regularly if she had any questions regarding the assessments. When Parent or Russell had questions about the assessment procedure or assessment results, the appropriate assessor responded. The May 2019 IEP team meeting took longer than Alta Loma expected because of active and extensive participation by Parent and her advocate. As a result, the IEP team determined it must hold a reconvened meeting to assure that Parent had the opportunity to hear and participate in the assessment presentation.

When the May 2019 IEP team meeting adjourned, Alta Loma could not gather all the team members for an IEP meeting during the two days that remained before the end of the school year on May 20, 2019. Therefore, on June 3, 2019, Alta Loma offered to schedule the second IEP team meeting on August 1, 2019, before the start of the new school year. Parent replied on July 24, 2019, stating she was available for the reconvened meeting on August 5 or 6, 2019. Alta Loma agreed to August 6, 2019. Alta Loma did not improperly or unreasonably delay in convening the second IEP team meeting. The meetings were timely.

#### MEETING PARTICIPANTS

Alta Loma contends that all necessary team members were present at the May 17 and August 6, 2019 IEP team meetings. Student contends that the failure to invite his public-school first grade general education teacher, from when he attended Carnelian two years before, and someone from Lindamood-Bell, violated Alta Loma's obligation to ensure the participation of Student's teachers. Student was also critical of Alta Loma's failure to invite Student's private speech pathologist.

The IEP team must include one or both of the parents or a representative chosen by the parents. It must include not less than one regular education teacher "of the child" if the child is participating in general education (20 U.S.C. § 1414(d)(1)(B)(ii); 34 C.F.R. § 300.344(a)(2), and not less than one special education teacher, or where appropriate, one special education provider to the student. It must include a representative of the school district who is:

- qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the student,
- knowledgeable about the general education curriculum, and



- knowledgeable about the availability of school district resources.

The team must include an individual who can interpret the instructional implications of assessment results. At the discretion of the parent, guardian or school district, other individuals may be included with knowledge or special expertise regarding the student; and, if appropriate, the student. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

The IEP team must include at least one teacher or specialist with knowledge in the suspected area of disability. (See *Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1499.) Any team member who is qualified to interpret the results of an assessment may do so. (20 U.S.C. § 1414(d)(1)(B)(v); 34 C.F.R. 300.321 (a)(5); Ed. Code, § 56341, subd. (b)(5).) An IEP team member may fulfill more than one role if he or she meets the criterion. (34 C.F.R. §§ 300.321(d), 300.321(a)(5).) School districts are responsible for inviting teachers to the IEP team meeting. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 644.) The Ninth Circuit has expressly held that the IDEA reference to a regular education teacher "of the child" at IEP team meetings does not require the presence of the student's current general education teacher on the IEP team. (*R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 939 (*R.B.*).

The IDEA does not require related services personnel to attend IEP team meetings. (See *Letter to Rangel-Diaz* (OSEP April 25, 2011) 58 IDELR 78, p. 1 (*Rangel-Diaz*)). The IDEA's implementing regulations provide that each child's IEP team must include "[n]ot less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child." (34 C.F.R. § 300.321(a)(3).) A special education teacher or provider, not both, is a required member of the IEP team. The teacher or provider, who is a member of the IEP team, must be designated by the

school district and should be the person who is, or will be, responsible for implementing the child's IEP. (*Rangel-Diaz, supra*, at p. 2.)

All required team members attended both the May 17 and August 6, 2019 IEP team meetings. Parent attended with Student's aunt and Student's advocate. Peregoy, Openshaw, Ragaza, Rogers, Escareno, and Simon were there as part of the multidisciplinary assessment team and well-qualified to interpret assessment results. Parent and Russell excused the school nurse following her presentation at the May 17, 2019 IEP team meeting. First-grade general education teacher Melissa Gunty attended the May 2019 meeting. Gunty was unavailable for the second meeting. General education teacher Kristen Bowyer attended the August 2019 meeting.

