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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MEGAN GOODEILL, on behalf of Minor
A.M.F.,

 Plaintiff,

 v.

COMMISSIONER OF SOCIAL
SECURITY,

 Defendant.

Case No. 1:21-cv-00242-CDB (SS)

ORDER (1) GRANTING PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT, (2)
DENYING DEFENDANT’S CROSS-
MOTION FOR SUMMARY JUDGMENT,
AND (3) REMANDING ACTION FOR
FURTHER PROCEEDINGS UNDER
SENTENCE FOUR OF 42 U.S.C. § 405(g)

(Docs. 27, 31)

Megan Goodeill on behalf of her minor daughter A.M.F. (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying Plaintiff’s application for disability insurance benefits and supplemental security income benefits under the Social Security Act. (Doc. 4). The matter is before the Court on the certified administrative record (Doc. 18) and the parties’ briefs, which were submitted without oral argument. (Docs. 27, 31).¹ Plaintiff asserts the Administrative Law Judge (“ALJ”) failed to properly analyze non-medical opinions and erred in concluding A.M.F. is less than markedly impaired in the domain of attending and completing tasks. (Doc. 27 at 2, 8-12). Plaintiff requests the decision of the Commissioner be vacated and the case be remanded for

¹ Both parties have consented to the jurisdiction of a magistrate judge for all proceedings in this action, in accordance with 28 U.S.C. § 636(c)(1). (Doc. 15).

1 further proceedings including a *de novo* hearing and new decision. *Id.* at 11.

2 I. BACKGROUND²

3 In February 2017, an application for supplemental security income was protectively filed
4 on behalf of Plaintiff, who was six years old at the time, alleging a period of disability beginning
5 on August 20, 2016. (Administrative Record (“AR”) 91, 191). Plaintiff claimed disability due to
6 issues with attention-deficit/hyperactivity disorder (“ADHD”), schizophrenia, sensory processing
7 disorder, and “hearing ear.” *Id.* at 91. The Commissioner denied Plaintiff’s application initially
8 and again on reconsideration. *Id.* at 91-116, 118-22, 127-31. Plaintiff submitted a written request
9 for a hearing by an ALJ. *Id.* at 135-49. On May 22, 2019, Plaintiff, represented by counsel,
10 appeared in person for a hearing before ALJ Shiva Bozarth. *Id.* at 39-90. Additionally, Faren
11 Ray Akins, Ph.D., appeared as a medical expert, and Megan Goodeill appeared as a witness. *Id.*
12 at 46-77, 176-77. On September 30, 2020, the ALJ issued a decision finding that Plaintiff was
13 not disabled. *Id.* at 18-33.

14 On June 8, 2020, the Appeals Council denied Plaintiff’s request for review, making the
15 ALJ’s decision the final decision of the Commissioner. *Id.* at 4-9. Plaintiff filed this action on
16 February 22, 2021, seeking judicial review of the denial of his application for benefits and a
17 motion to appoint Megan Goodeill as guardian *ad litem*. (Docs. 1-2). The following day,
18 Plaintiff filed a first amended complaint and an amended motion to appoint Megan Goodeill as
19 guardian *ad litem*. (Docs. 4, 6). The Commissioner lodged the administrative record on February
20 25, 2022. (Doc. 18). Plaintiff filed an opening brief on July 7, 2022. (Doc. 27). On October 5,
21 2022, Defendant filed a responsive brief. (Doc. 31).

22 II. THE DISABILITY STANDARD

23 An individual under the age of eighteen will be deemed disabled if she has “a medically
24 determinable physical or mental impairment or combination of impairments that causes marked
25 and severe functional limitations, and that can be expected to cause death or that has lasted or can
26 be expected to last for a continuous period of not less than 12 months.” 20 C.F.R. § 416.906.

27 ² The relevant hearing testimony and medical record were reviewed by the Court and will
28 be referenced in the opinion as necessary to this Court’s decision.

1 The Social Security regulations provide a three-step process in determining whether a child is
2 disabled. *See* 20 C.F.R. § 416.924. First, the ALJ must determine whether the child is engaged in
3 substantial gainful activity. 20 C.F.R. § 416.924(a). If the child is not engaged in substantial
4 gainful activity, then the analysis proceeds to step two, which requires the ALJ to determine
5 whether the child’s impairment or combination of impairments is severe. *Id.* The child will not
6 be found to have a severe impairment if it constitutes a “slight abnormality or combination of
7 slight abnormalities that causes no more than minimal functional limitations.” 20 C.F.R. §
8 416.924(c). However, if there is a finding of severe impairment, the analysis proceeds to the final
9 step. Step three requires the ALJ to determine whether the impairment or combination of
10 impairments “meets, medically equals or functionally equals” the severity of a set of criteria for
11 an impairment in the Listing of Impairments. 20 C.F.R. § 416.924(d).

12 If an impairment does not meet the requirements of, or is not medically equal to, a listed
13 impairment, the claimant may still be disabled if his impairment or combination of impairments is
14 found to be “functionally equivalent” to a listed impairment. In child disability cases, a “whole
15 child approach” is used to determine functional equivalence. *R.S. by & Through Herrera v.*
16 *Berryhill*, 357 F. Supp. 3d 1033, 1037 (C.D. Cal. 2019). That is, the ALJ considers all of the
17 child’s activities, “everything [the child does] at home, at school, and in [the] community.” 20
18 C.F.R. § 416.926a(b). Functional equivalence is measured by assessing the claimant’s ability to
19 function in the following six domains, which are “broad areas of functioning intended to capture
20 all of what a child can or cannot do”: (i) acquiring and using information; (ii) attending and
21 completing tasks; (iii) interacting and relating with others; (iv) moving about and manipulating
22 objects; (v) caring for yourself; and (vi) health and physical well-being. 20 C.F.R. §§
23 416.926a(b)(1)(i)-(vi). Limitations in functioning must result from the child’s medically
24 determinable impairments. *See* 20 C.F.R. § 416.924a (describing considerations for determining
25 disability for children). An impairment or combination of impairments is functionally equivalent
26 to a listing if it results in “marked” limitations in two areas, or an “extreme” limitation in one area
27 of functioning. 20 C.F.R. § 416.926a(a). Specifically:
28

1
2 We will find that you have a “marked” limitation in a domain when your impairment(s)
3 interferes seriously with your ability to independently initiate, sustain, or complete
4 activities. Your day-to-day functioning may be seriously limited when your
5 impairment(s) limits only one activity or when the interactive and cumulative effects of
6 your impairment(s) limit several activities. “Marked” limitation also means a limitation
7 that is “more than moderate” but “less than extreme.” It is the equivalent of the
8 functioning we would expect to find on standardized testing with scores that are at least
9 two, but less than three, standard deviations below the mean.

10 20 C.F.R. § 416.926a(e)(2)(i). A child of any age will be found to “have a ‘marked’ limitation
11 when [they] have a valid score that is two standard deviations or more below the mean, but less
12 than three standard deviations, on a comprehensive standardized test designed to measure ability
13 or functioning in that domain, and [their] day-to-day functioning in domain-related activities is
14 consistent with that score.” 20 C.F.R. § 416.926a(e)(2)(iii). Standardized testing provides
15 important information about deficits in development and functioning in terms of standard
16 deviations and percentiles. 20 C.F.R. § 416.926a(e)(1)(ii), (e)(2)(iii). However, test scores alone
17 do not establish marked or extreme limitations in a domain. 20 C.F.R. §§ 416.924a(a)(1)(ii), 20
18 C.F.R. § 416.926a(e)(4). No single piece of information taken in isolation can establish whether
19 the child has a “marked” limitation in a domain. 20 C.F.R. § 416.926a(e)(4)(i).

20 The Commissioner is to consider test scores together with reports and observations of
21 school personnel and others. 20 C.F.R. §§ 416.924a(a) & (e)(4)(ii). In assessing functional
22 equivalence, the ALJ also considers how much extra help the child needs, how independent he is,
23 how he functions in school, and the effects of medication or other treatment. 20 C.F.R. §
24 416.926a(a). In evaluating this type of information, the ALJ considers how the child performs
25 activities as compared to other children of the same age who do not have impairments. 20 C.F.R.
26 § 416.926a(b). This information comes from examining and non-examining medical sources as
27 well as “other sources,” such as parents, teachers, case managers, therapists, and other non-
28 medical sources who have regular contact with the child. *See, e.g.*, 20 C.F.R. § 416.913(a)(2),
(d); Social Security Ruling (SSR) 98-1p, “Sources of Evidence,” at section IV.B (Mar. 30,

1 1998).³

2 Here, Plaintiff contends that the ALJ erred in finding that she was not markedly limited in
3 attending and completing tasks. (Doc. 27 at 2, 8-11). The domain of attending and completing
4 tasks considers how well the child is able to focus and maintain attention, how well he begins,
5 carries through, and finishes activities, including the pace at which activities are performed and
6 the ease with which the child changes them. 20 C.F.R. § 416.926a(h)(1)(i). Claimants may be
7 limited in attending and completing tasks if they are (1) easily startled, distracted, or overreactive
8 to sounds, sights movements, or touch; (2) slow to focus on, or fail to complete activities of
9 interest; (3) repeatedly sidetracked from activities or frequently interrupt others; (4) easily
10 frustrated and give up on tasks, including ones they are capable of completing; and (5) require
11 extra supervision to stay engaged in an activity. *Id.*; § 416.926a(h)(3)(i)-(v). The regulations
12 summarize the typical functioning of school-age children with regard to this domain as follows:

13 When you are of school age, you should be able to focus your attention in a variety of
14 situations in order to follow directions, remember and organize your school materials, and
15 complete classroom and homework assignments. You should be able to concentrate on
16 details and not make careless mistakes in your work (beyond what would be expected in
17 other children your age who do not have impairments). You should be able to change
18 your activities or routines without distracting yourself or others[] and stay on task and in
19 place when appropriate. You should be able to sustain your attention well enough to
participate in group sports, read by yourself, and complete family chores. You should also
be able to complete a transition task (e.g., be ready for the school bus, change clothes after
gym, change classrooms) without extra reminders and accommodation.

20 20 C.F.R. § 416.926a(h)(2)(iv). In making a determination of disability, “the ALJ must consider
21 the ‘combined effect’ of all the claimant’s impairments without regard to whether any such
22 impairment, if considered separately, would be of sufficient severity.” *Howard ex rel. Wolff v.*
23 *Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) (quoting 20 C.F.R. § 416.923). “However, in
24 interpreting the evidence and developing the record, the ALJ does not need to ‘discuss every
25 piece of evidence.’” *Id.* (citing *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998), and *Vincent v.*
26 *Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984)).

27 _____
28 ³ Available at https://www.ssa.gov/OP_Home/rulings/ssi/02/SSR98-01-ssi-02.html (last visited Dec. 29, 2023).

III. STANDARD OF REVIEW

1
2 Congress has provided that an individual may obtain judicial review of any final decision
3 of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g). In
4 determining whether to reverse an ALJ's decision, a court reviews only those issues raised by the
5 party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). A
6 court may set aside the Commissioner's denial of benefits when the ALJ's findings are based on
7 legal error or are not supported by substantial evidence. *Tackett v. Apfel*, 180 F.3d 1094, 1097
8 (9th Cir. 1999).

9 "Substantial evidence is relevant evidence which, considering the record as a whole, a
10 reasonable person might accept as adequate to support a conclusion." *Thomas v. Barnhart*, 278
11 F.3d 947, 954 (9th Cir. 2002) (quoting *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453,
12 1457 (9th Cir, 1995)). "[T]he threshold for such evidentiary sufficiency is not high." *Biestek v.*
13 *Berryhill*, 139 S. Ct. 1148, 1154 (2019). Rather, "[s]ubstantial evidence means more than a
14 scintilla, but less than a preponderance; it is an extremely deferential standard." *Thomas v.*
15 *CalPortland Co.*, 993 F.3d 1204, 1208 (9th Cir. 2021) (internal quotations and citations omitted).

16 "[A] reviewing court must consider the entire record as a whole and may not affirm
17 simply by isolating a specific quantum of supporting evidence." *Hill v. Astrue*, 698 F.3d 1153,
18 1159 (9th Cir. 2012) (internal quotations and citations omitted). "If the evidence 'is susceptible
19 to more than one rational interpretation, it is the ALJ's conclusion that must be upheld.'" *Ford*,
20 950 F.3d at 1154 (quoting *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)). Even if the
21 ALJ has erred, the Court may not reverse the ALJ's decision where the error is harmless. *Stout v.*
22 *Comm'r. Soc. Sec. Admin.*, 454 F.3d 1050, 1055-56 (9th Cir. 2006). An error is harmless where it
23 is "inconsequential to the [ALJ's] ultimate nondisability determinations." *Tommasetti v. Astrue*,
24 533 F.3d 1035, 1038 (9th Cir. 2008) (quotation and citation omitted). The burden of showing that
25 an error is not harmless "normally falls upon the party attacking the agency's determination."
26 *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

IV. THE ALJ'S DECISION

27
28 On September 30, 2020, the ALJ issued a decision finding that Plaintiff was not disabled.

1 AR. 18-33. The ALJ conducted the three-step disability analysis set forth under 20 C.F.R. §
2 416.924(a) for claimants under the age of eighteen. *Id.* at 19-33. The ALJ found Plaintiff was a
3 school-age child (20 C.F.R. § 416.926a(g)(2)), and had not engaged in substantial activity since
4 February 2, 2017, the application date (step one). *Id.* at 21. The ALJ held Plaintiff possessed the
5 following severe impairments: selective immunoglobulin g deficiency, ADHD, and conductive
6 hearing loss of the right ear (step two). *Id.*

7 Next, the ALJ determined Plaintiff did not have an impairment or combination of
8 impairments that meets or medically equals the severity of one of the listed impairments in 20
9 C.F.R. Part 404, Subpart P, Appendix 1 (“the Listings”) (step three). *Id.* at 22. The ALJ noted
10 audiology testing did not indicate listing level hearing loss and the most recent testing indicated
11 greatly improved hearing in the right ear and mild conductive hearing loss in the left ear. *Id.* In
12 regard to Listing 112.11 (neurodevelopmental disorders), the ALJ found that “although [Plaintiff]
13 does present with distractibility and hyperactive behavior, she does not exhibit an extreme limit in
14 one area or marked limits in two areas of mental functioning set out in the listing.” *Id.*

15 The ALJ determined that Plaintiff does not have an impairment or combination of
16 impairments that functionally equals the severity of the Listings. *Id.* (citing 20 C.F.R. §
17 416.924(d) and 416.926a)). In reaching this functional equivalence determination, the ALJ
18 applied the “whole child” standard. *Id.* First, the ALJ considered testimony from Plaintiff’s
19 mother, Megan Goodeill. *Id.* at 23. Ms. Goodeill stated Plaintiff is chronically ill and misses a
20 lot of school. *Id.* Ms. Goodeill stated Plaintiff is unable to participate in physical education and
21 was removed from the cheer team because of a combination of physical issues and behavioral
22 issues. *Id.* Further, Ms. Goodeill testified:

23 “that [Plaintiff] has trouble with concentration and she is on the highest dosage of ADHD
24 medication. Despite medication, she requires redirection and timeouts in class. She also
25 has a sensory station in class when necessary. She goes to this area two to three times a
26 day. She said the claimant has been doing better with reading, but she is way behind in
27 math. She testified that the teacher said the claimant is always distracted and her hearing
28 Impairment increases her issues with learning. At home, she refuses or is unable to dress
herself or bathe herself. She drinks from a sippy cup, and she is bullied at school. Side
effects from medication include difficulty getting to sleep and weight loss. Completing

1 homework is a [four-hour] process because she needs redirection for each problem even
2 though she gets less work than the other students. The claimant has chronic sensory
3 issues and she sees someone that tells her to harm her sister. The claimant's mother said
4 the claimant has attacked her sister with a bat."

4 *Id.* Next, the ALJ considered the testimony of Plaintiff. *Id.* The ALJ found:

5 "The [Plaintiff] was able to testify appropriately and answered questions about her
6 interests. She was attentive and behaved in an age appropriate fashion during the hearing.
7 She said she does not like her sister, but she denied attacking her sister with a bat. She
8 said her sister pulls her hair. She testified that she is not good at math, but she likes to
9 read. She said she cared for her puppy[,] and she liked to clean, but her mom did not give
10 her chores. The claimant said she has a hard time sitting still in class and her teacher asks
11 her to settle down. She talks when she is not supposed to every day. She said she doesn't
12 always feel well in the mornings. She gets a stomach ache and her feet hurt."

11 *Id.* The ALJ determined that Plaintiff's medically determinable impairments could reasonably be
12 expected to produce the alleged symptoms. *Id.* However, the ALJ found the statements
13 concerning the intensity, persistence and limiting effects of those symptoms were not entirely
14 consistent with the medical evidence and other evidence in the record. *Id.* The ALJ noted
15 "although [Plaintiff] clearly has issues with attention," she has been progressing in school with
16 classroom accommodations and does not qualify for special education. *Id.* at 24. The ALJ found
17 "there does not appear to be abnormally frequent doctor visits for illness or problems caused by
18 absences at school" and there was some indication of noncompliance with treatment. *Id.* Instead,
19 the ALJ determined Plaintiff is able to behave during activities she enjoys. The ALJ noted Ms.
20 Goodeill's report that Plaintiff was not able to do physical education was not supported by the
21 school records or Plaintiff's pediatrician report. *Id.*

22 The ALJ reviewed Plaintiff's treatment records regarding her behavioral problems
23 beginning in 2016. *Id.* The ALJ noted Plaintiff exhibited difficulty with focus, hyperactivity,
24 tantrums, aggressiveness to peers, and heard commanding voices. *Id.* Plaintiff was prescribed
25 Adderall to treat her symptoms but was not always getting her afternoon dose "because she would
26 fight her mother over taking it." *Id.* Ms. Goodeill reported Plaintiff had social anxiety, had no
27 learning desire, did not like school, and did not want to leave the home. *Id.* Ms. Goodeill stated
28 she was called to pick up Plaintiff from kindergarten in the first five weeks of school, and that she

1 was taking out her rage on her older sister in March 2017. *Id.* In September 2017, Plaintiff was
2 doing well with her anger and self-control, had not been violent, and was reading better. *Id.* In
3 November 2017, Plaintiff was still having some disruptive behavior and fidgeting, but she was
4 learning yoga and was able to display focus. *Id.* The ALJ noted from January 2018 through
5 November 2018, Plaintiff was doing well in school with some setbacks. *Id.* at 24-25.

6 The ALJ also considered Plaintiff’s school records. *Id.* at 25. The ALJ found Plaintiff’s
7 school records did not indicate she was eligible for special education, but she did have a 504 plan
8 in place allowing classroom accommodations. *Id.* Plaintiff was allowed to use sensory toys and a
9 wiggle seat or other devices to aid in movement during instruction. *Id.* Plaintiff was seated close
10 to the teacher, was provided breaks when needed, and given “verbal reminders prior to activating
11 class behavior systems.” *Id.* Plaintiff ended the 2017-2018 academic year at grade level in most
12 areas but needed improvement in listening attentively and staying on task. *Id.* The ALJ noted the
13 school records indicated Plaintiff is bright and articulate, was very social with peers, enjoyed
14 recess, progressed well, was not academically at risk, and her medication helped a lot. *Id.* The
15 records also reflected Plaintiff is of average intellectual ability and that she can be defiant and
16 uncooperative. *Id.*

17 The ALJ reviewed teacher questionnaires completed by Plaintiff’s teachers. *Id.* Yazmin
18 Zavala, Plaintiff’s kindergarten teacher, completed a questionnaire in March 2016. *Id.* The ALJ
19 noted:

20 “[Ms. Zavala] indicated the claimant was slightly below in reading and math and was at
21 grade level in written language (Exhibit 3F, p. 4). She indicated slight to no problems in
22 acquiring and using information, noting that her behavior had changed since the
23 beginning of the year. She was able to do all tasks in class, but put herself down or
24 did not listen to directions and she had trouble organizing her thoughts to write because
25 she was so verbal (Exhibit 3F, p. 5). She was able to write simple sentences independently
26 (Exhibit 3F, p. 5). Ms. Zavala indicated some obvious problems with attending and
27 completing tasks with a serious problem in working without distracting [herself] or others
28 (Exhibit 3F, p. 6). She specifically noted that the claimant tended to ask for help as soon
as she was asked to work independently, she was able to work independently once given
directions, she could correct mistakes in math and writing once they were pointed out, and
she tended to talk to herself or others and became a distraction unless her attention was
redirected (Exhibit 3F, p. 6). She noted mostly no to slight problems in interacting and
relating with others, but she stated there was an obvious problem in playing

1 [cooperatively] with other children, following rules, and taking turns in conversation, and
2 a very serious problem with respecting/obeying adults in authority (Exhibit 3F, p. 7).
3 The claimant had a modified behavioral plan and often did not believe she was at fault for
4 her actions (Exhibit 3F, p. 7). There were no problems in moving about and manipulating
5 objects (Exhibit 3F, p. 8). In caring for herself, Ms. Zavala noted mostly no to slight
6 problems, but there was an obvious problem in responding appropriately to changes in her
7 own mood and knowing when to ask for help (Exhibit 3F, p. 9). She noted the claimant
8 had learned to control her emotions and reactions more appropriately, but continued to
9 pout and stomp when something did not go her way (Exhibit 3F, p. 9). She did not
10 indicate any medication problems, medications, or frequent absences (Exhibit 3F, p. 10).”

11 *Id.* Debra Heath, Plaintiff’s first-grade teacher, completed a questionnaire in September 2017.

12 *Id.* at 26. The ALJ found:

13 “[Ms. Heath] indicated a slight problem in comprehending and doing math problems in
14 the area of acquiring and using information, and she noted the claimant wore a
15 microphone to assist her in hearing and she used fidget toys if needed (Exhibit 10F, p. 2).
16 She reported only a slight problem paying attention when spoken to directly in the area of
17 attending and completing tasks (Exhibit 10F, p. 3). The claimant had hearing support, sat
18 closely to instruction, and she had not requested breaks of sensory toys more than three
19 times in two months (Exhibit 10F, p. 3). There were no problems in interacting and
20 relating with others, moving about and manipulating objects, or caring for herself (Exhibit
21 10F, pp. 4, 5, 6).”

22 *Id.* Lori Phillips, Plaintiff’s second-grade teacher, completed a questionnaire in March 2019. *Id.*

23 The ALJ determined:

24 “[Ms. Phillips] reported no problems in acquiring and using information, interacting and
25 relating with others, and caring for self (Exhibit 12E, pp. 2, 4, 6). In attending and
26 completing tasks, she opined obvious problems in paying attention when spoken to
27 directly, changing from one activity to another without being disruptive, and working at
28 reasonable pace/finishing on time; serious problems in focusing long enough to finish [an]
assigned activity or task, refocusing to task when necessary, organizing her own things or
school materials, and completing work accurately without careless mistakes; and a very
serious problem in working without distracting self or others (Exhibit 12E, p. 3). In a
narrative, Ms. Phillips reported that frequently the claimant could not attend to tasks even
on medication and she was all over the room bothering others despite redirection (Exhibit
12E, p. 3). With regard to moving about and manipulating objects, Ms. Phillips reported
the claimant was moving much of the time and liked to mess around with items from the
table or backpack (Exhibit 12E, p. 5). She also indicated the claimant was significantly
better at focusing and staying on [task] with medication (Exhibit 12E, p. 7). She noted the
claimant’s hearing required her to wear a microphone and to sit near the speaker and even
with her medication, there were days that it was very difficult for her to focus (Exhibit
12E, p. 8). However, she got along with others, and there was no limitation in caring for

1 herself (Exhibit 12E, pp. 6, 8). When she has not taken her medication, which was rare,
2 she was out of her seat constantly, disrupting others and causing chaos, but her mother
3 was supportive and on top of things (Exhibit 12E, p. 8).”

4 *Id.* Next, the ALJ considered a medical source statement from Charlie Kano, MD in March 2019.

5 *Id.* Dr. Kano first treated Plaintiff in March 2017 for a primary diagnosis of selective
6 immunoglobulin G deficiency, ADHD, and hearing loss. *Id.* Dr. Kano “indicated a moderate
7 impairment in acquiring and using information and attending and completing tasks; no
8 impairment in interacting and relating with others, moving about and manipulating objects, or
9 caring for herself; but he indicated a marked impairment in health and physical well-being.” *Id.*
10 Dr. Kano noted Plaintiff took medication that caused anorexia and insomnia that were slight and
11 caused a mild degree of impairment in concentration. *Id.*

12 The ALJ also reviewed Psychologist Dr. Faren R. Akins’ opinion. *Id.* at 26-27. Dr. Akins
13 assessed Plaintiff’s ADHD was Plaintiff’s only severe mental impairment. *Id.* at 26. Dr. Akins
14 found a notation of schizophrenia in the record and determined some complaints of hallucinations
15 that could be a basis for a diagnosis, but he did not see an actual diagnosis. *Id.* Dr. Akins noted
16 there was also a sensory disorder noted in the record, “but he did not feel it was significant to the
17 claimant’s presentation.” *Id.* Dr. Akins did not think Plaintiff had an actual diagnosis for
18 dyslexia, as it is fairly normal for young learners to write backwards. *Id.* Dr. Akins considered
19 listing 112.11 (neurodevelopmental disorders), but Plaintiff did not meet the listing as there were
20 no marked domains in the B criteria.⁴ *Id.*

21 Dr. Akins opined Plaintiff was mildly limited in understanding, remembering, or applying
22 information and interacting with others, and moderately limited in concentration, persistence, or
23 maintaining pace and adapting or managing oneself. *Id.* at 26-27. Dr. Akins “specifically noted
24 teacher questionnaires to support his position” and noted improvement in functioning with
25 medication. *Id.* at 27. With regard to the child domains, Dr. Akins opined the claimant had a less

26 ⁴ Although not elaborated upon during the taking of Dr. Akins’ testimony, the reference to
27 “B criteria” appears related to subsection B of listing 112.11, which requires a finding of certain
28 impairments with respect to identified areas of mental functioning. *See Z.W. ex. rel. Caldwell v. Astrue*, No. EDCV 09-0322-CT, 2009 WL 2707451, at *5 & n.3 (C.D. Cal. Aug. 25, 2009).

