

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016050233

DECISION

District filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, State of California, on May 3, 2016, naming Parent on behalf of Student. OAH continued this matter on May 23, 2016 at the request of the parties.

Administrative Law Judge Vernon Bogy heard this matter in Van Nuys, California, on July 26, 2016.

Mary Kellogg, Attorney at Law, assisted by Brian Reese, Legal Intern, represented Los Angeles Unified School District. Thomas Ramirez, Due Process Specialist, attended the hearing on behalf of District.

No appearances were made on behalf of Student at the hearing.¹

At the hearing, a continuance was granted for District to file written closing

¹ Student's Parent agreed to the continued hearing at the May 23, 2016 Prehearing Conference, participated in the June 14, 2016 mediation, but ceased participating in this matter afterwards.

arguments, and the record remained open until August 5, 2016. Upon timely submission of written closing arguments, the record was closed and the matter was submitted for decision on August 5, 2016.

ISSUES

Was District's February 25, 2015 psychoeducational assessment appropriate such that Student is not entitled to an independent educational evaluation at public expense?

SUMMARY OF DECISION

This decision holds that District's February 25, 2015 psychoeducational assessment met all legal requirements. The decision further holds that District filed for due process without unnecessary delay following Parents' request for an independent educational evaluation. Accordingly, Student is not entitled to an independent educational evaluation at public expense.

FACTUAL FINDINGS

JURISDICTION

1. Student is a twelve-year-old girl who at all relevant times resided with her Parents within District's geographical boundaries. Student has Down-Syndrome and was eligible for special education and related services under the category of specific learning disability.

DISTRICT'S PSYCHOEDUCATIONAL ASSESSMENT OF FEBRUARY 25, 2015

2. On February 25, 2015, District issued Student's psychoeducational assessment report as part of its triennial assessments. The suspected disabilities addressed in the assessment were specific learning disability and intellectual disability. Student had previously been eligible under the category of specific learning disability.

The February 25, 2015 assessment found that Student met the eligibility criteria for intellectual disability.

3. Judith Yada-Campos, District's school psychologist performed the February 25, 2015 psychoeducational assessment. Ms. Yada-Campos has a bachelor of science degree in psychology from California State University at Los Angeles in 1996, and a master of science degree in counseling, with an option in school psychology, from California State University at Los Angeles in 1999. She has a pupil service credential with a specialization in school psychology, and a school child welfare and attendance credential, both of which she earned in 1999, and which qualified her to work as a school psychologist.

4. Ms. Yada-Campos has worked for District as a school psychologist since receiving her credentials in 1999.

5. During her tenure at District, Ms. Yada-Campos has conducted an average of between 50 and 70 psychoeducational assessments per year, and has attended hundreds of Individualized Education Program team meetings.

6. Ms. Yada-Campos was knowledgeable about, and trained in, administering standardized assessment instruments at issue here. She was qualified to administer the psychoeducational assessment based on her education, training, credential and experience.

7. Ms. Yada-Campos issued the psychoeducational assessment report of Student on February 25, 2016. She assessed Student through the review of Student's educational records, direct observation, interviews with teachers and Parents, assessments prepared by Student's special education teacher Heather Armijo and general education teacher Ms. Zacarias-Ayala, and standardized testing. All the assessment tools and instruments were conducted in English, Student's primary language.

8. For the psychoeducational assessment, Ms. Yada-Campos employed the following tools: The Cognitive Assessment System, Second Edition; the Test of Auditory Processing Skills, Third Edition; the Test of Visual Perceptual Skills, Third Edition; the Behavioral Assessment System for Children, Second Edition; the Bender Gestalt Test, Second Edition; the Vineland Adaptive Behavior Scales, Second Edition; and the Kaufman Test of Educational Achievement, Second Edition.

9. The materials and procedures used for the psychoeducational assessment were not racially, culturally, or sexually discriminatory in selection or administration. All instruments were administered in English, which was Student's primary language. All instruments were reliable and widely accepted assessment tools. All instruments were administered and interpreted consistent with the publisher's protocols and yielded valid results. Ms. Yada-Campos did not rely on any single measure, tool, or score in making her recommendation for services.

