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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

L.H., Jr.,)	Case No.: 1:12-cv-00022 - JLT
)	
Plaintiff,)	ORDER DIRECTING ENTRY OF JUDGMENT IN
)	FAVOR OF DEFENDANT MICHAEL J. ASTRUE,
v.)	COMMISSIONER OF SOCIAL SECURITY, AND
)	AGAINST PLAINTIFF L.H., JR.
COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	
)	

L.H., Jr., (“Plaintiff”) by and through his guardian ad litem Felisha Owens, asserts he is entitled to benefits under the Social Security Act. Plaintiff argues the administrative law judge (“ALJ”) erred in assessing his functioning in one of the six domains used to evaluate the abilities of a minor. Therefore, Plaintiff seeks judicial review of the ALJ’s administrative decision. For the reasons set forth below, the ALJ’s decision is **AFFIRMED**.

PROCEDURAL HISTORY

On October 31, 2008, Plaintiff filed an application for Title XVI benefits, alleging disability beginning January 1, 2007. (Doc. 15-6 at 3). The Social Security Administration denied the claim initially and upon reconsideration. (Doc. 15-5 at 2-13). After requesting a hearing, Plaintiff testified before an ALJ at a hearing held January 25, 2011. (Doc. 15-3 at 25). The ALJ determined Plaintiff was not disabled under the Social Security Act, and issued an order denying benefits on July 30, 2010. *Id.* at 6-20. Plaintiff requested a review by the Appeals Council of Social Security, which found no

1 reason to change the ALJ's decision on November 3, 2011. *Id.* at 2. Thus, the ALJ's determination
2 became the decision of the Commissioner of Social Security ("Commissioner").

3 **STANDARD OF REVIEW**

4 District courts have a limited scope of judicial review for disability claims after a decision by
5 the Commissioner to deny benefits under the Social Security Act. When reviewing findings of fact,
6 such as whether a claimant was disabled, the Court must determine whether the Commissioner's
7 decision is supported by substantial evidence or is based on legal error. 42 U.S.C. § 405(g). The
8 ALJ's determination that the claimant is not disabled must be upheld by the Court if the proper legal
9 standards were applied and the findings are supported by substantial evidence. *See Sanchez v. Sec'y of*
10 *Health & Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

11 Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a
12 reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S.
13 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197 (1938)). The record as a whole
14 must be considered, because "[t]he court must consider both evidence that supports and evidence that
15 detracts from the ALJ's conclusion." *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985).

16 **DISABILITY BENEFITS**

17 To qualify for benefits under the Social Security Act, a minor claimant must demonstrate he
18 "has a medically determinable physical or mental impairment, which results in marked and severe
19 functional limitations, and which can be expected to result in death or which has lasted or can be
20 expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 1382c(a)(3)(C)(i).
21 The burden of proof is on a claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275
22 (9th Cir. 1990). Once a claimant establishes a prima facie case of disability, the burden shifts to the
23 Commissioner to prove the claimant is able to engage in other substantial gainful employment.
24 *Maounis v. Heckler*, 738 F.2d 1032, 1034 (9th Cir. 1984).

25 **DETERMINATION OF DISABILITY**

26 To achieve uniform decisions, the Commissioner established a sequential three-step process for
27 evaluating a minor claimant's alleged disability. 20 C.F.R. § 416.924(e). The process requires the
28 ALJ to determine whether the child (1) engaged in substantial gainful activity and (2) has a severe

1 impairments or combination of impairments (3) that met or equal one of the listed impairments set
2 forth in 20 C.F.R. § 404, Subpart P, Appendix 1. *Id.*

3 The ALJ must evaluate how the child’s limitations affect six broad areas of functioning called
4 “domains” to determine whether a child’s impairments functionally equal a Listing. *See* 20 C.F.R. §
5 416.926a. The domains are: (1) acquiring and using information; (2) attending and completing tasks;
6 (3) interacting and relating with others; (4) moving about and manipulating objects; (5) caring for
7 oneself; and (6) health and physical well-being. 20 C.F.R. § 416.926a(b)(1)(i)-(vi). When “marked”
8 limitations exist in two domains of functioning, or an “extreme” limitation exists in one domain, the
9 minor claimant meets the Listing requirements. 20 C.F.R. § 416.926a(a).

10 **A. School records**

11 Plaintiff was disciplined at Roosevelt Elementary for disobedience to a teacher and the
12 principal. (Doc. 15-8 at 53). In addition, he was disciplined at Frank West Elementary for violence
13 and engaging in “habitual profanity or vulgarity.” *Id.* at 49-52. In one incident, Plaintiff was
14 suspended on January 19, 2005, after “he pushed and hit another student” over a tetherball game
15 during recess. *Id.* at 52. Later the same month, Plaintiff was suspended for three days after he
16 “punched another student 3 times while in line for lunch.” *Id.* On March 30, 2006, Plaintiff was
17 suspended because “he showed a student a pocket knife and told that student that if this other boy
18 messes with him he was going to use it.” *Id.* at 49. However, expulsion was not recommended. *Id.*

19 Plaintiff continued to exhibit disruptive behavior after moving to McKinley Elementary school.
20 On December 7, 2006, Plaintiff was reprimanded for “[d]isrespect to other students.” (Doc. 15-8 at
21 48). The teacher noted Plaintiff was: “Loud and disruptive in class. Blurting out constantly. Not
22 keeping hands to himself. Girls are complaining that hie [sic] hits and bullies them. Using bad
23 language.” *Id.* Likewise, on December 11, Plaintiff “was singing loudly throughout the room,”
24 although he “had more than 5 warnings.” *Id.* On December 20, Plaintiff was suspended for a single
25 day for “repeatedly disrupt[ing] classroom instruction by talking out of turn, arguing with others, and
26 threatening others.” *Id.*

27 As a fifth grader, Plaintiff was reprimanded or suspended on several occasions for his behavior
28 toward other students, including “[c]ussing out another student,” kicking a student, “intimidating

1 another student after having been told to stay away from him,” and hitting a girl on the arm at recess.
2 (Doc. 15-8 at 41-47). Plaintiff also threatened other students, and in the presence of the vice principal
3 told students: “I’m going to pop both you niggers today. There, I don’t give a fuck.” *Id.* at 38.
4 Further, he was punished for defiance and “[d]isrespect to an adult.” *See, e.g., id.* at 39-41. For
5 example, after he received two referrals the afternoon of January 16, 2008, Plaintiff “refused to come
6 to the office with his teacher,” and “[w]hen he eventually came he stormed through and shouted, ‘Skip
7 you Ms. [redacted], you’re a dumb teacher anyway!’” *Id.* at 40. Expulsion was recommended on
8 August 6, 2008, although he continued to attend the school. *Id.* at 36.

9 A team from McKinley Elementary (including the vice principal of his school, the school
10 nurse, a counselor, and academic program leader) completed an assessment for an accommodation
11 review request on September 12, 2008. (Doc. 15-9 at 16). The team noted the area of concern for
12 Plaintiff was “social function,” noting he “lacks self control when angry” and was suspended for
13 threats, hitting, and extortion. *Id.* at 18. The staff opined Plaintiff was articulate and “demonstrated
14 leadership skills.” *Id.* In conjunction with the assessment, Plaintiff’s mother reported he “can be
15 lovable and has a good sense of humor.” *Id.*

16 On October 15, 2008, the school team provided an updated assessment, and opined Plaintiff’s
17 conduct was not caused by disability. (Doc. 15-10 at 84). The team explained: “[L.H.] chooses the
18 behavior that gets him attention and gives him a sense of control. He has shown that he can follow the
19 rules when he chooses.” *Id.* In the Behavior Support Plan, the team noted: “[L.H.] has great
20 leadership abilities, is intelligent, very independent. . . [L.H.] is very articulate and has strong
21 communication skills.” *Id.* at 85. The team reiterated that Plaintiff “engage[d] in disruptive behavior
22 and physical aggression to seek attention and demonstrate control and power.” *Id.*

