

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.

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 ALJ's
8 determination that a claimant is not disabled must be upheld by the Court if the proper legal standards
9 were applied and the findings are supported by substantial evidence. *See Sanchez v. Sec'y of Health &*
10 *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 In August 2013, Zebrina Graves completed a teacher questionnaire, noting Plaintiff had just
12 started the second grade, and she had been his teacher for one week. (Doc. 13-7 at 29, 31) She noted
13 Plaintiff was a “non-reader” and his dominate language was Hmong. (*Id.* at 29) Ms. Graves opined
14 under the domain of “Acquiring and Using Information,” Plaintiff exhibited a “slight problem” with
15 understanding school/content vocabulary and doing math problems.¹ (*Id.* at 31) She believed Plaintiff
16 had “[a]n obvious problem” with comprehending oral instructions, providing oral explanations and
17 adequate descriptions, expressing ideas in written form, and learning new material. (*Id.*) In addition,
18 Ms. Graves opined Plaintiff had a “serious problem” with recalling and applying previously learned
19 material and applying problem-solving skills in class discussions.” (*Id.*) Ms. Graves indicated Plaintiff
20 had a “very serious problem” with reading and comprehending written material. (*Id.*) She believed
21 Plaintiff was “academically low,” at the kindergarten level, and she paired him with another student
22 who helped Plaintiff complete tasks. (*Id.* at 29, 31) With the domain of “Attending and Completing
23 Tasks,” she opined Plaintiff had “no problem” with organizing his things or school materials; and a
24 “slight problem” with carrying out single step-instructions, carrying out multi-step instructions,
25 changing from one activity to the next without being disruptive, completing work accurately without
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27
28 ¹ The scale used on the teacher questionnaire ranked the severity of issues from 1 to 5, with “1” being “no
problem;” 2 being a “slight problem,” 3 being an “obvious problem,” 4 being a “serious problem,” and 5 being “a very
serious problem.” (*See* Doc. 13-7 at 31-32)

1 careless mistakes, working without distracting himself or others, and working at a reasonable place and
2 finishing on time. (*Id.* at 32) Ms. Graves did not identify any problems as “very serious” under this
3 domain. (*Id.*)

4 In January 2014, Ms. Graves completed another teacher questionnaire. (Doc. 13-7 at 46-53)
5 She again indicated Plaintiff had problems with the “Acquiring and Using Information” and “Attending
6 and Completing Tasks” domains. (Doc. 13-7 at 47-48) Ms. Graves noted Plaintiff was “very low”
7 academically, explaining he received instructions at the kindergarten level and did not “know all the
8 sounds of the letters in the alphabet.” (*Id.* at 47) She indicated Plaintiff had a speech problem for which
9 he went to speech therapy one day per week, as well as daily instruction for thirty minutes in English
10 Language Arts. (*Id.*) Ms. Graves believed Plaintiff had a “serious problem” with comprehending and
11 doing math problems, providing organized oral explanations and adequate descriptions, and applying
12 problem-solving skills in class discussions. (*Id.*) Ms. Graves noted Plaintiff had “a difficult time
13 recalling information,” and she sat him “by a high student who help[ed] him in class.” (*Id.*) Under the
14 “Attending and Completing Tasks” domain, Ms. Graves indicated Plaintiff did not have problems with
15 waiting to take turns or completing work accurately without careless mistakes. (*Id.* at 48) She believed
16 Plaintiff had a “slight problem” with paying attention when spoken to directly, carrying out single-step
17 instructions, completing class/ homework assignments, and working without distracting himself or
18 others. (*Id.*) Ms. Graves indicated Plaintiff had a “serious problem” with re-focusing on a task when
19 necessary, working at a reasonable pace, and completing work accurately without careless mistakes.
20 (*Id.*) According to Ms. Graves, each of these problems occurred on a monthly basis. (*Id.*) She did not
21 identify any “very serious” problems under this domain, or problems that occurred on an hourly, daily,
22 or weekly basis. (*Id.*)

23 In April 2014, Plaintiff received an “Individualized Education Program” (“IEP”), which
24 indicated he had a speech or language impairment. (Doc. 13-9 at 18) Ms. Graves reported Plaintiff
25 was “making slow improvements” though he “continue[d] to struggle in all areas of academics. (*Id.*)
26 Plaintiff participated in an English language program, math tutoring after school, and reading
27 intervention. (*Id.*) Ms. Graves indicated Plaintiff had “difficulty with [the] ability to process and retain
28 information,” which was “most evident in his inability to calculate basic math equations such as adding

