

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016060115

DECISION

Los Angeles Unified School District filed a due process hearing request with the Office of Administrative Hearings on May 31, 2016, naming Parent on behalf of Student. The matter was continued for good cause on June 17, 2016.

Administrative Law Judge Marc Levine heard this matter in Van Nuys, California, on September 19 and 20, 2016.

Donald Erwin, Attorney at Law, represented Los Angeles Unified School District. Due Process Specialist Ryan McNeil attended on behalf of District.

Student did not appear at the hearing on either day.¹

¹ Student was represented by an advocate throughout the course of this due process proceeding, pursuant to a Notice of Representation filed by the advocate on June 10, 2016. The advocate appeared at the September 9, 2016 prehearing conference, when the hearing date and time was discussed. The advocate was reminded of the hearing by OAH staff via phone calls on September 15 and 19, 2016. On the first day of

At District's request, the matter was continued to October 3, 2016, to allow District an opportunity to submit written closing briefs. District timely filed its closing brief. The matter was submitted for decision on October 3, 2016.

ISSUES²

1. Is District entitled to conduct a psychoeducational assessment of Student pursuant to the February 2016 assessment plan without parental consent?
2. Is District entitled to conduct an academic assessment of Student pursuant to the February 2016 assessment plan without parental consent?
3. Was District's April 13, 2016 occupational therapy assessment appropriate, such that Student is not entitled to an independent evaluation at public expense?

SUMMARY OF DECISION

Student's educational or related services needs warranted psychoeducational and

the hearing, neither the advocate, Student nor Parent appeared timely at the 1:30 p.m. start time. The ALJ delayed the start of the hearing, and OAH staff called at 1:39 p.m. and left a message advising Student's advocate that the hearing was trailed until 2:00 p.m. OAH staff also called Student's Mother at that time, who did not answer and the number did not accept a voicemail message. When Student did not appear by 2:00 p.m., the hearing proceeded.

² The due process hearing request originally contained five issues. District withdrew two of these issues prior to the hearing. 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.)

academic assessments. District satisfied all of the notice requirements for the proposed assessments. District may proceed with its proposed psychoeducational and academic assessments without Parent's consent.

Furthermore, District's occupational therapy assessment was complete and properly administered by a sufficiently trained individual. The assessment was not racially, culturally or sexually discriminatory. The assessment was also properly administered in English – Student's primary language. Therefore, District met its burden of demonstrating that its occupational therapy assessment of Student was appropriate, such that Student is not entitled to an independent assessment at public expense.

FACTUAL FINDINGS

1. At all relevant times, Student resided with Parent and attended school within District. Student was 17 years and three months old, and in the 11th grade at Esteban Torres High School – Social Justice and Leadership Academy at the time of the hearing. Student was eligible for special education under the eligibility category of autism. Student was nonverbal. He communicated with gestures, pictures, symbols and an iPad.

2. Student's operative individualized educational program at the time of hearing was the IEP dated August 25, 2015. It included placement in a special day class for 1,100 minutes per week, general education classes with related services including behavior intervention implementation, behavior intervention development, adaptive physical education, inclusion facilitator, language and speech, and occupational therapy services.

2010 PSYCHOEDUCATIONAL AND ACADEMIC ASSESSMENTS AND 2013 ACADEMIC ASSESSMENT³

3. Student's last psychoeducational and academic assessments took place in 2010, when he was 10 years old and in fourth grade. The academic assessment utilized standard testing assessments. At that time his cognitive functioning was significantly below average, and deficits were evident in his adaptive functioning (communication, motor skills, socialization, and self-help skills). He was unable to understand or anticipate common dangers and his fine and gross motor skills were within the below average range. Student exhibited an inability to use oral language for communication. He related to people inappropriately. He had impaired social interaction and exhibited an obsession to maintain sameness, extreme preoccupation with objects and/or inappropriate use of objects, and extreme resistance to controls. These issues adversely affected Student's educational performance. At the time of Student's 2010 assessment, he was unable to walk around school without someone constantly holding his hands.

4. The academic assessment that was conducted as part of the May 10, 2013 triennial review did not include standardized testing. The results were based upon the review of records and interviews with Parent and teachers.

2016 TRIENNIAL ASSESSMENT

5. District sent Parent notice of proposed assessments on February 23, 2016. The notice contained an assessment plan, a copy of parental rights and safeguards under the IDEA and related state laws. The notice was in Parent's native language,

³ Evidence of the 2010 and 2013 academic assessments was offered in the form of testimony at the hearing. District did not provide copies of the written assessments at the hearing.

English, and explained the types of assessments to be conducted, including occupational therapy, psychoeducational and academic assessments. District informed Parent that no IEP would result from the assessment without Parent's consent. District gave Parent at least 15 days to review, sign, and return the proposed assessment plan.

6. Parent did not initially reply to the assessment plan. District sent a second copy to Parent on February 26, 2016. On March 4, 2016, Parent signed the plan to allow District to proceed with the requested occupational therapy and academic assessments, but not those involving a psychologist. Thus, Parent refused to consent to a psychoeducational assessment.

PSYCHOEDUCATIONAL ASSESSMENT

7. A psychoeducational assessment was necessary as part of the 2016 triennial evaluation. Since Student's previous assessment in 2010, he had changed significantly. Over the years, his interactions with others, and behavior at school had improved. Student had also become more independent in that he became able to walk around school without someone constantly holding hands. The information from the 2010 assessment was no longer valid. District needed to reevaluate Student to determine his social-emotional status, his ability to process, comprehend, integrate, analyze, synthesize and apply information. District needed updated data in 2016 to evaluate Student's adaptive behavior, his ability to perform daily activities and to deal with how Student's issues affected his educational performance.

8. On March 7, 2016, District sent Parent a letter reaffirming the importance of, and the need for, a psychoeducational assessment. Parent did not respond and did not consent to a psychoeducational assessment.

9. The psychoeducational assessment would have been administered by Norma Colon. Ms. Colon earned her bachelor of arts degree in psychology in 2001, and her master of science in counseling from in 2003. She received her school psychologist

credential in 2003 and worked as a school psychologist with District since then. She has completed hundreds of psychoeducation assessments for District. She was knowledgeable regarding Student's disability and competent to perform a psychoeducational assessment. According to Ms. Colon, a psychoeducation assessment was necessary for the triennial IEP team meeting to monitor Student's progress, update relevant information, to determine goals and services, and to assure that Student's eligibility for special education was accurate.

ACADEMIC ASSESSMENT

10. On April 15, 2016, Victoria Baca, an advocate authorized by Parent to communicate with District regarding the triennial reassessments, sent District an email revoking Parent's consent to an academic assessment for Student.

11. Luis Medrano would have administered the academic assessment. Mr. Medrano was qualified to administer the assessment. Mr. Medrano received his bachelor of science in geography and has been a special education teacher since 1998 with teaching and special education credentials. He met Student in January 2016, when he was assigned as Student's special education teacher for math, history, and English. Mr. Medrano observed Student in class. Student exhibited inappropriate behavior interacting with classmates on many occasions. These behaviors include scratching others and pulling glasses off of his classmates. Student's issues with attention required consistent physical and verbal prompts from his aide. In Mr. Medrano's opinion, an academic assessment was imperative in determining the appropriate services and goals so that Student could properly access his education.

OCCUPATIONAL THERAPY ASSESSMENT

12. Denise Kwan Brown, Student's occupational therapist while in elementary school, and later in the summers of 2014 and 2015, completed an occupational therapy

assessment and prepared a report dated April 13, 2016.

13. Ms. Brown earned her bachelor's degree in exercise science in 2000, her master degree in occupational therapy in 2003, and her doctorate in occupational therapy in 2004. She worked as an occupational therapist for District since 2006 and completed hundreds of occupational therapy assessments. She was well trained, qualified and sufficiently experienced to complete such assessments.

14. As part of the assessment, Parent completed a questionnaire to share her concerns. Parent was concerned with Student's anxiety level and his fine motor skills for writing his name. Mr. Medrano completed a questionnaire for the assessment advising of his concerns. Mr. Medrano shared that Student was having difficulty meeting IEP goals and had trouble working in the classroom setting alongside peers. Ms. Brown also reviewed Student's health and school records, notes from prior occupational therapists, prior assessments/IEP's, and work samples.

15. Ms. Brown attempted to administer The Beery-Buktenica Development Test of Visual-Motor Integration (VMI). The VMI measures the extent to which individuals can integrate their visual and motor abilities. It is commonly used to identify children who are having significant difficulty with visual-motor integration and to determine the most appropriate course of action. The VMI was appropriate to administer to Student. It was not discriminatory, and it was administered in accordance with test instructions. However, student was unable to follow directions and was unable to complete the assessment. He did not visually attend to the pictures on the test in order to copy them. As such, the results of this test were invalid.

16. Ms. Brown utilized the *Educational Framework for Child Success*, the American Occupational Therapy Association's *Occupational Therapy Practice Framework* and the World Health Organization's *International Classification of Function* for the assessment process to take into account the curriculum, educational environment, and

Student's abilities to determine the current level of performance.

17. Student was observed on March 16, 2016 and April 13, 2016 by Ms. Brown as part of the assessment. Student transitioned to the assessment with prompts from his aide, and participated in activities with maximum prompts from Ms. Brown and/or the aide. Student did not participate in specific tasks for more than one to two minutes at a time despite verbal encouragement and prompts. During the assessment he would complete one item of a task, then push away other items, Student required maximum verbal prompts to complete a task or to do more of an activity. The assessment also focused on Student's relevant sensory issues, including sensory strategies and sensory integration issues (vestibular/proprioceptive input, visual, auditory and tactile).

18. Ms. Brown prepared a written report that included: (1) a determination that Student needed 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; (6) whether there was such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; and (7) a determination of the effects of environmental, cultural, or economic disadvantage. The report was provided to Parent after the assessment.

APRIL 27, 2016 TRIENNIAL IEP TEAM MEETING

19. The IEP team, including Parent and Ms. Baca, met on April 27, 2016 for the triennial team meeting.

20. Since Parent refused to consent to a psychoeducational assessment, the team's discussion was based on observations of Student, teacher interviews, and input from Parent, Ms. Baca, and others attending the meeting. The team determined that Student's autism impacted his ability to fully access the general education curriculum

and impaired his ability to interact with others, access vocational, educational, and independent living opportunities.

21. Since Parent refused to allow a formal academic assessment, the team based its findings regarding math, reading and writing on the review of school records, teacher observations, work samples and input from Parent, Ms. Baca, and others attending the meeting.

22. The team determined that Student's disability impacted his auditory processing, cognitive abilities and language deficits which made it difficult for him to process multi-step directions and to understand concepts. However, this determination was based on the very limited information available to the team as a result of Parent's refusal to consent to psychoeducational and academic assessments.

23. The team reviewed and discussed Ms. Brown's report. The report detailed the assessment results, described Student's strengths and weaknesses and Student's need for special education and related services.

24. On or about May 2, 2016, Ms. Baca requested an occupational therapy independent educational evaluation because she believed that Ms. Brown did not assess in the area of sensory integration. District declined the request because Student was assessed in the area of sensory integration and it filed this action to defend its assessment.

LEGAL AUTHORITY AND CONCLUSIONS

INTRODUCTION – LEGAL AUTHORITY⁴

1. This hearing was held under the Individuals with Disabilities Education Act,

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

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 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: PSYCHOEDUCATIONAL AND ACADEMIC ASSESSMENTS

5. District contends that it should be permitted to undertake psychoeducational and academic assessments without parental consent if Student is to continue to receive special education and related services. District also contends that it complied with the notice requirements of the IDEA and Education Code.

Applicable Law

6. Once a student has been found eligible for special education pursuant to an initial assessment conducted pursuant to Education Code section 56320, a district must periodically reassess the student's educational and related services needs. A special education student must be reassessed every three years, but not more frequently than once a year, unless the parent and district agree otherwise. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) A district must also reassess a special education student if it determines that the educational or related services needs of the pupil, including improved academic achievement and functional performance, warrant reassessment, or if the pupil's parents or teacher request an assessment. (Ed. Code, § 56381, subd. (a)(1).) Reassessment of educational and related services needs, like initial assessments for special education eligibility under Education Code section 56320, is warranted where the district has reason to suspect that a student has an impairment that is affecting the student's educational performance and special education services

may be necessary to address the impairment. (See, e.g., *Simmons v. Pittsburg Unified School Dist.* N.D. Cal., June 11, 2014, No. 4:13- CV-04446-KAW, 2014 WL 2738214, at page 6, citing *Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1032.)

7. A district must seek informed parental consent before conducting any reassessment of a special education student. (Ed. Code, § 56381, subd. (f)(1).) To obtain consent, the district must develop a written reassessment plan and provide it to the parents. (Ed. Code, § 56321, subd. (a); 20 U.S.C. § 1414(b)(1).) If the parents do not consent to the plan, the district may, but is not required to, pursue the reevaluation by requesting a due process hearing and proving that it needs to reassess the student and is lawfully entitled to do so. (Ed. Code, § 56381, subd. (f)(3).) Thus, to proceed with a reassessment over a parent's objection, a district must demonstrate at a due process hearing that: (i) the student's educational or related services needs warrant reassessment or a triennial reassessment is due, or the student's parent or teacher has requested reassessment (Ed. Code, § 56381, subd. (a)); and (ii) that the district has properly provided parent an appropriate written reassessment plan to which the parent has not consented.

8. A district must give a parent notice of the proposed assessment that includes the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).) The assessment plan must be provided in a language easily understood by the public (Ed. Code, § 56321, subd. (b)(1); and in the native language of the parents (Ed. Code, § 56321, subd. (b)(2); explain the types of assessments to be conducted (Ed. Code, § 56321, subd. (b)(3); and notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(4); 34 C.F.R. § 300.9(a).) The district must give the parent at least 15 days to review, sign, and return the proposed assessment plan.

(Ed. Code, § 56321, subd. (a).)

9. Parents who want their children to receive special education services must allow reassessment by the school district. (*Johnson v. Duneland Sch. Corp.* (7th Cir.1996) 92 F.3d 554, 558; *Andress v. Cleveland Independent School Dist.* (5th Cir.1995) 64 F.3d 176, 178-79; *Gregory K. v. Longview School Dist. supra*, 811 F.2d 1307, 1315; *Dubois v. Conn. State Bd. of Ed.* (2d Cir.1984) 727 F.2d 44, 48.)

Analysis

10. Here, District was required to reassess Student's because it was more than three years from his most recent psychoeducational and academic assessments. Reassessment was also warranted here since District had reason to suspect that Student had an impairment that was affecting his performance and special education services were necessary to address the impairment.

11. The April IEP team determined that Student's disability impacted his auditory processing, cognitive abilities and language deficits which made it difficult for him to process multi-step directions and to understand concepts. However, this determination was based on the very limited information available to the team as a result of Parent's refusal to consent to psychoeducational and academic assessments. Psychoeducational and academic assessments would have provided valuable data as to these issues and as to how Student's disabilities affect academics. A psychoeducational assessment would have allowed the team to properly determine Student's eligibility for special education, necessary services, and goals. Without the assessment, the data was unsubstantial. There was no evidence in the record to contradict this finding.

12. An academic assessment was warranted. It had been three years since his last such assessment in 2013, and Student had changed over those years. Additionally, it had been six years since Student had a formal academic assessment that included standardized testing. It was essential to know how Student was performing academically

and how he was functioning in school. This assessment would have provided fundamental information for the IEP team to develop an appropriate IEP.

13. District sought informed parental consent before conducting academic and psychoeducational assessments. District developed a written reassessment plan and provided it to the Parent. District gave Parent notice of the proposed assessment that included the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and related state laws. The assessment plan was provided in English, Parent's native language and it explained the types of assessments to be conducted. District also notified Parent that no IEP will result from the assessment without the consent of Parent and gave Parent at least 15 days to review, sign, and return the proposed assessment plan.

14. District demonstrated that psychoeducational and academic triennial reassessments were required. In addition, reevaluation in those two areas was warranted due to significant changes in Student's performance and behaviors based upon work product, teacher observations and interviews, and the opinions of Ms. Colon and Ms. Hall. District further demonstrated that it met the legal requirements in its attempts to obtain parental consent to the assessments.

ISSUE 3: DISTRICT'S OCCUPATIONAL THERAPY ASSESSMENT

15. District contends that its occupational therapy assessment was conducted in accordance with all necessary statutory requirements and that Student is not entitled to an independent evaluation at public expense.

Applicable Law

16. 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).)

17. 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).)

18. 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).)

19. 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).)

20. 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. § 300.502(b)(4); Ed. Code, § 56329, subd. (c).)

Analysis

21. District's occupational therapy assessment met all legal requirements for assessments. Ms. Brown was well educated and trained, and had been working as a school occupational therapist for District since 2006. She had completed hundreds of such assessments. The VMI was appropriate to administer to Student was selected so as not to be discriminatory, and was administered in accordance with test instructions. Although the results of the VMI were not valid, Ms. Brown used a variety of other assessment tools and strategies including observations, questionnaires, and her review of records, notes from prior occupational therapists, prior assessments/IEP's and work samples in completing the assessment.

22. Student was assessed in all areas of suspected disability within the occupational therapy realm, including sensory integration issues. Ms. Brown, the only witness with experience as to these concerns, credibly testified that the assessment was complete. Under these facts, the District has met its burden as to this issue.

23. The completed report was provided to Parent and was discussed at the IEP team meeting of April 27, 2016. The report provided the results of the assessment, detailed Student's strengths, weaknesses and Student's need for special education and related services. District established the accuracy of the information presented in the report.

24. On these facts, the District has met its burden as to the appropriateness of its occupational therapy assessment. Therefore, Student is not entitled to an independent evaluation.

REMEDY

1. If the parents do not consent to an appropriate assessment plan, district

may, but is not required to, pursue the reevaluation by requesting a due process hearing and proving that it needs to reassess the student and is lawfully entitled to do so. (Ed. Code, § 56381, subd. (f)(3).)

2. Parents who want their children to receive special education services must allow reassessment by the school district. (*Johnson v. Duneland Sch. Corp.* (7th Cir.1996) 92 F.3d 554, 558; *Andress v. Cleveland Independent School Dist.* (5th Cir.1995) 64 F.3d 176, 178-79; *Gregory K. v. Longview School Dist. supra*, 811 F.2d 1307, 1315; *Dubois v. Conn. State Bd. of Ed.* (2d Cir.1984) 727 F.2d 44, 48.)

3. If Student continues to withhold consent and/or does not comply with the orders set forth below, Student may not continue to receive special education and related services.

4. Here, District's proposed assessment plan was legally compliant. Thus, District is entitled to a remedy that it is entitled to pursue the academic and psychoeducational assessments without parental consent if Student is to continue to receive special education and related services.

ORDER

1. District's April 13, 2016 occupational therapy assessment was appropriate, such that Student is not entitled to an independent evaluation at public expense.

2. If Student is enrolled in District, District may conduct a psychoeducational assessment of Student pursuant to the February 2016 assessment plan without parental consent.

3. If Student is enrolled in District, District may conduct an academic assessment of Student pursuant to the February 2016 assessment plan without parental consent.

4. District shall notify Parent in writing of the date(s) of the assessments of Student at least 15 calendar days before they begin. If Student fails to allow District to

assess Student as required by this Order, District may, upon prior written notice to Student and without further order of an ALJ, terminate its delivery of special education and related services to Student.

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: October 31, 2016

/s/

MARC LEVINE

Administrative Law Judge

Office of Administrative Hearings