23 On December 5, 2008, expulsion was recommended from the Bakersfield City School District.
24 (Doc. 15-8 at 32; Doc. 15-9 at 58). The notice to Plaintiff’s mother explained:

25 School personnel have recommended an expulsion based on the following: On
26 11/04/08 [L.H.] accused another student of touching his butt. [L.H.] called the other
27 student gay and threatened him that he was going to beat him up. After speaking with
28 the Campus Supervisor and Principal, [L.H.] became very angry and violent in the
office. The authorities were called to take [L.H.] home. As the officers were speaking
with [L.H.], he made the threat “that kid has a death wish, I’m gonna get him when I

1 get back. Just watch me, I'll be here 5 minutes and I'm gonna get him". He also made
2 a comment that he hated the police and wanted to get a gun and shoot them. [L.H.]
3 threatened the life of the Campus Supervisor and the Principal. These comments were
made in front of the authorities.

4 (Doc. 15-9 at 58). The Board of Education for the Bakersfield City School District voted to expel
5 Plaintiff on January 27, 2009. (Doc. 15-9 at 76-77). The district referred Plaintiff to a community
6 school, and set forth a "rehabilitation plan" for Plaintiff. *Id.*

7 Plaintiff failed to comply with the terms of the rehabilitation plan, and was assigned to begin
8 the sixth grade at Rafer Johnson Community Day School. (Doc. 15-9 at 12). On October 1, 2009,
9 Plaintiff refused to complete an assignment, left class without permission, was "constantly talking, and
10 not on task." (Doc. 15-8 at 30). The next day his teacher noted Plaintiff "was yelling loudly, using
11 extreme profanity, including the 'F' word." *Id.* Similar behavior over the next several days resulted in
12 a five-day suspension beginning October 8, 2009. *Id.* After walking out of class without permission,
13 mocking a substitute teacher, and being "very disrespectful . . . on a daily basis," he was suspended
14 for five more days beginning October 18, 2009. *Id.* at 28.

15 After transferring to Emerson Middle School, Plaintiff continued defiant behavior, including
16 "shouting profanities at teacher, students, and staff repeatedly." (Doc. 15-8 at 28). He was "exhibiting
17 menacing behaviors in the presence of teacher and students," and left the campus without permission
18 on more than one occasion. *Id.* at 27-28. On September 21, 2010, Plaintiff was disciplined when he
19 told a teacher, "Fuck yourself nigger, Im [sic] a crip." (Doc. 15-8 at 25). In addition, Plaintiff was
20 suspended for five days following an incident on October 6, 2010. *Id.* A substitute teacher attempted
21 to restrain Plaintiff from attacking another student, and the teacher reported Plaintiff "pushed him in
22 the chest and use profanity towards him." *Id.* An academic coach witnessed Plaintiff "use profanity
23 towards the teacher and turn[] around and push[] him in the chest again." *Id.*

24 On November 23, 2010, the Bakersfield City School District expelled Plaintiff once again, and
25 assigned him to Kern County Superintendent of Schools' Community School. (Doc. 15-10 at 62-64).

