

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISTA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2017040867

DECISION

Vista Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on April 20, 2017, naming Parents on behalf of Student.

Administrative Law Judge Rommel Cruz heard this matter in San Diego, California, on May 18, 2017.

Student's Father and Mother did not attend the hearing on behalf of Student.¹ Alina Reynolds, a Spanish interpreter, was present to interpret for the Parents.

Jonathan Read, Attorney at Law, represented District. Rebecca Nobriga, Supervisor of Special Education, attended the hearing on behalf of District.

¹ Parents did not participate in the telephonic Prehearing Conference on May 12, 2017. District moved to change the location of the hearing to OAH's San Diego Office. The motion was granted. On May 15, 2017, OAH left Parents a voice message advising them of the date, time and new location of the hearing. The Order Following Prehearing Conference indicating the date, time, and new location of the hearing was served to Parents on May 16, 2017.

On May 18, 2017, the last day of hearing, the record was closed and the matter was submitted for decision.

ISSUE

Is District entitled to assess Student pursuant to the October 5, 2016 assessment plan without parental consent?

SUMMARY OF DECISION

District met its burden of proof as to its right and legal obligation to assess Student in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social/emotional development, adaptive behavior, and post-secondary transition. District's assessment plan was appropriate, its proposed assessors qualified and the assessments necessary to obtain information regarding Student's present levels of academic achievement, functional performance, and educational needs. District may assess Student pursuant to its proposed assessment plan without parental consent.

FACTUAL FINDINGS

1. Student is a 17-year-old female who resided in District at all relevant times, and eligible for special education under the categories of autism and intellectual disability. Student resides with Parents. Parents' native language is Spanish; Mother speaks only in Spanish, whereas Father is known to speak both Spanish and English. Student comprehends some English and Spanish.

2. Student last attended school at the TERI Learning Academy. TERI is a non-public school for children and adults with special needs. Student was referred to TERI by District and attended TERI for approximately one year. On January 21, 2014, TERI sent a 20 day notice to District of its intent to discharge Student, citing their inability to work

with Father effectively as the reason for the discharge. Student's last day at TERI was February 7, 2014.

3. In response to the impending discharge, an individualized education program team meeting was held on February 5, 2014. District's free appropriate public education offer consisted of placing Student at the Stein Education Center and providing her with related services. Parents did not consent to the IEP. A subsequent IEP team meeting convened on May 14, 2014. Parents did not attend that IEP team meeting. The IEP was finalized; however, Parents continued to withhold their consent. District filed for due process to implement the IEP over Parents' objection.

4. District prevailed at the due process hearing. (OAH Case No. 2014051236) Despite an order issued on November 25, 2014 by OAH authorizing District to implement the May 14, 2014 IEP, Parents did not enroll Student at Stein or at any other school. Student has not attended school since leaving TERI on February 7, 2014.

THE DECEMBER 2013 ASSESSMENTS

5. In December 2013, Student was assessed by the California Department of Education Diagnostic Center, Southern California.² Student was 13 years old at the time. The assessment was developed to determine Student's present levels of functioning in cognition, adaptive skills, communication, and pre-academics. Student was evaluated by a transdisciplinary team consisting of an education specialist, school psychologist, speech-language pathologist, motor assessment program specialist, and an

² The Diagnostic Center is operated by the California Department of Education and provides assessment and educational planning services to assist school districts in determining the needs of special education students, and technical assistance and consultative services.

occupational therapist. The California Department of Education Diagnostic Center presented its report to Parents and District in February 2014.

Cognition

6. Student was found to exhibit significant reduction in thinking and reasoning, with abilities ranging up to about 18 months. Her approach to problem solving mirrored characteristics associated with children of 12 to 18 months of age. At the time of the assessment she had yet to meet developmental milestones typically attained at two to three years of age. Those milestones include the ability to imitate, discriminate size, sort items, recognize part/whole relationships (i.e., two-piece puzzles), or match colors, shapes and objects.

Adaptive Behavior

7. Student's level of independence in carrying out daily living skills and responding to environmental demands was found to be significantly delayed. She required much more intensive supports in daily living skills compared to her same-age peers. For example, though Student at the time was able to put on her pants and take off her clothes and shoes, she had difficulty tying her shoes and could not distinguish right from left.

8. Student was observed at TERI. She was supported by an instructional assistant. The observer noted Student to be calm and actively engaged in her routine. No problems were observed. However, her instructional team painted a different picture, reporting that Student would engage in non-complaint behavior such as hitting staff members, pushing over furniture, crawling under desks, hiding in closets, throwing items, and minor property destruction. Student's behavior was identified as a mechanism to escape and avoid difficult or non-preferred tasks, as well as to access preferred activities and situations.

9. Student was also observed at the Diagnostic Center and demonstrated escape-based behaviors. Student would protest if the task was too difficult or the assignment took too long to complete. Student did respond positively when presented with predictable routines and frequent praise and reinforcement. She was more engaged when presented with assignments that were aligned with her current developmental level of functioning.

Communication

10. Student's communication skills were significantly delayed. Her skills varying between the eight to twelve month range up to three years. The assessment was conducted in both English and Spanish, and though Student got some correct answers in Spanish, it did not significantly improve her scores.

11. Student was a pre-symbolic communicator. This meant she did not understand that pictures or icons represent actual objects. This resulted in her communicating through gestures such as reaching or pushing away. Picture-based communication systems would have limited usefulness. Student was able to demonstrate some receptive language skills such as responding to cues, her name, and distinguishing simple pronouns. She was also able to demonstrate expressive skills such as recognizing others, making requests, and making connected word-like utterances. Student was challenged in her ability to follow two, two-step directions, understanding prepositions, imitating words, naming people and objects, and using words to functionally communicate.

Academics

12. Student's pre-academic level of functioning includes skills associated with early preschool level. She was at the early stages of responding to early concepts such as categorizing like objects, recognizing environmental symbols, and interacting with

objects appropriately. In English and language arts, Student was still not able to match symbols or cue to activity or function, sort objects by function or use, identify object or picture by function, or trace purposeful marks on paper. In mathematics, she could not identify the quantity of "1" or more than 1. She could not count whole numbers to three. She was unable to identify "one more than", "more or less", and match sizes.

Motor and Sensory

13. Student's gross and fine motor skills were found to fall within the two-year to four-year levels. Her imitation skills were very limited, making it difficult for her to learn movement skills. She demonstrated basic hand skills such as adapting puzzle pieces to puzzles and adjusting a coin to insert in coin bank slot. These skills fell around the three-year level. The highest fine motor skill she was able to demonstrate was using scissors to cut across paper while an adult held one side of the paper. Student, however, held the scissors upside down.

14. Student's sensory behaviors were consistent with her developmental level. Her responses were at times intense. Auditory avoidance affects her ability to focus and could elicit running.

FEBRUARY 5, 2015 TRIENNIAL IEP TEAM MEETING

15. On February 5, 2015, the IEP team met for Student's triennial review. Parents did not attend. The IEP team determined that the December 2013 Diagnostic Center assessments remained an accurate representation of Student's functioning.

16. Prior to the meeting, District requested that Parents allow Student to be observed to obtain updated information regarding her current levels of functioning. Parents did not respond to the request and did not make Student available for observations. As a result, no updated information was available for consideration. The

IEP team was limited to reviewing records that included the 2013 Diagnostic Center assessment report and Student's school, health and development history.

APRIL 19, 2016 TO MAY 25, 2016 ANNUAL IEP TEAM MEETINGS

17. An annual IEP team meeting was scheduled for April 19, 2016. Parents could not attend and requested to reschedule it to May 4, 2016. However, Parents failed to attend on that date as well. The IEP team meeting was rescheduled a second time, and convened on May 25, 2016. Parents again failed to attend. The IEP team went forward with the meeting. Student still had not attended school since February 2014 and no up-to-date information was available to determine Student's present levels of functioning or to review progress on past goals. Consequently, District was limited to relying on the outdated data reflected in the 2014 IEP.

THE OCTOBER 5, 2016 PROPOSED ASSESSMENT PLAN

18. On September 27, 2016, Parents requested Student to be evaluated. In a letter³ to District, Parents made it clear that they wanted reassessments for Student, reminding the District of their repeated requests to conduct Student's triennial evaluations. They emphasized that Student was ready to start school and available for evaluations.

19. On October 5, 2016, Rebecca Nobriga, District's supervisor of special education, developed a proposed assessment plan. As supervisor of special education, Ms. Nobriga supports District in special education programming.

20. Ms. Nobriga has the expertise to develop an appropriate assessment plan. From 1993 to 2005, Ms. Nobriga was a bilingual school psychologist for District. From

³ Parents' letter was written in Spanish and translated into English by District's translator.

July 2005 to June 2011, she was a program specialist with North Coastal Consortium for Special Education (NCCSE), a special education local plan area with the San Diego County Office of Education. From July 2011 to June 2016, Ms. Nobriga worked for the Solana Beach School District as a program specialist and psychologist before becoming that district's director of pupil services. She has been in her current position since July 2016.

21. Ms. Nobriga earned a bachelor's degree in psychology from California State University, Hayward⁴ and a master's degree in counseling and school psychology from San Diego State University in 1993. She has assessed well over 1,000 children; approximately 20 percent of the assessments were of children with autism and between 10 to 15 percent involved children with an intellectual disability.

22. District proposed to assess Student in the following areas: academic achievement, health, intellectual development, language/speech communication development, motor development, social/emotional, adaptive behavior, and post-secondary transition. The proposed assessment plan identified the professionals assigned to conduct the assessment for each area. It explained that the tests and procedures to be conducted may include classroom observations, rating scales, interviews, record review, one-on-one testing, or some other types or combination of tests.

23. The proposed assessment plan was written in both English and Spanish. The plan was written clearly and in terms understandable by the general public. It advised Parents that no educational services would be provided to Student without Parents' written consent.

⁴ The university is now known as California State University, East Bay.

24. On October 6, 2017, Ms. Nobriga provided both language versions of the plan, along with English and Spanish versions of the procedural safeguards to Parents through certified mail and email. In the body of her email, Ms. Nobriga outlined the personnel responsible for evaluating each area of interest. For example, the school nurse would evaluate Student's health and development. In that same communication, she explained that all district personnel maintain the appropriate credentials issued by the state of California to conduct the assessments.

25. Having received no response from Parents, Ms. Nobriga mailed Parents additional copies of the proposed assessment plan, along with their procedural safeguards. English and Spanish copies of both the plan and procedural safeguards were mailed on February 16, 2017 and March 6, 2017. In each instance, Ms. Nobriga included cover letters, written in English and Spanish, explaining the necessity of the assessments since it had been more than three years since Student was last assessed. She explained the purpose of the proposed assessment plan and the information District was seeking through the assessments. The information would allow District to accurately identify such things as Student's present levels of academic achievement, functional performance, and educational needs. The assessments would enable District to determine appropriate services, accommodations, and other supports necessary for Student to access and benefit from her education.

26. In her letters, Ms. Nobriga also explained that District required Parents' consent to assess Student. Parents were also invited to contact Ms. Nobriga to schedule an IEP team meeting to discuss the proposed assessments and to address any other questions or concerns they may have. Despite numerous efforts from District to obtain consent, Parents have continued to withhold it. Parents have not requested to meet with the IEP team nor have they explained why they have withheld their consent.

27. Ms. Nobriga's testimony was precise, thoughtful, and consistent with the documentary evidence. She was a credible witness and her testimony is given substantial weight.

28. Ms. Nobriga established that the data available to the District was obsolete and unreliable to develop an appropriate IEP for Student. Assessments were necessary to obtain Student's present levels of functioning; crucial to developing an IEP with appropriate goals and services. Ms. Nobriga confirmed that the evaluations would be conducted by credentialed professionals qualified to conduct their respective assessments. Additionally, Student is now 17 years of age and is at a point that post-secondary outcomes and transitional programming needs should be explored. Thus, assessments are very much needed.

QUALIFICATIONS OF PROPOSED ASSESSORS

29. Jennifer Gruman is a program supervisor of special education for District. She has been employed by District since 1997, first as a school psychologist for the first 15 1/2 years, followed by a year as a lead school psychologist. She has held her current position since January 2013. Ms. Gruman possesses a bachelor of arts in psychology, a master of arts program in psychology, and a master of science in school psychology. She also possesses a Pupil Personnel Services credential which permits her to work in a school setting.

30. Ms. Gruman is also a licensed educational psychologist in private practice, specializing in conducting independent educational evaluations in autism and neuropsychology. Throughout her career, she estimates assessing between 1,500 to 2,000 children. Roughly 800 to 900 assessments involved children with autism and approximately 700 assessments involved children with an intellectual disability.

31. Ms. Gruman had previously worked with Student. Her last contact with Student was in January or February of 2014 when Student attended TERI. She described

Student at that time as being non-verbal, having some vocalization, but unable to speak two words, being able to communicate with some gestures, mobile, and with behavioral issues.

32. Ms. Gruman established the need to obtain Student's present levels of functioning through assessments. District has not been able to observe Student since February 2014 and Parents have not provided any information as to her current level of functioning. As a consequence, District has had to rely on obsolete data from 2013 to develop an IEP. With up-to-date information, District can determine appropriate goals and identify the proper services to develop an appropriate IEP.

33. Patti Palomar is an occupational therapist with NCCSE. Her responsibilities involve evaluating students' abilities, skills, and performances in activities related to their educational curriculum, particularly in the areas of fine motor skills, sensory processing, motor planning skills, visual-motor integration, and school-related activities of daily living.

34. Ms. Palomar has extensive experience in the occupational therapy field. She has been an occupational therapist for over 39 years. Ms. Palomar earned a bachelor's degree in occupation therapy and is certified in occupation therapy, assistive technology application, and administering and interpreting the Southern California Sensory Integration Test. She is well qualified, having conducted at least 4,000 assessments, 3,000 of those on children. She estimated assessing about 2,000 children with autism and about the same number of children with an intellectual disability.

35. Ms. Palomar authored an OT evaluation report of Student dated February 2, 2015 as a part of Student's triennial review. Her evaluation consisted only of a records review since Student was not available for observations. The records included the 2013 Diagnostic Center assessment report, as well prior IEPs. Ms. Palomar established that the only available data regarding Student's level of functioning is obsolete and that current

data on Student is needed because children change so rapidly. Accordingly, an assessment is required to determine her current levels of functioning to properly develop an appropriate IEP.

36. Patti Mohan is a speech language pathologist for District. She conducts diagnostic assessments and provides individual and group therapy. Ms. Mohan possesses a bachelor's degree in communicative disorders, and a master's degree in communication sciences and disorders. She has conducted approximately 200 to 300 assessments. Roughly 75 percent of the assessments were of children; most of those children had autism, and roughly one out of ten children had an intellectual disability.

37. In reviewing Student's records, including the 2013 Diagnostic Center assessment report, Ms. Mohan opined the information to be outdated and unreliable to develop an IEP. Ms. Mohan established it was necessary to formally assess Student to determine her present levels of functioning. Student's present baseline could be very different as compared to December 2013. She could have regressed, lost some skills or she may have gained skills.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁵

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)⁶ et seq.; Ed. Code, § 56000 et seq.; Cal.

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁶ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, 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 California, related services are also called designated instruction and services].) 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)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized 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.)

4. The Ninth Circuit Court of Appeals had 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 were applied to define the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

5. In *Andrew F. v. Douglas County School Dist.* (2017) 137 S.Ct. 988, 1000 (*Andrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstance.” “[E]very child should have a chance to meet challenging objectives.” (*Id.*) *Andrew F.* explained that “[t]his standard is markedly more demanding than the ‘merely more than de minimis’ test....The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at pp. 1000-1001.)

6. 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) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

BURDEN OF PROOF

7. 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, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) District requested the hearing and, therefore, District has the burden of proof related to the issue for hearing.

MAY DISTRICT ASSESS STUDENT PURSUANT TO THE OCTOBER 5, 2016 ASSESSMENT PLAN WITHOUT PARENTAL CONSENT?

8. District contends that it has the right and obligation to assess Student pursuant to its October 5, 2016 assessment plan when that plan was presented to Parents and Parents have withheld their consent.

Is the Assessment of Student Warranted?

9. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and District agree otherwise, but at least once every three years unless the parent and District agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted if the local educational agency “determines that the educational or related services needs, including improved

academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment." (20 U.S.C. §1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

10. If the parents do not consent to a reassessment plan, the district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(a)(3)(i), (c)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

11. Parents who want their children to receive special education services must allow reassessment by the district. (Gregory K. v. Longview Sch. Dist. (9th Cir. 1987) 811 F.2d 1307, 1315; Dubois v. Conn. State Bd. of Ed. (2d Cir.1984) 727 F.2d 44, 48.)

12. District's request to assess Student is wholly warranted. District's proposed assessment plan dated October 5, 2016 was in direct response to Parents' requests for triennial evaluations. Their demand is reflected in their letter to District on September 27, 2016. Just nine days later, a proposed assessment plan was developed and provided to Parents for review, input, and consent.

13. Additionally, Student's last assessments were conducted in December 2013, representing Student's most up-to-date data as to her levels of academic achievement, functional performance and educational needs. This data is now obsolete.

14. Compounding the problem was Student's lack of school attendance for over three years. During that period, District has not had the opportunity to observe and assess Student. Student was significantly delayed in many areas of functioning as detailed in the 2013 Diagnostic Center assessment report. Children change rapidly over time, and at this point, it is uncertain whether Student has regressed and lost skills, or improved and gained skills.

15. The assessments would provide valuable information as to Student's present levels of academic achievement, functional performance, and educational needs.

It would allow District to accurately identify the appropriate services, accommodations, and other supports needed by Student. Without the assessments, developing an appropriate IEP for Student is impossible. Therefore, District met its burden of persuasion in establishing the need to assess Student.

Is the Assessment Notice Proper?

16. Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §56381, subd. (f)(1).) In order to start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and companion state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must: appear in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The district must give the parents and/or pupil 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

17. On October 6, 2016, February 16, 2017, and March 6, 2017, Ms. Nobriga provided the proposed assessment plan to Parents, along with a copy of the procedural safeguards. Both the assessment plan and procedural safeguards were provided in English and Spanish. Spanish is Parents' native language. In her 2017 correspondences to Parents, Ms. Nobriga explained the purpose for the proposed assessment plan and what information District was hoping to obtain through these assessments. She also explained that District required their consent to assess Student.

18. The proposed assessment plan outlined the areas to be evaluated and identified the titles of the examiners. The plan described the possible tests and

procedures that may be conducted. It also explained the information being sought through the evaluation of the various areas. The plan was written clearly and in terms understandable by the general public. The plan was clear in that no special education services would be provided to Student without Parents' written consent. All statutory requirements of notice were met, and the assessment plan itself complied with the applicable statutes.

Will the Proposed Assessment be Conducted by Competent Persons?

19. Reassessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils shall be made in accordance with Education Code section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, §§ 56322, 56324, subd. (a).)

20. All the assessments proposed by District would be conducted by persons competent to conduct them. For instance, Ms. Palomar has the licensure, training and over 39 years of experience in conducting occupational therapy assessments on children with autism and an intellectual disability. Ms. Mohan has the licensure, training, and experience in conducting a speech and language communication development assessments on children with autism and an intellectual disability. Ms. Nobriga established that each assigned assessor maintained the appropriate credentials to conduct their respective evaluations. The plan adequately identified the appropriate assessors qualified to conduct the assessment to which he or she is assigned.

21. District proved that the October 5, 2016 assessment plan complied with all applicable statutory requirements regarding form, function, and notice. District also

established that assessments are warranted and its assessors competent to perform them. Therefore, District may assess Student without parental consent.

ORDER

1. District is entitled to assess Student according to the October 5, 2016 assessment plan, without parental consent.
2. District shall notify Parents, within 10 business days of the date of this decision, of the days, times, and locations Parents are to present Student for assessment. Parents shall reasonably cooperate in presenting her for assessment on those days, times and locations.
3. Parents shall timely complete and return any documents reasonably requested by District as a part of the assessments.
4. If Parents do not present Student for assessment as specified above, or do not complete and return documents as specified above, District will not be obligated to provide special education and related services to Student until such time as the Parents comply with this Order.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District was the prevailing party on the sole issue presented.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: May 30, 2017

/s/

ROMMEL P. CRUZ

Administrative Law Judge

Office of Administrative Hearings