Freer attended as the director of special education services and led the meeting. Freer was also a credentialed special education teacher, with added authorizations for autism and emotional disturbance. Freer was qualified to supervise the provision of specially designed instruction to meet Student's unique needs, and was knowledgeable about the availability of Alta Loma's resources. Rogers, Freer, Peregoy, and Openshaw were familiar with Student's disabilities of autism and language impairment. Alta Loma school psychologist Ame Vigil and Alta Loma's legal counsel, Diane Willis, were also present.

Alta Loma was not legally required to have Student's former first-grade teacher attend the IEP. Alta Loma had two credentialed general education teachers who were familiar with the general education curriculum and available resources at each IEP team meeting. Rogers had participated in Student's multidisciplinary assessment and was familiar with Student and his unique educational needs. Gunty and Bower were first grade teachers. Together, these teachers were equipped to discuss the extent to which

general education curriculum and placement would address Student's educational needs. Alta Loma met the mandatory general education teacher attendance criteria. (See *R.B., supra*, 496 F.3d at 939.)

Student's private speech pathologist and Lindamood-Bell personnel were not mandatory members of the IEP team and Alta Loma was not required to invite them. Lindamood-Bell clinicians and Gravatt contributed a significant amount of information to the assessors, via multiple questionnaire responses, interviews, and email exchanges. Similarly, the assessors gathered and evaluated substantive information from Student's private speech pathologist.

Finally, Parent was empowered to bring another individual to Student's IEP team meetings who was not employed by the public agency but possessed knowledge or special expertise regarding her child. Parent could have brought a Lindamood-Bell representative or the private pathologist to either IEP team. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).). Parent did not.

Accordingly, the May 17 and August 6, 2019 IEP team meetings convened by Alta Loma had all necessary IEP team members present.

#### PARENTAL PARTICIPATION

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 FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) 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*, 993 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].)

An IEP team must consider a parent's input, but it need not necessarily follow a parent's wishes. For example, in *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314, the court stated that if a school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*) Similarly, when presented with an outside expert's report, a school district need only review and consider the report; it need not follow its recommendations. (34 C.F.R. § 300.502(c); *G.D. v. Westmoreland School Dist.* (1st Cir. 1991) 930 F.2d. 942, 947.)

A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344 (*H.B.*); see also, *S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (*Vashon Island*).) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.*, (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.) However, school officials do not predetermine

an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688 at p. 693, fn. 3.)

Student argued that the draft IEP and the placement discussion towards the end of the August 6, 2019 meeting indicated that Alta Loma had predetermined placement. Student's argument was unpersuasive. Multiple Alta Loma IEP team members testified credibly and convincingly that they came to the IEP team meetings with open minds and had not met outside of the meetings to predetermine a placement. Team members informed Parent that the IEP document used at the meetings was a draft and, in fact, the draft was amended or modified a number of times during the meeting following team discussions.

The team members addressed placement after reviewing the goals and accommodations at the August 6, 2019 meeting. The team discussed the continuum of placements from general education classroom with no supports to more restrictive county programs and non-public schools. Parent asked about county programs. Freer explained what county programs provided and what type of student was placed in such programs. At Russell's request, the team had a more in-depth discussion of non-public school programs, their low student to staff ratio, and the profile of their students. However, Russell announced that Parent could not agree to a proposed placement because he and Parent did not agree to the IEP's proposed goals. Earlier in the meeting, Russell said Parent disagreed with the goals because Parent disagreed with Alto Loma's assessments.

Alta Loma then reviewed the offered services as listed on the IEP's services page. Rogers and Peregoy recommended placement in a district mild-to-moderate special day class. Both detailed the reasons why Student would benefit from the placement. Based

on Alta Loma's team member recommendations, Freer made Alta Loma's formal IEP offer of proposed related services and placement in the Alta Loma's mild-to-moderate special day class, with opportunities to participate in the general education setting (i.e., lunch, recess, physical education, art, music, science, assemblies, special programs, and field trips). Russell stated that Parent was not going to agree to the mild-to-moderate special day class placement and would like Alta Loma to put the offer in writing, along with a copy of the IEP. The IEP team meeting concluded. The evidence convincingly demonstrated that the Alta Loma IEP team members did not predetermine Student's placement or services.

