

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016031273

DECISION

Los Angeles Unified School District filed a due process hearing request with the Office of Administrative Hearings on March 28, 2016, naming Parents on behalf of Student. The matter was continued for good cause on April 7, 2016.

Administrative Law Judge Marc Levine heard this matter in Van Nuys, California, on June 7 and 8, 2016.

Mary Kellogg, Attorney at Law, represented Los Angeles Unified School District. On behalf of District, due process specialists Francine Metcalf attended on June 7, 2016 and Matthew Adair attended on June 8, 2016.

Michael J. Smith, Attorney at Law, represented Student. Mother attended the hearing on June 7 and 8, 2016 and Father attended on June 7, 2016. Bernadette Buckley, a qualified interpreter, provided Spanish interpreter services for Mother throughout the hearing. Student did not attend the hearing.

At the parties' request, the matter was continued to June 27, 2016, to afford the parties an opportunity to submit written closing briefs. The parties submitted their

closing briefs on June 27, 2016, and the matter was submitted for decision.

ISSUES¹

1. Was District's August 12, 2015 psychoeducational assessment appropriate under the Individuals with Disabilities Education Act, such that Student is not entitled to an independent evaluation at public expense?

2. Was District's August 20, 2015 academic assessment appropriate under the IDEA, such that Student is not entitled to an independent evaluation at public expense?

3. Was District's August 31, 2015 physical therapy assessment appropriate under the IDEA, such that Student is not entitled to an independent evaluation at public expense? ²

SUMMARY OF DECISION

District contends its August 12, 2015 psychoeducational assessment, August 31, 2015 physical therapy assessment, and August 20, 2015 academic assessment, were appropriate and in accordance with all necessary requirements, such that Student is not entitled to independent evaluations at public expense.

Student contends District's assessments were not appropriately conducted, such that he is entitled to independent evaluations at public expense.

¹ The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

² The due process hearing request originally contained five issues. Two of these issues were withdrawn by District prior to the hearing.

The Decision finds that the assessments were complete and properly administered by sufficiently trained individuals. Student was assessed in all areas of suspected disability and the assessments were not racially, culturally or sexually discriminatory. The assessments were also properly administered in English – Student’s primary language and the language spoken at home. Therefore, District met its burden of demonstrating that its psychoeducational, physical therapy and academic assessments of Student were appropriate, such that Student is not entitled to any independent evaluations at public expense.

FACTUAL FINDINGS

JURISDICTION

1. Student was first made eligible for special education in 2007, when he was in preschool, under the eligibility category of autism. At all relevant times, Student resided with both Parents and attended school within the district. Student was 12 years and four months old at the time of the hearing.

PRIMARY LANGUAGE

2. At hearing Student contended that Mother’s use and understanding of the English language is limited, such that District should have presented testing materials and reports in Spanish. However, Mother’s preferred choice of language was English.

3. The spoken language in the home is English. Father does not speak Spanish. Since 2007 Mother has attended at least seven individualized education program team meetings, wherein, she participated in English and there is no evidence that she requested an interpreter. Since 2007, Mother attended at least seven IEP team meetings and participated in English at all of these meetings. The family only speaks English at home and Father does not speak Spanish.

4. In District enrollment materials and in nearly all communications with

District, Mother has directed District to communicate in English.

INDEPENDENT EVALUATION COMPLETED BY TIMOTHY GUNN ON APRIL 8, 2015

5. Pursuant to the June 3, 2015 IEP team meeting Student attended fifth grade at Calahan Elementary School during the 2015-2016 school year, in a general education placement. Student was provided 120 minutes per month of resource specialist support in reading, writing and math. He was also provided 60 minutes per month of counseling services; 600 minutes per month of behavior intervention development services; and 1,800 minutes per month of behavior intervention implementation.

6. On April 8, 2015, Timothy Gunn, Psy.D, who is licensed in clinical psychology, completed an independent evaluation at public expense of Student because of concerns Parents had regarding Student's academic performance at school. Parent was further concerned that District might, in the future, eliminate Student's one-to-one aide at school, and occupational therapy services. Dr. Gunn assessed Student on February 9 and 11, 2015.

7. For purposes of the assessment, Mother reported to Dr. Gunn that only English is spoken at home. Furthermore, as part of the assessment, Mother completed a questionnaire in English without any suggestion to Dr. Gunn that she had any difficulty with English.

8. Dr. Gunn found that Student was pleasant, intelligent with some areas of average academic achievement, but with delays in pragmatic language, social skills, attention/focus and essay writing. In his report, Dr. Gunn recommended, in relevant part, the following: a one-to-one aide trained in behavioral principles to assist Student with continued placement in a general education placement; remaining in the resource specialist program to assist with reading, writing and math; and, a functional behavioral assessment to address issues with writing. Upon completion of Dr. Gunn's assessment,

Parents requested District assessments. This request led to District assessments in August of 2015 and an IEP team meeting on September 2, 2015.

PSYCHOEDUCATIONAL ASSESSMENT OF AUGUST 12, 2015, WHICH INCLUDED THE ACADEMIC ASSESSMENT OF AUGUST 20, 2015

9. Veronica Tallman has been a school psychologist for District since 2002. She earned her bachelor's degree in psychology from the University of Colorado in 1998 and masters' degrees in school psychology and counseling from Loyola Marymount University in 2002. She also received her Pupil Personnel Services credentials in psychology and counseling in 2002. Since 2002, she has completed hundreds of psychoeducational assessments and attended hundreds of IEP team meetings.

10. Ms. Tallman is properly trained and qualified to complete psychoeducational assessments. The assessment of Student was performed to help determine special education eligibility, placement and services by obtaining information regarding his general ability, behavior and current academic progress. Mother's areas of concern for the assessment were language arts, math skills, language skills, gross motor skills, writing skills, social skills, fine motor skills and sensory issues.

11. Ms. Tallman collected and compiled the information in the rating scales completed by Mother. She also reviewed other data from school records, District staff questionnaires, information from prior IEP team meetings and assessments (including the independent evaluation administered by Dr. Gunn), and personally observed Student.

12. Student's health and development records combined with information from Parents reflected, in relevant part, that Student had a history of autism spectrum disorder, attention deficit hyperactivity disorder, obsessive compulsive disorder, chronic fatigue, and constipation. He had also been diagnosed with a 15q11.12 deletion on array (a rare genetic variation in which a small piece of chromosome 15 is missing),

silent seizures, behavior problems, and he has had several tumors removed.

13. As part of the psychoeducational assessment report, Ms. Tallman observed Student at school on August 19, 2015, in class and during lunch. During class, Student followed the class routine, teacher instructions and participated in classroom instruction. At lunch, he ate, socialized and played with peers, and acted appropriately.

14. The Cognitive Assessment System (CAS) was administered to measure how Student thinks, learns, and solves problems based on planning, attention, simultaneous and successive processing. CAS was administered by Ms. Tallman in English, Student's primary language, in conformance with testing instructions and it was valid for the purpose for which the test was intended. Ms. Tallman was qualified to administer, score and interpret the results of the testing, as she has done hundreds of times before. The assessment materials were without racial, cultural, or gender discrimination. Student followed verbal instructions and completed assigned tasks during these assessments. The results showed that Student was below average with regard to planning, and average in the areas of simultaneous reasoning, attention and successive processing.

15. Ms. Tallman administered the Test of Auditory Processing, Third Edition (TAPS-3) to evaluate auditory skills. It was administered in conformance with testing instructions and it was valid for the purpose for which the test was intended. Student placed in the average range for overall auditory processing skills. In the subscales, he was average in the phonologic scale and cohesion skills and scored a low average in verbal memory. Ms. Tallman was qualified to administer, score and interpret the results of the testing, as she has done hundreds of times before. The assessment materials were without racial, cultural, or gender discrimination. Student followed verbal instructions and completed assigned tasks during these assessments.

16. Ms. Tallman also administered the Motor Free Visual Perception Test which measures visual memory, perception and manipulation of visual information. The

test was administered in conformance with testing instructions and it was valid for the purpose for which it was intended. Student scored in the average range. Ms. Tallman was qualified to administer, score and interpret the results of the testing, as she has done hundreds of times before. The assessment materials were without racial, cultural, or gender discrimination. Student followed verbal instructions and completed assigned tasks during these assessments.

17. The Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI) was administered by Ms. Tallman in conformance with testing instructions and it was valid for the purpose for which the test was intended. Student placed in the low average range. Ms. Tallman was qualified to administer, score and interpret the results of the testing, as she has done hundreds of times before. The assessment materials were without racial, cultural, or gender discrimination. Student followed verbal instructions and completed assigned tasks during these assessments.

18. Ms. Tallman also assessed for concerns Mother had regarding Student's unclear/immature speech while at home. However, while working with Student on the various parts of the assessment and during the observation at school, Student's language functioning was age-appropriate. Student did not display unclear/immature speech while at school.

19. Behavior Assessment System for Children, Second Edition (BASC) scales were properly provided to, and completed by, Mother and Susan Ismail, Student's fourth grade general education teacher, to assess various behaviors. Mother was provided scales in English and her responses were consistent with her view of Student's issues at home. Mother understood and properly responded to the questions in English. At no time did Mother request forms in Spanish, nor did she advise anyone that she had any difficulty with the English forms. The BASC was scored and interpreted by Ms. Tallman in conformance with testing instructions and it was valid for the purpose for which the test

was intended. Ms. Tallman was qualified to administer, score and interpret the results of the testing, as she has done hundreds of times before. Mother's scores on the BASC scales were high for Student, indicating issues at home involving hyperactivity, anxiety, depression, somatization, atypicality, withdrawal, attention, social skills, activities of daily living and functional communication. However, the scores from the scales completed by Ms. Ismail were not elevated and were average in these categories. While Student may have exhibited behaviors of concern at home, Student did not display these issues at school. The differences in the scores between Ms. Ismail and Mother did not show that the BASC was administered, scored or interpreted inappropriately. The assessment materials were without racial, cultural, or gender discrimination.

20. Due to Mother's concerns that Student had difficulty with attention and focus, the Conners 3 behavior rating scale was administered, scored and interpreted by Ms. Tallman based on scales completed by Mother and Ms. Ismail. Mother completed the scales in English and her responses were consistent with her view of Student's issues at home. Mother understood, and properly responded to the questions in English. At no time did Mother request forms in Spanish, nor did she advise anyone that she had any difficulty with the English forms. Ms. Tallman has administered hundreds of these scales in the past. Student's was administered, scored and interpreted in conformance with testing instructions and it was valid for the purpose for which the test was intended. Ms. Tallman was qualified to administer, score and interpret the results of the testing. The assessment materials were without racial, cultural, or gender discrimination. The scores revealed that both Mother and Ms. Ismail observed areas of weakness in areas involving attention.

21. The Autism Spectrum Rating Scales (ASRS) was administered, scored and interpreted by Ms. Tallman to determine the extent to which Student used verbal and nonverbal communication appropriately to initiate, engage in and maintain social

contact. She has administered, scored and interpreted the ASRS dozens of times in the past and is qualified to do it. Mother and Ms. Ismail completed the scales. Mother's scales were in English and her responses were consistent with her view of Student's issues at home. In response to a question as to whether Student used an odd way of speaking, Mother appropriately responded by writing "meep meep." Mother understood, and properly responded to the questions in English. Mother never requested forms in Spanish and never advised anyone that she had any difficulty with the English forms. The scales were administered, scored and interpreted in conformance with testing instructions and the test was valid for the purpose for which it was intended. The assessment materials were without racial, cultural, or gender discrimination. The scores revealed that both Mother and Ms. Ismail observed areas of weakness in inattentive behaviors. Overall, Mother's scores were very elevated, while Ms. Ismail's scores were average. This demonstrated that at home Student had many problematic issues involving inattention. However, at school, he did not exhibit such issues. The differences in the scores between Ms. Ismail and Mother did not show that the ASRS was administered, scored or interpreted inappropriately.

22. At Mother's request, Ms. Tallman administered the Vineland Adaptive Behavior Scales, Second Edition. The Vineland was not typically part of such a psychoeducational assessment and was only completed because of Mother's concern with adaptive behavior. District did not have any concerns regarding adaptive behavior. Mother was the only person to complete scales. It was not necessary for a teacher or anyone else to complete scales in this situation because Student's history at school, combined with Ms. Tallman's observations, demonstrated that his adaptive functioning at school was age appropriate. Mother completed the scales in English. She wrote on the form that English is the language spoken at home and she provided numerous appropriate comments written in complete sentences in English in response to various

questions. Her responses were consistent with her view of Student's issues at home. Mother understood and properly responded to the questions in English. At no time did Mother request forms in Spanish, nor did she advise anyone that she had any difficulty with the English forms.

23. Overall, the psychoeducational report established that Student had weakness in the area of attention, with difficulty staying on task and working independently at school. The report recommended continued eligibility of autism for special education, along with continued support in academic areas and motivational strategies to motivate Student to complete work. It also suggested an organized system for completing work, teaching him opening conversation starters to improve social language, and to help develop conflict resolution skills.

24. One of Mother's main concerns with the report was that it did not list ADHD as Student's primary eligibility category for special education. This concern did not reflect that the report was inappropriate since Student's attentional deficits associated with his ADHD were thoroughly addressed in the assessment.

25. Student's academic performance was measured, in part, by using the Woodcock Johnson III standardized measuring tool. It was administered by Michael Hovaguimian, who has been a resource specialist with District since 2013 and has administered the tool over 50 times. It was scored and administered in conformance with testing instructions and it was valid for the purpose for which the test was intended. Mr. Hovaguimian was sufficiently trained, experienced and qualified to administer and score the test. The assessment materials were without racial, cultural, or gender discrimination. Student was able to properly follow instructions and completed the required tasks. Student tested in the average range in broad reading, math and written language. The scores were slightly higher than those found in the results from Dr. Gunn, who administered the tool to Student six months prior. The difference was in

math fluency. Student was average in math fluency in Mr. Hovaguimian's assessment, but scored in the borderline delayed range in Dr. Gunn's. The difference in scores was not due to "practice effect"³ because there was a six month gap in taking the test. The differences in the scores determined by Mr. Hovaguimian and Dr. Gunn did not show that Mr. Hovaguimian administered, scored or interpreted the assessment inappropriately.

PHYSICAL THERAPY ASSESSMENT OF AUGUST 31, 2015

26. In anticipation of the September 2, 2015 IEP team meeting, a physical therapy assessment report was completed by Dr. Teresa L. Van Vranken. Dr. Van Vranken earned her bachelor's degree in science kinesiology from Sonoma State University graduating Cum Laude in 1995. She earned her doctorate of physical therapy from the University of Southern California in 1998 and has worked as a physical therapist for District since 1998. She has completed, on average, 30-40 physical therapy assessments each year. She was well trained, qualified and experienced to complete such assessments.

27. The assessment was requested by Mother and not due to District concerns since there was no previous need or request for a physical therapy assessment. Dr. Van Vranken spoke with Mother briefly, prior to the assessment, to find out Mother's concerns. At the outset of the conversation, she offered to speak to Mother in Spanish, but Mother advised that she preferred English. Mother competently articulated that Student had issues with motor planning, balance, posture, and coordination. Dr. Van Vranken also interviewed Ms. Ismail, who had no concerns about gross motor abilities or

³ The term "practice effect" refers to inaccurate testing results due to the test taker having taken the very same test too recently, too often or due to having practiced the test.

physical access. Dr. Van Vranken also reviewed school records including those from the school nurse, which did not indicate any need for physical therapy.

28. Dr. Van Vranken observed Student in class for approximately 90 minutes and on the playground for approximately 50-60 minutes. In class, and on the playground, Student performed appropriately for his age and there was no indication of any motor planning, balance, posture, coordination or any other physical therapy related issue whatsoever. Student performed specific tasks without assistance that showed appropriate motor planning, balance, posture and coordination. Student properly followed all instructions, which were in English (his primary language as stated in school records) and he completed all tasks. The results in the report were valid and concluded that Student did not have any need for physical therapy as a related service to access his education.

SEPTEMBER 2, 2015 IEP TEAM MEETING

29. Upon completion of the assessments, the September 2, 2015 IEP team meeting convened. Parents attended the meeting, along with their attorney. Neither Parents, nor their attorney, requested a Spanish interpreter or documents in Spanish. Parents participated and communicated effectively in English.

30. At the time of the meeting, the psychoeducational report did not include the results of the Vineland scales because Ms. Tallman had received the scales from Mother, just days earlier, on August 25, 2015. Ms. Tallman did not have time to score and interpret the Vineland, nor did she have time to update her report with the Vineland results prior to the IEP team meeting. However, the Vineland results were discussed at the meeting and were incorporated into the final report.

31. Parents did not receive the updated psychoeducational report until the hearing because neither Parents, nor District, realized this had occurred. Both parties believed that Parents had the updated report. This miscommunication did not adversely

affect Parents' participation in, or the validity of, the psychoeducational assessment.

32. On February 4, 2016, Parents requested independent evaluations at public expense. District declined and on March 28, 2016, District filed this action to defend its assessments.

LEGAL AUTHORITY AND CONCLUSIONS

INTRODUCTION – LEGAL AUTHORITY⁴

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)⁷ 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 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 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

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

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 IDEA administrative hearing decision is preponderance of the evidence].) In this case, District, as the complaining party, bears the burden of proof.

ISSUES 1 AND 2: DISTRICT’S PSYCHOEDUCATIONAL AND ACADEMIC ASSESSMENTS

5. District contends that its psychoeducational assessment, which incorporated the academic assessment, was conducted in accordance with all necessary statutory requirements and that Student is not entitled to an independent evaluation at public expense. District asserts that it communicated with Mother in English at Mother’s direction and that it assessed in all areas related to Student’s disabilities.

6. Student contends there were various flaws in the instruments and methods District used in conducting its assessment. Student alleges that since District

did not communicate with Mother in Spanish, and did not provide documents and scales for assessments to Mother in Spanish, the assessments at issue are inappropriate. According to Student, Ms. Tallman failed to assess for his chromosome deletion and emotional disturbance and Ms. Tallman should have contacted Regional Center for records. Furthermore, Ms. Tallman should have given Vineland scales to Student's teacher and BASC scales to Student to complete. Student also raised concerns that the academic assessments administered by Dr. Gunn and Mr. Hovaguimian had different results regarding math fluency. Finally, Student alleges that District has not met its burden of proof regarding the legal adequacy of its psychoeducational assessment, which incorporated the academic assessment.

7. A student who is eligible for special education and related services must be reevaluated at least once every three years, and when a parent requests a reassessment. (20 U.S.C. § 1414(a)(2)(B), (a)(2)(A)(i); 34 C.F.R. § 300.303(a); Ed. Code, § 56381, subd. (a).) The reassessment shall be conducted under the procedures and assessment requirements set forth regarding initial assessments, as well as the requirements for reassessment. (Ed. Code, § 5638, subd. (a)(1), (b).)

8. The IDEA and California state law require that a school district assess a student in all areas of his or her suspected disability. (20 U.S.C. § 1414(b)(3); Ed. Code, § 56320, subd. (f).) A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); see also Ed. Code, § 56320, subd. (b)(1).) The assessment must be sufficiently comprehensive to identify all of the student's special education and related services needs, regardless of whether they are commonly linked to the student's disability category. (34 C.F.R. § 300.304(c)(6).)

9. Assessments and other evaluation materials must be administered by

trained and knowledgeable personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(iv) & (v), (3); Ed. Code, § 56320, subd. (b)(3).) Assessments must be conducted by individuals who are both “knowledgeable of the student’s disability” and “competent to perform the assessment, as determined by the local educational agency.” (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).)

10. Tests and assessment materials must be selected and administered so as not to be racially, culturally or sexually discriminatory; must be provided and administered in the student’s primary language or other mode of communication unless this is clearly not feasible; and must be used for the purposes for which the assessment or measures are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(i), (ii) & (iii); Ed. Code, § 56320, subds. (a), (b)(1) & (2).) The school district must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).) No single measure or assessment shall be used as the sole criterion for determining whether a student is a child with a disability or for determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e).) Further, a school district must provide and administer tests and other assessment materials in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless not feasible. (Ed. Code, § 56320, subd. (b)(1); see also 20 U.S.C. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii)(2006).)

11. The personnel who assess a student must prepare a written report that includes: (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) for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; and (7) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage. (Ed. Code, § 56327.) The report must be provided to the parent after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

12. The procedural safeguards of the IDEA provide that under certain conditions, a parent is entitled to obtain an independent evaluation of a child at public expense. (20 U.S.C. §1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent has the right to request an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an independent evaluation at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the independent evaluation at public expense, unless the school demonstrates at a due process hearing that an independent evaluation already obtained by the parent does not meet its criteria. (34 C.F.R. 34 C.F.R. § 300.502(b)(4); Ed. Code, § 56329, subd. (c).)

13. Student alleges that since District did not communicate with Mother in Spanish, and did not provide documents and scales for assessments to Mother in Spanish, the assessments at issue are inappropriate. Mother's allegation that she requires Spanish translation or Spanish language documents to communicate and participate in Student's education is not persuasive. The facts overwhelmingly establish

that District was reasonable in relying on information provided by Mother that it should utilize English in communicating with her. In nearly all communications with District, Mother indicated a preference for English and that English is the primary language spoken at home.

14. Father speaks English, but not Spanish. At the hearing Mother communicated with Father in English. Mother attended and participated in at least seven prior IEP team meetings in English and never requested assistance in Spanish. She indicated to District upon enrollment, that she communicates in English. During her interviews for the assessments, Mother replied with her preference for English and provided accurate information in complex English terminology as to her concerns regarding Student. She also specified that English is the language spoken at home on the Vineland scale she completed in English. In the Vineland scale Mother made numerous appropriate written comments in response to questions in complete English sentences. Mother's responses to all of the scales she completed in English for District were consistent with the opinions and concerns she had about Student. Had Mother not been able to properly complete the English versions of the various scales, her scores would not be expected to consistently and accurately reflect her views of Student. Mother also expressed her understanding of English during the hearing by answering questions in English, before they were translated, and by speaking English during the hearing. She also did not discount the validity of the scores for the independent evaluation with Dr. Gunn. She completed the scales in English for Dr. Gunn. Moreover, she attended and participated in, the IEP team meeting of September 2, 2015, with her attorney and neither requested an interpreter. Mother did not establish that any of her communications with the district resulted in miscommunications or that she was unable to participate in the process in any meaningful way.

15. District's psychoeducational assessment met all legal requirements for

assessments. Ms. Tallman was well educated and trained, and had been working as a school psychologist for District since 2002. She had completed hundreds of psychoeducational assessments. The assessment instruments were appropriate to administer to Student, they were selected so as not to be discriminatory, and they were administered in accordance with test instructions. She used a variety of assessment instruments that were valid and reliable. Ms. Tallman also reviewed existing evaluation data. For example, she observed Student, obtained input from Student, his teacher, and Mother, reviewed reports, records, prior IEP's and assessments and she administered CAS, TAPS-3, Motor Free Visual Perception Test, VMI, Conners 3, BASC, ASRS and Vineland. Parent input was considered through scales appropriately completed by Mother in English.

16. Student was assessed in all areas of suspected disability within the psychoeducational realm and the issues of the chromosome deletion and emotional disturbance were properly addressed. There is no evidence indicating that Ms. Tallman's data was lacking or that her results would have differed had she contacted Regional Center, as suggested by Student. Ms. Tallman, the only witness with experience as to these concerns, credibly testified that the assessment was complete and that Student was assessed in all areas of suspected disability. Under these facts, the District has met its burden as to this issue.

17. The completed report, along with results of the Vineland, was discussed at the IEP team meeting of September 2, 2015. The report explained the assessment results, described Student's strengths and weaknesses and Student's need for special education and related services. District established the accuracy of the information presented in the report.

18. Student asserts that the psychoeducational assessment was inappropriate because Vineland scales were not given to a teacher to complete. Student provided no

evidence that a teacher was required to complete scales under Vineland protocols or that the results of the assessment would change had a teacher completed scales. To the contrary, the District provided credible evidence from Ms. Tallman that having the teacher complete scales was unnecessary. On these facts, the District has met its burden as to the appropriateness of Vineland.

19. Student asserts that the psychoeducational assessment was inappropriate because BASC scales were not given to Student to complete. Student provided no evidence, that he was required to complete scales under the protocols or that the results of the assessment would change had he completed scales. To the contrary, the District provided credible evidence from Ms. Tallman that having Student complete scales was unnecessary. She had sufficient information from other sources (reports, interviews, etc.) to complete the report and to obtain valid results from BASC without his scales. On these facts, the District has met its burden as to the appropriateness of BASC.

20. Student raised concerns that the results of the academic assessment completed by Mr. Hovaguimian differed from those of Dr. Gunn. Mr. Hovaguimian's assessment was administered so as not to be racially, culturally or sexually discriminatory. It was used for the purposes for which the assessment or measures are valid and reliable. Further, Mr. Hovaguimian administered the test/assessment materials in English, the language and form most likely to yield accurate information on what Student knows and can do academically, developmentally, and functionally. Moreover, Mr. Hovaguimian has been a resource specialist with District since 2013 and has administered the tool over 50 times. Therefore, he was sufficiently trained and experienced to administer, interpret and score the academic assessment. The assessment was scored and administered in conformance with testing instructions and it was valid for the purpose for which the test was intended.

21. Dr. Gunn's results showed that Student scored in the borderline delayed

range in math fluency, but Mr. Hovaguimian's results showed slightly higher results in the average range with regard to math fluency. According to testimony provided by Ms. Tallman and Mr. Hovaguimian, the only witnesses with experience as to these issues, since the tests were taken six months apart, practice effect did not influence results and it is not uncommon for results to differ in such situations. They further agreed that the difference in scores does not show that the District's results are inaccurate or inappropriate. Therefore, District's academic assessment is appropriate.

22. On these facts, the District has met its burden as to the appropriateness of its assessments. Therefore, the psychoeducational assessment and the incorporated academic assessment are appropriate and Student is not entitled to an independent evaluation.

ISSUE 3: DISTRICT'S PHYSICAL THERAPY ASSESSMENT

23. District contends that its physical therapy assessment of Student in August, 2015, was conducted in accordance with all necessary statutory requirements and that Student is not entitled to an independent evaluation at public expense. Student asserts that the physical therapy assessment was inappropriate because Parents were not given results in Spanish and because Student was not assessed in all areas of suspected disability.

24. As discussed above, it was not necessary for District to communicate with Parents, or provide documentation to them, in Spanish.

25. Student provided no evidence showing that District somehow failed to assess Student in all areas of suspected disability. To the contrary, District provided credible testimony from Dr. Van Vranken, the only witness with experience as to this issue, that Student was assessed in all areas of suspected disability. Her assessment was complete and substantive due to her personal observations of Student and her review of all relevant records.

26. The tests and assessment materials were selected and administered so as not to be racially, culturally or sexually discriminatory. They were provided and administered in Student's primary language and were used for the purposes for which the assessment or measures are valid and reliable. District used technically sound instruments that assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. Dr. Van Vranken did not use a single measure or assessment as the sole criterion for determining her results.

27. On these facts, the District has met its burden as to the appropriateness of its assessment. Therefore, the physical therapy assessment was appropriate and Student is not entitled to an independent evaluation.

ORDER

1. District's August 12, 2015 psychoeducational assessment is appropriate. Therefore, Student is not entitled to an independent evaluation at public expense.

2. District's August 20, 2015 academic assessment is appropriate. Therefore, Student is not entitled to an independent evaluation at public expense.

3. District's August 31, 2015 physical therapy assessment is appropriate. Therefore, Student is not entitled to an independent evaluation at public expense.

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, District prevailed on all issues.

RIGHT TO APPEAL

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

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

Dated: July 26, 2016

/s/

MARC LEVINE

Administrative Law Judge

Office of Administrative Hearings