

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF  
GARDEN GROVE UNIFIED SCHOOL DISTRICT  
v.  
PARENT ON BEHALF OF STUDENT.  
OAH CASE NUMBER 2019030631

DECISION

Garden Grove Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on March 15, 2019, naming Parents on behalf of Student. OAH continued the matter for good cause on March 27, 2019.

Administrative Law Judge Kara Hatfield heard this matter in Garden Grove, California, on June 4 and 5, 2019.

Attorney Tracy Petznick Johnson represented Garden Grove Unified School District. Valerie Shedd, Assistant Superintendent of Special Education and Student Services, and Jim Carter, Assistant Director of Special Education, attended the hearing on behalf of Garden Grove.

Student's attorney withdrew from the case the day before the hearing began. Parents did not appear for hearing. The ALJ used the Vietnamese language interpreter OAH provided for Parents to call Parents at their home, on the record. Mother and Father acknowledged they were aware of the hearing, the availability of a Vietnamese language interpreter, and their right to attend and participate. They declined to appear for any of the three days for which the hearing was scheduled. The entire discussion with the ALJ was audio recorded as part of the record. Parents did not attend the hearing. Student did not attend the hearing.

At the request of Garden Grove, OAH granted a continuance to June 24, 2019, to

file written closing arguments. OAH served notice to Parents, in Vietnamese, of the continuance for the parties to file written closing arguments. Garden Grove filed a timely written closing argument. On June 24, 2019, the record was closed and the matter was submitted for decision.

## ISSUES

The issues set forth below have been redefined in accordance with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443. No substantive changes have been made.

1. Were Garden Grove's occupational therapy assessment and September 24, 2018 occupational therapy assessment report appropriate?
2. Were Garden Grove's multidisciplinary assessment and November 2, 2018 multidisciplinary assessment report appropriate?

## SUMMARY OF DECISION

This Decision holds that Garden Grove's September 24, 2018 occupational therapy assessment and report, and November 2, 2018 psychoeducational assessment and language and speech assessment, and multidisciplinary assessment report, met all legal requirements. Student is not entitled to independent evaluations at public expense.

## FACTUAL FINDINGS

Student was 20 years old at the time of hearing. He was eligible for special education and related services as a student with autism. Parents were Student's conservators. Student attended his local public high school until the end of the 2017-2018 school year. For the 2018-2019 school year, Student attended Garden Grove's adult transition program for students aged 18 to 22 at Jordan Intermediate

School.

#### DEVELOPMENT OF AUGUST 31, 2018 ASSESSMENT PLAN

Student always resided within Garden Grove, and he attended Garden Grove schools from 2002 through the 2010-2011 school year. When Garden Grove conducted the California English Language Development Test for Student in 2009, Parents reported Student's primary home language was Vietnamese.

Parents removed Student from Garden Grove before seventh grade, and re-enrolled him with Garden Grove at the end of eighth grade in March 2013. When Parents re-enrolled him, they completed a new home language survey and indicated English was Student's home language, designating him as an English speaker. That information was input into Garden Grove's Special Education Information System and an electronic record keeping database called AERIES.

Garden Grove employed Vietnamese language interpreters/translators as staff to facilitate communication with the many Vietnamese-speaking parents residing within the school district. These staff provided oral interpretation of spoken English and Vietnamese, and translation of documents written in English and Vietnamese.

Diane Tran was one of Garden Grove's interpreters/translators since 2006. Ms. Tran mostly worked within the special education department, interpreting at individualized education program team meetings and translating IEP documents and assessment reports.

Ms. Tran had known Student and Parents since Student was in middle school. She interpreted at Student's IEP team meetings and had other communication with Parents over the years. She regarded Father's English as fairly proficient, and during the IEP team meetings Father directly communicated with Garden Grove staff in English. Ms. Tran did not recall Father needing her to interpret for him. She believed the interpretation she provided was for Mother's benefit. Ms. Tran regarded Mother as able to speak

conversational English, but Ms. Tran sometimes provided simultaneous interpretation of technical terms for her during IEP team meetings. Ms. Tran only interpreted as needed, determined by Mother's requests to hear things for herself in English and relying on Ms. Tran to interpret if she did not understand or wanted to confirm her understanding.

Other Garden Grove interpreters/translators provided services for Parents over the years, but Ms. Tran was the primary interpreter/translator for Parents. Mother had received documents in English from Garden Grove and directly contacted Ms. Tran at the district office to ask things she did not understand about them. Ms. Tran believed Parents were comfortable contacting her for interpreting or translation service if they wanted that support.