Student asserts that Alta Loma's offer of placement was not sufficient because Alta Loma did not actively discuss the specific location of the placement. The IEP team offered a mild-to-moderate special day class at Jasper, because Student's home school of Carnelian did not have the class. The IEP identified Jasper as the placement location and offered transportation. Jasper was about three-quarters of a mile from Carnelian. In the United States Department of Education's comments to the federal regulations, the Department stated its longstanding position is that ". . . placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school." (71 Fed. Reg. at 46,687; *see Student v. Hacienda-La Puente Unified Sch. Dist.* (CA SEA 2007) 107 LRP 45563.) Also, according to Russell, Parent was not going to accept the special day class placement offer, which had nothing to do with the class' location. Alta Loma appropriately discussed and offered services and placement during the IEP team meetings.

Parent was informed of Student's problems, attended the May 17 and August 6, 2019 IEP team meetings, asked questions and discussed Alto Loma's responses, expressed disagreement regarding the IEP team decisions on present levels of

performance, goals, services and placement, and requested that the IEP be changed. Present levels of performance and goals were modified and added at Parent's request. Accordingly, Parent actively and meaningfully participated in the decision-making process of developing a FAPE for Student.

## GOALS

Alta Loma contends that the IEP team developed appropriate goals to meet Student's needs resulting from his disability. Student claims that Alta Loma failed to develop goals in all Student's areas of need and drafted inappropriate goals.

An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) Goals are evaluative and provide a mechanism for determining if anticipated outcomes are being met and if the placement and services are appropriate. (*Letter to Hayden* (OSEP 1994) 22 IDELR 501.)

In addition, the IEP must include "appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved," and a statement of how the student's progress toward

the goals will be measured. (Ed. Code, § 56345, subd. (7), (9); 20 U.S.C. § 1414(d)(1)(A)(i)(III).)

However, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, *Part 300 – Assistance to States for the Education of Children with Disabilities* (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C., § 1414(d)(1)(A)(i)(II).)

Student's IEP contained 11 goals. Goal 1 was in reading comprehension. The goal required Student to read a passage at the third grade, fifth month level, and answer six multiple choice questions related to the passage, scoring five out of six over three consecutive classroom tests. This goal was appropriate for Student. Though able to read and retell short passages, Student struggled to comprehend long passages. The goal referenced the Common Core's English language arts fourth-grade standard. The "Baseline" box, next to the goal description on the IEP goal page, stated Student was comprehending at the grade equivalent level of first grade, sixth month, pursuant to the Woodcock achievement tests.

Student's expert Dr. Bailey contended that the baseline entry for each IEP goal must include a full statement of the bases for each goal, not a mere reference to some tests or assessments. Student claimed that the goals were therefore inappropriate because the baselines were inaccurate and incomplete. Here, the IEP comprehensively stated Student's levels of performance. Student's IEP was not required to restate all related levels of performance under each goal's baseline entry that were already contained in other components of the IEP. (Ed. Code, § 56345, subd. (h).). Goal baselines were to be read within the context of the entire IEP's review of Student's



present levels of performance. All of Student's goal baselines were accurate and sufficiently supported each goal.

Flores-Fiumara opined that the goal's reference to the common core standard could be read to mean that Student would not necessarily work on different types of comprehension questions. Her opinion was not persuasive. Flores-Fiumara was a BCBA and not a credentialed teacher. The goal was a statement of what Student can reasonably be expected to accomplish, not the methodology used by the educators to build the skills necessary to achieve the goal. Methodologies are left to the discretion of teachers and service providers. (*Rowley*, 458 U.S. at 208.)

Patricia Oleas would have been Student's fourth-grade special education teacher in the offered mild-to-moderate special day class, had Parent accepted the offered placement. She testified at hearing. Oleas thought the goal might have been too ambitious because the goal was for almost two years of growth within a single year. However, Student's goals were evaluative measures. Alta Loma's assessors and special education teachers knowledgeably affirmed that goals can be revised once Student started performing in a school setting.

Goal 2 was in the area of reading accuracy and required Student to read aloud a passage at the second grade, fifth month reading level, for one minute, with fewer than five errors over three trials. The goal was appropriate and sufficiently challenging. Student skipped words, added words, and misread words on his achievement reading fluency subtest. His skills were at the first grade, third month level.

