

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SAN RAMON VALLEY UNIFIED SCHOOL  
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. 2008040331

AMENDED DECISION<sup>1</sup>

Suzanne Dugan, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 12, 13 and 14, 2008, in San Ramon, California.

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<sup>1</sup> The original decision was issued on June 2, 2008, and a corrected decision was immediately issued that same day. This amended decision is issued solely to clarify the correction. The only change between the original decision and the corrected decision was to the last paragraph of Legal Conclusion 6, on page 6 of the decision. Specifically, surplus language was deleted from Legal Conclusion 6 and the last full sentence of the original Legal Conclusion 6 was moved to Legal Conclusion 5 in the Corrected Decision. There were no substantive changes in the corrected decision. In addition, this Amended Decision adds a period to the end of Factual Finding 4 and inserts "IEE" in Issue 2. There are no substantive changes in the Amended Decision.

San Ramon Valley Unified School District (District) was represented by Sarah Daniel, Attorney at Law. Karen Heilbrunner, District Director for Secondary Special Education, was present during the hearing.

Student's mother (Mother) represented Student.

The District filed its request for due process hearing on April 9, 2008. Oral and documentary evidence were received during the hearing. The record remained open for the submission of written closing arguments by May 23, 2008, when the record was closed and the matter was submitted for decision.

## ISSUES

1. Is the District entitled to conduct a triennial assessment of Student in accordance with the October 11, 2007 and the January 18, 2008 enhanced assessment plan?
2. Are Parents entitled to an Independent Educational Evaluation (IEE) at District's expense?

## FACTUAL FINDINGS

1. Student is sixteen years old and resides in the District with his family. He currently is in the eleventh grade at California High School, located within the District. Student is eligible for special education under the category of Speech or Language Impaired. Student's first Individualized Education Program (IEP) was signed on May 29, 1998, when Student was in the first grade. Student had his last triennial assessment in June 2004. Student's triennial assessment was due in November 2007.
2. Once a student is determined to be eligible for special education programs and services, that student must be assessed at least once every three years, and not more often than once yearly, unless the parents and the local educational agency (LEA) otherwise agree to a different assessment schedule.

3. District contends that they have the right to conduct a triennial assessment of Student, who has not had a comprehensive assessment since June 2004. District asserts that Student warrants reassessment because he appears to be more capable than his most recent test scores demonstrate and he will be transitioning out of high school to a job or college. District contends that they have the right to use their own qualified personnel for the assessment and that Student's parents do not have the right to request an IEE because there is no District assessment with which parents are disagreeing. District also asserts that a 2006 assessment performed by an independent evaluator, at District expense, does not entitle parents to another IEE.

4. Parents contend that the triennial assessment was addressed in an IEP meeting on August 30, 2007, and the only assessment required for the triennial review was an Occupational Therapy assessment. Parents contend that they are entitled to be fully informed of the proposed assessment, and that District failed to identify the assessors or present the educational background, licenses, training or credentials of all prospective assessors. Parents contend that District has not taken reasonable measures to obtain consent of Parents and therefore District is not entitled to an order overriding Parents refusal to consent to the triennial assessment. Specifically, Parents also contend the list specific tests that they proposed to perform for the assessment, which they thought was required. Mother believed that District would use improperly trained evaluators to perform testing. She does not dispute the need for an OT assessment, but wants to ensure appropriate qualification by meeting first with the proposed assessor. Mother believed that excessive testing has been performed, that testing is stressful to the Student, and that further testing is not necessary or of use to Student.

5. Parents also contend that they are entitled to an IEE at District's expense since the District did not timely provide Dr. Jackie Cheong's 2006 assessment, an independent assessor. Student's last triennial assessment was done by Dr. Jackie

Cheong in June 2004.<sup>2</sup> Dr. Cheong, as an independent evaluator by agreement of the parties evaluated Student's reading and writing achievement in June 2006. Dr. Cheong presented her preliminary findings in a draft report at the August 2007 IEP meeting where the issue of OT testing was also discussed. Mother mistakenly thought that meeting was a triennial review. Karen Heilbronner, Director of Secondary Special Education, and Cheri Ng, Resource Specialist, established that the meeting was not a triennial assessment.

6. On October 11, 2007, the District proposed a written assessment plan for Student's triennial assessment. The assessment plan, created by Ms. Ng, sought to test in the following areas: academic/academic areas by a resource specialist and a general education teacher, speech/language by a speech and language pathologist, intellectual development by a psychologist, health/physical status by a District nurse, gross/fine motor development by an assistive technology specialist and occupational therapist, and career/vocational by a resource specialist.<sup>3</sup> Parents did not sign the assessment plan and did not consent to conduct the assessments. The January 18, 2008 assessment plan was developed by Ms. Ng in response to Parents' request for specific tests in the areas to be assessed.

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<sup>2</sup> Dr. Cheong is licensed as a school psychologist and has been a psychologist for 29 years. She has a doctorate in Educational Psychology, a master's in School Psychology, and bachelor's in Psychology. Dr. Cheong assessed Student for his last triennial assessment in June 2004.

<sup>3</sup> District withdrew their request to complete assistive technology assessment and their request for a health/physical status evaluation in their Pre-hearing Conference Statement on April 29, 2008.

7. On December 19, 2007, an IEP meeting was held which parents attended. The primary purpose of the meeting was the Triennial Review. District sought parents consent to the assessment plan. Parents did not consent to Student's IEP. Parents contended that they had not received the written final assessment of Dr. Cheong's 2006 tests, which they were disputing. Parents received Dr. Cheong's final written assessment on March 15, 2008. Parents requested an IEE due to the lapse of time since the assessment and before the report was received.<sup>4</sup> Parents contended that the report is incomplete and does not contain results of all the testing. Ms. Heilbronner credibly established that she informed Mother that District would not provide an IEE at this time as parents did not consent to the triennial assessment so there were no reports available for parents to disagree.

#### TRIENNIAL REVIEW

8. Dr. Cheong believed a current assessment was needed given Student's age, his progress, and to assess the effectiveness of accommodations in each class. Dr. Cheong believed Student's functional skills after high school and his job skills should be addressed. Dr. Cheong was ambivalent about the need for intellectual development testing as Student's IQ scores have remained the same since he was in the third grade, but recent test scores might be needed if he goes to college.

9. Janet Terranova, Assistant Principal at California High School and supervisor of special education. Ms. Terranova has known Student for three years and she believed assessments were needed to determine what services Student currently needs. Student passed his high school exit exam and is on track for graduation, but Ms.

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<sup>4</sup> Parents contended that the report is incomplete and does not contain results of complete testing.

Terranova believed further assessment was needed to track Student's progress and goals.

10. Jill Chandler, speech and language pathologist, was familiar with Student in the ninth grade and had reviewed Student's file. She had not seen Student since then as Parents asked that she not see Student. Parents arranged for a private evaluation in Speech and Language. Therefore, District had not done a speech assessment within the last three years and current levels of performance were necessary to properly address his needs.

11. Teri Lock is an occupational therapist who worked with Student in the ninth grade. She knows that Student is due for a triennial assessment and believes assessment should evaluate what services Student currently needs. She recommended evaluation of Student's gross motor skills, fine motor skills, and agility.

12. Doug Dildine works in the Independent Living Center and attended the December 19, 2007 IEP meeting and reviewed the assessment form. His testimony established that assessments are used to develop a clear idea of Student's ability to live as independently as possible. Vocational assessment is especially important in an IEP when Student is sixteen years old and therefore Student needs vocational assessment.

13. Student's father (Father) attended the August 2007 IEP meeting where Dr. Cheong said that her assessments of Student were incomplete. Father helped Student with homework and noticed that Student's resistance had changed regarding academics. Student has needs or deficits in OT and is missing information to plan for college or life after high school. Based on his observation of Student, testing is difficult for Student and caused him to like school less. Father believes the quantity of assessment is burdensome for Student.

14. Based on Ms. Terranova's credible testimony and her review of Student's records, District has the right and obligation to assess Student for his three year triennial

assessment and to determine Student's needs. Student's last triennial was in 2004 and his next triennial was due in 2007. The weight of the evidence established that District's personnel are qualified and competent to assess student's current condition.

## IEE

15. Parents contend they are entitled to an IEE because the District caused a substantial delay in the delivery of Dr. Cheong's assessment report.