1 and subtracting with the use of manipulatives and several adult models at the one-on-one level. (*Id.*)
2 She also observed that Plaintiff continued to have difficulty writing but had “overall improvements”
3 with his communication skills. (*Id.* at 19-20) The IEP team observed:

4 [H]is verbal performance of the English language is just entering the “Intermediate”
5 level; therefore his verbal language contains a limited range of vocabulary, but with a
6 broader range of syntax appropriate to his setting and the purpose of his speech. He is
7 able to tell a coherent story but may not clearly state the main events of his story and he
8 tends to use[] more phrases and incomplete sentences while speaking. These are not
language or articulation disordered errors; they are due to his development of English
language with a different primary language in his home environment and his early childhood
language development.

9 (*Id.* at 20) The IEP team concluded Plaintiff did not require special education classes, and his regular
10 teacher could provide English language mainstream instruction. (*Id.* at 19, 23)

11 Plaintiff’s first report card for his third-grade year indicated his GPA was a 1.25, with an F in
12 reading, C- in writing, D- in math, and C in social studies. (Doc. 13-7 at 69) The report also indicated
13 Plaintiff exhibited “satisfactory” effort/citizenship with following directions, paying attention, working
14 in groups, and cooperating on the playground. (*Id.*) He received “unsatisfactory” ratings for working
15 independently, turning work in on time, and completing his homework. (*Id.*) His citizenship was
16 ranked as “outstanding” for treating others with respect and showing self-control. (*Id.*) In October
17 2014, a preliminary “Individual Student Learning Plan” was prepared for Plaintiff, indicating that he
18 was at risk of retention in the third grade. (Doc. 13-7 at 68) The preliminary plan indicated Plaintiff
19 needed reading intervention and small group instruction for reading strategies and comprehension
20 skills. (*Id.*) In November 2014, Plaintiff’s grade in reading improved to a D+, while he again received
21 a C- in writing and D- in math. (*Id.* at 67) The fourth quarter of his third grade year, Plaintiff received
22 Fs in reading, writing, and social studies, and a D- in math. (*Id.* at 78)

23 Plaintiff’s teacher in the fourth grade, Suzanne Mendes, noted Plaintiff read 41 correct words
24 per minute at grade level. (Doc. 13-7 at 92) Ms. Mendes indicated Plaintiff’s writing was “often
25 confusing and lack[ed] sentence structure.” (*Id.*) She also noted Plaintiff knew “some of his addition
26 and subtraction facts” and was “working on x2 multiples.” (*Id.*)

27 In May 2016, Ms. Mendes completed a teacher questionnaire, on which she indicated Plaintiff
28 had problems with the “Acquiring and Using Information” and “Attending and Completing Tasks”

1 domains. (Doc. 13-8 at 3-4) She believed Plaintiff “struggle[d] with most grade level materials and
2 [had] difficulty meeting grade level standards,” as his reading and writing abilities were at the second-
3 grade level and math abilities were those of a third-grader. (*Id.* at 2, 3) Ms. Mendes opined Plaintiff
4 had an “obvious problem” with comprehending oral instructions, comprehending and doing math
5 problems, understanding and participating in class discussions, providing organized oral explanations
6 and adequate descriptions. (*Id.* at 3) She indicated Plaintiff had a “serious problem” with vocabulary
7 and learning new material. (*Id.*) She also believed Plaintiff had a “very serious problem” with reading
8 and comprehending written material, expressing ideas in writing, recalling and applying previously
9 learned material, and applying problem-solving skills in the class discussions. (*Id.*)

10 Under the “Attending and Completing Tasks” domain, Ms. Mendes believed Plaintiff had a
11 “slight problem” with sustaining attention, carrying out single-step instructions, waiting his turn,
12 changing activities without being disruptive, organizing his things or school materials, and completing
13 assignments. (Doc. 13-8 at 4) In addition, she indicated Plaintiff had a “serious problem” with paying
14 attention when spoken to, focusing upon tasks, and working without distracting himself or others. (*Id.*)
15 Finally, Ms. Mendes noted Plaintiff had a “very serious problem” with carrying out multi-step
16 instructions and completing work without careless mistakes. (*Id.*) Ms. Mendes indicated Plaintiff
17 manifested these problems daily. (*Id.*) She opined Plaintiff’s classroom citizenship was “satisfactory,”
18 and concluded he did not have issues with the remaining domains. (*Id.* at 5-7, 10)