Wendy Kinney was a Garden Grove school psychologist with 19 years' experience. She earned a bachelor's degree in Psychology in 1987 and a master's degree in Education in 2000. She received her Multiple Subjects Teaching credential in 1988 and her Pupil Personnel Services credential in 2000. She regularly conducted between 100 and 200 assessments per year for initial evaluations, triennial reassessments, and records reviews. At the time of hearing, around 40 percent of her caseload was students with a medical diagnosis of autism spectrum disorder, and more than half her caseload was students between 18 and 22 years of age. She was knowledgeable about the needs of and assessment strategies for students on the autism spectrum, and for assessing adult students.

Ms. Kinney and Ms. Tran met in person with Parents on August 31, 2018, to discuss Student and develop an assessment plan for his triennial reassessments. Ms. Kinney provided Parents written copies of their notice of procedural rights and safeguards, and two different assessment plans, all in both English and Vietnamese.

Ms. Kinney discussed two assessment plans with Parents, and explained the proposed assessments. One assessment plan included the option to do only a review of

records, which Ms. Kinney proposed to Parents. Ms. Kinney had worked with Parents regarding another child for whom Parents had only allowed a records review for a triennial reassessment, so she was prepared for them to allow only a records review for Student. But Ms. Kinney did not think that was the most appropriate option at the time. Ms. Kinney believed Student showed a pattern of developmental delays and intellectual disability as far back as 2001, but Student was only eligible for special education and related services under the eligibility category of autism.

Ms. Kinney wanted to explore the possibility that Student had additional eligibilities. She believed that was important because the triennial assessment would be the last comprehensive evaluation conducted by Garden Grove before Student left the school district after reaching age 22. If Student went to a day program operated by the regional center or Department of Rehabilitation, Ms. Kinney wanted to be sure other agencies had the best information about Student to guide future decisions. Regional center day programs included work programs and arts programs, and persons with a disability were assigned a helper to facilitate working in a competitive job situation. Some programs only accepted people who functioned below a certain level, and some only accepted people who functioned above a certain level. Ms. Kinney wanted to evaluate Student in many areas to maximize Student's post-secondary opportunities.

Ms. Kinney reviewed with Parents an assessment plan that included the areas of health, academic achievement, intellectual development, motor development, social-emotional functioning/behavior, adaptive behavior, speech/language communication development, and post-secondary transition. She described each area and why she wanted to evaluate it.

The assessment plan, on a form developed by Garden Grove's special education local plan area, 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. The proposed assessment plan was written in both English and Vietnamese. 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. Parents did not raise concerns at the meeting or later about other areas in which Parent wanted Garden Grove to assess. Parents consented to the comprehensive reassessment on September 7, 2018.

Student had been due for his triennial reassessment to be completed in September 2018, but Garden Grove and Parents had agreed during the 2017-2018 school year to delay the triennial reassessment until Student started and settled into his new placement in the adult transition program at the beginning of the 2018-2019 school year. On September 12, 2018, Mother sent Ms. Kinney a letter in English agreeing to hold Student's triennial IEP team meeting in two parts. One meeting would be opened and adjourned without action for compliance with the deadline for Student's triennial review, and the other would be held to review the results of the triennial reassessments within the statutory timeline for completing assessments in November.

#### SEPTEMBER 24, 2018 OCCUPATIONAL THERAPY ASSESSMENT AND REPORT

Garden Grove contracted with Cornerstone Therapies, a nonpublic agency, to provide occupational therapy services and assessments to its students. Cornerstone began providing Student occupational therapy as a related service on May 31, 2012. Cornerstone employee Arnold Roguel had conducted a triennial reassessment of Student's motor development in 2015, and he did again in 2018. Mr. Roguel became a licensed occupational therapist in 2012. Since he joined Cornerstone in 2013, he had done contract work with multiple school districts. Approximately 30 to 50 percent of his work involved occupational therapy services in the educational setting. He also conducted assessments in the school setting. In the 2018-2019 school year, he

conducted 25 evaluations for school-based occupational therapy services. Before that, he averaged 10 school-based services evaluations per year.

Mr. Roguel was the supervisor for Student's occupational therapy services since 2015. In the assessment he conducted in 2015, he concluded Student had motor development deficits, but his fine motor, self-care, and sensory processing skills were functional to access the educational environment. Mr. Roguel recommended Student be exited from occupational therapy services at that time. Parents did not consent to the removal of occupational therapy from Student's IEP, and for the next three years, Garden Grove continued to provide occupational therapy to Student for one hour per week from an occupational therapy assistant, under Mr. Roguel's supervision. Mr. Roguel observed Student in his high school classroom and during occupational therapy sessions until Student moved to the adult transition program in the 2018-2019 school year, where he observed Student at the adult transition program and during occupational therapy sessions.

Mr. Roguel conducted the triennial occupational therapy assessment on September 11, 2018. The assessment was an educational evaluation, not a medical evaluation, to assess Student's performance within the educational environment and on task demands related to the curriculum, considering if his difficulties performing within his education program were related to issues that needed additional support from a licensed occupational therapist.

Mr. Roguel used these assessment procedures:

- Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, a standardized measure of fine motor skills, precision, integration, manual dexterity, and upper extremity coordination;
- Occupational Therapy School District Data Collection Measure, a standardized measure of a student's ability to participate in occupations relevant to a

- school-aged child including academic readiness, self-care, vocation/pre-vocation, social participation, and recreation/leisure, as reported/rated by Student's special education teacher Karen Condon;
- Adolescent/Adult Sensory Profile, a standardized measure of a student's sensory processing patterns in the context of everyday life, as reported and rated by Parents;
  - Clinical observations of handwriting skills, typing skills, neuromuscular performance, and sensory integration; and
  - Teacher and educational staff interview.

Mr. Roguel administered all the assessments in English. English was designated in Student's school records as his home language, and all instruction at school and during many years of occupational therapy was in English. Student was compliant and participated in all testing activities without difficulty. He did not require any nonverbal prompting during the assessments, indicating he understood the tasks he was asked, in English, to perform.

Mr. Roguel had interacted with Parents in many IEP team meetings over the years. Based on his personal experience, he believed Father understood basic English, appeared not to need the interpreter during IEP team meetings, responded to English language questions with appropriate answers in English, and asked Mr. Roguel questions in English that Mr. Roguel understood. Mr. Roguel was not familiar with Father's ability to read or write English.

Mr. Roguel sought input from Parents in the sensory component of the assessment, through parent responses on the Adolescent/Adult Sensory Profile. Mr. Roguel gave Parents the English language version of the Adolescent/Adult Sensory Profile form to complete. The form was a 60-item standardized tool to evaluate the brain's ability to receive, interpret, and analyze sensory input from the environment to



produce an appropriate response. Parents had to rate the frequency that Student displayed different types of behavior on a five-step scale ranging from “almost always” to “almost never.” Parents completed and returned the form.

Parents’ responses were consistent with Mr. Roguel’s own clinical observation of Student’s sensory integration, and with the impressions of Student’s special education classroom teacher, Ms. Condon. Mr. Roguel had no reason to believe Parents’ responses were invalid, despite the completed form being written in English, not Vietnamese.

Mr. Roguel believed the assessment results accurately identified what Student could do academically and functionally. The instruments Mr. Roguel used were standardized for Student’s age. Mr. Roguel administered the assessments according to the instructions.

Mr. Roguel prepared a written report documenting the occupational therapy triennial evaluation, dated September 24, 2018.

#### NOVEMBER 2, 2018 PSYCHOEDUCATIONAL ASSESSMENT AND REPORT

Ms. Kinney conducted the psychoeducational assessment and wrote the November 2, 2018 “Triennial Psychoeducational Report” that also included the report of the health, academic, and speech and language assessments. The report noted the assessment materials and procedures used during the evaluation were selected so as to not be racially, culturally, or sexually discriminatory. The effects of environmental, cultural, or economic disadvantage were considered in the selection and administration of the instruments used. The materials and procedures were administered in Student’s native language of English and were validated for the specific purpose for which they were used. A variety of tools and strategies including parent input were used to assess student behavior. No single procedure was used as the sole criterion for determining recommendations of an appropriate educational program.

Michelle Rymer was a registered nurse who had been a school nurse with Garden

Grove since September 2015. She obtained her bachelor of science degree in nursing in 1991, and held a School Nurse Services credential since 2006. As part of her job she regularly conducted health assessments for special education students.

Ms. Rymer conducted the health assessment as part of Garden Grove's triennial reassessment. She provided Parents a Health Assessment Form to obtain their input. The form was in Vietnamese. Parents returned the form completed half in English and half in Vietnamese. For Parents' responses in Vietnamese, Ms. Rymer had a Garden Grove interpreter/translator provide her the information in English. In some places Parents did not provide sufficient information, and Ms. Rymer called Parents and talked to them to obtain additional information. The evidence did not establish with which Parent(s) Ms. Rymer spoke, or whether the conversation was in English or through a Vietnamese language interpreter.

Ms. Rymer physically assessed Student by checking his near and far vision, his hearing, and looking in his mouth. Student's aide was with him during the physical examination and Student required a few extra verbal cues to complete the vision and hearing testing.

Ms. Rymer reviewed Student's records and noted the medical diagnoses of Pervasive Developmental Disorder and Autism.

Ms. Rymer wrote a health assessment report dated September 11, 2018. Information from her health assessment report was incorporated into the triennial psychoeducational report dated November 2, 2018. Ms. Rymer signed the psychoeducational report.

Ms. Condon was Student's special education teacher at the adult transition program during the 2018-2019 school year. She had a bachelor's degree in child development with a minor in education, which earned her a multiple subjects teaching credential in 1980. She had a master's degree in education, which also earned her an

education specialist credential in 1983 for working with the “severely handicapped.”

Ms. Condon taught in special education classrooms serving students with moderate to severe disabilities. She had been exclusively teaching students age 18 and over for 28 years at the time of hearing. About 40 percent of her current students had autism. She was knowledgeable about techniques and strategies to teach and work with students with autism. She used the Unique Learning System curriculum and a community-based program.

As part of the psychoeducational reassessment, Ms. Condon administered some academic testing instruments, completed the rating scales Ms. Kinney, Mr. Roguel, and the speech-language pathologist provided her, and spoke to the other assessors who requested her input as Student’s classroom teacher. Ms. Condon was familiar with a variety of instruments for assessing students and regularly administered them.

Ms. Condon administered the Brigance Inventory of Early Development, Third Edition. The Inventory of Early Development was a criterion-referenced measure of a student’s performance compared to specific educational objectives for students from birth through the developmental age of seven years. Although Student was 19 years old at the time he was assessed, his development was delayed and the Inventory of Early Development included skills Student had not mastered.

In the area of physical development, for early handwriting skills, Student demonstrated skills in the six-year-old range by copying and tracing both capital and lowercase letters. In the area of academic/cognitive literacy, the test focused on the development of Student’s knowledge and appreciation for books, knowledge of letters, phonological awareness, early writing skills, and early reading. Student demonstrated skill at the six-year-old level by blending word parts into one word, and literacy skills to the eight-year-old level by identifying, matching, copying, and printing all capital and lowercase letters.

Ms. Condon administered the Brigance Transition Skills Inventory. The Transition Skills Inventory was a comprehensive collection of research-based, age-appropriate assessments to support formal transition planning for students with disabilities preparing for life after high school. The inventory determined skill levels, not age levels, in four domains of academic skills, described as reading grade placement, listening and speaking skills, functional writing skills, and math skills.

In the area of reading grade placement, a subtest to screen students for instructional purposes, Student recognized words at the eighth grade level. He was unable to demonstrate comprehending vocabulary or reading comprehension at the first grade level. Ms. Condon testified that Student's reading comprehension was around the kindergarten level. He required pictures to understand short stories one paragraph long.

In the area of listening and speaking skills, Student's speech was understandable 80 percent of the time, and he responded to "why" questions at least 80 percent of the time. He spoke in complete sentences that were three or more words long.

Student's functional writing skills included the ability to provide personal data in writing including his full name, telephone number, street and city of mailing address, age, and date of birth. His writing was 90 percent legible in printed form, with oral reminders. Student answered questions from a short story with three to four word sentences.

Student's math skills indicated a variety of abilities regarding addition, subtraction, multiplication, and division. He recognized number words. He read 22 out of 23 math direction words, missing only "reciprocal," but did not demonstrate comprehension of them. He read and comprehended vocabulary for United States money such as cent, dime, dollar, nickel, penny, quarter.

Ms. Condon helped Student complete the Recreation and Leisure Survey

evaluation tool that was part of the Unique Learning System Transition Passport. Ms. Condon sat with Student as he looked at the survey on the computer screen and she read aloud to him the questions, Student pointed to the answer he wanted on the screen, and she told him to click the mouse. Student was familiar with the standard symbols from the Unique Learning System curriculum used in class and Ms. Condon had no reason to believe Student did not understand the pictures used in the survey.

Ms. Kinney conducted the other portions of the psychoeducational reassessment. Ms. Kinney reviewed Student's records and observed Student three times in different settings, in addition to observing him during formal testing procedures. She consulted with Student's teacher and Parents, using an interpreter or forms written in Vietnamese. She used the following instruments for the following purposes:

- Comprehensive Test of Nonverbal Intelligence, Second Edition, a norm-referenced test using a nonverbal format to estimate the general intelligence of children and adults whose performance on traditional intelligence tests might be adversely affected by subtle or overt impairments involving language or motor abilities;
- Adaptive Behavior Diagnostic Scale, an interview-based rating scale to assess the adaptive behavior of individuals between the ages of two through 21 years, to establish the presence and the magnitude of adaptive behavior deficits;
- Behavior Rating Instrument for Autistic and Other Atypical Children, an observational instrument to evaluate the status of autistic, atypical, and other low functioning children;
- Childhood Autism Rating Scale, Second Edition, a rating form covering 15 areas of behavior defined by a unique rating system developed to assist in identifying individuals with autism spectrum disorders and distinguishing

- them from individuals with other diagnoses;
- Gilliam Autism Rating Scales, Third Edition, a norm-referenced a screening tool designed for individuals three through 22 years of age to identify severe behavioral problems that may be indicative of autism;
  - Informal Autism Checklist, an informal checklist by which parents are asked to provide information regarding a student's verbal and nonverbal communication as well as social interaction at home and in the community;
  - Social Profile: Adult Version, a measure of social participation in activity groups that range from the family, to schools, to clinics, to clubs, to cultural groups, sports groups, and community groups, for individuals with skill abilities from 18 months through adulthood;
  - Reading-Free Vocational Interest Inventory, Second Edition, to measure the vocational interests of special populations, with no reading or writing required, using pictures of different occupations to measure the vocational likes and dislikes of students and adults who were intellectually disabled, learning disabled, adult disadvantaged, or enrolled in alternative or vocational/career training programs;
  - Pictorial Interest Inventory, a vocational inventory developed to identify occupational interests by using pictures of people at work rather than text-based materials, structured around eight different career fields;
  - Vocational Feedback/Work Survey, an informal survey using a Unique Learning System component to learn a student's preferences for environmental features of a work site;
  - Work Personality Profile, an observational tool to identify potential barriers to employment, described as behaviors that will limit a person's chances for employment; and

- Recreation and Leisure Survey, a community evaluation regarding a student's current recreation and leisure activities and possible future choices.

Ms. Kinney provided Parents several forms, surveys, and rating scales to complete. She gave them forms in Vietnamese. Parents returned the forms with their responses written in English. Most rating scales completed by Parents resulted in scores very similar to Student's teacher and case manager Ms. Condon.

Ms. Kinney considered whether Student met the eligibility criteria of autism and of intellectual disability. She concluded Student continued to demonstrate a developmental disability that significantly affected verbal communication and nonverbal communication and social interaction, and adversely affected educational performance and therefore continued to meet eligibility criteria under the category of autism. She also concluded Student presented with significantly below average intellectual functioning and delays in adaptive behavior, which manifested during the developmental period, and adversely affected educational performance and therefore qualified under the eligibility category of intellectual disability.

Ms. Kinney documented the results of her assessments in a written report, in which she also included other assessment components. The written report was dated November 2, 2018, the date originally scheduled for the IEP team meeting to review the triennial reassessment.

#### NOVEMBER 2, 2018 LANGUAGE AND SPEECH ASSESSMENT AND REPORT

Speech-language pathologist Phoebe Chen conducted the language and speech assessment. Ms. Chen held a bachelor's degree in sociology and a post-baccalaureate certificate in speech language pathology. She had a master's degree in speech language pathology. She was credentialed and licensed as a speech-language pathologist in California since 2015. At the time of hearing, she had worked for Garden Grove for three years, and all three years she worked at Jordan Intermediate with the students in the

adult transition program. During the 2018-2019 school year, she provided speech therapy to Student on an individual basis for 90 minutes per week, and in a group for 30 minutes per week.

Ms. Chen's language and speech assessment included her own observation and assessment tools she administered herself, as well as some assessment tools and information from Ms. Kinney's psychoeducational assessment. She reviewed Parents input on forms provided by Ms. Kinney. She conducted a record review, observed Student, consulted Student's teacher, took a language sample, and used the following instruments for the following purposes:

- Brigance Inventory of Early Development, Third Edition, to assess Student's listening and speaking skills within the classroom and community setting;
- Goldman-Fristoe Test of Articulation, Third Edition, a standardized assessment to measure speech sound abilities in the area of articulation in individuals ages two years to 21 years and 11 months old that compared an individual's intelligibility in connected speech with others of the same gender and age or grade;
- Social Thinking Dynamic Assessment Protocol Double Interview Task, to assess social thinking and related social pragmatic behavior and its impact on social and academic functioning, if any;
- Vocabulary Assessment Scales – Receptive, and Vocabulary Assessment Scales – Expressive, using full-color digital photographs to measure receptive and expressive vocabulary in English for individuals ages 3 to 95 with more ecological validity and more transparent assessment of a person's language abilities than similar measures that use line drawings for hard-to-test clinical groups; and
- Oral and Written Language Scales, Second Edition, an assessment of receptive



and expressive language for individuals aged 3 to 21, for listening comprehension and oral language expression.

Ms. Chen was familiar with how to administer these instruments. The assessment materials and procedures used during the speech and language evaluation were selected so as to not be racially, culturally, or sexually discriminatory. The effects of environmental, cultural, or economic disadvantage were considered in the selection and administration of the instruments used. The materials and procedures were administered in Student's native language of English and were validated for the specific purpose for which they were used. Ms. Chen had worked with Student in English, and did not believe Student would have performed better or more proficiently if he had been assessed in Vietnamese with the help of an interpreter. A variety of tools and strategies including parent input were used to assess student behavior. No single procedure was used as the sole criterion for determining recommendations of an appropriate educational program.

Ms. Chen took a language sample from Student using a tool designed to be used with much younger students. However, the picture book story Ms. Chen chose to ask Student about was based on Student's performance on the expressive and receptive language tests and his age equivalency on the Oral and Written Language Scales. She did not run the language sample through the computer software designed to analyze it because Student was outside the age range for the standardized software analysis. She only used the language sample to document Student's abilities to retell a narrative story from a wordless picture book within the levels at which Student performed.

Ms. Chen concluded Student had an articulation disorder and language disorder, and met eligibility for the category of speech and language impairment. She noted that although Student continued to meet the criteria as a student with a speech and language impairment, his global speech and language delays, which included persistent

articulation errors, atypical voice characteristics, and deficits in receptive and expressive language and social communication skills, were best described by the eligibility category of autism rather than a separate speech and language impairment. She believed Student's speech and language impairment was part and parcel of his autism.

The results of Ms. Chen's speech and language assessment were written into the psychoeducational assessment report dated November 2, 2018. Ms. Chen signed the psychoeducational assessment report.

#### FEBRUARY 7, 2019 IEP TEAM MEETING TO REVIEW RESULTS OF ASSESSMENTS

Garden Grove sent Parents the occupational therapy assessment report and the psychoeducational assessment report, including the language and speech assessment, on November 1, 2018, the day before the IEP team meeting scheduled for November 2, 2018. Father emailed Garden Grove requesting to reschedule the IEP team meeting to allow Parents a week to review the reports before the meeting. The IEP team meeting was rescheduled to November 30, 2018, but Parents cancelled. The IEP team meeting was rescheduled to December 20, 2018, but Parents cancelled again. The IEP team meeting was rescheduled to January 23, 2019, but on January 8, 2019, Mother requested to schedule it for February 7, 2019.

Among other participants, Mr. Roguel, Ms. Kinney, Ms. Condon, and Ms. Chen attended the IEP team meeting on February 7, 2019. Mr. Roguel, Ms. Kinney, and Ms. Chen each reviewed and discussed their assessments and report with Parents. A Vietnamese interpreter/translator was present. Parents did not have questions about or comments regarding the triennial reassessments, despite being given the opportunity to ask questions or make comments.

#### PARENTS REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

On February 12, 2019, an attorney for Student wrote Garden Grove a letter

disagreeing with the triennial reassessment and requesting independent educational evaluations in all areas Garden Grove assessed.

On March 14, 2019, Garden Grove wrote to Parents stating Garden Grove understood Parents' letter as a request for independent educational evaluations in the areas of psychoeducation, speech and language, and occupational therapy. Garden Grove denied Parents' request because after reviewing the triennial reassessments, Garden Grove believed it comprehensively assessed Student in all areas of suspected need and complied with all applicable statutory and regulatory requirements. Garden Grove informed Parents it would file a request for a due process hearing to defend the appropriateness of its assessments in the areas of psychoeducation, speech and language, and occupational therapy.

The next day, on March 15, 2019, Garden Grove filed its request for due process hearing.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

In this discussion, unless otherwise indicated, this introduction's legal citations are incorporated into each issue's conclusion. All references to the Code of Federal Regulations are to the 2006 version.

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. §1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The Individuals with Disabilities Education Act is often referred to as the "IDEA." 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 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).)

A free appropriate public education, often called 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 Individualized Education Program, commonly called an 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 or 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 that is developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, needs, and academic and functional goals related to those needs. It also provides a statement of the special education; related services, which include transportation and other supportive services; and program modifications and accommodations that will be provided for the child to work towards the stated goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39; Cal. Code Regs., tit. 5, § 3001, subd. (p).)

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 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.)

In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000] (*Endrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstances.” “Every child should have a chance to meet challenging objectives.” (*Ibid.*) *Endrew F.* explained that “this 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.) The Court noted that “any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” (*Id.* at p.999.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.* The Court acknowledged that Congress had not materially changed the statutory definition of a FAPE since *Rowley* was decided and so declined to change the definition itself. The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

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, assessment, 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).) Generally, a party is limited to filing a request for due process two years from the date the person knew or should have known of the facts which form the basis for the request for a due process hearing.

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).) Here, Garden Grove requested the hearing, and therefore has the burden of proof on the issues.

#### ISSUES 1 AND 2: LEGAL ADEQUACY OF OCCUPATIONAL THERAPY AND MULTIDISCIPLINARY ASSESSMENTS AND REPORTS, INCLUDING PSYCHOEDUCATIONAL, AND SPEECH AND LANGUAGE ASSESSMENTS

Garden Grove contends its occupational therapy evaluation of Student in September 2018, and multidisciplinary evaluation of Student in November 2018, including the psychoeducational and language and speech assessments, were conducted in accordance with the legal requirements and that Student is not entitled to independent educational evaluations at public expense. Student disagreed with the assessments and requested independent evaluations at public expense.

When a student is eligible for special education and related services, the school district must reassess the student at least once every three years, unless the parent and school district agree, in writing, that reassessment is unnecessary. (Ed. Code, § 56381, subd. (a)(2).) This is commonly referred to as a triennial reassessment. The purpose of the reassessment is to determine:

1. Whether the student continues to have a disability as defined under federal law;
2. The present levels of performance and educational needs of the student; and

3. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general education curriculum.

(Ed. Code, § 56381, subd. (b)(2)(A)-(D).)

Reassessment shall be conducted under the same procedures as for initial assessments. (Ed. Code, §§ 56381, subd. (e), 56320 et. seq.) A reassessment usually requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain consent, a school district must develop and propose to the parents a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).)

The required notice of assessment consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).) The assessment plan must be provided in a language easily understood by the public and in the native language of the parent; explain the types of assessments to be conducted; and notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).)

The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision; the assessment may begin immediately upon receipt of the parent's consent. (Ed. Code, § 56321, subds. (a) & (c)(4).)

The IDEA and California state law require that a school district assess a student in all areas of his or her suspected disability. (20 U.S.C. § 1414(b)(3); Ed. Code, § 56320, subd. (f).) A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); see also Ed. Code, § 56320, subd. (b)(1).) The assessment must be

sufficiently comprehensive to identify all of the student's special education and related services needs, regardless of whether they are commonly linked to the student's disability category. (34 C.F.R. § 300.304(c)(6).)

Assessments and other evaluation materials must be administered by trained and knowledgeable personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(iv) & (v), (3); Ed. Code, § 56320, subd. (b)(3).) 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 local educational agency." (Ed. Code, §§ 56320, subd. (g), and 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).) A health assessment must be conducted by a credentialed school nurse or physician. (Ed. Code, § 56324, subd. (b).)

Tests and assessment materials must be selected and administered so as not to be racially, culturally or sexually discriminatory; must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible; and must be used for the purposes for which the assessment or measures are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(i), (ii) & (iii); Ed. Code, § 56320, subds. (a), (b)(1) & (2).) The school district must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).) No single measure or assessment shall be used as the sole criterion for determining whether a student is a child with a disability or for determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e).)

The personnel who assess a student must prepare a written report that includes, among other items not applicable to Student's situation:

1. whether the student may need special education and related services;



2. the basis for making that determination;
3. the relevant behavior noted during observation of the student in an appropriate setting;
4. the relationship of that behavior to the student's academic and social functioning;
5. the educationally relevant health, development, and medical findings, if any; and
6. if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage.

(Ed. Code, § 56327.)

The report must be provided to the parent after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

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, subd. (c).)

A school district must provide parents with prior written notice when it refuses to initiate or change the identification, evaluation, or educational placement of a child or

the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3).)

Garden Grove responded in writing to Student's request for an independent evaluation one month after Student's request, stated the basis for its denial of the request for an independent evaluation, and filed a request for due process the next day. Garden Grove did not unnecessarily delay in filing to defend its assessment.

All portions of Garden Grove's multidisciplinary assessment, including the psychoeducational and language and speech assessment, and the occupational therapy assessment, met all legal requirements for assessments. Garden Grove met with Parents to develop an assessment plan to conduct a comprehensive triennial reassessment of Student. The assessment plan was in language easily understood, in the native language of Parents, explained the types of assessments to be conducted and was further explained to Parents in a meeting with Ms. Kinney and a Vietnamese language interpreter/translator, and notified Parents that no IEP would result from the assessments without their consent. Parents consented to the assessment plan.

Each assessor who conducted the occupational therapy evaluation, and who contributed to the multidisciplinary evaluation, was qualified to conduct the assessment. In addition to being familiar with Student's disabilities of autism and intellectual disability, each assessor was qualified and experienced in conducting assessments on students between 18 and 22 years of age with developmental disabilities. Mr. Roguel was a licensed occupational therapist with years of experience in conducting educationally based assessments. He was familiar with Student from having assessed him in the past, supervised Student's occupational therapy, and observed Student over the years in a variety of educational settings. Ms. Chen was a licensed speech-language pathologist with years of experience conducting educationally based assessments. She was providing Student speech and language services at the time she conducted the assessment. Ms. Condon was Student's special education teacher at the time of the

assessments, and familiar with Student from daily interactions with him. Each assessor was trained to administer the test instruments used and competent to interpret the results. In addition, Ms. Kinney was a school psychologist, and Ms. Rymer was a school nurse, qualifying them to conduct assessments of Student's intellectual and emotional functioning, and health, respectively.

The assessment instruments were appropriate to administer to Student, selected so as not to be discriminatory, and administered in accordance with any test instructions. The assessors used assessment instruments that were valid and reliable. The assessors used a variety of assessment measures, both standardized and non-standardized, and reviewed existing evaluation data.

Parents contributed information about Student. Mr. Roguel gave Parents a form written in English and requested they complete it, which they did. It would have been better to give Parents the Adolescent/Adult Sensory Profile form in Vietnamese, like Ms. Kinney did with forms relevant to her psychoeducational assessment. But Parents completed the form and their responses were consistent with and corroborated by sensory functioning and motor development information provided by Ms. Condon, the occupational therapy assistant who worked with Student, and Mr. Roguel's personal knowledge of Student's sensory processing patterns.

Student was assessed in all areas of suspected disability within the psychoeducational assessment realm, speech and language development, and educationally relevant motor development. Mr. Roguel prepared an occupational therapy evaluation report, and the other assessors prepared a collaborative multidisciplinary report, which explained the assessment results, described Student's strengths and weaknesses, and discussed Student's need for special education and related services. Garden Grove provided Parents a copy of the occupational therapy evaluation report, and the multidisciplinary/psychoeducational report on November 1,

2018, prior to the February 7, 2019 IEP team meeting, at which the reports were reviewed and discussed.

Mr. Roguel, Ms. Kinney, Ms. Rymer, Ms. Condon, and Ms. Chen each administered assessment materials in the language and a form most likely to yield accurate information on what Student knew and could do academically, developmentally, and functionally, except where it was not feasible to do so. Each used standardized, non-standardized, and informal measures which, based upon their professional education, training and experience in their respective fields, provided accurate and sufficient information about Student for purposes of educational planning.

Student, through his parents, declined to participate in the due process hearing, and called no experts in the fields of occupational therapy, psychology, physical health, or speech and language to contradict the results of the occupational therapy evaluation or the multidisciplinary assessment's components, or to persuasively criticize the assessment instruments or methods utilized. At the February 7, 2019 IEP team meeting and the due process hearing, each assessor explained why they chose the assessment tools they did, and that the assessment tools, whether normed tests or scales, were used for their intended purpose, valid and reliable, and administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. The tests and assessment materials utilized by Ms. Kinney were tailored to assess specific areas of educational need, and not merely designed to provide a single general intelligence quotient. Tests were selected and administered to best ensure that they accurately reflected the factors they were designed to measure, and not Student's impaired sensory, manual or speaking skills, except where those skills were the factors the test purported to measure.

Garden Grove convened an IEP team meeting to review the multidisciplinary assessment. The IEP team looked at all of the assessment reports, and no single measure

or assessment was used as the sole criterion for determining Student's eligibility or an appropriate educational program for Student. The February 7, 2019 IEP team had accurate, reliable, or sufficiently comprehensive triennial assessment information before it to appropriately and fully consider whether Student had additional unique needs that needed to be addressed at that meeting. Therefore, Garden Grove's September 2018 occupational therapy evaluation and report, and November 2018 multidisciplinary assessments and report, including the information and conclusions in the occupational therapy, psychoeducational, health, academic, and language and speech assessments, were appropriate.

In sum, the evidence showed that Garden Grove's September 2018 occupational therapy assessment and report, and November 2018 multidisciplinary assessment, including the psychoeducational and speech and language assessment, of Student was conducted in accordance with the legal requirements. Garden Grove satisfied its burden of proof on these issues and Student therefore is not entitled to independent evaluations at public expense in the areas of occupational therapy, psychoeducation, or speech and language.

## ORDER

Student is not entitled to independent educational evaluations at public expense in the areas of occupational therapy, psychoeducation, or speech and language.

## 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, Garden Grove prevailed on both issues decided.

## 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: July 23, 2019

*/s/*

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings