

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ROCKLIN UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014070464

DECISION

Rocklin Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on July 8, 2014, naming Parent on behalf of Student.

Administrative Law Judge Margaret M. Broussard heard this matter in Rocklin, California, on October 13, 15, 16, and 20, 2014¹.

Colleen Villarreal and Marcella Gutierrez, Attorneys at Law, represented Rocklin. Janna Cambra, Rocklin's special education director, was present at all times during the hearing.

Allison Hyatt, Attorney at Law, represented Student. Mother was present at all times during the hearing and Student was present for part of the hearing.

On October 20, 2014, the matter was continued until November 3, 2014, to allow the parties to submit closing briefs. The closing briefs were timely filed and the matter was submitted.

¹ ALJ Andrea Miles observed the hearing.

ISSUE

Did Rocklin's May 2014 speech and language assessment of Student meet all legal requirements such that Student is not entitled to an independent speech and language evaluation at Rocklin's expense?

SUMMARY OF DECISION

Rocklin seeks an order that its May 2014 speech and language assessment met all legal requirements such that it is not required to fund Student's request for an independent evaluation in this area. Rocklin did not show that the speech and language assessment met all legal requirements.

The assessment did not meet legal requirements because the assessor did not administer several of the assessments in accordance with the producer's instructions. In addition, the written assessment report provided to Parent and the individualized education program team did not accurately depict the results of the tests given, incorrectly characterized Student's speech and language abilities, did not adequately describe the procedures the assessor followed, and did not provide an interpretation of the results of some of the assessment tests such that the team could rely on the report to develop Student's IEP. The totality of the inadequacies in the assessment and the written report entitle Student to an independent speech and language assessment at public expense.

FACTUAL FINDINGS

JURISDICTION

1. Student is a five-year-old girl who has resided within the geographical boundaries of Rocklin at all relevant time periods. Student has been eligible for special

education since 2010. Student has a diagnosis of Down Syndrome and has significant needs in the area of speech and language.

STUDENT'S SPEECH AND LANGUAGE NEEDS AND SERVICES

2. Student began receiving speech and language therapy services before her second birthday. At that early age, Student had recognized deficits in expressive language, receptive language, speech skills and oral motor weaknesses. Student's therapy at that time was provided by Jan Johnson, a speech and language pathologist, vendored through the Alta California Regional Center.

3. Student began receiving special education services, including speech and language therapy, from Rocklin after turning three years of age. While Student enjoyed and sought out social companionship, her speech was often unintelligible to both known and unknown conversation partners. Student continues to express a clear intent to communicate and will often attempt communication several times before giving up. She continues to have significant needs in expressive and receptive language, speech skills, articulation and oral motor skills.

ROCKLIN'S MAY 2014 SPEECH AND LANGUAGE ASSESSMENT

4. Rocklin provided Parent with an assessment plan on April 21, 2014, asking for consent to undertake a comprehensive assessment of Student in many areas, including speech and language. The purpose of the assessment was to give the IEP team, including Parent, the information necessary to prepare for Student's transition from preschool to kindergarten. The assessment plan met all legal requirements. Parent consented to the assessment plan and the assessments were timely completed.

5. Rocklin's speech and language therapist Yvonne Katsuyama, a licensed speech and language pathologist, completed Student's speech and language assessment. The resulting report was presented as part of the larger "Pre-school

Transdisciplinary Transition Evaluation.” Ms. Katsuyama had also assessed Student in the spring of 2013 and had been providing Student speech and language services since March 2012.

6. As part of Student’s speech and language assessment, Ms. Katsuyama reviewed Student’s previous speech and language assessments, including assessments conducted by Ms. Johnson and another outside agency. She also observed Student in the classroom in both her special day class and regular education preschool class. Ms. Katsuyama gave Student what she referred to as 10 standardized and non-standardized tests, spoke with Student’s Parent and teachers, and prepared a written report².

Speech and Language Tests

7. Ms. Katsuyama administered several norm-referenced standardized assessment tests to Student, including the Preschool Language Scale -5, the Receptive One- Word Picture Vocabulary Test, the Expressive One-Word Picture Vocabulary Test and the Goldman-Fristoe Test of Articulation - 2. She also administered several non-norm referenced assessments including the Language Development Survey, the Descriptive Pragmatics Profile of the Preschool Clinical Evaluation of Language Fundamentals -2, the Pre-Literacy Rating Scale, the Khan-Lewis Phonological Analysis-2, the Apraxia Profile and the Kaufman Speech Praxis Test. All of these tests, with the exception of the Language Development Survey, whose origins are unknown, are

² Although Ms. Katsuyama referred to some of the 10 tests given as standardized tests and some of them as non-standardized tests, they were all standardized tests. Some of the tests were not norm-referenced tests and Ms. Katsuyama incorrectly used the term “non-standardized” interchangeably with non-norm referenced tests.

commercially available assessments with specific test protocols and detailed instructions from the producer of the test for both giving and scoring the assessments.

8. The test protocols for all of the assessment tests listed above were entered into evidence in the hearing, with the exception of the Khan-Lewis test. The Khan-Lewis assessment appears to be based upon data collected from the Goldman-Fristoe Articulation test, and Rocklin did not provide any explanation for the absence of the scoring rubric or protocols.

9. Ms. Katsuyama failed to complete many of the test protocols according to the directions on the protocols. Some of her errors, like not checking the confidence level of the standard score reported on Goldman-Fristoe, were insignificant because it did not materially change the information provided to Parent and the IEP team. Similarly, the Receptive Vocabulary test directions called for the administrator to put a number next to the correctly identified words, and Ms. Katsuyama placed a plus sign next to each correct word. Although the specific directions were not followed, the test was scored by counting the correct and incorrect words and the use of a plus sign instead of a number did not significantly change the ability of a reader of the protocol to see which items were correct and which were not.

10. However, Ms. Katsuyama committed other errors in following test administration directions that were significant. In the three sections of the Apraxia Profile, Mrs. Katsuyama did not follow the test instructions. The scoring was inconsistent throughout, (a consistent scoring symbol system was not used) and the summary results did not match the individual results on the test protocols. There is no way to tell from the test protocol what Student's actual results were.

11. For example, in Part I of the Apraxia Profile, Ms. Katsuyama should have placed a checkmark next to the mouth movements that Student could successfully imitate and an "x" next to the movements Student could not complete. In section A, Ms.

Katsuyama put an "x" next to all five movements, indicating that Student could not make the movements. However, the summary for section A indicated that Student successfully completed all five movements. Although Ms. Katsuyama testified that she used an "x" to mean that Student could perform the movements, this was not according to the instructions and she did not indicate an alternative scoring key on the protocols anywhere. As written, the summary section contradicts the data (either the scoring was incorrect or the summary was incorrect) and it is impossible to which movements Student could perform.

12. Ms. Katsuyama's testimony regarding her use of the "x" was undermined because, in Section B of the same test (which is located just below Section A on the same page and which had the same instructions), she did not use an "x" where she claimed Student correctly completed the movements. She used a completely different self-created scoring system, utilizing an "ok" where Student could imitate the movements. In this section, there were also movements where there was no "ok" placed on the page. This made it look like Student did not correctly imitate at least one movement. However, in the Section B summary, Ms. Katsuyama indicated that Student successfully completed all of the movements. So, in this section, even if Ms. Katsuyama's testimony about using yet another non-standard scoring system was credible, the summary should reflect that Student was not able to complete at least one of the movements. Instead, the scoring section reflected that Student could complete all of the movements.

13. Finally, in Section C, Ms. Katsuyama scored Student's results using both an "x" and an "ok" and several movements were left completely blank. No part of Section C had the summary score filled out and, again, it is impossible to tell which movements Student successfully performed.

14. The connected speech sample of the Apraxia Profile assessment test also contained significant errors. The sample called for the assessor to record 25 of Student's utterances, then to count the number of morphemes (base units of language) in each utterance and then average the number of morphemes. This resulting score is referred to as a child's mean length of utterance and is an important indicator of a child's speech and language ability. Ms. Katsuyama only recorded six morphemes, and calculated Student's mean length of utterance to be 4.2.

15. Ms. Katsuyama's contention that she utilized utterances by Student during other parts of the assessment, as well as from her therapeutic experience with Student, to attain the necessary 25 utterances for the test was not credible. She could not and did not produce the other utterances she claimed to have added to the ones on the protocol. The test protocol showed where the utterances on the protocol page were totaled, and divided with the math work showing on the page to calculate to 4.2. It would be quite a coincidence if 19 additional utterances were gathered and added outside of the test protocol and exactly the same mean length of utterance were calculated. There would also be no reason to average out only the six on the page if the actual result was a calculation based on 25 utterances. Rocklin did not meet its burden to show that the calculation was derived from anything but the six utterances listed. The table in the written report for the Apraxia profile also supports this determination as it lists 4.2 as the result of the connected speech sample and makes no note that this number was determined from utterances collected outside the actual test sample.

16. In Section V of the same assessment, the protocols required the assessor to place a checkmark next to the characteristics that describe a child's motor, speech and language skills and leave the others that did not apply to the child blank. The assessor was to use information gathered from Parent, observations of the student and from the rest of the assessment. The evidence showed that Ms. Katsuyama failed to

mark several of the areas that should have been marked, including that Student's speech was more unintelligible than would be expected based on the results of single-word articulation tests, and that Student had a limited response to traditional speech therapy. The protocols also required an "N/A", meaning not available, to be placed next to any item where the information was not available and this area would not be counted in the overall scoring when calculating and reporting the percentage of areas that were marked. The section regarding family history of speech, language or learning problems was not marked with "N/A" and should have been. Student was adopted from the Ukraine at the age of 16 months and there was no information regarding her birth family. Further, in testimony, Ms. Katsuyama admitted that she did not evaluate several of the areas because she did not find them relevant to her analysis. These were not marked "N/A" and were included in the summary as if Student did not exhibit these characteristics. These errors caused the percentage calculation representing the amount of characteristics Student exhibited to be incorrectly reflected in the written report

17. Ms. Katsuyama also did not fill out any of the scoring information on the summary pages of many other test protocols. As a result, except for Ms. Katsuyama's testimony that she scored them correctly, Rocklin was unable to show affirmatively that they were correctly scored. Although Ms. Cambra testified that she went over all of the test protocols, checked the scoring and determined they were correctly scored, when confronted with specific scoring errors that were uncovered, she admitted that she had not detected them. The testimony of Ms. Katsuyama and Ms. Cambra is given little weight in this matter because the protocols they claimed were correctly scored contained errors apparent upon careful inspection.

18. Given the errors on the protocols and the scoring that were found, Rocklin was unable to affirmatively show that the tests without scoring references on the protocol summary pages were scored according to the producer's instructions. The

same is true for the Khan-Lewis test where no protocols were provided at all. As a result, Rocklin was unable to show that its speech and language assessment was performed correctly.

The Written Assessment Report

19. Rocklin's written assessment report contained several key inaccuracies with respect to Student's speech and language assessment. Student's intelligibility is a key area of need, which affects her ability to communicate with peers and adults. Mother credibly testified that Student is often unintelligible even to her. Student's intelligibility decreases dramatically when Mother does not know the context of Student's speech. Student is significantly more intelligible to familiar listeners than unfamiliar listeners and when the context of the communication is known to the listener. The assessment report made the blanket statement that Student's speech is "approximately 75-85% intelligible to a familiar and unfamiliar listener with and/or without context." The evidence showed that this statement simply is not true. Also, in the results of the Apraxia profile, Student is listed as 100% intelligible to a familiar listener, which is not consistent with either the evidence in this case or the above statement in the report. This was an incorrect characterization of Student's intelligibility, which resulted in the written report being inaccurate.

20. In several places, scores from the assessment protocols were misreported in the written report. There is a chart in the written assessment, which outlines all of the articulation errors Student made. This is important because the IEP team created annual goals for Student to work on her articulation errors. Close inspection of the Goldman-Fristoe test protocols showed that errors present on the test protocols were not listed in the written report. The results from the Apraxia Profile were reported incorrectly. Because of the errors made in the Section V scoring by not correctly calculating the number of items scored and failing to mark items that should have been marked, the

percentages were incorrect in the written report. In addition, the entire Apraxia Profile was not given to Student and the written report did not explain this to the reader. The report made it look as if the entire assessment was given.

21. Finally, in several places Rocklin's written assessment report was uninformative. The speech and language results of the Khan-Lewis and other tests were full of jargon and technical words with no explanation of their meaning or significance for Student. The results of the Language Development Survey were listed in a chart with no guidance to give context to the results and to help the reader know what the results meant for Student. As a whole, the report was not sufficient to give the IEP team the information it needed to develop an appropriate program for Student: 1) the data was not reliable, 2) there were inaccuracies in both the testing and the written report, and 3) the reported results were not explained in the report or able to be interpreted.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)² et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that

³ Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) 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).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) 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] (*Schaffer*)) In this case, Rocklin, as the complaining party, bears the burden of proof.

ISSUE: WAS THE MAY 2014 SPEECH AND LANGUAGE ASSESSMENT LEGALLY COMPLIANT?

3. Rocklin contends that its May 2014 speech and language assessment was legally compliant and any errors or omissions were *de minimus* and did not affect the assessment results.

Was the Assessment Notice Proper?

4. To obtain parental consent for an assessment, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. § 1414(b)(1); 20 U.S.C. § 1415(b)(3),(c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights

under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).)

5. Rocklin's assessment plan was given to Parent and there was no allegation that Parent did not receive a copy of the procedural rights at the same time. The assessment plan was in language easily understood by the general public, was provided in Mother's native language of English, explained the types of assessments to be conducted, and indicated that no educational placement or services would result from the assessment without the consent of the parent. All statutory requirements of notice were met and the assessment plan complied with the applicable statutes.

Was the administration of the assessments legally compliant?

6. The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the

producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b).)

7. Rocklin's administration of the speech and language assessment met all of the applicable legal standards with the exception of the requirement to administer the assessments in accordance with any instructions provided by the producers of the assessments. Ms. Katsuyama did not follow the producer's instructions for many of the assessments. Although some of the failures were minor and did not affect the information provided to the IEP team, other errors were significant and rendered the information provided inaccurate or unreliable.

8. Ms. Katsuyama's failure to follow scoring procedures made the results reported in the summary sections of the protocols and in Rocklin's written assessment report inconsistent with her notations on the test protocols and it is impossible to tell which scores accurately reflected Student's performance on the tests. For example, errors were made on the Apraxia Profile Section V, when indicating whether Student exhibited certain characteristics and the percentage of items scored was incorrectly calculated. In addition, Student's mean length of utterance was not correctly calculated from the sample size required from the publisher but was reported as if it were. Given these significant errors on the protocols that had enough information to determine these errors, the protocols without score calculations filled out and assessments with missing test protocols cannot be assumed to have been correctly calculated. Rocklin did not meet its burden to show that the assessments were administered in accordance with the protocols and scoring instructions from the producer of the assessment test. Therefore, the administration of Student's speech and language assessment was not legally compliant.

Was the Written Assessment Report Legally Compliant?

9. The law requires the personnel who assess a student to prepare a written report that shall include, without limitation, the following: (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; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

10. In the instant case, the Rocklin speech and language assessment report was fundamentally flawed. Statements in the assessment report about Student's intelligibility were not supported by the evidence and were contradictory in different places in the report. Student's articulation errors listed in the report differed from ones noted on the test protocols. Assessment test results were calculated incorrectly and the incorrect percentages were listed in the written report. Finally, there was no explanation or interpretation for some of the results and much of the results listed in the tables in the report were undecipherable by the average IEP team member. This information, according to the report and testimony in the case, were used to make the recommendations in the report, which led to the recommendation for services for Student. In this case, the aggregation of the incorrect results, incorrect statements about Student's intelligibility and mean length of utterance, and failure to explain or interpret assessment test results, rendered the data, from which any recommendations were

made, based upon faulty information. Therefore, for this reason as well, the assessment and the associated report were not legally compliant.

ORDER

1. Rocklin's May 2014 speech and language assessment was not legally compliant.
2. Student is entitled to an independent educational evaluation in the area of speech and language at Rocklin's expense.

PREVAILING PARTY

Pursuant to 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. Student prevailed on the only issue heard and 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: December 1, 2014

/s/

MARGARET BROUSSARD

Administrative Law Judge

Office of Administrative Hearings