26 **B. Relevant Medical Opinions**

27 Dr. Thomas Middleton saw Plaintiff when he was nearly 11 years old for a psychological
28 evaluation on December 16, 2008. (Doc. 15-12 at 21). Dr. Middleton observed Plaintiff "was quiet

1 and cooperative in manner.” *Id.* at 22. In addition, Dr. Middleton found: “He was alert and his mood
2 was normal. His affect was appropriate. He was oriented for person, place, and time. . . The minor’s
3 attention and concentration were adequate.” *Id.* at 23. Dr. Middleton Plaintiff was hospitalized at the
4 end of 2007 after he “placed a plastic bag over his head and stated that he wanted to die so he could be
5 with his deceased father.” *Id.* at 22. Plaintiff told Dr. Middleton he was “really mad” when he
6 attempted suicide “and acknowledged that he did not really mean to kill himself.” *Id.* at 23. Also,
7 Plaintiff told Dr. Middleton that he heard voices and could “see ‘white things’ as well as his father.”
8 *Id.* Dr. Middleton concluded Plaintiff’s “level of intellectual functioning falls in the low [a]verage
9 range,” and recommended “individual counseling for his depression, anger management problems,
10 etc.” *Id.* at 26.

11 On December 22, 2008, Dr. Vea completed a childhood disability evaluation form. (Doc. 15-
12 12 at 29-34). Dr. Vea opined Plaintiff’s impairments were severe, but did not meet or medically equal,
13 or functionally equal the listings. *Id.* at 29. According to Dr. Vea, Plaintiff had “no limitation” in
14 acquiring and using information because he had fair judgment, average intelligence, and was not in
15 special education classes. *Id.* at 31. Dr. Vea opined Plaintiff had “no limitation” moving about and
16 manipulating objects, caring for himself, and with health and physical well-being. *Id.* Further, Dr. Vea
17 found Plaintiff had “less than marked” limitation in attending and completing tasks, though he was
18 “[e]asily distracted” and did not listen. *Id.* Based upon Plaintiff’s school records and the report of his
19 mother, Dr. Vea opined Plaintiff had “less than marked” limitation with interacting and relating with
20 others. *Id.*

21 Dr. Trachtenberg completed a childhood disability form on May 6, 2009, and indicated
22 Plaintiff had severe mental impairments. (Doc. 15-12 at 45-50). Dr. Trachtenberg opined Plaintiff
23 had a “less than marked” limitation in acquiring and using information, based upon his IQ and WRAT-
24 4 test results, and “[h]is speech was reported to be well formed and direct.” *Id.* at 47. Further, he
25 observed a psychiatric progress note from December 30, 2008 “reported average intelligence.” *Id.*
26 This same noted “indicated that attention/concentration were intact.” *Id.* Likewise, Dr. Middleton
27 “indicated that his attention and concentration were adequate.” *Id.* Based upon these assessments, Dr.
28 Trachtenberg opined Plaintiff had a “less than marked” limitation in attending and completing tasks.

1 Due to Plaintiff's "history of being expelled from two elementary schools for fighting, acting up,
2 saying things, [and] . . . threaten[ing] to hurt his family," Dr. Trachtenberg concluded Plaintiff had a
3 "marked" limitation in interacting and relating with others. *Id.* Dr. Trachtenberg found Plaintiff had
4 "no problems" with moving about and manipulating objects. *Id.* at 48. Dr. Trachtenberg opined the
5 allegations of disability "exceed objective material." *Id.* at 50.

6 **C. Hearing Testimony**

7 Plaintiff testified at a hearing before the ALJ on January 25, 2011. (Doc. 15-3 at 25). He
8 reported he was thirteen years old and he lived in a house with his mom, four sisters, and two brothers.
9 *Id.* He said he was responsible for cleaning his room, and "[s]ometimes" made decisions about what
10 clothes to wear to school. *Id.* at 30-31.

11 He stated that he was in the seventh grade, and he went to a community school after being
12 expelled from Emerson Junior High School. (Doc. 15-3 at 30, 32, 36). According to Plaintiff, he was
13 expelled for fighting with a teacher:

14 Q: [W]hat happened?

15 A: I was thirsty that day and I wanted to some water and [the teacher] told me to sit
16 down and I said no, I'm going to get me some water. And he grabbed me by the
neck and threw me against the wall.

17 Q: And what did you do?

18 A: I pushed him off of me, I kept pushing him until he grabbed me so hard around my
19 neck I tried to hit him.

20 (Doc. 15-3 at 37). Also, Plaintiff said he threw a chair at a teacher at the school he attended before
21 Emerson. *Id.*

22 Plaintiff explained he went to school one day a week where his teacher gave him homework
23 for the rest of the week. *Id.* at 32. Plaintiff reported he did "probably all" of his homework, and
24 thought he was doing okay in school. *Id.* at 33. He did not believe he had any difficulties reading. *Id.*
25 at 34. Plaintiff said that when in school he "[k]ind of, not really" had problems staying in his seat. *Id.*

26 Plaintiff said he had a friend who moved out of town, and did not do anything with his siblings
27 because they would "fight all the time." (Doc. 15-3 at 31, 40). He testified he did not get along well
28 with classmates when he was in a regular classroom because he did not like some of them, and some

1 of them did not like him. *Id.* at 34-35. He reported that he spent his time at home watching cartoons
2 on television, and he did not really like sports. *Id.* at 31-32.

3 Plaintiff reported he went to a counselor “every couple of weeks.” (Doc. 15-3 at 36). He
4 stated people did not like him, so he did not like them in return. *Id.* at 38. In addition, Plaintiff said he
5 heard voices “[e]very day” that would “just whisper but sometimes they talk to [him].” *Id.* at 38-39.

6 Felisha Owens, Plaintiff’s mother, testified after him at the hearing. (Doc. 15-3 at 41). She
7 reported that she first noticed Plaintiff’s behavior problems “when he was five-years-old, after his
8 father died. *Id.* at 42. Ms. Owens explained Plaintiff had “angry problems” and began “acting up at
9 school.” *Id.* According to Ms. Owens, Plaintiff first attended Roosevelt Elementary School, from
10 which he was expelled for “[b]eing defiant,” having problems with classmates, and “cursing at the
11 teacher.” *Id.* at 42-43. She stated Plaintiff next attended McKinley “[f]or a couple of years,” until he
12 was expelled from the school for “[f]ighting and arguing with the teacher.” *Id.* at 43. Ms. Owens
13 stated Plaintiff’s third and fourth schools were Sequoia and Emerson, which also expelled him. *Id.* at
14 43-44. Ms. Owens reported Plaintiff did his homework for the community school “when he want[ed]
15 to do it,” but he would “get distracted.” *Id.* at 44-45.

16 She testified Plaintiff took Seroquel and Wellbutrin, which were prescribed by a doctor at
17 Clinica Sierra Vista. (Doc. 15-3 at 45). She estimated Plaintiff had been taking the medication for “a
18 couple of years,” and that the medication helped. *Id.* She explained the medication calmed Plaintiff,
19 and without that medication he goes off the handle.” *Id.* However, Ms. Owens believed Plaintiff still
20 had problems while taking his medication. *Id.*

21 According to Ms. Owens, Plaintiff had to be taken into custody after he threatened to kill
22 someone, and was hospitalized for “depression and hearing voices.” (Doc. 15-3 at 45-46). She said
23 she would catch Plaintiff talking to himself, and that Plaintiff reported talking to his dead father. *Id.* at
24 46. She reported Plaintiff was on probation, and his probation officer visited their house “about once a
25 month, twice a month.” *Id.* at 47.