Flores-Fiumara criticized the goal, asserting that Student could meet the goal by reading very slowly. Student could achieve accuracy by merely compromising his fluency. However, Rogers persuasively testified that Student's inaccurate reading would

negatively affect his comprehension, which would also impact his speed. Oleas agreed that accuracy was more important than fluency. As accuracy increased, so would fluency.

Goal 3 was for sentence writing and addressed Student's need in the area of written expression. The goal required Student to independently write a logically organized sentence, with a subject, verb, and object, including correct punctuation and capitalization, with a four out of five score on a teacher created rubric, over three trials, as measured by Student's work samples. This goal was appropriate and was consistent with fourth-grade sentence organization and structure expectations. Student struggled when asked to independently write a sentence, missing capitalization and punctuation, even with a word bank.

Flores-Fiumara claimed the goal was inappropriate because Student was already capable of meeting the goal and, therefore, the goal was not challenging. Student referred to a few sentences in writing samples from Student's Woodcock achievement subtest. However, Rogers explained those sentences were written in response to a prompt, accompanied by a picture. Also, at the time of testing, Student was finishing third grade at Lindamood-Bell. But Student's writing samples were not those of a third grader. The longest sentence produced by Student in the writing sample – "The toy is a truck" – was typical of a student finishing first or just beginning second grade. The goal was sufficiently challenging.

Goal 4 was a math goal in the area of applied problems. The goal required Student to read a single-step word problem, determine the appropriate operation, and solve the addition or subtraction problem independently, with four correct out of five problems, over three trials. The goal was appropriate because Student struggled with

deciding which operation he should use when given a word problem. The goal allowed Student to develop his ability to independently conceptualize the difference between addition and subtraction and, later, to scaffold up to include word problems involving multiplication and division.

Goals 5 and 6 addressed Student's occupational therapy and adapted physical education needs. Pursuant to the parties' stipulation at hearing, these two goals are not discussed.

Goal 7 was in receptive language and required Student to choose from a variety of strategies to determine or clarify the meaning of unknown and multiple-meaning words and phrases from classroom reading vocabulary. The goal was appropriate because Student's assessments confirmed that he did not use strategies to ascertain meaning from contextual cues. Student did not demonstrate problem solving skills when confronted with an item he could not name. The skill developed by this goal applied to unknown words, the concept of opposites, and multiple-meaning words, which would build Student's independence.

Goal 8 was also in receptive language and required Student to follow a three-step/three-element direction when provided with visual and/or verbal cues. This goal was appropriate because receptive language had been an identified area of need throughout Student's educational history. Assessment data supported the need for this goal, which was designed to be a functional goal for the classroom. The goal was added at Parent's request.

Goal 9 addressed Student's expressive language deficits. Student was required to produce a grammatically complete sentence when provided with visual or verbal stimuli, with six to eight words in four out of five trials over three consecutive sessions.

Openshaw developed this goal to build upon the goals from Student's private speech provider, where Student had been working on speaking in complete sentences. She updated the baseline following the IEP discussion of this goal, to indicate that Student's spontaneous utterances during testing were observed to usually be two to four words in length.

Flores-Fiumara criticized the goal and asserted at hearing that Student was already speaking in six to seven-word sentences. However, she met Student just days before the hearing and did not hear Student speak in Spring 2019. She formed her opinion by comparing two Lindamood-Bell assessments with the Behavior Autism Therapies report. The Lindamood-Bell test results were not reliable, and the autism therapies report was a behavioral update for an insurance company. Openshaw observed that Student could speak in six to seven-word "grammatically incomplete" sentences when excited, demonstrating he had the capability to speak longer sentences. But Student continued to exhibit a need to develop the expressive skills to speak responsively in grammatically correct sentences. Student's private speech provider and Openshaw were pathologists who properly determined that this goal addressed Student's expressive language needs.

Goal 10 was in the area of pragmatics. Student would be provided with a conversation starter topic, with 50 percent verbal/visual cues. Student was then required to initiate a conversation by introducing the topic or asking a question, produce contingent comments or questions linked to the utterances of a conversational partner, or produce adjacent comments, across three to four conversational turns during four of five opportunities. Student's pathologist was responsible for measuring Student's progress by date and observation. The goal was appropriate because the assessments found that Student often required repetition of a question or comment

before responding and he was inconsistent in taking both speaker and listener roles in a conversation. This was a continuance of Student's private speech therapy goal and properly addressed Student's pragmatics need to participate and maintain conversations.

Goal 11 addressed Student's needs in the area of attention. The goal required Student to remain focused and on task during independent or small-group time, when given strategies to enhance his focus without more than two redirections back to the task, during a 15-minute work period. Alta Loma's assessors observed that Student required frequent prompting to stay on task, even though all his teaching and services were in a one-to-one setting. Student had not been in a classroom setting for almost two years. As Gunty emphasized, fourth-grade students were expected to work independently for 20 to 30-minute blocks of time. The goal was appropriate.

Student's IEP team developed annual goals in all areas of needs, which were identified by assessments, evaluations, the IEP team, and his private providers. The annual goals were designed to meet Student's educational needs resulting from his autism and communication deficits, and to enable him to be involved in and make progress in the general curriculum. All the goals were tied to fourth-grade common core standards. They described and provided a means of evaluating what Student could reasonably be expected to accomplish over a 12-month period.

The IEP included appropriate objective criteria, evaluation procedures, and schedules for determining on an annual basis whether the annual goals were being achieved and a statement of how Student's progress toward the goals would be measured. Incremental objectives ensured that Student's progress would be measured no less than three times during the school year, including an annual review. Both the

method of calculation of progress and the frequency of measurement met the statutory requirements for measurability of annual goals. The 2019 IEP contained annual goals appropriately designed to measure Student's progress in his educational program that addressed all his educational needs, consistent with state and federal standards.

In summary, the IEP developed at the May 17 and August 6, 2019 IEP team meetings met all procedural requirements for development and documentation of an IEP.

## ALTA LOMA'S SUBSTANTIVE COMPLIANCE

Alta Loma contends that its 2019 IEP offer included an appropriate placement in the least restrictive environment that enabled Student to benefit from and make progress in his academic program, with appropriate supports and services. Student contends that the special day class placement was not the least restrictive environment because Student could access and make academic progress in a general education classroom if supported with a proper aide and resource services. Student also asserted that the offered related services were insufficient to meet his needs.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Rowley, supra*, 458 U.S. at pp. 201-204; *Endrew F., supra*, 580 U.S. \_\_\_\_ [137 S.Ct. at p. 1000].)

For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the school district's offer of educational services and placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314; 20 U. S.C. § 1401(9).)

A school district has the right to select the program offered, as long as the program is able to meet the student's needs, and the district is ultimately responsible for ensuring that FAPE is offered. (*Letter to Richards*, 55 IDELR 107 (OSEP 2010).) No one factor is determinative in placement, and parental preference cannot be either the sole or predominant factor in placement decisions. (See, e.g., *Letter to Burton*, 17 IDELR 1182 (OSERS 1991); *Letter to Anonymous*, 21 IDELR 674 (OSEP) 1994); *Letter to Bina*, 18 IDELR 582 (OSERS 1991).) The Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Vashon Island, supra*, at 337 F.3d p. 1131.)

A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) The IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA

does not provide for an “education . . . designed according to the parent’s desires”], citing *Rowley, supra*, 458 U.S. at p. 207.)

## LEAST RESTRICTIVE ENVIRONMENT

To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers, and that special classes or separate schooling occur only if the nature or severity of the disability 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); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors:

1. the educational benefits of placement full-time in a regular class,
2. the non-academic benefits of such placement,
3. the effect the student has on the teacher and children in the regular class,  
and
4. the costs of mainstreaming the student.

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402.)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in



light of the continuum of program options. (*Daniel R.R.*, *supra*, 874 F.2d at p. 1050.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L.*, *supra*, 394 F.3d at p. 640, fn. 7.) 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 instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.) Related services under the IDEA are referred to as designated instruction and services in California. (Ed. Code § 56363, subd. (a); 20 U.S.C. § 1401(26); 34 C.F.R. 300.34.)

The first *Rachel H.* factor concerns the educational benefits available to a disabled student in a regular classroom with any supplemental aids and services. The Ninth Circuit held that academic needs weigh most heavily in the *Rachel H.* analysis, so when mainstreaming provides no educational benefit, “that finding can be dispositive of the entire LRE [least restrictive environment] analysis, even if the other three factors weigh in favor of mainstreaming.” (*Katherine G. ex rel. Cynthia G. v. Kentfield School Dist.* (2003) 261 F. Supp. 2d 1159, 1173-74 (citing *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 836-37); *Seattle School. Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500-01 (student was unable to derive any meaningful educational benefit from general education, where student’s educational progress was deteriorating), *abrogated in part on other grounds.*)

Here, observation and assessment indicated that Student would not be able to access and benefit from his academics independently, which would impede his academic performance as he moved beyond third grade. Freer, Rogers, Curtis and Oleas persuasively testified that Student’s academic challenges would increase in fourth grade.

Through third grade, pupils were learning and expected to have largely mastered discrete academic skills. In contrast, fourth grade pupils were expected to use those skills to learn, work independently and in small groups, and benefit from the general education teacher's whole group instruction. Fourth grade required higher-level thinking and conceptualization, where pupils researched, synthesized, compared and contrasted. Here, the evidence indicated that Student would not be able to perform independently, at or near grade level. Student did not exhibit the ability to do so in the general education classroom, even if supported by a full-time aide and pullout resource specialist services.

A school district's offer of FAPE is evaluated based upon what the school district knew, or should reasonably had known, at the time of the offer. (*Adams, supra*, 195 F.3d at 1149.) Here, however, Student regularly referred to Student's 2019-2020 school year, calling Student's fourth-grade general education teacher as a witness and having experts comment on the services Student was receiving. Alta Loma obviously did not have the benefit of seeing into the future when it made its 2019 IEP FAPE offer in August 2019. However, Student's fourth-grade performance confirmed Alta Loma's concern that Student was not going to benefit from such a placement.

Parent enrolled Student in Carnelian's fourth-grade general education class and requested that Alta Loma use Student's last agreed upon and implemented IEP for Student's placement and services. This was Student's December 2016 first-grade IEP, as amended. For the 2019-2020 school year, Student was in Curtis' fourth-grade general education classroom of about 32 pupils, age nine to 10 years. Student had a full-time aide and was removed from the classroom five hours a week for specialized academic instruction by the special education resource teacher. He was also removed from the

classroom for speech and language, occupational therapy, and adapted physical education weekly services.

Student received failing grades, or was not meeting proficiency, in all areas of English language arts and reading, writing, and math on his first trimester fourth grade report card. Student was not meeting grade level standards and needed frequent monitoring to stay on task. Curtis explained that she did not spend any class time teaching discrete academic skills that the general education pupils had already mastered. A primary consideration for a special education pupil's inclusion in a general education classroom was whether the pupil could access the general education academic curriculum, with some modifications, by participating in the general education class lessons and learning from the general education teacher. Here, the evidence indicated that Student was not directly benefiting from Curtis' teaching, but was receiving his academic instruction vis-à-vis the aide and resource pullout.

Alta Loma's multidisciplinary assessment found Student's academic skills were well below grade level. This was further confirmed when Student completed the September 2019 California Standardized Testing and Reporting, Reading Diagnostic testing, where he was given three times the normal time limit to complete. Student's optimal reading level range was from first grade, sixth month to second grade, sixth month. Student's reading skills were in the first percentile compared to other fourth grade students nationally.

Student argued that Alta Loma should have considered additional or modified push-in or pull-out resource services. However, Student failed to produce any persuasive or credible evidence that tweaking resource services would enable Student to benefit from and make progress in the general education classroom. Resource classes

were designed to build on the instruction that Student received in general education. Resource pupils might have accommodations, but they were generally expected to do the same work as general education peers. A resource class targeted skills and gaps so a pupil could return and independently work in the general education setting.

In general education, fourth grade pupils were learning to write five-paragraph essays with about twenty sentences, including an introduction, body paragraphs, and conclusion. Alta Loma's assessments and evaluation found that Student's writing was heavily scaffolded and not independent. Student's fourth-grade resource teacher reported at the December 2019 IEP team meeting that Student was not able to keep up with the resource class pace. And by the time of the hearing, Curtis had not seen Student write a long sentence without significant prompting. The evidence demonstrated that adding or altering resource services would not have enabled Student to access grade level curriculum in the general education classroom.

Student argued that he would be successful in a general education classroom if his aide were trained in applied behavior analysis and was supervised by a BCBA. However, Student's inability to access curriculum in general education was not due to maladaptive or other behaviors. Student did not provide persuasive or credible evidence of how a BCBA supervised aide would address Student's substantively below grade level academic performance, enable him to access his academics in a general education class, and empower him to work independently.

Given Student's documented receptive language and expressive language skills deficits, Student would not benefit from whole-group instruction in a class of 30 plus pupils. In contrast, Oleas' mild-to-moderate special day class was designed for students with academic needs similar to those of Student. The special day class had 10 to 12

students with varying disabilities, including autism and specific learning disabilities. Oleas would have been using interventions in small groups of three to four pupils to work on Student's math fluency, guided reading, and sentence structure., building confidence and increasing independence, while maintaining the common core fourth grade curriculum.

No amount of related services in a general education setting would meet Student's academic needs in lieu of specialized academic instruction. Further, if Student were routinely removed from class for designated instruction and services, he would miss significant hours of classroom instruction and the general knowledge shared by his typical classmates. A less restrictive setting of designated instruction and services with a general education placement, the support of a grade level resource specialist program for academics, and a full-time aide, would be insufficient to enable Student to access and benefit from his general education curriculum.

For two years, Student had received all his education and services one-to-one and had not been in a classroom environment. Freer reasonably opined that Student needed an opportunity to "catch up" to the rigors and expectations of a classroom environment. In *Baquerizo v. Garden Grove Unified School. Dist.* (9th Cir. 2016) 826 F.3d 1179, the Ninth Circuit applied the *Rachel H.* analysis to a pupil with autism whose academic scores were in the average range, but had been educated in a one-to-one setting for three years pursuant to a settlement agreement. Garden Grove offered a mild-to-moderate special day class placement because the pupil lacked independence and would become dependent upon an aide. The Ninth Circuit found that, of the four *Rachel H.* factors, the pupil's academic needs weighed the most heavily against a typical general education classroom and found that the smaller special day class was an appropriate transition for the pupil from the one-to-one setting. (*Id.* at 1187-1188.)

Similarly, Student required a small group special education setting to not only transition him to more independent learning but also to address his identified academic deficits, so he might make progress in his academic program.

The second *Rachel H.* factor was the nonacademic benefits of a general education placement. Student argues that he required general education placement because he benefitted from peer modeling by typical peers. Parent asserted that Student would likely regress if in a class where all the students had autism and were likely to exhibit maladaptive behaviors. However, there was no evidence that the mild-to-moderate special day class students exhibited maladaptive behavior. Parent did not observe the proposed special day class until shortly before the February 2020 hearing. Further, there was no evidence indicating that Student's social pragmatic skills improved or that he made new friends, in addition to those he already knew from first grade, in the general education classroom placement. In many ways, other than on the play yard, Student was isolated from his fourth-grade general education peers, unable to independently work alone or in groups.

As addressed in Student's goals and acknowledged by Dr. Bailey, Student's social skills were emerging. He generalized social skills with familiar people but stumbled when negotiating relationships with new people. Student particularly struggled in initiating and maintaining the back-and-forth nature of a conversation. A general education placement afforded him little opportunity to build and generalize these skills in the classroom environment, where he was working with a full-time aide or pulled for resource and related services. In contrast, the special day class small group environment afforded Student an opportunity to build peer-to-peer relationship, within the academic setting as he worked with other pupils. Further, 31 percent of Student's school time would be with typical peers, including in general education science and music classes.

The evidence established that Student could adequately and appropriately socialize and practice communication skills learned in the special day class with typical peers during the mainstreaming opportunities offered in the 2019 IEP.

Student also argued that he would lose his friends because the special day class was not at his home school. Parent testified that Student asked to return to Carnelian because he had friends from when he attended first grade. However, Parent also testified that during the two years Student was in private placement, Student maintained the friendships made in first grade. Therefore, Student should likewise be able to maintain those same friendships while attending Jasper, which was about three-quarters of a mile from Carnelian.

Student had ample opportunities to obtain non-academic benefit and mainstream with typical peers with the mild-to-moderate special day class placement. Further, placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school. Alta Loma's placement offer was therefore appropriate because the evidence indicated the mild-to-moderate special day class addressed Student's unique needs. The evidence did not show that a general education classroom placement would socially benefit Student to the extent that would warrant placement in general education.

No evidence was presented regarding the third *Rachel H.* factor, which was the effect Student had on the teacher and children in the regular classroom. Also, the fourth factor regarding the cost mainstreaming Student in a general education classroom was never discussed because it was not an issue.

Applying the *Rachel H.* factors affirms that Student could not have been satisfactorily educated in a regular general education classroom environment. The

moderate-to-severe special day class offer was reasonably calculated to enable Student to make progress on his goals and learn to independently demonstrate skills across a variety of contexts and environments, outside of the one-to-one educational setting of the prior two years. The special day class offer was reasonably calculated to provide Student access to grade-level curriculum with specially designed instruction that was implemented throughout the day by a special education teacher. Alta Loma's placement offer was Student's least restrictive environment.

## RELATED SERVICES

Alta Loma contended that the 2019 IEP offered appropriate related services. Student asserted the speech and language was insufficient and did not address his language impairment needs.

The IDEA defines "related services" as "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education." (34 C.F.R. § 300.34; 20 U.S.C. 1401(26).) Related services under the IDEA are referred to as designated instruction and services in California (Ed. Code § 56363, subd. (a)).

Alta Loma presented convincing and uncontroverted evidence that 2019 IEP offered Student appropriate related services that addressed his academic, receptive and expressive language, and social-emotional needs. Alta Loma offered adapted physical education, occupational therapy services, as well as transportation services because the special day class was not at Student's home school.

Alta Loma also offered group speech and language services by a pathologist for fifty-five 30-minute weekly sessions for the 2019-2020 school year. Student asserted



that the group sessions did not address Student's characteristics associated with his diagnosed apraxia needs. However, as discussed above, Alta Loma properly evaluated Student and found that he did not exhibit characteristics associated with apraxia. Therefore, speech and language services were not needed to address apraxia.

The evidence demonstrated that Student's speech services needed to focus on conversation and understanding language, with peers and adults. Group speech therapy provided opportunities for Student to react to stimuli from others than just the pathologist and to build skills in reading facial expressions and repairing misunderstood messages. One-to-one speech did not provide a natural environment, like a school setting, in which to develop communicative exchange. Though Student did well in his private one-to-one speech sessions, Student's properly assessed speech needs were better addressed in group speech sessions. Student did not submit credible evidence, or testimony from a pathologist or qualified expert, that Student required one-to-one or additional speech services to meet his needs.

In summary, the 2019 IEP provided a level of individualized academic instruction and related services, with supplementary supports, reasonably calculated to enable Student to make progress in light of his circumstances, and offered him a FAPE in the least restrictive environment.

## CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Alta Loma met its burden of proof and prevailed on each issue heard and decided.

The IEP developed at the team meetings on May 17 and August 6, 2019, offered Student a FAPE in the least restrictive environment. Alta Loma prevailed on the sole issue presented.

## ORDER

1. Alta Loma's 2019 IEP offered Student a FAPE in the least restrictive environment.
2. Alta Loma may implement the 2019 IEP without parental consent if Student is enrolled in an Alta Loma school and requests special education and related services.

## RIGHT TO APPEAL

This is a 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).)

/s/

Clifford Woosley

Administrative Law Judge

Office of Administrative Hearings