19 **B. Relevant Medical Opinions**

20 Dr. Richard Engeln performed a psychological evaluation on October 31, 2013, when Plaintiff
21 was seven years old. (Doc. 13-11 at 20) Dr. Engeln noted Plaintiff was accompanied by his parents
22 and “an adult male who described [himself as] a spokesperson for the family.” (*Id.* at 21) Dr. Engeln
23 observed that when checking in, Plaintiff “appeared to begin to say something, but very quickly, the
24 spokesperson stated ‘He can’t talk.’” (*Id.*) His parents reported they had nine children, of which
25 Plaintiff was the youngest and the only born in the United States, and the family primarily spoke
26 Hmong. (*Id.* at 22) However, Plaintiff’s parents indicated he did “not talk at all in Hmong or English.”
27 (*Id.* at 23) Dr. Engeln determined Plaintiff’s “visual intelligence is in the average range” and his
28 “[g]rapho-motor reproductions were assessed in the average range for the age level. (*Id.* at 22) He

1 observed: “[Plaintiff] would not cooperate on academic tasks presented, rejecting all the academic
2 measurements... [and] he achieved a grade equivalent scores of beginning preschool on reading,
3 spelling and arithmetic.” (*Id.*) Further, Dr. Engeln observed that Plaintiff “refused to [say] any words.”
4 (*Id.*) According to Dr. Engeln, Plaintiff’s communication and daily living skills appeared to be “in the
5 moderate range of mental retardation” and his socialization skills were borderline. (*Id.* at 23) He
6 concluded Plaintiff “presented without any stigmata of developmental disorder,” and diagnosed
7 Plaintiff with oppositional behavior disorder, opining Plaintiff’s issues “appear[ed] to be more
8 behavioral than academic delay.” (*Id.*)

9 On February 6, 2014, Dr. Pamela Hawkins reviewed Plaintiff’s school records and evaluations
10 from his teacher and found Plaintiff had a severe impairment, but it did “not meet, medically equal, or
11 functionally equal the listings.” (Doc. 13-4 at 6-8) Dr. Hawkins noted Plaintiff’s teacher ranked his
12 issues under the “acquiring and using information” domain as “in the serious range,” and Dr. Hawkins
13 opined his limitations were “[l]ess than marked.” (*Id.* at 7) She also determined Plaintiff had “less than
14 marked” issues with attending and completing tasks. (*Id.*) Dr. Hawkins found no limitation with the
15 remaining domains related to the ability to interact and relate with others, move about and manipulate
16 objects, care for himself, and health and physical well-being. (*Id.* at 7-8)

17 Dr. Katherine Redwine performed a psychological evaluation, during which she administered
18 intellectual tests on April 25, 2014. (Doc. 13-11 at 37, 53-54) Plaintiff “obtained scores in the mildly
19 impaired range for verbal comprehension (59), perceptual reasoning (61), and processing speed abilities
20 (68), and in the borderline range for working memory (74) on the WISC-IV.” (*Id.* at 37) Dr. Redwine
21 did not calculate a full-scale IQ score “due to the significant discrepancy between his Working Memory
22 Index and Verbal Comprehension Index scores.” (*Id.*) Further, she believed the results of the testing
23 “should be interpreted with some caution due to [Plaintiff’s] reluctance at times to answer questions.”
24 (*Id.* at 54) Dr. Redwine observed that Plaintiff “demonstrated somewhat of a hit-and-miss response
25 style, indicating possible problems with attention” and his “scores may reflect an underestimate of his
26 true cognitive potential.” (*Id.*) Dr. Redwine believed Plaintiff would benefit from special education
27 services; having limited television, video game, and screen time “to provide him with ample
28 opportunity to engage in language and social-based activities; treatment with a behavioral intervention

1 specialist “to improve his adaptive abilities;” and “a referral to a mental health agency to assess for the
2 presence of attention, mood, or anxiety disorders.” (*Id.* at 57)

3 In June 2014, Plaintiff was determined to be eligible for treatment though Central Valley
4 Regional Center. (Doc. 13-11 at 37) Alex Vang, an intake counselor, observed that Plaintiff answered
5 all questions that were spoken in Hmong and did not answer questions spoken in English. (*Id.*)
6 According to Mr. Vang, Plaintiff “was able to converse... in Hmong fairly well,” and “demonstrated
7 skills that his parents reported he was not able to perform.” (*Id.*) Mr. Vang also believed Plaintiff knew
8 and understood “more than his parents reported.” (*Id.*) He believed that because Plaintiff was the
9 youngest child, everything was “done for him” and “[h]e was not given an opportunity to grow.” (*Id.*)

10 On August 21, 2014, Dr. Steven Swanson performed a psychological assessment, which
11 included the Leiter International Performance Scale and Vineland Adaptive Behavior Scales. (Doc. 13-
12 11 at 26-27) Dr. Swanson noted Plaintiff’s father “describe[d] him as ‘very slow.’” (*Id.* at 27) He
13 observed that Plaintiff “appeared motivated to exaggerate compromise in functioning,” because
14 Plaintiff said he did not know his age, school grade, whether he had any siblings, or the name of the
15 city in which he lived. (*Id.*) In addition, Dr. Swanson noted: “On the psychometrics, he appeared
16 intentionally to give the incorrect answer. He was given encouragement to give the correct answer and
17 was easily able to do so with prompting but then went back to avoiding the correct answer.” (*Id.* at 27-
18 28) Dr. Swanson believed Plaintiff’s “father appeared motivated to exaggerate [Plaintiff’s] compromise
19 in functioning.” (*Id.* at 28) Dr. Swanson found “no genuine reason to believe that [Plaintiff’s] mental
20 or emotional functioning falls sincerely outside normal limits.” (*Id.* at 29)

21 In September 2014, Dr. Jan Jacobson reviewed the records and completed a functional capacity
22 assessment. (Doc. 13-4 at 20-21) She noted that Plaintiff “was uncooperative [and] exaggerated his
23 deficits” during the consultative examinations. (*Id.* at 21) Dr. Jacobson opined Plaintiff had “less than
24 marked” difficulties with acquiring and using information, as well as attending and completing tasks.
25 (*Id.* at 20) She also opined Plaintiff had no limitation with the remaining domains. (*Id.* at 21)

26 **C. Third Party Statement**

27 Chong Vang, Plaintiff’s father, completed a “Function Report” on July 22, 2013. (Doc. 13-7 at
28 8-16) Mr. Vang indicated Plaintiff had problems talking clearly and could “hardly ever” be understood

1 by people who did not know him well, though people who knew Plaintiff could understand his speech
2 some of the time. (*Id.* at 10) Mr. Vang indicated Plaintiff could not or did not communicate by telling
3 stories, explain why he did things, talk with family or friends, read letters or simple words, print his
4 name, add or subtract numbers over 10, use scissors, work video game controls, use a zipper, tie his
5 shoes, take a bath without help, brush his teeth, perform chores, or play team sports. (*Id.* at 11-15) He
6 believed his son was able to get along with adults, such as school teachers. (*Id.* at 14)

7 **D. Hearing Testimony**

8 Mr. Vang testified with the assistance of a Hmong interpreter at the hearing. (Doc. 13-3 at 42)
9 Mr. Vang reported he did not know his son’s age exactly, but believed he was “[e]ight or nine years
10 old.” (*Id.* at 44) He stated that he lived with his wife and eleven kids in a home purchased by one of
11 his sons. (*Id.* at 45) Mr. Vang reported his “other kids speak English,” but Plaintiff was “not interested
12 to learn or to speak English,” and he spoke Hmong with his siblings. (*Id.* at 45-56)

13 The ALJ questioned Plaintiff and asked him to respond in English. (Doc. 13-3 at 46) When
14 asked his grade in school and the name of the school, Plaintiff responded, “I don’t know.” (*Id.*)
15 Plaintiff stated he did not have any friends. (*Id.*) When questioned by counsel, Plaintiff identified his
16 favorite color as blue and stated that he liked to color with crayons. (*Id.* at 49) He stated that he was
17 able to count to three and he did not like to read, though he had to read in class. (*Id.* at 50) Plaintiff
18 said his favorite thing to do at school was play during recess, and he liked to “play on the Playstation”
19 at home. (*Id.* at 50-51)

20 **E. The ALJ’s Findings**

21 The ALJ noted Plaintiff was born on July 22, 2006, and “was a school-age child on July 22,
22 2013, the date the application was filed.” (Doc. 13-3 at 25) Pursuant to the three-step process, the
23 ALJ first found Plaintiff did not engage in substantial gainful activity after the application date. (*Id.*)
24 Next, the ALJ determined Plaintiff had the following severe impairments: “mild intellectual disability
25 and second language acquisition issues.” (*Id.*)

26 To determine whether Plaintiff’s impairments satisfied the listings, the ALJ examined the six
27 functional domains set forth in 20 C.F.R. § 416.926a. The ALJ determined Plaintiff had “less than
28 marked limitation in acquiring and using information.” (Doc. 13-3 at 30) In addition, he had “less

1 than marked limitation in attending and completing tasks.” (*Id.* at 31) The ALJ opined Plaintiff had
2 “no limitation” in interacting and relating with others, moving about and manipulating objects, the
3 ability to care for himself, and in health and physical well-being. (*Id.* at 32-35) Because Plaintiff did
4 not have “marked” limitations in two domains or an “extreme” limitation in one domain, the ALJ
5 concluded Plaintiff was not disabled as defined by the Social Security Act. (*Id.* at 35)

6 **DISCUSSION AND ANALYSIS**

7 Plaintiff argues the ALJ erred in her evaluation of the first and second domains related to
8 “acquiring and using information” and “attending and completing tasks.” (Doc. 21 at 6) Plaintiff
9 observes that the ALJ found he had “less than marked limitation” in these domains and contends “[t]he
10 record supports greater limitation[s].” (*Id.* at 6-7) The Commissioner argues, “Contrary to Plaintiff’s
11 contention, the ALJ found correctly that Plaintiff’s impairments did not cause marked limitations in the
12 first two domains.” (Doc. 22 at 5)

13 **A. Acquiring and using information**

14 This domain concerns how well a child can acquire or learn information, and how well the
15 child can use that information. 20 C.F.R. § 416.926a(g). The Regulations explain that a school-age
16 child “should be able to learn to read, write, and do math, and discuss history and science.” *Id.*, §
17 416.926a(g)(2)(iv). Limitations in this domain may be demonstrated with the inability to understand
18 words about space, size, or time; “difficulty recalling important things” learned in school the day
19 before, “difficulty solving mathematics questions or computing arithmetic answers;” speaking “only in
20 short, simple sentences;” and “difficulty explaining what you mean.” *Id.*, § 416.926a(g)(3).

21 The ALJ determined Plaintiff had “less than marked limitation in acquiring and using
22 information.” (Doc. 13-3 at 30, emphasis omitted) In so finding, the ALJ observed:

23 In the Child Function Report, Mr. Chong Vang (father) asserts that his child’s ability to
24 progress in learning is significantly limited, such that he is unable to read capital/small
25 letters of the alphabet, unable to read/understand simple sentences or stories in books/
26 magazines, unable to print his name, spell most 3-4 letter words, or write a simple story
27 with 6-7 sentences, and unable to add/subtract numbers over 10 (Ex. 3E). The claimant’s
28 teacher reported that the claimant has a very serious problem comprehending oral
instructions, understanding school and content vocabulary, recalling and applying
previously learned material, and expressing ideas in written form (Ex. 7E). Ms. Mendez
(4th grade teacher) reported that the claimant had difficulty with reading comprehension,
making inferences, figurative language, sequencing information [and] main ideas in text.
He demonstrated some difficulty composing paragraphs. He rushed through his work,
little attention to detail. He often needed to have the directions repeated (Ex. 8F/p. 28).

1 For these reasons, the undersigned finds no more than less than marked limitation in this
2 domain.

3 (Doc. 13-3 at 30) In addition, the ALJ noted her conclusion was “supported by the assessment offered
4 by Dr. Pamela Hawkins and Dr. Jan Jacobson, a psychologist who reviewed the record ... [and]
5 reached the same conclusion.” (*Id.*)

6 **B. Attending and completing tasks**

7 This domain addresses the claimant’s ability to focus and maintain attention. 20 C.F.R. §
8 416.926a(h). It also concerns how well a child can “begin, carry through, and finish ... activities.” *Id.*
9 The Regulations explain: “When you are of school age, you should be able to focus your attention in a
10 variety of situations in order to follow directions, remember and organize your school materials, and
11 complete classroom and homework assignments. You should be able to concentrate on details and not
12 make careless mistakes in your work (beyond what would be expected in other children your age who
13 do not have impairments).” *Id.*, § 416.926a(h)(2)(iv). In addition, school children “should be able to
14 change ... activities or routines without distracting [themselves] or others, and stay on task and in
15 place when appropriate.” *Id.* Difficulties in this domain may be demonstrated where a child is “easily
16 startled, distracted or overreactive to sounds, sights, movements, or touch;” slow to focus on, or fail to
17 complete activities of interest” such as games or art projects; the child is “repeatedly sidetracked” from
18 activities or frequently interrupts others;” is “easily frustrated” and gives up on tasks; or “require[s]
19 extra supervision to keep [him] engaged in an activity.” *Id.* § 416.926a(h)(3).

20 The ALJ found Plaintiff had “less than marked” limitation with this domain. (Doc. 13-3 at 31,
21 emphasis omitted) Reviewing the evidence related to this domain, the ALJ observed:

22 The claimant has less than marked limitation in attending and completing tasks. The
23 claimant’s father reported that his child's ability to attend and complete task is
24 significantly limited such that he is unable to finish what he starts, unable to complete
25 homework or chores most of the time, and unable to keep busy on his own (Ex.3E). Ms.
26 Zebrina Givens (teacher) noted the claimant has a serious problem paying attention when
27 spoken to directly, waiting to take turns, and completing class/homework assignments
(Ex. 6E). Ms. Suzanne Mendes (teacher) reported the claimant has a serious problem
paying attention when spoken to directly. Focusing long enough to finish assigned task,
refocusing to task when necessary, and carrying out multi-step instructions (Ex. 1 7F).
Dr. Swanson concluded the claimant appeared to have the ability to engage in and sustain
an activity at a pace that is mostly appropriate for his age (Ex. 4F).

28 (*Id.*) In addition, the ALJ noted her conclusion that Plaintiff’s limitations were “less than marked” was

1 “supported by the assessment offered by the State Agency’s psychological consultant who has reached
2 the same conclusion.” (*Id.*)

3 **C. Substantial evidence supporting the ALJ’s decision**

4 Plaintiff observes that in evaluating the first two domains, the ALJ relied upon the statements
5 of Plaintiff’s father, his teachers, a psychoeducation report, and opinions of a consultative examiner.
6 (Doc. 21 at 6) However, Plaintiff contends “[t]he record supports greater limitations” in the “acquiring
7 and using information” and “attending and completing tasks” domains. (*Id.*) In particular, Plaintiff
8 asserts that with the first domain:

9 K.V.’s father noted significant limitations. AR 157-165. Ms. Graves observed
10 obvious to very serious problems in this domain. AR 180, 196. Ms. Mendez, another
11 teacher observed serious to very serious difficulties in this domain on a daily basis.
12 AR 245, 532. A student learning plan recommended small group instructing. AR
217. An April 2014 IEP revealed that K.V. continued to struggle in all areas of
academics. AR 275. K.V. was found eligible for Regional Center services due to test
results. AR 402, 417-422.

13 (Doc. 21 at 6) With the second domain, Plaintiff contends:

14 Ms. Graves noted obvious to serious problems in this domain. AR 181, 197. Ms.
15 Mendez noted serious to very serious problems in this domain. AR 245. It was noted
on psychological testing that adaptive functioning was extremely limited. AR 417- 422.

16 (*Id.* at 7) According to Plaintiff, “Although Dr. Swanson opined that K.V. had the ability to engage in
17 and sustain an activity at an age appropriate pace, he did not specifically address limitations in this or
18 any of the 6 domains.” (*Id.*) Thus, Plaintiff contends the ALJ’s findings regarding the first two
19 domains “lack[] the support of substantial evidence.” (Doc. 21 at 6)

20 In response, the Commissioner argues the ALJ identified “valid reasons supported by the
21 record for finding that in the domain for acquiring and using information Plaintiff’s functional
22 limitations were not ‘marked.’” (Doc. 22 at 8) In addition, the Commissioner argues that “the ALJ ...
23 relied properly on the assessments offered by the State Agency’s psychological consultants who
24 reached the same conclusion” related to the attending and completing tasks domain. (*Id.* at 9) Thus,
25 the Commissioner asserts “there was substantial evidence to support the ALJ’s finding and her
26 analysis was sufficient.” (*Id.* at 10)

27 Significantly, the term “substantial evidence” “describes a quality of evidence ... intended to
28 indicate that the evidence that is inconsistent with the opinion *need not* prove by a preponderance that

1 the opinion is wrong.” 1996 SSR 4 LEXIS 9 at *8.² Rather, “[i]t need only be such relevant evidence
2 as a reasonable mind would accept as adequate to support a conclusion that is contrary to the
3 conclusion expressed in the medical opinion.” *Id.* The opinion of an examining physician may be
4 substantial evidence in support of the ALJ’s decision. *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir.
5 2007); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). Likewise, an ALJ may use evidence
6 from educational personnel, including “school teachers, counselors, [and] early intervention team
7 members.” 20 C.F.R. § 416.913(d)(2). Thus, statements from these sources may be substantial
8 evidence in support of an ALJ’s findings.

9 As acknowledged by Plaintiff, the ALJ referred to school records and assessments of teachers
10 to evaluate the first two domains. (Doc. 13-3 at 30-31) The ALJ noted that although Mr. Vang
11 indicated Plaintiff was completely unable to read letters of the alphabet or spell, Ms. Mendes observed
12 that Plaintiff had “some difficulty composing paragraphs” (*id.* at 30), which indicated Plaintiff had
13 learned to read and write. In addition, both Ms. Graves and Ms. Mendes rated Plaintiff’s difficulties
14 with activities under the acquiring and using information domain as “obvious” to “very serious”—
15 thereby indicating the teachers’ belief that Plaintiff did not have marked or extreme difficulties with
16 *all* activities under the first domain. (*See* Doc. 13-7 at 31, 47; Doc. 13-8 at 3)

17 Similarly, Plaintiff’s teachers rated very few problems with activities under the
18 “attending and completing tasks” as “serious” or “very serious.” (Doc. 13-7 at 32, 48; Doc. 13-8 at 4)
19 Ms. Graves did not identify *any* problems under the second domain as “very serious” and believed
20 Plaintiff’s issues were manifested only on a monthly basis during the school year. (Doc. 13-7 at 48)
21 Both Ms. Graves and Ms. Mendes also indicated Plaintiff also had “no problem” or only “a slight
22 problem” with several activities under this domain. (Doc. 13-7 at 32, 48; Doc. 13-8 at 4) Plaintiff fails
23 to identify any specific opinions from Ms. Graves or Ms. Mendes that support a finding of marked or
24 extreme limitations under the domains. Instead, the statements of his teachers are substantial evidence
25 supporting the conclusions of the ALJ. *See, e.g. Abukhader v. Comm’r of Soc. Sec.*, 2013 WL 5882858,
26 *2, *6 (S.D.N.Y. 2013) (ALJ’s determination that the claimant had “less than marked” limitations with

27
28 ² Social Security Rulings are issued by the Commissioner to clarify regulations and policies. Though they do not 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 domains were greater than those identified by the ALJ, substantial evidence in the record supports the
2 ALJ's findings. It is not the role of the Court to reweigh the evidence. *See German v. Comm'r of Soc.*
3 *Sec.*, 2011 WL 924737 (E.D. Cal. Mar. 14, 2011). Rather, "[w]here the evidence is susceptible to
4 more than one rational interpretation, one of which the ALJ's decision, the ALJ's conclusion must be
5 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

6 The findings of the ALJ regarding the first and second domains are supported by substantial
7 evidence, including the opinions of his teachers and several physicians. Therefore, the Court must
8 uphold the ALJ's determination that Plaintiff is not disabled. *See Sanchez*, 812 F.2d at 510.

9 Accordingly, the Court **ORDERS**:

- 10 1. The decision of the Commissioner of Social Security is **AFFIRMED**; and
- 11 2. The Clerk of Court is **DIRECTED** to enter judgment in favor of Defendant Nancy A.
12 Berryhill, Acting Commissioner of Social Security, and against Plaintiff K.V.

13
14 IT IS SO ORDERED.

15 Dated: June 1, 2019

/s/ Jennifer L. Thurston
16 UNITED STATES MAGISTRATE JUDGE