26 **D. The ALJ’s Findings**

27 Pursuant to the three-step process, the ALJ found Plaintiff had not engaged in substantial
28 gainful activity since the application date of October 31, 2008. (Doc. 15-3 at 12). Next, the ALJ

1 determined Plaintiff had the following severe impairment: “attention deficit hyperactivity disorder,
2 oppositional defiant disorder, and mood disorder.” *Id.*

3 To determine whether Plaintiff’s impairments satisfied the listings, the ALJ examined the six
4 functional domains set forth in 20 C.F.R. § 416.926a. The ALJ determined Plaintiff had “less than
5 marked limitation in acquiring and using information.” (Doc. 15-3 at 15). In addition, he had “less
6 than marked limitation in attending and completing tasks.” *Id.* at 16. Plaintiff had “marked limitation
7 in interacting and relating with others.” *Id.* at 17. The ALJ found Plaintiff had “no limitation” in
8 moving about and manipulating objects, in the ability to care for himself, and in health and physical
9 well-being. *Id.* at 18-19. Because Plaintiff did not have an impairment that resulted in “marked”
10 limitations in two domains or “extreme” limitation in one domain, the ALJ concluded Plaintiff was not
11 disabled as defined by the Social Security Act. *Id.* at 19.

12 **DISCUSSION AND ANALYSIS**

13 Plaintiff argues the ALJ erred in her evaluation of the third domain of interacting and relating
14 with others. (Doc. 16 at 3-13). To evaluate a minor’s ability to interact and relate with others, the
15 ALJ is instructed to “consider how well [the child] initiate[s] and sustain[s] emotional connections
16 with others.” 20 C.F.R. 416.926a(i). In addition, the ALJ considers the ability to “develop and use the
17 language of [the] community, cooperate with others, comply with rules, respond to criticism, and
18 respect and take care of the possessions of others.” *Id.*

19 Here the ALJ determined Plaintiff had a “marked limitation in interacting and relating with
20 others.” (Doc. 15-3 at 17). In the so finding, the ALJ observed:

21 The claimant’s mother, Felisha Owens, reported in November 2008 that the
22 claimant did not have any problems communicating (Exhibit 3E, p. 4), did not have
23 friends his own age, make new friends, generally get along with other adults or school
teachers, or play team sports (Exhibit 3E, p. 7).

24 The claimant had great leadership ability, was intelligent, very independent, and
25 had strong communication skills, and was very articulate. However, he argued with
26 adults when given directions or instructions and refused to comply with requests. He
27 engaged in disruptive behavior and physical aggression daily when at school, severe
enough to warrant referrals and suspensions (Exhibit 14E). He showed that he could
follow the rules when he chose (Exhibit 14[E], p. 251).

28 The [plaintiff] has been charged with assault with a deadly weapon and making
terrorist threats (Exhibit 2F). He has also thrown a chair at his probation officer and

1 been involved in many fights. His activities have led to multiple suspensions and
2 expulsions from school (Exhibit 1E, p. 20).
3 (Doc. 15-3 at 17). Plaintiff argues these findings lack the support of substantial evidence. (Doc. 16 at
4 3). Further, Plaintiff asserts “Exhibit 14E,” which contains the school records from Bakersfield City
5 School District, belies a finding that Plaintiff could follow the rules. *Id.* at 10- 13. Plaintiff asserts “all
6 the suspensions and expulsions and supporting particulars,” demonstrate he “is unable to cooperate
7 with others and comply with rules.” *Id.* at 13-14.

8 Defendant argues, “The ALJ’s finding that Plaintiff had a ‘marked’ limitation in interacting
9 and relating with others was supported by substantial evidence in the record.” (Doc. 17 at 10).
10 Defendant contends the opinion of the ALJ was “consistent with the opinion of child psychiatrist, Dr.
11 Trachtenberg, who . . . concluded that Plaintiff’s only ‘marked’ limitation was in the domain of
12 interacting and relating with others.” *Id.* Further, Defendant notes that the opinion of the ALJ was
13 “more restrictive” than the opinions of other physicians. *Id.*

14 Significantly, in a Social Security Ruling, the Commissioner explained the term “substantial
15 evidence” “describes a quality of evidence ... intended to indicate that the evidence that is inconsistent
16 with the opinion *need not* prove by a preponderance that the opinion is wrong.” 1996 SSR 4 LEXIS 9
17 at *8.¹ Rather, “[i]t need only be such relevant evidence as a reasonable mind would accept as
18 adequate to support a conclusion that is contrary to the conclusion expressed in the medical opinion.”
19 *Id.* The opinion of an examining physician may be substantial evidence in support of the ALJ’s
20 decision. *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007); *Tonapetyan v. Halter*, 242 F.3d 1144,
21 1149 (9th Cir. 2001). Likewise, an ALJ may use evidence from educational personnel, including
22 “school teachers, counselors, [and] early intervention team members.” 20 C.F.R. § 416.913(d)(2).
23 Thus, statements from these sources may be substantial evidence in support of an ALJ’s findings.

24 Here, the ALJ referred to school records to evaluate Plaintiff’s ability to interact and relate
25 with others. (Doc. 15-3 at 17, citing Exhibit 14E). Although Plaintiff contends the ALJ failed to cite

27 ¹ Social Security Rulings are issued by the Commissioner to clarify regulations and policies. Though they do not
28 have the force of law, the Ninth Circuit gives the rulings deference “unless they are plainly erroneous or inconsistent with
the Act or regulations.” *Han v. Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1989).

1 evidence supporting the findings that Plaintiff is “very independent,” “has strong communication
2 skills,” and “is articulate” (Doc. 16 at 9), these statements were made by school personnel in the
3 exhibit cited by the ALJ. On September 12, 2008, a team from McKinley Elementary—including the
4 vice principal, nurse, and counselor—opined “[L.H.] has demonstrated leadership skills [and] he is
5 articulate.” (Doc. 15-9 at 18). On October 15, 3008, the school team noted: “[L.H.] has great
6 leadership abilities, is intelligent, very independent. . . [L.H.] is very articulate and has strong
7 communication skills.” *Id.* at 85. The team believed Plaintiff “has shown that he can follow the rules
8 when he chooses.” *Id.* Accordingly, these statements are substantial evidence supporting the findings
9 of the ALJ.

10 Moreover, the assessment of Dr. Trachtenberg supports the ALJ’s conclusion. After reviewing
11 the record, Dr. Trachtenberg noted Plaintiff had “history of being expelled from two elementary
12 schools for fighting, acting up, saying things, [and] . . . threaten[ing] to hurt his family.” (Doc. 15-12
13 at 47). Based upon this, Dr. Trachtenberg opined Plaintiff had a “marked” limitation interacting and
14 relating with others. *Id.* Accordingly, the assessment of Dr. Trachtenberg, an examining physician, is
15 substantial evidence supporting the ALJ’s findings.

16 **CONCLUSION AND ORDER**

17 Although Plaintiff argues the evidence supports a finding that he has an extreme, rather than
18 marked, limitation, the decision of the ALJ is supported by substantial evidence in the record. It is not
19 the role of the Court to reweigh the evidence. See *German v. Comm’r of Soc. Sec.*, 2011 U.S. Dist.
20 LEXIS 25691, at *11-12 (E.D. Cal. Mar. 14, 2011). Rather, “[w]here the evidence is susceptible to
21 more than one rational interpretation, one of which the ALJ’s decision, the ALJ’s conclusion must be
22 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

23 Here, the findings of the ALJ regarding the third domain are supported by substantial evidence,
24 including the school records and assessment of Dr. Trachtenberg. Therefore, the ALJ’s determination
25 that Plaintiff is not disabled must be upheld by the Court, because the ALJ applied the proper legal
26 standards and her findings are supported by substantial evidence. See *Sanchez*, 812 F.2d at 510.

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Accordingly, **IT IS HEREBY ORDERED:**

1. The decision of the Commissioner of Social Security is **AFFIRMED**; and
2. The Clerk of Court **IS DIRECTED** to enter judgment in favor of Defendant Michael J. Astrue, Commissioner of Social Security, and against Plaintiff L.H., Jr.

IT IS SO ORDERED.

Dated: January 4, 2013

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE