

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN LUIS COASTAL UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012090333

DECISION

Administrative Law Judge (ALJ) Peter Paul Castillo, from the Office of Administrative Hearings (OAH), State of California, heard this matter in San Luis Obispo, California, on October 9, 2012.

Attorney Peter Sansom represented the San Luis Coastal Unified School District (District). Executive Director of Student Support Services, Dr. Jackie Kirk-Martinez, attended throughout the hearing on behalf of the District.

Educational Advocate Brad Bailey represented Student. Student's Mother and Father attended throughout the hearing.

The District filed a request for due process hearing on September 11, 2012. There were no continuances granted in this matter. At the conclusion of the hearing on October 9, 2012, the matter was submitted for decision.

ISSUE

Are the proposed assessors trained and knowledgeable in administering the Autism Diagnostic Observation Schedule (ADOS) to Student, pursuant to the May 4, 2012, assessment plan?¹

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student is a 6-year-old boy who resides with Parents within the geographical boundaries of the District, and is in a District kindergarten class for the 2012-2013 school year (SY). Student is eligible for special education services under the category of speech and language impairment. The District found Student eligible for special education services on or about August 29, 2011. Student attended a private school for SY 2011-2012 with an individualized service plan.

DISTRICT'S MAY 4, 2012 ASSESSMENT PLAN

2. Once a student is determined to be eligible for special education programs and services, that student must be assessed at least once every three years, and not more often than once yearly, unless the parents and the local educational agency agree to a different assessment schedule.

3. In the spring of 2012, Parents informed the District that they wanted Student to attend a District school for SY 2012-2013 and provided the District with a private assessment that found Student had an autism spectrum disorder.

¹ Parents have permitted the District to complete the remainder of the assessment provided in the May 4, 2012 assessment plan.

4. On May 4, 2012, the District developed an assessment plan, which Parents consented to on May 18, 2012. The District proposed a comprehensive assessment, including the use of test instruments to determine whether Student also qualified for special education services under the category of autistic-like behaviors. As part of the assessment, the District would administer the ADOS as part of its evaluation to determine Student's eligibility under the category of autistic-like behaviors.

5. The District informed Parents that District school psychologists Deborah Johnson and Sharon Corcoran would jointly administer the ADOS. Ms. Johnson would interact with Student to prompt activities the ADOS evaluates, while Ms. Corcoran would observe and take notes. At the conclusion of the ADOS, Ms. Johnson would make her own notes and record her scores. Ms. Johnson and Mr. Corcoran would compare their notes and ADOS scores, which would then be recorded in the assessment report.

6. On or about September 10, 2012, Parents withdrew their consent to the May 4, 2012 assessment plan only as to the District conducting the ADOS with Ms. Corcoran based on concerns that she failed to assess Student as promised at the August 30, 2010 individualized education program team meeting.²

7. Student stipulated at hearing that Ms. Corcoran was qualified to administer the ADOS based on her education and experience. At hearing, Dr. Kirk-Martinez stated Ms. Johnson was the school psychologist in charge of the assessment process and would write the assessment report, including the ADOS results, and that Ms. Corcoran was only to assist Ms. Johnson in the ADOS administration. Parents were

² No factual findings or legal conclusions are made in this decision as to whether Ms. Corcoran agreed to assess Student on August 30, 2010, and issue an assessment report, or her legal obligation to do so, which is the subject of Student's separate complaint against the District, OAH Case No. 2012090695.

not aware of that information before the hearing, and agreed that Ms. Corcoran could assist Ms. Johnson in the administration of the ADOS.

8. In this case, the District had ample reason to assess Student for eligibility under the category of the autistic-like behaviors based on information presented by Parents. The ADOS is an appropriate test instrument for the District to use in evaluating Student's eligibility under the category of autistic-like behaviors. Ms. Corcoran has adequate education and experience to assist Ms. Johnson in administering the ADOS for Ms. Johnson to complete her assessment of Student.

9. Therefore, the District has met its burden of proof that the proposed ADOS administration by Ms. Johnson and Ms. Corcoran is appropriate and will be conducted by qualified personnel. The District is therefore entitled to an order that it may conduct the ADOS of Student pursuant to the assessment plan dated May 4, 2012, without parental consent if Parents subsequently withdraw their consent for the District to conduct the ADOS with Ms. Johnson and Ms. Corcoran.

LEGAL CONCLUSIONS

1. As the petitioning party, the District has the burden of proof in this matter. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. A parent cannot withhold consent as a means of forcing a school district to adopt the parents' own evaluation. "Every court to consider the [Individuals with Disabilities Act's] reevaluation requirements has concluded that "'if a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation.'" (*M.T.V. v. DeKalb County School Dist.* (11th Cir. 2006) 446 F.3d 1153, 1160, quoting *Andress v. Cleveland Independent School Dist.* (5th Cir. 1995) 64 F.3d 176, 178-179.) The Ninth Circuit held in *Gregory K. v. Longview School Dist.* (9th

Cir. 1987) 811 F.2d 1307, 1315 that "if the parents want [their child] to receive special education services under the [IDEA], they are obliged to permit [re-assessment] testing."

3. Under special education law, a reassessment of a student must be undertaken by the district, if the reassessment is requested by the parents, or is warranted by the student's needs and performance. (20 U.S.C. § 1414(a)(2)(A).) The reassessment must occur at least every three years, and shall not occur more often than once per year, unless the parents and the district otherwise agree. (20 U.S.C. § 1414(a)(2)(B)(i)-(ii), 34 C.F.R. § 300.303(b) (2006).)

4. A student is eligible in California for special education and related services if, among other things, he "exhibits any combination of the following autistic-like behaviors, to include but not limited to:

- (1) An inability to use oral language for appropriate communication.
- (2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.
- (3) An obsession to maintain sameness.
- (4) Extreme preoccupation with objects or inappropriate use of objects or both.
- (5) Extreme resistance to controls.
- (6) Displays peculiar motoric mannerisms and motility patterns.
- (7) Self-stimulating, ritualistic behavior."
- (8) (5 Cal. Code Regs., § 3030, subd. (g).)

ARE THE PROPOSED ASSESSORS TRAINED AND KNOWLEDGEABLE IN ADMINISTERING THE ADOS TO STUDENT, PURSUANT TO THE MAY 4, 2012, ASSESSMENT PLAN?

5. To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental

and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable, explain the assessments that the district proposes to conduct, and state that the district will not implement an IEP based on the assessment without the consent of the parents. (Ed. Code, § 56321, subds. (b)(1)-(4).) A school district must give the parents and/or the student at least 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

6. Special education assessments shall be conducted by qualified persons. (Ed. Code, §§ 56320, subd. (g), 56322.) A person is qualified if he or she has met federal and state certification, licensing, or other comparable requirements which apply to the area in which he or she is providing special education or related services. (Cal. Code Regs., tit. 5, §§ 3023, 3065.)

7. Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).) A school district can overcome a lack of parental consent for an initial assessment or re-assessment if it prevails at a due process hearing regarding the need to conduct the assessment. (20 U.S.C. §§ 1414(a)(1)(D)(ii)(I), 1415(b)(6)(A), 1414(c)(3); *Schaffer, supra*, 546 U.S. at pp. 52-53 [school districts may seek a due process hearing “if parents refuse to allow their child to be evaluated.”]; Ed. Code, §§ 56501, subd. (a)(3), 56506, subd. (e), 56321, subd. (c).) If a parent does not consent to an initial assessment or re-assessment, the school District may, but is not required to, file a request for a due process hearing. (34 C.F.R. § 300.300(a)(3)(i) (2006); Ed. Code, §§ 56321, subd. (c)(2), 56506, subd. (e).)

8. According to Factual Findings 2 through 9 and Legal Conclusions 1 through 7, based on information provided by Parents, the District needs to assess Student for possible eligibility under the category of autistic-like behaviors, even though Student is presently eligible for special education services under the category of speech

and language impairment. The District provided Parents with advance notice of its proposed assessment plan, and Parents provided initial consent to the entire assessment plan, but later withdrew their consent for Ms. Corcoran to assist with the ADOS. As part of the assessment for autistic-like behaviors eligibility, the ADOS is an appropriate test to administer, and can be administered by two persons. Ms. Corcoran is qualified to assist in the administration of the ADOS based on her education and experience. Ms. Corcoran will only be assisting Ms. Johnson for the ADOS and Ms. Johnson is the responsible person to complete portions of the May 4, 2012 assessment plan assigned to the District school psychologist, and based on that information from the District, Parents have agreed to allow Ms. Corcoran to assist Ms. Johnson with the ADOS administration. Therefore, the District established that it may conduct the ADOS proposed in the May 4, 2012 assessment plan with both Ms. Johnson and Ms. Corcoran.

ORDER

1. The District's request to assess Student pursuant to the May 4, 2012 assessment plan as to the ADOS administration by Ms. Johnson and Ms. Corcoran is granted.

2. If Student's Parents wish to have Student considered for special education services by the District, Student's Parents must make Student available for the ADOS administration by Ms. Johnson and Ms. Corcoran, in accordance with the May 4, 2012 assessment plan.

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, the District prevailed on the sole issue presented.

RIGHT TO APPEAL THIS DECISION

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

Dated: October 23, 2012

/s/

PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings