

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014080281

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on August 6, 2014, naming Long Beach Unified School District. The matter was continued for good cause on September 26, 2014.

Administrative Law Judge Robert G. Martin heard this matter in Long Beach California, on September 30, 2014, and October 7, 2014.

Tania L. Whiteleather, Attorney at Law, and Lisa Peskay Malmsten, Attorney at Law, represented Student. Student's mother attended the hearing on October 7, 2014. Student did not attend.

Debra K. Ferdman, Attorney at Law, represented District. District Director of Special Education Christopher Gutierrez-Lohrman, Ed. D, attended both days of the hearing on behalf of District.

On the last day of hearing, the parties were granted a continuance to file written closing arguments by the close of business on October 21, 2014. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted.

ISSUES

1. Did District deny Student a free appropriate public education by failing to appropriately assess him in all areas of suspected disability between November 22, 2013, and August 5, 2014, specifically, in the area of central auditory processing, by delaying an evaluation of Student's central auditory processing?¹

SUMMARY OF DECISION

Student demonstrated that District failed to timely complete an agreed upon assessment for central auditory processing disorder. The failure to timely complete the assessment and develop an IEP considering the results of the assessment significantly impeded Parents' opportunity to participate in the decision-making process and denied Student a FAPE. Student's remedy is discussed below.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. At the time of the complaint, Student was six years old and enrolled in first grade at District's Prisk Elementary School. At all relevant times, Student resided with Student's mother and father within District's boundaries, and he has been eligible for special education and related services under the category of autistic-like behaviors since May 2012. As of Student's IEP team meeting in April 2014, his general cognitive ability was

¹ On September 30, 2014, Student withdrew all issues in the complaint other than the issue of District's alleged failure to appropriately assess Student in the area of central auditory processing. At the commencement of the first day of hearing, Student narrowed the issue to the question of whether District unreasonably delayed an evaluation of Student's central auditory processing auditory processing.

in the very high range, and he was performing above grade level academically. To address difficulties processing social cues to identify other's thoughts and needs, difficulty with body awareness and respecting other's personal space, and difficulty with posture and hand grasp, Student was receiving related services of speech and language therapy and occupational therapy.

PARENT REQUESTS FOR A CENTRAL AUDITORY PROCESSING ASSESSMENT

2. From an early age, Student exhibited a number of characteristics that led Mother to wonder whether Student had issues with the way he perceived and responded to sounds. Student had a very low tolerance for certain types of sounds. He complained that he had a "noisy brain" and heard buzzing, clicking and raspberry noises in his head that he would repeat out loud in an attempt to get them out of his head. He sought to avoid noisy environments by using noise-cancelling headphones or by physically removing himself to a quiet place. Student would come home from school complaining that his brain hurt from the noise. In one instance, in the fall of 2013, he ran from his classroom because he could not tolerate the sound of the class singing a song. Student also had a tendency to speak in disjointed sentences that did not make sense, such as, "When the sun is yellow, I fall down."

3. Mother researched the above characteristics, and concluded that they could be the result of a central auditory processing disorder. At an addendum IEP meeting held on November 22, 2013, for the purpose of developing an assessment plan for Student, Parents requested that Student's assessment plan include an assessment for a central auditory processing disorder. District stated that it would respond in writing to Parents' request.

4. On December 13, 2013, District Special Education Program Specialist Wendy Rosenquist sent Parents a prior written notice of District's refusal to assess Student for a

central auditory processing disorder. District's grounds for refusing to provide this assessment were that the American Speech-Language Hearing Association and the California Speech Language Association recommended that children under the age of seven not be tested for central auditory processing disorder, the American Academy of Audiology Clinical Practice Guidelines had stated that test subjects needed to be at least seven to accurately interpret the results of behavioral measures conducted in the comprehensive test battery, and the testing battery used by District required the child to be a minimum of seven years old. Student at that time was five years and five months old.

5. District did not, at any time prior to the hearing, tell Parents that it was refusing to provide the requested assessment on the grounds that there was no reason to suspect Student had a central auditory processing disorder.

6. On January 7, 2014, District, Mother responded to District's prior written notice, contending that the American Speech-Language Hearing Association did not recommend against central auditory processing disorder testing of children under the age of seven, but had stated only that it might not be possible to accurately test younger children. Mother believed that a trained audiologist could assess Student using assessments developed and normed for children of Student's age. Mother noted that the District had previously approved testing by pediatric clinical audiologist Dr. Carol Atkins, and requested that either Dr. Atkins or another audiologist with similar skills and experience perform the assessment.

JANUARY 16, 2014: DISTRICT APPROVES PARENTS' ASSESSMENT REQUEST

7. On January 16, 2014, Ms. Rosenquist informed Parents that District had approved Parent's request for an auditory processing assessment. However, because District's audiologist, Dr. Corinne Mann, thought that the results of testing of a child under the age of seven would be unreliable, District agreed to Parent's request for "assessment

by an outside audiologist,” and sent parents a list of proposed assessors. District also sent Parents an assessment plan pursuant to which District was to conduct psychoeducational, speech and language, occupational therapy, and inclusion facilitation assessments of Student. The District assessment plan did not include a plan for the outside audiologist’s testing because District did not believe that the central auditory processing test was a District assessment for which the District was obligated to create a plan.

FEBRUARY 9, 2014, TO SEPTEMBER 17, 2014: DISTRICT’S PROCESSING OF CONTRACT FOR STUDENT’S ASSESSMENT

8. On February 9, 2014, Mother responded to Ms. Rosenquist, objecting to certain aspects of District’s assessment plan, but not to the central auditory processing assessment. However, Parents did not want to utilize any of District’s proposed assessors, and Mother stated, “Having reviewed the list of independent evaluators the District provided, we request that Dr. Pamela Best . . . perform an independent educational evaluation for auditory processing. . . . Please advise us when arrangements have been made for Dr. Best to be retained so that we may schedule an appointment with her.” Shortly thereafter, Ms. Rosenquist contacted Dr. Best’s secretary and confirmed that Dr. Best was willing and able to assess Student. Ms. Rosenquist then prepared a contract worksheet that she submitted to District’s contracts department for its use in preparing a contract between District and Dr. Best. After submitting the worksheet to the contracts department, Ms. Rosenquist did not follow up on the status of the contract and at the time of hearing did not know whether Dr. Best had received a contract from the District.

9. On February 24, 2014, Ms. Rosenquist e-mailed Mother that District would require approximately eight weeks to prepare a contract for Dr. Best, obtain board approval of the contract, and enter into the contract so that Dr. Best could start work. This representation was contrary to Ms. Rosenquist’s understanding that District usually required four to six months to complete that process. The discrepancy was not explained

at hearing.

10. On March 5, 2014, Parents consented to District's January 15, 2014, District assessment plan, explaining that they believed that the assessments "must be done, since we are approaching the end of the school year and the IEP team needs this result to set baselines, objectives and goals for the next school year."

11. The IEP team met in March 2014 to discuss the status of Student's assessments. Ms. Rosenquist told Mother that the IEP team was waiting for District's contract with Dr. Best to be submitted to District's board for approval.

12. In April 2014, District completed the assessments described in the District assessment plan. Student's triennial IEP team meeting was held on April 29, 2014. The team reviewed District's assessments. The central auditory processing assessment was not conducted prior to Student's April 29, 2014, IEP team meeting, and Parents were told that District's board had not yet approved the contract for that assessment.

13. On May 14, 2014, Student's counsel wrote to Ms. Rosenquist and Principal Jesperson regarding a number of concerns, including her concern that District had not yet approved Student's central auditory processing assessment. Principal Jesperson believed that Ms. Rosenquist would respond to this letter, but neither she nor anyone else, from District responded.

14. On June 17, 2014, District contract analyst Hope Araujo sent Dr. Best an e-mail with attached W-9 tax form and a proposed consultant agreement for a central auditory processing assessment of Student. The agreement called for Dr. Best to provide a one hour parent orientation to the central auditory processing disorder testing program, plus a single office visit for Student of up to two hours, during which Dr. Best would conduct an interview and case history, an audiological assessment, and diagnostic testing. Dr. Best was then to prepare a diagnosis and results summary report and present it at Student's IEP team meeting, with a treatment intervention plan, if appropriate.

15. Ms. Araujo requested that Dr. Best print, sign and return the agreement and form by mail to District's purchasing and contracts branch. The contract provided that Dr. Best would commence providing services under the agreement on March 1, 2014, but that the term of Dr. Best's contract "[u]nder no circumstances" would extend beyond September 30, 2014, without a written amendment. Ms. Araujo's e-mail stated that Dr. Best would not receive payment for services until the agreement had been approved by District's Board, and requested that Dr. Best return the signed agreement by July 2, 2014, so that the agreement could be submitted for approval at District's July 21, 2014, board meeting. District did not advise Parents that it had sent the central auditory processing assessment consultant agreement to Dr. Best.

16. On June 17, 2014, Dr. Best responded by e-mail that she would mail the consulting agreement to District the following day, and the signed agreement was received in time to be submitted to District's Board on July 21, 2014.

17. At its July 21, 2014, meeting, District's board approved the consultant agreement with Dr. Best. District's purchasing and contracts director signed the agreement the following day, and Ms. Araujo sent the fully executed agreement to Dr. Best on July 22, 2014. District did not notify Parents that the consultant agreement had been approved and sent to Dr. Best, and Dr. Best did not notify Parents that she had received the agreement.

18. At the time Student filed the complaint in this matter, he was unaware the consultant agreement had been approved and sent to Dr. Best. At an August 29, 2014, informal dispute resolution session between Parents and District, District Director of Special Education Dr. Gutierrez-Lohrman was unable to tell Parents whether the Board had approved Dr. Best's contract to assess Student.

19. At hearing, District offered no explanation of the delay between Dr. Best's agreement to assess Student and the District's preparation of a contract for her to do so.

Dr. Gutierrez-Lohrman explained that District tried to adhere to timelines for an independent educational evaluation, and admitted that Parents were not responsible for any delay.

20. On September 17, 2014, District employee Grace Reyes notified Mother by e-mail that District's board had approved the consultant agreement with Dr. Best. The e-mail directed Mother to contact Dr. Best to arrange the assessment. Mother promptly contacted Dr. Best and scheduled the assessment. Due to Mother's illness, the assessment had to be re-scheduled, and had not occurred at the time of hearing.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("Rowley"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE

articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. 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, § 56505, 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. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for an IDEA administrative hearing decision is preponderance of the evidence].)

ISSUE: DID DISTRICT DENY STUDENT A FAPE BY UNREASONABLY DELAYING AN EVALUATION OF STUDENT’S CENTRAL AUDITORY PROCESSING?

5. Student contends that District denied him a FAPE by unreasonably delaying an evaluation of whether Student had a central auditory processing disorder affecting his educational performance during the period from Student’s November 22, 2013 amendment IEP meeting to the filing of Student’s complaint. District contends that it

agreed to provide an independent educational evaluation of Student for central auditory processing disorder, despite the fact that Student had not shown symptoms or characteristics sufficient to require an auditory processing assessment, and therefore any delay in providing the unnecessary assessment did not deny Student a FAPE

District's Prior Written Notice of Its Refusal to Conduct a Central Auditory Processing Assessment

6. The suspicion that a student may have an impairment that is affecting the student's educational performance, and requires special education, is sufficient to trigger a need for assessment. (See, e.g., *Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1032 ["The District is not required to assess double vision or optic nerve damage if it does not affect a child's educational needs"], citing Ed. Code, § 56320.) A parent suspecting that his or her child suffers from such an impairment may refer the child for assessment by the district. (Ed. Code, § 56302.) A parent's request for an assessment initiates the assessment process. (Cal. Code Regs., tit. 5, § 3021(a).) If the parent's request is verbal, the district must offer to assist the parent in preparing a written request. (*Ibid.*)

7. Under Education Code section 56500.4, subdivision (a), a district must give prior written notice of its refusal to conduct an assessment. This prior written notice must be given a reasonable time before the district refuses to initiate the assessment, and must contain: (1) a description of the action proposed or refused by the agency; (2) an explanation for the action; and (3) a description of the assessment procedure or report which is the basis of the action. (Ed. Code, § 56500.4, subd. (b).) An IEP document can serve as prior written notice as long as the IEP contains the required content of appropriate notice. (71 Fed.Reg. 46691 (Aug. 14, 2006).) The procedures relating to prior written notice "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." (*C.H.*

v. Cape Henlopen School Dist. (3rd Cir. 2010) 606 F.3d 59, 70.) When a failure to give proper prior written notice does not actually impair parental knowledge or participation in educational decisions, the violation is not a substantive FAPE denial under the IDEA. (*Ibid.*)

8. In this matter, Parents, at a November 22, 2013, addendum IEP meeting, requested that District develop an assessment plan for Student that included an assessment for central auditory processing disorder. District agreed to respond in writing to Parents' request. On December 13, 2013, District sent Parents prior written notice of its refusal to conduct the requested central auditory processing assessment of Student. This notice was well within the 75-day period, discussed below, in which District would have been required to provide Parents an assessment plan, complete an assessment, and hold an IEP meeting. District described the basis for refusing to provide the auditory processing assessment requested. Student had an opportunity, and did in fact, object in his letter dated January 7, 2014, which resulted in District's agreement to the assessment on January 16, 2014. Accordingly, District did not deny Student a FAPE by unreasonably delaying prior written notice of its initial refusal to conduct an auditory processing assessment.

District's Delay in Approving Dr. Best's Contract

9. After District's January 16, 2014, reconsideration of its initial refusal to assess Student, District and Parents treated the agreed-upon central auditory processing assessment by an outside audiologist as an independent educational evaluation at public expense, despite the assessment originating as a parental referral and not because parent disagreed with an existing District assessment in this area. On February 9, 2014, Mother requested that Dr. Best conduct an independent educational assessment. District tried to adhere to timelines for an independent educational evaluation, and Ms. Rosenquist advised Mother that District would need four to eight weeks just to approve the contract for Dr. Best to conduct the assessment, leaving insufficient time to complete the assessment and hold an IEP within the timelines for a District assessment.

10. A student may be entitled to an independent educational evaluation at public expense when a parent disagrees with an evaluation previously obtained by the public agency. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).) In this matter, District had never assessed Student's central auditory processing. Thus, because there was no prior District central auditory processing assessment with which parents' disagreed, regardless of the parties' belief that this was an independent educational evaluation at public expense, Dr. Best's assessment was an initial assessment by District. District was free to contract with Dr. Best to provide Student's initial assessment on behalf of District, which is what it did.

11. When a district agrees to assess a student, it must give the parent a written assessment plan within 15 calendar days of referral, subject to certain exceptions. The plan must explain, in language easily understood, the types of assessments to be conducted. (Ed. Code, §§ 56043, subd. (a), 56321, subd. (b).) The parent then has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c).) The district then has 60 days from the date it receives the parent's written consent for assessment, excluding vacation and days when school is not in session, to complete the assessments and develop an initial IEP, unless the parent agrees in writing to an extension. (Ed. Code, §§ 56043, subds. (c) & (f), 56302.1.)

12. Here, District failed to provide Parents a plan to assess Student for a central auditory processing disorder within 15 days of agreeing to the assessment on January 16, 2014, and failed to conduct an assessment within 60 days of receipt of consent to an assessment plan. Indeed, District had not assessed Student even 202 days later, when Parents filed the complaint on August 6, 2014.

13. In *Rowley, supra*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, 458 U.S. at pp. 205-06.) The IDEA's procedural safeguards are intended to protect the informed

involvement of parents in the development of an education for their child. (*Winkelman v. Parma City Sch. Dist.* (2007), 550 U.S. 516, 524 [127 S. Ct. 1994] 2d 904 (2007).)

14. Notwithstanding the importance of the IDEA's procedural safeguards, a procedural violation is not an automatic FAPE denial. A procedural violation results in liability for denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

15. A district's violation of its obligation to assess a student is a procedural violation of the IDEA and the Education Code (*Park v. Anaheim, supra*, 464 F.3d 1025 at pp. 1031-1033), and the failure to provide a parent information related to the assessment of his or her child may significantly impede the parent's opportunity to participate in the decision-making process and result in liability. *Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F. 3d 877, 892-895 held that a failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents right to participate in the IEP process, resulting in compensatory education award. In *M.M. v. Lafayette Sch. Dist.* (9th Cir. 2014) 767 F.3d 842, 856, a district's failure to provide parents assessment data showing their child's lack of progress in district's response to intervention program, left the parents, "struggling to decipher his unique deficits, unaware of the extent to which he was not meaningfully benefitting from the ISP [individualized services plan], and thus unable to properly advocate for changes to his IEP." The court concluded that the failure to provide the assessment data prevented the parents from meaningfully participating in the IEP process and denied their child a FAPE.

16. In this matter, If District had acted promptly in February 2014 to contract with Dr. Best for Student's central auditory processing assessment – and advise Parents of

the contract - the results of the assessment, which required only a single office visit, would have been available to Parents for an IEP meeting before the end of the 2013-2014 school year. As a result of District's failure to timely conduct the assessment, Parents were deprived of the opportunity to incorporate the information from such an assessment into Student's IEP for the 2014-2015 school year, and were left "struggling to decipher his unique deficits . . . and thus unable to properly advocate for changes to his IEP." (*M.M. v. Lafayette, supra*, 767 F.3d at 856.) The evidence further demonstrated Student's suspected disability may have caused him to repeat out loud noises he heard in his head, avoid noisy environments, come home from school complaining his brain hurt, speak in disjointed sentences, and flee from the classroom. District's failure to assess Student significantly impeded Parents' opportunity to participate in the IEP decision-making process and constituted a denial of a FAPE.

DISTRICT'S APPROVAL OF STUDENT'S ASSESSMENT WAS UNTIMELY EVEN UNDER THE
STANDARDS APPLICABLE TO AN INDEPENDENT EDUCATIONAL EVALUATION

17. Even if the parties' mistaken characterization of the central auditory processing assessment by Dr. Best as an independent educational evaluation were to be accepted, it would not change the outcome of this decision. Although independent educational evaluations at public expense are not subject to hard completion deadlines such as those applicable to District assessments, they are subject to a qualitative deadline that District failed to meet.

18. When a parent requests an independent educational evaluation at public expense, the district must either proceed without unnecessary delay to ensure that the evaluation is provided at public expense, or file a due process complaint without unnecessary delay to request a hearing to show that its evaluation is appropriate. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).) The regulations themselves do not suggest guidelines for determining whether a district unnecessarily delayed ensuring an

independent educational evaluation. However, district delays of three or more months with respect to the alternative option of filing a due process complaint to defend a district assessment have been found to be unnecessary delays, if not excused by actions of parents or others not in the district's employ. (See, for example, *Pajaro Valley Unified School Dist. v. J.S.* (N.D. Cal. Dec. 15, 2006, C06-0380 PVT) 2006 WL 3734289, p. 3)(*Pajaro Valley*)[three month delay unnecessary]; *Taylor v. District of Columbia* (D.D.C. 2011) 770 F.Supp.2d 105, 107-108, 111(*Taylor*) [four month delay unnecessary].) By contrast, a six-month delay in contracting for an IEE was found to be reasonable in *D.A. v. Fairfield-Suisun Unified School Dist.* (E.D. Cal. Sept. 18, 2013, where the delay was caused by the parent's rejection of the district's proposed assessors and failure to identify a suitable assessor willing to observe the student in an educational setting.

19. In this matter, seven months passed between the parties' February 9, 2014 agreement that Dr. Best would assess Student, and District's September 17, 2014 notification to Mother that Dr. Best had received a District contract and could start work. Four months of this delay was attributable to District's unexplained delay in preparing a proposed contract and transmitting it to Dr. Best, one month was lost waiting for board approval of Dr. Best's contract, and two months went by after the completed contract had been sent to Dr. Best because District failed to inform Parents that Dr. Best had the contract and could start work. As District admitted at hearing, none of these delays were caused by Parents. Collectively, the delays were plainly unnecessary. In short, there was no justification in this matter for a delay that was considerably longer than the three-or-four month delays found to be unnecessary in *Pajaro Valley* and *Taylor, supra*.

20. At hearing, District contended that Student did not require a central auditory processing assessment because he had not presented with characteristics or symptoms that would lead one to suspect that he might have a central auditory processing disorder. Accordingly, District argued, any failure to provide Student a central auditory processing

assessment could not have denied Student a FAPE or impeded Parents' opportunity to participate in the decision making progress, and could not be a basis of liability. However, District did not timely raise this argument, either in its prior written notice in December 2013, or by filing a request for due process hearing in response to Parent's January 7, 2014 request that District engage an outside consultant. Instead, District on January 16, 2014 elected to agree to evaluate Student's central auditory processing, rather than defend its prior refusal to provide the assessment, which refusal District had made solely on grounds that Student was too young for a valid assessment. District has cited to no authority that having agreed to assess Student for purposes of developing Student's IEP, it could later be relieved of the duty to conduct the assessment by claiming it was not necessary. In sum, Student was denied a FAPE by District's delay in providing the central auditory processing assessment.

REMEDIES

1. Student seeks an order directing District to fund an independent educational evaluation for Student. District did not dispute the appropriateness of this remedy in the event District was found liable.

2. Additionally, it appears that the unnecessary delay in this matter was not a one-time occurrence unique to the facts of this case. Although District's special education program specialist promptly obtained from the agreed-upon provider the information necessary to prepare a consulting agreement, and forwarded that information to District's contracting department, she did not follow up on the status of the consulting agreement despite inquiries from Parents, and four months went by before District sent the provider a proposed consulting agreement. Following the provider's prompt approval and return of the consulting agreement, another month went by before the consulting agreement was approved by District's board, a delay which could have been avoided if District had sent

the proposed consulting agreement in time to reasonably allow for its consideration at an earlier board meeting. Finally, two more months were lost because neither District nor the provider notified Parents that the consulting agreement had been approved and fully executed and Student's assessment could be scheduled. District conceded that none of this delay was caused by Parents. District further acknowledged that District typically required four to six months to complete, approve, and fully execute consulting agreements with outside providers. There thus appears to be a system-wide unnecessary delay in District's processing of outside consulting agreements, and it is reasonable to anticipate that Student, and other students, will experience similar unnecessary delay in the future, unless the District makes changes to its procedures.

3. The IDEA does not require that compensatory education services be awarded directly to a student, and staff training may be an appropriate remedy in certain instances. (*Park v. Anaheim Union High Sch. Dist.*, *supra*, 464 F.3d at p. 1034 [student ,who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.*) (See, for example, *Student v. Reed Union School District*, (Cal. SEA 2008) 52 IDELR 240 [109 LRP 22923; Cal.Ofc.Admin.Hrngs. Case No. 2008080580] [requiring training on predetermination and parental participation in IEPs].)

4. Here, in addition to awarding an assessment by Dr. Best, equity supports requiring District to adhere to the statutory timelines and processes when contracting with outside assessors or independent educational evaluators. Accordingly, District will be ordered to develop and train staff on procedures for complying with deadlines under Education Code sections 56043 and 56302 and Code of Federal Regulations, title 34, part

300.502(b)(2) for preparing, approving and completing contracts for non-district assessors.

ORDER

1. Within 10 calendar days of the date of this order, District shall deliver to Dr. Best and to Parents a written amendment of District's contract with Dr. Best, extending the contract deadline for the completion of services to December 19, 2014, if Student's auditory processing assessment has not been completed and presented at an IEP team meeting as of the date of this decision. If not already completed, District shall hold an IEP team meeting within 10 working days of the completion of the assessment.

2. If District assesses Student in the future, it shall comply with the timelines set forth in Education Code sections 56043 and 56302.1 if conducting a District assessment, and, if arranging an independent educational evaluation of Student at public expense, District will comply with the timelines under Code of Federal Regulations, title 34, part 300.502(b)(2).

3. Within 45 days of the date of this order, District shall develop and train staff on procedures for complying with deadlines under Education Code sections 56043 and 56302 and Code of Federal Regulations, title 34, part 300.502(b)(2) for preparing, approving, and completing contracts for non-district assessors.

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, Student was the prevailing party on the sole issue presented.

RIGHT TO APPEAL

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

competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: November 12, 2014

_____/s/_____

ROBERT G. MARTIN

Administrative Law Judge

Office of Administrative Hearings