1 than marked limit in acquiring and using information, attending and completing tasks, interacting
2 with others, and caring for self; and had no limitation in moving about and manipulating objects.
3 *Id.*

4 The ALJ concluded, “I have considered all of these reports and I give them some weight.
5 I have also considered the overall medical record in making this decision. I give the most weight
6 to Dr. Akins’ testimony with regard to mental limitations, as he had the opportunity to review the
7 entire record and set forth a persuasive basis for his determination at the hearing.” *Id.*

8 The ALJ next considered the “six functional equivalence domains” regarding limitations
9 caused by Plaintiff’s impairments. *Id.* at 27-33. In terms of attending and completing tasks, the
10 ALJ found Plaintiff “has less than marked limitation in attending and completing tasks.” *Id.* at
11 29. The ALJ determined Plaintiff has issues focusing and maintaining concentration but had done
12 better with medication. *Id.* The ALJ found the teacher questionnaires indicated some
13 inconsistencies with reports in the area of functioning. *Id.* The ALJ expressly characterized the
14 “2017 teacher report” as only indicating a “slight problem when spoken to directly, and [that
15 Plaintiff] had not needed to use her sensory station more than three times in two months.” *Id.*
16 The ALJ concluded the March 2019 report “indicated obvious, serious, and very serious problems
17 in the area of functioning.” *Id.* The ALJ found that these inconsistent reports were not sufficient
18 to overrule Dr. Akins’ opinion that Plaintiff is less than markedly limited in attending and
19 completing tasks. *Id.* The ALJ stated, “[i]n support, I note that [Plaintiff] was progressing well in
20 school, she was able to pay attention and answer questions appropriately at the hearing, and she
21 enjoyed cheer, t-ball, and dance.” *Id.*

22 The ALJ held Plaintiff does not have an impairment or combination of impairments that
23 result in either “marked” limitations in two domains of functioning or “extreme” limitation in one
24 domain of functioning. *Id.* at 33. The ALJ concluded Plaintiff has not been disabled, as defined
25 in the Social Security Act, since February 2, 2017, the date the application was filed. *Id.*

26 V. LEGAL ISSUE

27 Plaintiff advances a single issue of claimed error for this Court’s review: that the ALJ
28 failed to properly analyze non-medical opinions and erred in concluding Plaintiff is less than

1 markedly impaired in the domain of attending and completing tasks. (Doc. 27 at 2).

2 VI. DISCUSSION

3 In evaluating child disability cases, the opinions of a child's teachers are "valuable
4 sources of evidence." See Social Security Ruling (SSR) 06-03p, "Considering Opinions & Other
5 Evidence from Sources Who Are Not 'Acceptable Med. Sources' in Disability Claims;
6 Considering Decisions on Disability by Other Governmental & Nongovernmental Agencies,"
7 available at 2006 WL 2329939, at *3 (Aug. 9, 2006). As with lay witness testimony, the
8 educators' opinions are "other sources" that must be considered and the ALJ should explain the
9 weight provided to them. *Id.* at *6. In considering how much weight to give "other" source
10 opinion evidence, the ALJ should consider: (1) "how long the source has known and how
11 frequently the source has seen the individual"; (2) "how consistent the opinion with other
12 evidence"; (3) "the degree to which the source presents relevant evidence to support an opinion";
13 (4) "how well the source explains the opinion"; (5) "whether the source has a specialty or are of
14 expertise related to the individual's impairment(s)"; and (6) "any other factors that tend to support
15 or refute this opinion." *Id.* at *4. The ALJ cannot disregard lay witness testimony without
16 providing reasons germane to the witness. *Stout*, 454 F.3d at 1053; See *Bayliss v. Barnhart*, 427
17 F.3d 1211, 1218 (9th Cir. 2005) ("Germane reasons for discrediting a lay-witness's testimony
18 include inconsistency with the medical evidence and the fact that the testimony 'generally
19 repeat[s]' the properly discredited testimony of a claimant.").

20 Plaintiff contends the ALJ failed to consider all of the relevant evidence in her record,
21 including the pertinent information from her teachers. (Doc. 27 at 9). Plaintiff asserts the ALJ
22 failed to follow the standards set forth in SSR 06-03p. *Id.* Specifically, Plaintiff contends that
23 Ms. Zavala and Ms. Phillips were "internally consistent" and "entirely consistent" with one
24 another. As such, "the ALJ should have explained if and how he determined that, despite the
25 consistency of limitations" as noted by the two teachers in the domain of attending and
26 completing tasks, the reports were entitled to "essentially no weight." *Id.* at 10-11. Plaintiff
27 notes that "Dr. Akins did not dispute that in this domain, [Ms. Zavala and Ms. Phillips'] reports
28 were not inconsistent, and indeed demonstrated a worsening of the impairment." *Id.* at 10.

1 Plaintiff argues “[b]ecause the ALJ is also silent on that issue, the reviewing court has no guide to
2 determine how the ALJ reconciled this discrepancy.” *Id.* Additionally, Plaintiff contends the
3 ALJ failed to consider the length of time each teacher had been involved with the claimant. *Id.* at
4 11. Plaintiff claims that this error is not harmless because “[h]ad the ALJ found one more domain
5 to be markedly impaired, a favorable determination would result pursuant to SSR 09-1p.” *Id.*

6 Defendant argues the ALJ considered statements from Plaintiff’s teachers and provided
7 valid reasons for giving them “some weight.” (Doc. 31 at 8-9). Defendant asserts “although each
8 of Plaintiff’s teachers noted some problems in the functional domain of attending and completing
9 tasks, most of their assessments either noted no or at most ‘slight’ problems in this area.” *Id.* at 9-
10 11. Defendant argues the ALJ properly discounted the statements made by Plaintiff’s teachers
11 because they were inconsistent with one another. *Id.* Defendant similarly contends the ALJ
12 properly discounted Plaintiff’s teacher’s testimony as they were inconsistent with the overall
13 record. *Id.* at 11-14. Defendant points to the ALJ’s conclusion that the teacher questionnaires
14 were not consistent with the testimony from Drs. Kano and Akins and the assessment that
15 Plaintiff had performed better in school with medication, as well as with Plaintiff’s daily
16 activities. *Id.* at 14. Defendant asserts “[t]he ALJ’s finding that Plaintiff had marked limitations
17 in no more than one functional domain was reasonable, supported by medical opinion evidence
18 and the record as a whole, and should be affirmed.” *Id.* at 15.

19 As set forth above, the ALJ found the teacher reports were inconsistent and were not
20 sufficient to overrule Dr. Akins’ opinion that Plaintiff is less than markedly limited in attending
21 and completing tasks. AR. 29. The ALJ found the basis for this inconsistency was that “[t]he
22 2017 teacher report only indicated only [*sic*] a slight problem when spoken to directly, and she
23 had not needed to use her sensory station more than three times in two months,” while the “March
24 2019 report indicated obvious, serious, and very serious problems in the area of functioning.” *Id.*
25 Thus, the ALJ compared the reports of Ms. Heath, Plaintiff’s first grade teacher, and Ms. Phillips,
26 Plaintiff’s second grade teacher.

27 The ALJ did not address the report of Ms. Zavala, Plaintiff’s kindergarten teacher, in that
28 section of the opinion. An ALJ errs by failing to “explain her reasons for disregarding...lay

1 witness testimony, either individually or in the aggregate.” *Molina v. Astrue*, 674 F.3d 1104,
2 1114-15 (9th Cir. 2012). This error may be harmless “where the testimony is similar to other
3 testimony that the ALJ validly discounted, or where the testimony is contradicted by more
4 reliable medical evidence that the ALJ credited.” *See id.* at 1118-19. Additionally, “an ALJ’s
5 failure to comment upon lay witness testimony is harmless where ‘the same evidence that the ALJ
6 referred to in discrediting [the claimant’s] claims also discredits [the lay witness’s] claims.’” *Id.* at
7 1122 (quoting *Buckner v. Astrue*, 646 F.3d 549, 560 (8th Cir. 2011)). When an ALJ fails to
8 “consider and comment upon” “uncontradicted lay testimony” that is relevant to the claimant’s
9 condition, “a reviewing court cannot consider the error harmless unless it can confidently
10 conclude that no reasonable ALJ, when fully crediting the testimony, could have reached a
11 different disability determination.” *Stout*, 454 F.3d at 1053, 1056.

12 Here, the backgrounds, observations and statements of the three teachers are varying. Ms.
13 Zavala had known Plaintiff for seven months when she wrote her report and Ms. Phillips reported
14 having known Plaintiff for eight months when she wrote her report. *Id.* at 266, 335. In contrast,
15 Ms. Heath stated she had known Plaintiff only for approximately six weeks (August 16, through
16 September 28, 2017) when she wrote her report. *Id.* at 650. Thus, Ms. Heath’s rating that
17 Plaintiff had a slight problem “paying attention when spoken to directly” and no problems in 12
18 other key activities was based on a minimal period of observation which was orders of magnitude
19 less than Ms. Zavala and Ms. Phillips’ experience interacting with Plaintiff. *Id.* at 652.

20 Certainly, the ALJ would have found “inconsistencies with reports in the area of
21 functioning” by comparing the eight months of observations by Ms. Zavala and Phillips to that of
22 the limited observation by Ms. Heath. *Id.* at 29. Had the ALJ “consider[ed] and comment[ed]
23 upon” Ms. Zavala’s report, after teaching Plaintiff for seven months, the ALJ would have noted
24 the report consistent with Ms. Phillips, who had rendered her report after teaching Plaintiff for
25 eight months. *See Stout*, 454 F.3d at 1053.

26 Ms. Zavala’s report observed Plaintiff had no problem to a slight problem in eight of the
27 13 key activities for attending and completing tasks. *Id.* at 337. Ms. Zavala found Plaintiff had
28 an obvious problem in (1) focusing long enough to finish an assigned activity or task, (2) carrying

1 out multi-step instructions, (3) waiting to take turns, and (4) completing work accurately without
2 careless mistakes. *Id.* Ms. Zavala assessed Plaintiff had a serious problem working without
3 distracting self or others. *Id.* Ms. Zavala commented Plaintiff tends to ask for help as soon as she
4 is asked to work independently and that, once she is given directions, she can work
5 independently. *Id.* Ms. Zavala also noted Plaintiff often talks to herself or others and becomes a
6 distraction unless her attention is directed. *Id.*

7 In comparison, Ms. Phillips reported Plaintiff had no problem to a slight problem in five
8 of the 13 key activities for attending and completing tasks. *Id.* at 268. Ms. Phillips found
9 Plaintiff had an obvious problem in (1) paying attention when spoken to directly, (2) changing
10 from one activity to another without being disruptive, and (3) working at a reasonable
11 pace/finishing on time. *Id.* In all three categories, Ms. Phillips provided a worse rating in
12 comparison to Ms. Zavala. *Id.* at 268, 337. Ms. Phillips found Plaintiff had a serious problem:
13 (1) focusing long enough to finish an assigned activity or task, (2) refocusing to task when
14 necessary, (3) organizing own things or school materials, and (4) completing work accurately
15 without careless mistakes. *Id.* at 268. These assessments constitute a more adverse rating in
16 comparison to Ms. Zavala. *Id.* at 268, 337. Both teachers identified Plaintiff had problems with
17 focusing long enough to finish an assigned activity or tasks and completing work accurately
18 without careless mistake. *Id.* Ms. Phillips assessed Plaintiff had a “very serious problem”
19 working without distracting self or others. *Id.* at 268. Ms. Phillips provided a more adverse
20 rating in comparison to Ms. Zavala, and both teachers agreed Plaintiff functioned more
21 deficiently in this key activity than any of the other 12 activities making up the
22 attending/completing tasks domain. *Id.* at 268, 337. Separately, Ms. Phillips commented Plaintiff
23 frequently could not attend to tasks even while on medication and she was all over the room
24 bothering others despite redirection. *Id.* at 268.

