

BEFORE THE
SPECIAL EDUCATION DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT,

Petitioner

vs.

STUDENT,

Respondent.

OAH CASE NO. N 2005071032

DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on October 12, 13, 17, 31 and November 4 and 7, 2005.

Eileen Matteucci, Attorney at Law, represented Respondent (Student), who was not present. Student's parents (Parents) were present.

Elizabeth Rho-Ng, Attorney at Law, represented Petitioner San Ramon Valley Unified School District (District). Karen Heilbronner, Assistant Director of Special Programs, was also present.

District called and examined the following witnesses: Kathleen Hermann, Beverly Tom, Dr. Stephanie Cowen, Laura Gordon, Dr. Shirley Convirs, Yolanda Tadler, Kathleen Profumo, Karen Heilbronner, Angela Conner and Zenia Lemos-Britton. Student called and examined Jenna Krook. Neither of Student's parents testified.

The record remained open to receive written briefs, which were timely received

and marked for identification. District's briefs were marked Exhibit I and Exhibit III. Student's briefs were marked Exhibit II and Exhibit IV.

The record closed on December 5, 2005.

ISSUES

1. Whether District complied with the Individuals with Disabilities Education Act's (IDEA) (20 U.S.C. § 1400 et seq.) procedural requirements in its offer to Student for placement and services for the 2005 extended school year (ESY) and for the 2005/2006 school year (SY).
2. Whether District's offer of educational placement and services for ESY 2005 and SY 2005/2006 constituted a free and appropriate public education (FAPE).
3. Whether District may assess Student in the areas of social/emotional functioning and behavioral functioning without parental consent.

SUMMARY OF CONTENTIONS

1. Student contends that he was not provided FAPE because of District's violation of IDEA's procedural requirements during the individualized education plan (IEP) process. Specifically, Student claims that Parents were not afforded their right to meaningful participation. District contends that all procedural requirements were satisfied.
2. District contends that its offers for ESY 2005 and SY 2005/2006 constituted FAPE in all respects. Student's position regarding the substantive content of the offers is somewhat unclear. It appears that his only objections concern the areas of social skills and behavior.
3. District contends that current assessments in the areas of social/emotional functioning and behavioral functioning are necessary to further Student's education. Specifically, it is argued that they are necessary to develop IEP team consensus

regarding goals and objectives for Student in those areas. Student's position is somewhat unclear, but it appears that he contends they are not necessary because sufficient information exists.

FACTUAL FINDINGS

1. Student, born August 6, 1997, is currently eight years of age and lives with Parents within the District. He qualifies for special education under the category of autism and has received special education since preschool. Student currently attends Alamo School, where he is in the second grade.

BACKGROUND

2. Student was first enrolled in first grade at Rancho Romero School. In fall 2003, at the request of Parents, school psychologist Shirley Convors conducted a functional analysis assessment (FAA). The reason for the FAA was that Student was exhibiting behaviors such as hitting, humming, "not attending" and drawing pictures on his written work. Convors also provided 30 minutes each week of psychological consultation services. Convors issued a report in February 2004 that contained proposed social skills goals and objectives. Parents were not satisfied with the report. They requested that another FAA be completed by Vicki Wells, an independent assessor.

3. On June 4, 2004, a request for due process hearing filed by Student in December 2002 was resolved by settlement agreement. The agreement included the provision that Wells conduct an FAA and present a positive behavior intervention plan (PBIP) at an IEP meeting. District paid Student's parents \$5,750 to compensate Wells for these services. Wells began by observing Student at Rancho Romero towards the end of SY 2003/2004 and District believed that the FAA would be completed in the fall of 2004.

4. District convened four IEP meetings between June and August 2004. On August 30, 2004, District completed its offer for SY 2004/2005. The offer included

placement in a first grade classroom at Alamo School (Student was retained for a second year in first grade) and many additional services, including speech/language and social skills training. Parents did not agree with the offer and filed a due process hearing request. A hearing convened in mid-October 2004. After the hearing's conclusion, but prior to the issuance of the decision, Parents notified District that, consistent with District's offer, Student would begin attending Alamo School on November 1, 2004. Student has been a full time student at Alamo since that date.

5. Wells finally produced an FAA, dated March 28, 2005, approximately ten months after it was begun. It was delivered to District in April 2005. The FAA was incomplete and no PBIP was provided. In addition, by the time the report was received, the information it did contain was seriously out of date.

SOCIAL SKILLS/BEHAVIOR GOALS

6. Parents accepted the academic goals developed by the IEP team for SY 2004/2005, but requested that staff continue working on the social skills and behavior goals. On January 6, 2005,¹ an IEP meeting was held to review Student's transition to Alamo School. Student's teacher and service providers drafted proposed new goals and objectives based upon his performance to date and submitted them to Parents in advance of the meeting. At the meeting, the team discussed and agreed upon academic, occupational therapy (OT) and speech/language goals. Staff and Parents differed as to Student's social progress and it was unclear to staff what Parents were seeking for

¹ All subsequent dates are in 2005 unless otherwise stated.

Student in that area. Hence, goals in the areas of social skills and behavior were not agreed upon. Parents did not sign the January 6 IEP. ²

7. Due to the lack of agreement, two informal meetings were held – one to address social skills and one to address behavior. Although District staff found the meetings productive, they did not result in agreement on goals and Parents requested a return to the more formal IEP meetings. Meanwhile, Convirs revised the goals and objectives for social skills several times. Parents e-mailed revisions to her on January 25 and she incorporated those changes into the goals. At that point, Convirs thought that there was agreement. She sent Parents the revised goals, but Parents did not respond.

8. Similar events were occurring during this period regarding the production of behavioral goals for Student. Angela Connor is a behavioral specialist who worked with Student. Parents disputed the performance summary that Connor presented at the January IEP meeting. Parents questioned whether Student had met the goals for self-talk and non-compliance, and requested that goals be drafted for classroom behaviors. They also wanted more specific information regarding Student's behavioral functioning. Consequently, staff compiled behavioral data and prepared to report it to the IEP team. In addition, proposed behavioral goals for self-talk, non-compliance, waiting quietly while raising hand and completing seat work independently were drafted and given to Parents.

MARCH 10 IEP MEETING

9. The purpose of the March 10 IEP meeting was to review Student's progress in several areas, including social skills and behavior. In addition, the team

² Following the meeting, the parties received the Decision from the October 2004 due process hearing. The Decision, dated January 4, 2005, found District's offer for 2004/2005 both procedurally and substantively appropriate.

briefly discussed the possibilities for Student for ESY 2005. These included the District's summer enrichment program, speech/language services and OT.

The team did not reach agreement regarding new goals. During the discussions, Parents expressed an interest in how Student's behavior compared with his typically developing peers. Accordingly, Convirs and other staff developed a list of social skills behaviors and collected data from observing Student's peers in the classroom, recess and lunch settings. Convirs prepared a summary of this information (dated April 4) and gave it to Parents. They did not respond.

APRIL 14 IEP MEETING

10. On April 14 the IEP team reconvened to continue discussing social skills and behavior goals. A significant amount of time was spent defining and discussing self-talk. District staff did not believe that the self-talk Student engaged in impeded his learning or disrupted other students. Nonetheless, due to parental concern, the team agreed that behavioral staff would monitor his behavior closely and record their observations.

Because of frustration regarding previous meetings, an outside person was brought in to facilitate the meeting. Parents felt, however, that the facilitator favored the District. They believed that they were not allowed as much time as District had to present their point of view and that their attorney was rudely interrupted. District staff did not agree and believed the facilitator enforced the ground rules for the meeting in a neutral manner. Unfortunately, disagreement over the facilitator's actions became another source of tension between the parties.

District brought a new team member to this meeting: Zenia Lemos-Britton, a school psychologist. She had served as an independent assessor for other District school sites and it was felt that she could assist in determining Student's social/emotional needs. In addition, the relationship between Parents and Convirs had

become quite strained and Lemos-Britton would be able to replace Convirs, if needed. District proposed that Lemos-Britton conduct a behavioral and social needs assessment.

Parents sent an addendum to District following the meeting that included the statement: "We are very tired to be asked what we want for [Student] behaviorally (this IEP) and socially (previous IEPs)."

On April 27 District sent Lemos-Britton's assessment plan for behavioral and social testing to Parents. They did not respond until June.

JUNE IEP MEETINGS AND COMMUNICATION

11. The June 9 IEP meeting constituted Student's annual review. Prior to the meeting, District sent home new proposed goals and objectives in several areas. The meeting covered many topics, including academic and speech/language goals. The team discussed whether another FAA would be useful given the dispute over Student's current level of functioning. District offered an assessment by District personnel to begin during ESY 2005. Parents desired an independent assessor and suggested a county behaviorist. The meeting ended following a discussion of programming for ESY 2005. Parents requested Quest Camp and District brought up a social skills program administered by Dr. Sandie Frawley. As the agenda was not completed, and pursuant to Parents request, the team agreed to continue the meeting to June 15.

On June 10 Parents sent an addendum to District that expressed their disappointment and frustration in several areas. Parents complained that they did not receive progress reports regarding academic, OT or speech prior to the meeting, per their previous requests. They also felt that more priority should have been given to the ESY issue. Parents declined District's offer of an assessment by Lemos-Britton, because "the District has already conducted an FAA and family is now entitled to conduct an independent FAA free of District interference."

12. Karen Heilbronner is District's Assistant Director for Special Programs. Although not an IEP team member, she is well acquainted with and involved in the educational planning for Student. Heilbronner participated in the prior settlement agreement and due process hearing and had communicated with Parents directly about various issues. On June 14 she wrote a letter to Parents "in part to follow-up on the IEP for [Student] on June 9 and to respond to your Parent Addendum received June 10." Heilbronner sent copies of the letter to all of the IEP team members. She agreed to provide progress notes to Parents in advance of meetings pursuant to their request. She also wrote:

Secondly, in anticipation of the IEP meeting to be held on Wednesday, June 15, the District is giving you this written notice of its complete offer for the ESY 2005 and 2005/2006 school year. Given how difficult it has been to complete the agenda items at [Student's] IEP meetings this year, we believed this notice would help you prepare any questions or comments in advance so that the team can discuss why it has rejected other options for [Student]. Because certain members of the IEP team will not be available after June 16, the last day of this school year, the District wanted to provide you with notice of its proposed offers in the event the entire team cannot reconvene prior to the start of the 2005-06 school year.

13. As to the 2005 ESY issue, Heilbronner stated that the offer was "based on [Student's] goals and objectives, and also on what the IEP team discussed would be necessary in order for [Student's] social skills to not regress unnecessarily over the

summer. The offer considers all the input that was provided at the June 9th IEP meeting . . . as well as information the District has obtained from Dr. Bob Field of Quest Camp and Dr. Sandie Frawley, the two summer programs mentioned at the June 9 IEP meeting.” Heilbronner wrote:

The District proposes to fund the summer enrichment program, with DIS [*sic*] services as follows, and a 5-week afternoon social skills program operated by a colleague of Dr. Sandie Frawley which, as currently scheduled, would provide [Student] social skills/social language training spread out over the course of the entire summer. The District has considered your request for Quest Camp but believes Dr. Frawley’s program would provide [Student] with more targeted social skills training in a structured setting with a smaller ratio than at Quest Camp and be consistent with [Student’s] social skills goals and objectives (including collaborative activities with peers, working on eye contact, perspective/turn-taking, listening skills and greetings).

14. The letter concluded with the following paragraph:

The IEP team will be prepared to discuss the above offer and address any concerns you have on June 15. Although we hope to reach agreement at the upcoming meetings, we understand that you may assert your right to dissent to the IEP. Attached is a copy of your Procedural Rights.

15. Heilbronner's letter provided Parents with concrete information they could use to prepare any questions or proposals. Although she refers to District's offer as "complete," the letter also explains that the offer is being sent in writing in order to facilitate discussion at the meeting.

On June 15 the IEP team, including Parents and their counsel, reconvened. The meeting was not productive and terminated early due to acrimony among the participants. District witnesses testified that an adversarial and hostile environment was created by Parents' counsel, who aggressively questioned team members about Heilbronner's letter, Dr. Frawley's social skills group and Quest Camp. District team members felt that they were treated inappropriately and disrespectfully by Student's counsel. Convirs characterized the meeting as the worst of "a lot of bad meetings."

DISTRICT'S PROPOSAL FOR ESY 2005

16. Throughout the 2004-2005 school year, Student needed academic support and special services in the areas of OT, speech/language and social skills. At the end of the year, he needed help in the areas of reading comprehension, OT, oral communication, pragmatics, and vocabulary. Although he had met his behavioral goals, Student needed ongoing support to maintain them. These included his use of self-talk, a special concern of Parents.

17. District's offer for the ESY 2005 was designed to further Student's goals and unique needs, including maintaining his social and behavioral progress. The offer included the summer enrichment program at Green Valley Elementary School from June 28 to July 28, with a 1:1 paraeducator for four hours daily; OT one time each week with pull-out for 30 minutes; speech/language services twice each week with small group pull-out for 30 minutes; classroom-based behavioral management support for 60 minutes each week; behavior analyst level consultation to staff for 30 minutes each week; and daily round-trip transportation. To follow the school summer program,

District offered a five-week independent social skills program operated by Dr. Sandie Frawley, including reimbursement for mileage to Parents.

18. Parents accepted District's ESY 2005 offer for the summer enrichment program and related OT and speech/language services. By their actions it also appears that they accepted the offer for the Frawley program. After Parents observed the program, Student attended the summer session, and continued to attend in the fall.

DISTRICT'S PROPOSAL FOR SY 2005/2006

19. Heilbronner's letter of June 14 also contained District's proposed offer for SY 2005/2006:

- Placement in a general education second grade classroom at Alamo School with 1:1 aide, full time (25 hours a week);
- Resource support, three times a week pull-out, 30 minutes each session;
- Speech and language therapy, two times a week, pull-out in small group;
- OT, 45 minutes a week of direct, 1:1, service;
- Classroom-based behavior management support, 60 minutes a week, and behavioral consultation, to classroom staff and parents, by District behavior analyst, 60 minutes a week;
- Academic goals presented and revised at the June, 2005 IEP meeting will be implemented;
- Speech/language goals presented and revised at the June 9, 2005 IEP meeting will be implemented;
- OT goals dated January 6, 2005 will continue to be implemented until the parties agree to new goals (Exhibit C) for the Fall 2005;
- Functional analysis assessment (FAA) to be conducted by a District behavior analyst, County employee or District- contracted independent consultant, to be completed and reviewed at an IEP meeting in the fall 2005;

- Behavioral goals to be developed and agreed-upon following the results of the FAA (and, until such agreement, the proposed behavioral goal on self-talk dated June 2005 (Exhibit D) will be implemented);
- Social skills goals will be developed following a meeting between parents and District psychologist and following the results of the FAA (and, until such agreement, the social skills goals dated May 26, 2005 (Exhibit E) will be implemented);
- Guidelines of Facilitating Behavior dated June 6, 2005 (Exhibit F) will be implemented until the parties agree to a positive behavior support plan following the FAA; and
- An annual IEP meeting will be held prior to June 9, 2006.

20. Numerous highly qualified District personnel were involved in formulating District's offer, each applying her expertise and knowledge of Student. The plan is comprehensive and proceeds logically from the placement and services he received both in SY 2004/2005 and in ESY 2005.

PARENTAL PARTICIPATION

21. Parents meaningfully participated as IEP team members in the planning process for Student that led to District's offer for ESY 2005 and SY 2005/2006. This participation included attendance at IEP meetings (always with legal counsel), attendance at additional less formal meetings held to address their specific concerns, written correspondence with District administrators and verbal communication with teachers and service providers. In addition, Parents received concrete information about Student on a continuous basis from teachers and service providers, including performance summaries and social plans. Parents provided input and advice that was seriously considered by District personnel, who provided numerous revisions of draft

goals and objectives. When Parents asked for more information and data, District staff responded to these requests.

22. District staff has been frustrated by the IEP team's inability to develop an IEP that Parents can agree to in all respects. Dr. Stephanie Cowen was a District program manager who was actively involved in Student's IEP process. Cowen's description of her attempts to work with Parents was consistent with testimony from other District personnel. For example, Parents would disagree about a position staff had taken. When Parents were then asked what they wanted, they would frequently respond, in essence, "you are the professionals; you tell us what you think it should be." This happened repeatedly. Parents would be asked what they wanted, and they would reply that the focus should be on Student's needs. But when staff made proposals based on his needs, Parents would again disagree. In Dr. Cowen's words, "true collaboration was very difficult to obtain."

DISTRICT PROPOSAL FOR SOCIAL/EMOTIONAL ASSESSMENT

23. On April 27 District sent Parents a proposed Assessment Plan in accordance with the April 14 proposal to assess Student in the areas of social and emotional development (see Finding 10). The proposal was authored by Lemos-Britton, who is well qualified by virtue of education and experience to conduct such an assessment. The accompanying letter requests that Parents sign if they are in agreement and return the document to District. Parents did not respond – either in agreement or disagreement. On May 16 Parents were again asked for their permission to conduct the assessment. They did not respond.

24. The topic of social skills development has long been a major area of dispute between the parties. When staff presented information at IEP meetings regarding Student's present level of performance Parents commonly disagreed. Parental objection appeared to be grounded in the belief that the Wells FAA rendered the

proposed assessment unnecessary. However, the Wells FAA was insufficient to provide the necessary information. In sum, despite numerous and extensive discussions, the parties did not reach consensus regarding goals, objectives or services in this area.

DISTRICT'S PROPOSAL FOR AN FAA

25. District's offer for SY 2005/2006 included a proposal to conduct a new FAA. In her June 14 letter outlining the offer, Heilbronner wrote:

Even though the team has historically not been in agreement this year about behavioral or social skills goals and objectives, the district is offering an FAA by a qualified behavior analyst from the District or County, or an independent contractor of the District. The District will identify a list of possible assessors. Once the FAA is completed, which we anticipate will be in the fall 2005, the IEP team will review the FAA and collaborate on the development of social skills and behavioral goals.

26. On July 14 Heilbronner sent Parents a follow-up letter and Assessment Plan for their consideration. Parents did not sign the consent form.

27. District desires a new FAA for many of the same reasons it desires a social/emotional assessment. The last agreed-upon Goals and Guidelines for Facilitating Behavior are more than two years old, as is the Convirs FAA. The Wells FAA contained insufficient data to develop goals and what information it does contain is now seriously out of date. Although Student has not exhibited the types of behaviors that would mandate an FAA, Parents have been consistently concerned about behaviors they believe impede his learning. These include his use of self-talk and some incidents of

non-compliance. An FAA would provide a more complete picture of Student's current behavioral needs that would assist the IEP team to develop goals and objectives.

STUDENT'S PROGRESS IN GENERAL

28. District teachers, other staff and administrators credibly testified that Student has made educational, social and behavioral progress since his enrollment at Alamo School on November 1, 2004. No evidence to the contrary was presented. Objective evidence made clear that Student has benefited and continues to benefit from the education and services provided by District.

LEGAL CONCLUSIONS

ISSUE NO. 1

1. The purpose of IDEA is to ensure a FAPE to children with disabilities. The United States Supreme Court decision *Hendrick Hudson Central Sch. Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176 is the seminal case. *Rowley* identifies two areas of inquiry when considering compliance with IDEA. The first concerns satisfaction of the procedural requirements of the Act. (*Id.* at p. 206.) The safeguard of parental participation in the IEP process was specifically addressed, with the Court noting that the Act's requirement of parental involvement serves to ensure that the rights accorded the individual child are protected. (*Id.* at p. 208.) Nonetheless, procedural violations do not result in a denial of FAPE unless they have resulted in substantive harm.³ (*Knable v. Bexley City Sch. Dist.* (6th Cir. 2001) 238 F.3d. 755, 764.)

³ IDEA was amended effective July 1, 2005 (See 20 U.S.C. 1400 et seq.) It is now consistent with case law in providing that procedural violations may result in a denial of FAPE only if they significantly impeded the parents' opportunity to participate in the

2. In this matter, Student contends that his procedural rights were violated because Parents were not accorded the opportunity to meaningfully participate in the IEP process. Student points to Heilbronner's letter of June 14 and claims that it evidences a "hijacking" of the process by Heilbronner, who was not a member of the IEP team. In support Student cites three cases, but none support his argument. *W. G. v. Board of Trustees of Target Range School District No. 223* (9th Cir. 1992) 960 F.2d 1479 concerns a district that prepared an IEP independently and without parental input. The district then presented it to the parents as a fait accompli. In *Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, the district failed to respond to the parents request for all of the student's records. Thus, her parents were not informed she suffered from autism or that a psychiatric evaluation had been recommended. This failure prevented the development of an IEP in accordance with procedural requirements and "undermined the very essence of IDEA." (*Id.* at p. 892.) *Isadora Shapiro v. Paradise Valley Unified School District No. 69* (9th Cir. 2003) 317 F.3d 1072 involved convening an IEP meeting without the parents or the student's teacher from her private school. Although the district knew the parents could not attend and despite the parent's request that it be rescheduled, the district held the meeting and drafted an IEP based on information from prior meetings.

Student's position ignores the facts surrounding the June 14 letter's provision. The letter was written and presented to Parents in order to assist them to prepare for a continued IEP meeting – to assist them in being meaningful participants. Participants are not required to attend IEP meetings without information or ideas. School officials may form opinions and put them in writing prior to IEP meetings (*N. L. v. Knox County*

decision making process or cause a deprivation of educational benefits. (20 U.S.C. 1415(f)(3)(E).)

Schools (6th Cir. 2003) 315 F.3d 688, 693-94, fn. 3) so long as they still “come to the meeting with suggestions and open minds, not a required course of action.” (*Id.* at pp. 694-95.)

3. Despite occasional use of conclusionary language, Heilbronner’s letter does not demonstrate that District had made up its mind so as to prevent meaningful participation by Parents in the IEP process. On the contrary, the letter was part of an ongoing process utilized by all concerned. And any procedural defects that did occur – such as the failure to have an agreed-upon IEP in place by fall 2005 – did not result in any lost educational opportunity for Student. These defects were technical violations that do not result in a denial of FAPE. (See *MM v. School District of Greenville County* (4th Cir. 2002) 303 F.3 523, 534.) Hence, the evidence demonstrated that District complied with IDEA’s procedural requirements respecting its offer of placement and services for ESY 2005 and SY 2005/2006.

ISSUE NO. 2:

4. The second area of inquiry identified by *Hendrick Hudson Central Sch. Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. 176, concerns what substantive education IDEA requires. The best possible education is not required, nor is it necessary that the maximum potential of each child be realized. Rather, IDEA requires that the unique needs of the disabled child be considered and that he or she receive “some educational benefit” from the program and services provided. (*Id.* at p. 203) In other words, an IEP is valid if the child’s unique needs have been considered in fashioning a plan that provides access to educational progress for that child. IDEA does not mandate a particular amount of progress or achievement. However, objective indications of progress are relevant to an analysis of whether FAPE was offered or provided (*Id.* at p. 207, n. 58).

5. The offers proposed by District for ESY 2005 and SY 2005/2006 contain a wealth of individualized services supporting Student’s educational placement at Alamo

School. For ESY 2005, it was proposed that Student attend an enrichment program supplemented by services and another program addressing his need for social skills. Parents accepted this offer and Student made progress. For SY 2005/2006, a second grade placement supplemented by services, again tailored to Student based upon the information gathered by District staff, was offered. It was undisputed that Student has progressed and continues to progress well in every area. Although it can be inferred from Student's argument that his parents dispute District's conclusions regarding his progress behaviorally and socially, no evidence to support this inference was presented.

6. The evidence demonstrated that District's offer for ESY 2005 and SY 2005/2006 met Student's educational needs and was reasonably calculated to provide him with educational benefit, therefore Student was provided FAPE.

ISSUE NO. 3:

7. Education Code section 56320 provides: "Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted. . ." However, "an assessment may not be conducted, unless the written consent of the parent or guardian is obtained." (Ed. Code § 56321, subd. (c).) In addition, reassessments are required at least once every three years (Ed. Code § 56381, subd. (a).) and consent must again be obtained unless the district can demonstrate that the parents have failed to respond to a request for consent despite reasonable measures. (Ed. Code § 56381, subd. (f).) In this matter, District desires assessments both to update the information it has about Student in the areas of social/emotional skills and behavior and, hopefully, to help the IEP team reach consensus regarding goals and objectives in those areas.

8. For reasons not clear, Student's parents have failed to sign consent forms for the proposed assessments. In his closing brief, Student argues that reassessment is

not necessary because sufficient information exists by virtue of previous assessments. The evidence demonstrated otherwise; for example, it was shown that the Wells FAA lacked value. In addition, Student claims that District seeks the reassessments in order to convince Parents that it has offered FAPE. This position is advanced without factual support.

9. The IEP has been called the basic mechanism for advancing the goals of IDEA. (*Murray v. Montrose County School District* (10th Cir. 1995) 51 F.3d 921, 925.) Without sufficient current information, however, an IEP lacks foundation. It is essential that educators and parents have thorough information about students in order to formulate optimal IEPs. It is axiomatic that students grow and change; hence, the three-year reassessment requirement. Student's position that sufficient information exists is belied by both the passage of time and the IEP team's failure to reach consensus regarding the goals and objectives for Student in these two areas. It is true that District could proceed to finalize the IEP without parental agreement because such is not required by IDEA. It is to District's credit that it still seeks to find common ground with Parents despite the difficulties to date. Perhaps the assessments will not lead to agreement, but they will provide up-to-date information and are therefore deemed necessary to advance Student's education.

10. The evidence demonstrated that District should be permitted to conduct assessments as provided for in the April 27, 2005 and July 14, 2005 Assessment Plans without consent of Parents.

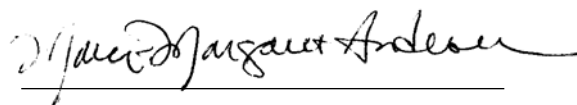
PREVAILING PARTY

11. District prevailed on all issues. (Ed. Code, § 56507, subd. (d).)

ORDER

1. District may implement its offer for the 2005/2006 school year without the consent of Parents if Student remains enrolled in District.
2. District may conduct assessments as provided in the April 27, 2005 and July 14, 2005 Assessment Plans without the consent of Parents if Student remains enrolled in District.

DATED: January 17, 2006



MARY-MARGARET ANDERSON

Administrative Law Judge

Office of Administrative Hearings

Special Education Division

NOTICE OF APPEAL RIGHTS

The parties are advised that they have the right to appeal this Decision to a state court of competent jurisdiction. Or, a party may bring a civil action in United States District Court. An appeal must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)