16. Dr. Cheong's report was not prepared for the purposes of a triennial assessment. While the final report itself was not delivered to the Parents until 2008, the report was discussed at the August 2007 IEP.

## LEGAL CONCLUSIONS

1. The District bears the burden of persuasion in this matter. (*Schaffer vs. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

2. Reassessment of a student eligible for special education must be conducted at least every three years, or more frequently if the local educational agency determines conditions warrant reassessment, or if a reassessment is requested by the student's teacher or parent. (20 U.S.C. § 1414(a)(2)(A); Ed. Code, § 56381, subds. (a)(1), (2).)

3. A reassessment requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f).) To obtain consent, a school district must develop and propose a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (f).) If the parents do not consent to the plan, the district can conduct the reassessment only by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300(c) (2006); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f), 56501, subd. (a)(3), 56506, subd. (e).) The District must propose a written assessment plan and include notice of the

procedural safeguards under the Individuals with Disabilities Education Improvement Act (IDEA) and state law. (20 U.S.C § 1414(a)(1)(D)(ii); Ed. Code, §§ 56321, 56329, 56381.)

4. As determined in Factual Findings 5 to 14, and Legal Conclusion 2 and 3, Student's triennial evaluation was due in November 2007. Accordingly, the District is entitled to conduct a reassessment of Student for the triennial evaluation. The District properly noticed the triennial assessment to Parents and provided a proper written assessment plan to Student.

5. As determined in Factual Findings 2 to 14, and Legal Conclusions 5 to 7, Student's parents did not consent to the October 11, 2007 or the January 18, 2008 assessment plan. The District has the right to evaluate Student for special education services using its own personnel. In so doing, District staff needs to use their professional judgment and training to determine the proper tests to be given, the nature of observations during the assessment process, and information they need to gather to produce valid test results. The conditions and restrictions proposed by Parents to select assessors and an independent evaluator would unfairly constrain the assessment process such that the District might not have received the proper picture of Student, the nature of his disability, and how best to meet his needs in the educational environment. The District made reasonable efforts to obtain parental consent to the assessment plan and made reasonable efforts to inform the Parents about the process. The District is legally mandated to reassess Student for his triennial evaluation without restriction or condition from the parents. Accordingly, the District is entitled to assess Student pursuant to the October 11, 2007 as enhanced by the January 18, 2008 assessment plan, without condition or restriction and without parental consent. District is entitled to conduct its triennial assessment and no determination of the availability of an IEE to challenge that specific assessment is determined in this decision.



6. A parent who wishes that a child receive special education services must allow reassessment if conditions warrant; "if the parents want [their child] to receive special education under the Act, they are obliged to permit such testing." (*Gregory K. v Longview School Dist.* (9th Cir. 1987) 811 F.2d 130, 1315.) "A parent who desires for her child to receive special education must allow the school district to reevaluate the child using its own personnel; there is no exception to this rule." (*Andress v. Cleveland Independent School Dist.* (5th Cir. 1995) 64 F.3d 176, 179.)

## ORDER

1. The District is entitled to assess Student pursuant to the October 11, 2007 as enhanced by the January 18, 2008 assessment plan, without conditions or restrictions imposed by Parents, and without parental consent.

2. If Parents intend for Student to attend a public school, Parents shall make Student reasonably available for assessment by the District.

3. Parents are not entitled to a triennial IEE at District expense.

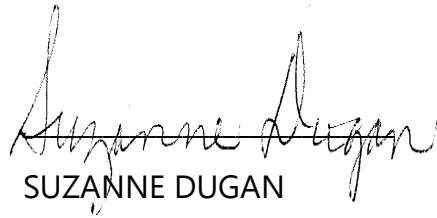
## PREVAILING PARTY

The hearing decision shall indicate the extent to which each party has prevailed on each issue heard and decided. (Ed. Code, § 56507, subd. (d).) The District prevailed on all issues heard and decided.

## RIGHT TO APPEAL THIS DECISION

The parties have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: July 23, 2008

A handwritten signature in black ink, appearing to read "Suzanne Dugan". The signature is fluid and cursive, with the first name "Suzanne" and last name "Dugan" clearly distinguishable.

SUZANNE DUGAN

Administrative Law Judge

Office of Administrative Hearings