25 In sum, Ms. Zavala and Phillip’s reports, both given after each had interacted with
26 Plaintiff for at least seven months, were consistent with one another in identifying Plaintiff’s
27 limitations in attending and completing tasks. The ALJ’s reliance on Ms. Heath’s limited report
28 to show there were inconsistencies in the teacher questionnaires without commenting on the

1 internal consistencies of the reports from two sources who had a significantly longer basis for
2 observing and commenting on Plaintiff’s functionality constitutes error. *See Stout*, 454 F.3d at
3 1053; *see also Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) (finding error where ALJ
4 “improperly cherry-picked” evidence without broader consideration of overall context).

5 In concluding Plaintiff had less than a marked limitation in the attending/completing tasks
6 domain, the ALJ discounted the teacher questionnaires because, the ALJ asserted, they were
7 inconsistent and, thus, insufficient to overrule Dr. Akins’ opinion, which the ALJ wholly credited.
8 AR. 29. But the ALJ did not cite Ms. Zavala’s report in his passing reference to the “teacher
9 questionnaires” and offered no rationale either for ignoring her opinion or discounting Ms.
10 Phillips’ report. *See Noa v. Berryhill*, No. 17-cv-05147-MEJ, 2018 WL 1696819, at *7-8 (N.D.
11 Cal. Apr. 6, 2018) (finding error where the ALJ failed to identify what portions of the lay witness
12 testimony was inconsistent with the medical record); *Eddy v. Colvin*, No. 14-cv-01418-JE, 2016
13 WL 11383833 at *6 (D. Or. Sept. 1, 2016) (“the Ninth Circuit has held that it is error for an ALJ
14 to reject lay witness testimony simply because it is not corroborated by the medical record”).
15 Based on his failure to acknowledge Ms. Zavala’s report or offer any substantive comment
16 regarding the cited inconsistencies, the Court can only speculate as to the inconsistencies the ALJ
17 found, or the statements—or portions thereof—that the ALJ rejected. *Noa*, 2018 WL 1696819, at
18 *7-8; *Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (the court cannot “speculate as
19 to the grounds for the ALJ’s conclusions”).

20 Consequently, the Court finds that the ALJ erred in failing to provide germane reasons for
21 discounting Ms. Zavala and Phillips’ report. The error was not harmless. In particular, the Court
22 cannot “confidently conclude” that no ALJ could reach a different disability determination had he
23 fully credited the teacher’s internally consistent reports. *See Stout*, 454 F.3d at 1053, 1056.
24 *Molina*, 674 F.3d at 1117. Ms. Zavala and Phillips are teachers who worked closely with Plaintiff
25 on an almost daily basis for over seven months and during different school years. The reports are
26 substantially similar in assessing problems in the domain of attending and completing tasks.
27 Given that the ALJ had already found Plaintiff had a marked limitation in the domain of health
28 and physical well-being and that the teachers’ assessments plausibly suggest that Plaintiff may

1 also have marked limitation in the domain of attending and completing tasks, it conceivably is a
2 close question as to whether marked limitations exist in two domains. As such, it was incumbent
3 upon the ALJ to clearly articulate germane reasons for discounting Ms. Zavala and Phillips'
4 reports.

5 VII. REMAND

6 The decision whether to remand a matter pursuant to sentence four of 42 U.S.C. § 405(g)
7 or to order immediate payment of benefits is within the discretion of the district court. *Harman v.*
8 *Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). Except in rare instances, when a court reverses an
9 administrative agency determination, the proper course is to remand to the agency for additional
10 investigation or explanation. *Moisa v. Barnhart*, 367 F.3d 882, 886 (9th Cir. 2004) (citing *INS v.*
11 *Ventura*, 537 U.S. 12, 16 (2002)). Generally, an award of benefits is directed when:

12 (1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence, (2)
13 there are no outstanding issues that must be resolved before a determination of disability
14 can be made, and (3) it is clear from the record that the ALJ would be required to find the
15 claimant disabled were such evidence credited.

16 *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). In addition, an award of benefits is
17 directed where no useful purpose would be served by further administrative proceedings, or
18 where the record is fully developed. *Varney v. Sec'y of Health & Human Serv.*, 859 F.2d 1396,
19 1399 (9th Cir. 1998).

20 Here, the ALJ's decision was not supported by substantial evidence and constituted legal
21 error that was not harmless by failing to properly consider and provide germane reasons for
22 discounting the opinions of Plaintiff's teachers, and the Court finds it appropriate to remand the
23 case for proper consideration of these opinions for the reasons discussed above. Because this
24 error may be remediable, further administrative proceedings are warranted.

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VIII. CONCLUSION AND ORDER

Based on the foregoing, the Court finds that the ALJ’s decision is not supported by substantial evidence. Accordingly, IT IS HEREBY ORDERED:

- 1. Plaintiff’s motion for summary judgment (Doc. 27) is GRANTED;
- 2. Defendant’s cross-motion for summary judgment (Doc. 31) is DENIED;
- 3. The ALJ’s decision is VACATED, and this matter is REMANDED to the ALJ for further proceedings consistent with this order; and
- 4. The Clerk of Court is DIRECTED to enter judgment in favor of Megan Goodeill on behalf of her minor daughter A.M.F. and against Defendant Kilolo Kijakazi, Acting Commissioner of Social Security.

IT IS SO ORDERED.

Dated: December 29, 2023


UNITED STATES MAGISTRATE JUDGE