10. Throughout the assessment process, Student was polite and responsive to conversation, maintained appropriate eye contact, appeared at ease, and made all appropriate efforts to participate. She demonstrated an understanding of task demands and attempted all items presented to her. Student was able to focus and follow directions, was comfortable in the testing environment, and appeared to be working to the best of her ability. Her activity level and response to the various assessment tasks was age appropriate.

Cognitive Assessment

11. Ms. Yada-Campos administered the Cognitive Assessment System as part of her assessment. The Cognitive Assessment System evaluates how the brain processes information visually, auditorily, and in non-verbal problem solving, and assesses attentiveness. The test includes a series of standardized questions which are graded to produce a composite score.

12. Student was assessed in four areas: planning processing; simultaneous processing; attention processing; and, successive processing. Planning processing is the ability to problem-solve, execute a plan, anticipate consequences, and organize actions. Simultaneous processing is the ability to synthesize separate elements into an interrelated group using verbal and nonverbal content. Attention processing is the ability to selectively focus and concentrate on a particular stimulus while at the same time resist distractions. Successive processing is the ability to organize, sequence and recall verbal information in a specific linear order. Student's performance in each of these areas was well below average as compared to high school students of similar age.

Auditory Processing Skill Test

13. Ms. Yada-Campos administered the Test of Auditory Processing Skills in her assessment. The Test of Auditory Processing Skills is used to identify students who have auditory-perceptual difficulties or language issues which could be the basis for learning problems. This assessment is used to measure three areas: basic phonologic skills; auditory memory and auditory cohesion. Student's performance in each of these areas, and her overall performance in the Test of Auditory Processing Skills was classified as well below average.

Visual Perception Skills Test

14. Ms. Yada-Campos administered the Test of Visual Perception Skills in her assessment. The Test of Visual Perception Skills is a non-verbal measure of Student's visual processing skills, and is made up of three clusters: basic processes; sequencing; and, complex processes. Student's performance in each of these clusters, and her overall performance in the Test of Visual Perception Skills, was classified as well below average.

Broad Band Rating Scale

15. As part of her assessment, Ms. Yada-Campos reviewed a Behavior Assessment System for Children scales assessment administered by Student's general education teacher, Ms. Zacarias-Ayala.

16. Ms. Yada-Campos has administered and reviewed hundreds of Behavior Assessment System for Children assessments. She found the assessment to be valid.

17. The Behavior Assessment System for Children is an assessment tool designed to evaluate various aspects of a child's social, emotional, behavior, and personality.

18. On the clinical scales completed by Ms. Zacarias-Ayala, Student's behaviors were rated as average in the areas of hyperactivity, aggression, conduct problems, anxiety, depression, somatization, attention problems, learning problems and atypicality. Student was rated "at-risk" for withdrawal.

19. On the adaptive scale, Student demonstrated a high level of adaptive behavior in the area of social skills. Student rated average in the areas of adaptability, leadership skills, study skills and functional communication skills.

20. The Behavior Assessment System for Children rating scale form was provided to Student's Mother on January 30, 2015, but Mother did not return the questionnaire to District. The results were therefore based on the scales completed by Ms. Zacarias-Ayala.

Motor Abilities

21. As part of her assessment, Ms. Yada-Campos administered a Bender Gestalt Test, which is a measure designed to assess the extent to which Student could integrate her visual and motor skills. Student's overall performance on the Bender Gestalt test was classified in the well below average range in both gross and fine visual and motor skills.

Self-Help/Adaptive Functioning

22. As part of her assessment, Ms. Yada-Campos reviewed a Vineland-Adaptive Behavior Scales assessment administered to Ms. Zacarias-Ayala. Ms. Yada-Campos has administered and reviewed hundreds of Vineland-Adaptive Behavior Scales assessments, and found the assessment valid.

23. The Vineland-Adaptive Behavior Scales is an adaptive behavior survey which measures personal and social skills of individuals from birth through adulthood in four separate domains: communication; daily living skills; socialization; and, motor skills. In the communication domain, Student demonstrated a moderately low score, standard score of 67, with a standard score of 100 being the median average, with weaknesses in receptive, expressive and written language skills. In the daily living domain, Student demonstrated a moderately low score, standard score of 72, with weaknesses in her personal and academic skills. In the socialization domain, Student demonstrated a moderately low score, standard score of 85, but showed adequate play and leisure skills and coping skills. In the motor domain, Student demonstrated a moderately low score, standard score of 75. Student showed adequate fine motor skills, but was in the low range in her gross motor skills.

24. The Vineland-Adaptive Behavior Scales form was provided to Mother on January 30, 2015, but Mother did not return the questionnaire to District. The results were therefore based on the scales completed by Ms. Zacarias-Ayala.

Academic Achievement

25. As part of her assessment, Ms. Yada-Campos reviewed the results of the Kaufman Test of Educational Achievement, which was administered by Student's special education teacher, Heather Armijo.

26. Ms. Armijo earned her bachelor of science degree in elementary and special education from Grand Canyon University in December 2013. She has been

employed by District since 2001, initially as a special education assistant, working with mild to moderate and severely disabled students in preschool through 8th grade. For approximately the past two years, she has been employed by District as a teacher education specialist. During that time she was credentialed to teach mild to moderately disabled students, and has been teaching students with special needs. Ms. Armijo also has an authorization credential for early childhood special education. She is familiar with all relevant aspects of Down syndrome.

27. Ms. Armijo's job duties with District include conducting assessments and attending IEP team meetings. She conducts on average three academic assessments per year. She taught Student in the 5th grade and administered the Kaufman Test of Educational Achievement assessment of Student on February 17, 2015. The Kaufman Test of Educational Achievement includes individually administered tests used for measuring academic achievement in the areas of reading, written language and math. Ms. Armajo was qualified to administer the assessment based on her education, training, credentials and experience. The Kaufman Test of Educational Achievement was administered and interpreted in a manner consistent with the publisher's protocols, and the assessment yielded valid results.

28. Student's individual scores were standard score of 66 in the reading composite; standard score of 67 in the math composite; standard score of 63 in the written language composite; standard score of 43 in the oral language composite; standard score of 84 in the sound and symbol composite; and standard score of 75 in the decoding composite. These scores were in the well below average range in each composite, and in overall reading, writing and math.

Language Assessment

29. As part of her assessment, Ms. Yada-Campos administered a language function assessment. She was qualified to administer the assessment based on her

education, training, credential and experience. The assessment materials were without racial, cultural, or gender discrimination. The assessment was conducted in English, which is the only language spoken in Student's home.

30. Student was able to express her thoughts and ideas using one-three word sentences, and was able to ask and answer simple questions and express her wants and desires using short two-four word sentences. Student showed expressive and receptive language delays, and continued to require development in vocabulary, more complex sentence structure, grammar and comprehension.

Social Emotional Assessment

31. Ms. Yada-Campos assessed Student's social emotional needs by interviewing Student, her mother, and her special education teacher Heather Armijo.

32. Ms. Armijo established that Student was cooperative, friendly, helpful, and able to follow classroom rules and procedures. Student related positively to peers and adults in school, and enjoyed participating in class activities. Student demonstrated good work and study habits but she was nevertheless functioning well below her grade level in all academic areas.

33. Ms. Armijo's findings were consistent with Mother who reported that Student is cooperative, respectful, helpful, well-behaved, and gets along well with others. Mother described no significant concerns with social-emotional status or behaviors.

34. Ms. Yada-Campos found Student cooperative and pleasant during the interview. Student made appropriate eye-contact and was responsive to conversation. Student expressed that she enjoyed going to school and got along well with her teacher, peers, her Parents, sibling and extended family members.

Behavioral Observations

35. Ms. Yada-Campos observed Student both in the classroom and on the playground as part of her assessment.

36. Student was first observed in her special education classroom in the morning. Student was seated with four other students, was working quietly, and appeared focused on her assignment. Student was able to read at a slow rate with teacher assistance and showed no significant behavioral concerns with respect to focus or attention.

37. Student was next observed on the schoolyard during lunch recess. She was playing a game of handball with five other students, acted cooperatively and showed adequate turn-taking skills with the other students. Student seemed to enjoy the activity, and was observed smiling and socializing with her peers.

General Health and Development

38. As part of her assessment, Ms. Yada-Campos reviewed Student's health assessment report, prepared by the school nurse, Chuiping Pan. That assessment identified Student as having a diagnosis of Down syndrome. Student's health was otherwise good, without any serious illnesses, accidents, hospitalizations or surgeries. Student was able to ambulate without assistance, and was able to perform self-care skills at school. Student passed the audio/hearing screening, and the visual screening with glasses. Student's health was not an area of need.

FEBRUARY 27, 2015 IEP

39. On February 27, 2015, an IEP was developed, based upon the triennial assessments, including the psychoeducational assessment, Student was found eligible for special education and related services under the category of intellectual disability. Mother participated in the IEP team meeting, and consented to all components of the

IEP, including the eligibility category of intellectual disability.

PARENTS' REQUEST FOR INDEPENDENT PSYCHOEDUCATIONAL ASSESSMENT

40. On March 10, 2016, Student's next annual IEP team meeting was held. At that time, Mother consented to all components of Student's proposed annual IEP, except for the eligibility category. Specifically, Mother expressed concern that Student's eligibility category had been changed to intellectual disability after her 2015 triennial evaluation, and requested that Student's eligibility category be changed. Mother requested a comprehensive assessment from an outside independent assessor. Because the request did not identify any particular assessment procedures or findings which Mother believed to be inappropriate, District was required to reevaluate the entire February 25, 2015 psychoeducational assessment.

41. District interpreted Mother's March 10, 2016 request as a disagreement with the February 25, 2015 psychoeducational assessment and a request for a publically funded independent educational evaluation. After fully reviewing its prior psychoeducational assessment, District elected to file a due process complaint on May 3, 2016 to defend the appropriateness of the assessment.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)³ et seq.; Ed. Code, § 56000, et seq.; Cal.

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis below.

³ All references to the Code of Federal Regulations are to the 2006 version, unless

Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their Parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the Parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of Parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized

otherwise noted.

instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords Parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, District, as the complaining party, bears the burden of proof on the issue.

APPROPRIATENESS OF DISTRICT PSYCHOEDUCATIONAL ASSESSMENT

5. District contends that its February 25, 2015 psychoeducational assessment was appropriate. For that reason, District asserts that it is not obligated to fund an independent psychoeducational evaluation for Student.

6. Under certain conditions, a student is entitled to obtain an independent educational evaluations at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [Parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to Parents to include information about obtaining an IEE].) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

7. The procedural safeguards of the IDEA provide that under certain conditions, a parent is entitled to obtain an independent evaluation of a child at public expense. (20 U.S.C. §1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent has the right to request an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an independent evaluation at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the independent evaluation at public expense, unless the school demonstrates at a due process hearing that an independent evaluation already obtained by the parent

does not meet its criteria. (34 C.F.R. § 300.502(b)(4); Ed. Code, § 56329, subds. (b), (c).)

8. Whether a district's delay is unnecessary within the meaning of the above regulation is a fact-specific inquiry. While the statutes do not define "unnecessary delay," no California case at the administrative or appellate levels has held that 53 days or less constitutes an unnecessary delay. To the contrary, the briefest period of time actually determined to be an "unnecessary delay" in a California case at any level appears to be 74 days. *See, e.g., See, e.g., Student v. Los Angeles Unified School Dist.* (2007) Cal.Offc.Admin.Hrngs. Case Nos. 2006120420 and 2007050027. In *Pajaro Valley Unified Sch. Dist. v. J.S.* (N.D.Cal. December 15, 2006, C06-0380 PVT) 2006 WL 3734289, the court found that a three month delay between the IEE request and the due process filing constituted "unnecessary delay" because the District was unable to provide an explanation for the delay. In *C.W. v. Capistrano Unified Sch. Dist.* (C.D.Cal. Aug. 3, 2012, No. SACV 11-1157 DOC(RNBx)) 2012 WL 3217696, the court held that a 41-day delay between student's request for an IEE assessment and the filing of the due process complaint was not unnecessary delay. The court noted that delay in filing may be justified where the request for an IEE is "vague" and fails to "identify any basis for the disagreement" with an assessment. (*Id.* at pp. 6-7.)

9. Here, the evidence established that District timely filed its request for due process hearing to show that its February 25, 2015 psychoeducational assessment was appropriate. Mother did not request an independent psychoeducational evaluation until March 10, 2016, more than one full year after the assessment, when she expressed a concern that Student's eligibility category had been changed to intellectual disability after her 2015 IEP, and requested a comprehensive assessment from an outside independent assessor. District filed its complaint for due process hearing on May 3, 2016, 53 days after Mother's request. Because Mother did not identify any particular assessment procedures or findings which she believed to be inappropriate in the

assessment, District was required to reevaluate the entire 2015 psychoeducational assessment. In the circumstances, District did not unreasonably delay in filing its complaint for due process hearing.

10. Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) Thereafter, a special education student must be reassessed at least once every three years, or more frequently if conditions warrant, or if a Parent or teacher requests an assessment. (Ed. Code, § 56381, subd. (a).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).)

11. Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Under federal law, an assessment tool must provide relevant information that directly assists persons in determining the educational needs of the child. (34 C.F.R. § 300.304(c)(7).) In California, a test must be selected and administered to produce results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) A district must ensure that a child is assessed in all areas related to a suspected disability. (Ed. Code § 56320, subd. (c), (f).)

12. Assessments must be conducted by individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area. (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, §

56324, subd. (a).)

13. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3).) Persons knowledgeable of the student's disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

14. Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56320, subd. (a).)

15. An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

16. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessment materials must be used for purposes for which they are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii)); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).)

17. The evidence established that District conducted an appropriate, comprehensive and thorough assessment which assessed Student in all areas related to suspected disability.

18. The assessment materials used in conducting Student's February 25, 2015

psychoeducational assessment were selected by Ms. Yada-Campos (school psychologist), Ms. Zacarias-Ayala (Student's general education teacher), and Ms. Armijo (special education teacher), each of whom is credentialed and trained in selecting and administering the assessments they used in assessing Student, and was knowledgeable about Student's disability.

19. The assessment instruments used in the psychoeducational assessment were not racially, culturally or sexually biased, and were provided and administered in English, Student's primary language. The assessments given were valid and reliable and administered according to the instructions provided by the test producers.

20. Ms. Yada-Campos prepared the final assessment report incorporating the findings of the other assessors. She established that the assessments yielded relevant information regarding Student's educational needs and produced relevant information that was utilized by Student's IEP team to determine Student's then current eligibility category and her needs. This was further supported by Ms. Zacarias-Ayala, Student's general education teacher, and Ms. Armijo, Student's special education teacher. Ms. Zacarias-Ayala, based upon her interaction with Student in the classroom and on the playground, established that the results accurately reflected Student's aptitude, achievement level, and other factors that the tests purported to measure such as her behavior, social emotional needs, and health. Ms. Armijo, administered the Kaufman Test of Educational Achievement and established Student's level of academic achievement. The psychoeducational assessment assessed Student in all areas of suspected disability.

21. District met its burden of proof that its February 25, 2015 psychoeducational assessment was legally appropriate, and that qualified personnel conducted assessments in all areas of Student's suspected disability. Accordingly, Student is not entitled to an independent psychoeducational evaluation at public

expense.

ORDER

District's claim for relief is granted. District's February 25, 2015 psychoeducational assessment was appropriate. Student is not entitled to an independent psychoeducational evaluation at public expense.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed as to the only issue that was heard and decided in this case.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

DATED: August 15, 2016

/s/

VERNON BOGY

Administrative Law Judge

Office of Administrative Hearings