

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016080688

DECISION

San Mateo-Foster City School District filed a due process hearing request (complaint) with the Office of Administrative Hearings on August 12, 2016, naming Student. On September 6, 2016, OAH granted a continuance for good cause. Administrative Law Judge Sabrina Kong heard this matter in Foster City, California, on December 6, 2016.

Lenore Silverman, Attorney at Law, represented District. John Bartfield, District's special education director, attended the hearing. Father represented Student at hearing. Student did not attend the hearing.

A continuance was granted for the parties to file written closing arguments and the record remained open until January 13, 2017. District timely filed written closing arguments. Student did not file written closing arguments. The record was closed on January 13, 2017, and the matter was submitted for decision.

ISSUES¹

1. Was District's spring 2016 psycho-educational assessment appropriate such that Student is not entitled to an independent educational evaluation at public expense?
2. Was District's spring 2016 speech and language assessment appropriate such that Student is not entitled to an independent educational evaluation at public expense?

SUMMARY OF DECISION

District proved that its psycho-educational and speech and language evaluations complied with the procedural requirements for appropriate assessments under the Individuals with Disabilities Education Act. The assessors were qualified; they used valid test instruments and obtained valid results; they documented their assessment results in written reports; and they presented their findings to Student's IEP team at two IEP team meetings. Father attended the first meeting, and Mother and Father attended the second meeting. Both Parents had the opportunity to and did participate at the meetings. Father expressed his concerns about the assessment reports at the IEP team meeting, and later in writing. District considered Father's concerns. The evidence established the assessments results were appropriate. Therefore, Student was not entitled to independent educational 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.) Father withdrew his request for an independent occupational therapy evaluation at the November 30, 2016 prehearing conference.

FACTUAL FINDINGS

1. Student was 13 years old, and attended Bayside Stem Academy, a District school, at the time of the hearing. She resided with Mother within District at all relevant periods. Mother and Father were divorced and did not reside together.

2. District received Father's request for assessments to determine if Student qualified for special education on February 24, 2016. On March 4, 2016, District provided an assessment plan to Father. The plan proposed assessments in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social/emotional, adaptive behavior and records review and observations by District's specialists. District also included a copy of Parents Rights and Procedural Safeguards with the assessment plan. District received the assessment plan, signed by Father, on March 7, 2016.

PSYCHO-EDUCATIONAL ASSESSMENT

3. John Michael Gomez conducted a psycho-educational assessment of Student. He held a bachelor's degree in psychology, a master's degree, a Pupil Personnel Services Credential in school psychology, and performed graduate coursework in applied behavior analysis. He had worked as a school psychologist since 2012; as District's school psychologist since July 2015; and conducted approximately 45 psycho educational assessments. He was familiar with the special education eligibility categories under federal and state law, and his conclusions were valid because they were based upon assessment results analyzed under the law.

4. Mr. Gomez reviewed Student's cumulative file starting from elementary school before assessing Student. Student had been medically diagnosed with anxiety, Tourette's syndrome, and attention deficit hyperactivity disorder. Mr. Gomez asked Mother and Father to fill out developmental questionnaires regarding Student. He

provided Mother's questionnaire in Spanish based on Father's representation that Mother spoke Spanish. Mother provided responses in English. Mr. Gomez interviewed Father, who shared information about Student while she was briefly in foster care. Mr. Gomez also interviewed Student and teachers. Mr. Gomez spoke with Student about her medical diagnosis of anxiety, attention deficit hyperactive disorder, and Tourette's syndrome. He learned that blinking was one of her ticks, and asked her if she could show him what it looked like. Student declined to do so. Mr. Gomez also asked Student to confirm that the handwriting on a questionnaire was Mother's handwriting which Student did.

5. Student struggled in math. District enrolled her in a math support class, in addition to her core math class. The math support class was a class that District offered to all general education students who struggled in math. Mr. Gomez observed Student in her math and social studies classes and concluded that she was on task over 90 percent of the time.

6. Mr. Gomez also observed Student during unstructured time in the library, and at lunch, giggling; happy; comfortable; responding to conversation; asking for clarification when needed; and transitioning appropriately to class when the bell rang. Mr. Gomez concluded that Student interacted appropriately with peers.

7. The psycho-educational assessment took four days, and included testing Student at District for two sessions, for two hours each session. All assessment tools were administered in Student's primary language of English. Mr. Gomez administered the following standardized tests: Differential Ability Scales, Second Edition; the Test of Nonverbal Intelligence, Fourth Edition; the Wide Range Assessment of Memory and Learning, Second Edition; the Test of Auditory Processing Skills, Third Edition; the Motor Free Visual-Perception Test, Third Edition; the Beery-Buktenica Developmental Test of Visual Motor Integration, Sixth Edition, both the Test of Visual Perception and Test of

Motor Coordination; the Behavior Assessment System for Children, Second Edition; the Conners, Third Edition; and the non-standardized, Screen for Child Anxiety Related Disorders, Child Version. Education Specialist, Habiba Naqvi, administered the standardized, Wechsler Individual Achievement Test, Third Edition, in consultation with Mr. Gomez who was qualified to interpret all test results. All instruments were reliable and widely accepted assessment tools. All instruments were administered and interpreted consistent with the publisher's protocols and yielded valid results. The assessments were not racially, culturally, or sexually biased.

8. The Wechsler Individual Achievement Test measured Student's academic achievement. She scored average in basic reading and written expression; low average in oral language and reading comprehension and fluency; and low in math. Student scored the lowest in math, a 72. The Differential Ability Scale measured Student's cognitive and intellectual abilities. She scored low average in verbal clusters such as word definitions and verbal similarities and in spatial clusters such as recalling designs and pattern construction. She scored low in nonverbal reasoning. Student's general conceptual ability was low, a 78. Student scored low average in the area of processing speed. Her ability to make quantitative comparisons was low, and her ability to access words in long-term verbal memory was average. Student's low nonverbal reasoning score in the Differential Ability Scale triggered Mr. Gomez to administer the Test of Nonverbal Intelligence to see if the results were consistent. Student scored low average, an 84, on managing nonverbal information, organizing spatially oriented material, and mastering abstract properties of visual symbols. Comparing both Student's 78 nonverbal score in the Differential Ability Scale, and her score of 84 on the Test of Nonverbal Intelligence, Mr. Gomez concluded that Student's overall cognitive profile and non-verbal reasoning skills were in the low average range. Mr. Gomez calculated the difference between Student's lowest academic achievement score of 72 in math, and her

score of 84 on the Test of Nonverbal Intelligence to be a total of 12 points. Because the point differential between academic achievement and cognitive abilities was less than 22 points, he correctly concluded that Student did not exhibit a severe discrepancy between academic achievement and cognitive abilities needed to meet the legal definition of a specific learning disorder.

9. The Wide Range Assessment of Memory and Learning assessed Student's memory and learning abilities. Student scored average in attention and concentration, and low average in verbal memory, visual memory, and general memory. The Test of Auditory Processing Skills assessed Student's ability to manipulate, remember and understand auditory information. Student scored average in all areas. The Motor Free Visual-Perception Test assessed Student's visual perceptual processing ability, or the ability to interpret what she saw, such as constructing a design from a picture. Student scored low average, indicating difficulty with visual processing. The Beery-Buktenica Developmental Test of Visual Motor Integration assessed Student's visual-motor integration skills such as eye-hand coordination. Student scored average indicating that her fine motor skills were within normal limits.

10. The Behavior Assessment System for Children assessed Student's social, emotional, behavioral, and adaptive functioning through questionnaires filled out by Mother, Father, Student, and her social studies, math, English, and science teachers. Student's self-rating did not show any signs of depression or social emotional issues. Parents' and the English teacher's ratings of Student showed she exhibited signs of withdrawal which were not clinically significant. Parents' ratings of Student did not show any anxiety, and the English and science teachers' ratings showed Student exhibited anxiety which was not clinically significant. Everyone's responses indicated that Student's social, emotional, behavioral, and adaptive functioning was within the acceptable range.

11. Mr. Gomez used the Screen for Child Anxiety Related Disorders, a non-standardized screening measure for anxiety related disorders, to provide initial screening information of whether Student showed symptoms of an anxiety related disorder. Although Student perceived herself as having more anxiety related symptoms consistent with separation anxiety, Student's scores did not meet the cutoff criteria for having symptoms related to a generalized anxiety disorder, panic disorder, and social anxiety disorder or school avoidance.

12. Responses from Mother, Father, and Student's social studies, math, English, and science teachers on the Conners Rating Scale provided Mr. Gomez information about Student's behavior. Some of the responses suggested Student had poor concentration, attention, made careless mistakes, and was easily distracted. Some of the responses to the Conners rating scale were inconsistent with the results from the Behavior Assessment System for Children attention scales and Mr. Gomez's own observations. For example, Parents' reported Student exhibited high average to elevated ratings in her impulsivity and hyperactivity; whereas all the teachers' ratings reported Student's impulsivity and hyperactivity were within the normal range, consistent with the Behavior Assessment System for Children ratings and Mr. Gomez's observations. Mr. Gomez concluded that the Behavior Assessment System for Children attention scales and his own observations of Student's attention more accurately reflected Student's attention status. Mr. Gomez also concluded that the Conners scores showed that Student had behaviors at home which did not exhibit themselves at school. Further, Parents rated Student's executive function as high average. Three teachers' ratings showed elevated concerns regarding Student's executive function, which suggested that Student could have difficulty understanding academic materials and needed extra explanations; could have poor organizational skills; and could have difficulty starting projects. However, her social studies teacher's rating showed that Student's learning and

executive functioning skills were normal. Mr. Gomez concluded that the social studies' teacher's ratings of Student's executive function were more consistent with the results obtained from the Behavior Assessment System for Children attention scales and Mr. Gomez's own observations. All raters agreed that Student did not exhibit defiance or aggressive behaviors. Four out of five raters had elevated concerns with Student's peer relations, but these ratings were inconsistent with teachers' feedback and Mr. Gomez's observations. Mr. Gomez concluded that teachers' feedback and Mr. Gomez's own observations more accurately reflected Student's peer relations status at school.

13. Mr. Gomez concluded that Student did not have a specific learning disability because her scores did not show a severe discrepancy between her academic achievement and cognitive ability. The difference between Student's Wechsler Individual Achievement Test, general conceptual ability score, 78; *or* Test of Nonverbal Intelligence, nonverbal information score, 84; and her lowest achievement score of 72 in math from the Wechsler Individual Achievement Test reflected a six points, and a 12 points difference, respectively. Further, Student's processing skills (*e.g.* cognitive association, expression, conceptualization, visual processing, sensory motor abilities, attention processing) were consistent with her overall cognitive skills. Her math, oral language, reading comprehension and fluency skills were also consistent with her overall cognitive skills. Her executive function skills were within normal limits. Student was capable of learning and the Wechsler Individual Achievement Test was representative of Student's low average cognitive profile with strength in auditory processing, basic reading and written expression skills.

14. Mr. Gomez also concluded from his assessment of Student that she did not have other health impairments impacting her strength, vitality or alertness, or adversely affecting her educational performance. Mr. Gomez's observations all consistently showed that Student's attention were within normal limits. Student's social-

emotional and behavioral development scores were also within normal limits, and not an area of concern; even though she exhibited withdrawal and anxiety behaviors, they did not interfere with her ability to access the curriculum.

15. Mr. Gomez further concluded from his assessment of Student that she did not have an emotional disturbance over a long period or to a marked degree adversely affecting her educational performance. According to assessment data, Student maintained appropriate interpersonal relationships and interactions with peers and adults, displayed appropriate behaviors, and did not display symptoms consistent with a pervasive mood of unhappiness or depression. Student's medical diagnosis of anxiety, and shyness, did not adversely impact her education. She did not display symptoms of fears with personal or school problems.

16. Student did not have physical disabilities, was not socially maladjusted, and had no environmental, cultural, or economic factors impacting her ability to access the curriculum. At the time of the psycho-educational assessment, Student was passing all her classes, and her lowest grade was a D. Mr. Gomez did not find that Student was academically impacted with a specific learning disorder, other health impairment for ADHD, or emotional disturbance. He recorded all of his assessment findings and conclusions in his May 20, 2016 Psycho-educational Assessment Report.

SPEECH AND LANGUAGE ASSESSMENT

17. Kelly Clark conducted a speech and language assessment of Student. She had a minor in psychology, and held a bachelor's and a master's degree speech pathology, a certificate of clinical competence from the American Speech-Language-Hearing Association, and was a licensed California speech pathologist. She worked as a speech and language pathologist since 2010, and as District's sole speech and language pathologist since November 2011, with approximately 55 cases per year. She was familiar with the special education eligibility categories under federal and state law, and

her conclusions were valid because they were based upon assessment results analyzed under the law. Her duties as District's speech and language pathologist included conducting speech and language assessments, providing speech and language services, attending IEP team meetings and making eligibility recommendations. She reviewed Student's cumulative file before assessing Student, and noted that Student had previously been assessed for special education, but did not qualify. She asked Father for access to previous assessment reports, and Father declined to provide them. The speech and language assessment took four sessions of 45 minutes each in a therapy room, at Bayside Stem Middle School. Ms. Clark assessed Student in her native language of English with the Receptive One-Word Picture Vocabulary Test, Fourth Edition; the Expressive One-Word Picture Vocabulary Test, Fourth Edition; the Clinical Evaluation of Language Fundamentals, Fifth Edition; a speech and language sample, and a Pragmatic Skills Checklist. Ms. Clark was qualified to interpret all test results. All instruments were reliable and widely accepted assessment tools. All instruments were administered and interpreted consistent with the publisher's protocols and yielded valid results. The assessment was not racially, culturally or sexually biased. She opined that Student was focused, used her best effort, and believed the results represented Student's speech and language skills.

18. The Receptive One-Word Picture Vocabulary Test evaluated Student's one-word listening vocabulary based on home and formal education and asked her to identify one out of four pictures orally presented by Ms. Clark. The Expressive One-Word Picture Vocabulary Test evaluated Student's one-word vocabulary skills and asked her to produce the name of the pictured object. Student's receptive and expressive vocabulary skills were average. The Clinical Evaluation of Language Fundamentals evaluated Student's ability to: understand word classes such as antonyms and synonyms; follow directions; formulate sentences; understand paragraphs; assemble grammatically

acceptable and semantically meaningful sentence—areas where Student performed in the average range. It also evaluated Student’s ability to recall sentences and determine semantic relationships such as making comparisons, identifying location/direction, specifying time relationships, including serial order, and passive voice expressions—areas where Student performed below average. The speech and language sample evaluated Student’s conversational speech and narrative retell. Student’s sentences averaged a mean length of utterance, which was within the average range for her age. Ms. Clark concluded Student’s overall communication skills and fluency were age appropriate and 100 percent intelligible. The Pragmatic Skills Checklist evaluated how Student used words and behaviors to communicate. Ms. Clark observed Student during class and unstructured time. Student performed in the acceptable range in all areas of pragmatic competency such as paralinguistic behaviors, interactive management and conversation skills. Ms. Clark observed Student smiling; conversing; asking questions; responding with accurate information, using sufficient details; and always remaining on topic. Ms. Clark concluded Student was polite and appropriate in conversation. Student’s language scores were all within the average range, and Student did not score below the seventh percentile in any area, which would be one component indicating the presence of a speech and language impairment. Ms. Clark did not find that Student’s speech and language skills adversely affected her ability to perform academically. She recorded all of her assessment findings and conclusions in her May 20, 2016 Speech and Language Initial Evaluation report.

19. District had a two week spring break from March 25, 2016 to April 10, 2016. On May 2, 2016, District sent notice of an initial IEP team meeting for May 20, 2016.

MAY 20, 2016 IEP TEAM MEETING

20. Father, Mr. Gomez, Ms. Clark, Ms. Naqvi, general education teacher Laura Evans, principal Dr. Toni-Sue Passantino, and Student's educational advocate attended the May 20, 2016 IEP team meeting. District provided Father with a copy of Parents Rights and Procedural Safeguards. District permitted Father to record the IEP team meeting. The IEP team discussed the psycho-educational and speech and language assessments. Based upon the assessment results, the District IEP team members concluded that Student was not eligible for special education under the category of specific learning disability, other health impairments for ADHD, emotional disturbance, or speech and language impairment. Father did not disagree with the reports or findings at the meeting. District recommended developing an educational support plan under Section 504 of the 1973 Rehabilitation Act (Section 504 plan) to provide appropriate academic supports for Student.²

21. At the May 20, 2016 IEP team meeting, Father asked Mr. Gomez to include in his psycho-educational report that Student had been abused by her foster mother. Mr. Gomez did not initially include that information provided by Father during his interview because he thought Father wanted that information to remain confidential. Mr. Gomez agreed to add that Student had been abused by her foster mother in the psycho-educational report. Father disagreed with Mr. Gomez's use of the word "unique" to describe Student's educational history of enrolling in multiple schools over the course

² A 504 plan is an accommodation plan created pursuant to Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et. seq. (2000).) Generally, the law requires a district to provide program modifications and accommodations to children who have physical or mental impairments that substantially limit a major life activity such as learning.

of her educational career. Father was upset when he perceived Dr. Passantino to be laughing at Student during a discussion of Student's atypical behaviors at the May 20, 2016 IEP team meeting. When discussing the speech and language assessment results, Ms. Clark explained that standardized test scores evaluated how Student performed compared to other peers her age. Despite Ms. Clark's attempt to clarify that standardized tests were predicated on Student's performance as compared to same aged peers, Father was displeased that Ms. Clark compared Student to peers. Ms. Clark also explained that she preferred to focus on Student's abilities in the "real world" instead of focusing solely on standardized test scores when explaining Student's capabilities. Father interpreted Ms. Clark's explanation to mean that she disliked standardized testing, and found them boring. At hearing, Father shared that Ms. Clark's comment that the semantics part of the standardized testing made her "brain feel like scrambled eggs" contributed to the inappropriateness of her speech and language assessment.

22. Mother did not attend the May 20, 2016 IEP team meeting. The IEP team continued the May 20, 2016, so that Mother would have an opportunity to attend and discuss the psycho-educational and speech and language assessments.

23. On May 31, 2016, District sent the continuation notice of the May 20, 2016 initial IEP team meeting to both Mother and Father. On June 3, 2016, Father sent a letter to District entitled "Request for Independent Educational Assessments." The letter stated that Father was displeased with District's conduct during testing and during the May 20, 2016 IEP team meeting because District personnel displayed inappropriate, unprofessional and discriminatory conduct toward Student. Father suggested that an unbiased person review the IEP team meeting recording regarding his concerns. Father did not specifically request any independent assessments, or expressly disagree in his letter with any District assessments.

JUNE 13, 2016 IEP TEAM MEETING

24. On June 13, 2016, District held a continuation of the May 20, 2016 IEP team meeting. Father, Mother and an occupational therapist attended along with the same District personnel who attended the May 20, 2016 IEP team meeting. District provided a Spanish interpreter to Mother, but Mother did not need the service. District provided both Parents with copies of Parents Rights and Procedural Safeguards. The IEP team discussed Student's strengths and weaknesses, and Parents' concerns about Student's anxiety, math needs, social skills, and self-advocacy skills. The IEP team also discussed the psycho-educational and speech and language assessments. The District IEP team members repeated their conclusion that Student was not eligible for special education under the category of specific learning disability, other health impairments for ADHD, emotional disturbance, or speech and language impairment. Parents did not expressly disagree with the reports or findings. District discussed continuing academic supports that were available to all the general education students, including in reading and in math, for Student, and recommended a Section 504 Plan to provide accommodations for her medical diagnosis of anxiety, Tourette's syndrome, and ADHD.

25. Mr. Gomez asked Father to clarify his June 3, 2016 letter, specifically the reason he entitled his letter as a request for an independent evaluation. Father shared that the reasons were stated in his letter and involved inappropriate behaviors by three District personnel; he did not provide further details about the inappropriate behaviors. Father stated that if he could meet with District's special education director, John Bartfield, Father may not need independent evaluations. Father also wanted Mr. Gomez to include more of Student's background/history in the psycho-educational report and to detail the nature of Child Protective Services' involvement in Student's history. Mr. Gomez added that Student was "sexually abused" by her foster parent to the psycho-educational report based on what Mr. Gomez thought was Father's request at the May

20, 2016 IEP team meeting. Father disagreed with Mr. Gomez's addition to the psycho-educational report, stating he did not request such addition. The IEP team asked Father to submit a written request for all additions to the psycho-educational report to avoid further miscommunications.

26. On June 21, 2016, as a follow up to Father's request to meet with Mr. Bartfield at the June 13, 2016 IEP team meeting, Mr. Bartfield e-mailed Father a copy of District's independent evaluation policies and procedures, asked if Father wanted independent evaluations, or if he had any concerns and/or disagreements with District's assessments. Father responded to Mr. Bartfield on August 2, 2016 by e-mail, that he disagreed with District's assessments, and that he wanted independent evaluations as stated in his June 3, 2016 letter. On August 9, 2016, District sent prior written notice to Father denying his requests for independent evaluations, provided him a copy of the Notice of Parents Rights and Procedural Safeguards, and informed him District would be filing for due process to defend its assessments. District filed for due process shortly thereafter, on August 12, 2016.

27. At hearing, Father opined that Mr. Gomez's failure to include all of Student's background information rendered the psycho-educational assessment report inappropriate, including: (a) that Child Protective Services filed a felony child abuse report against the foster mother for pulling Student's hair; (b) that the report left out Student's second grade enrollment information; and (c) the report incorrectly stated that Student was "sexually abused", when the abuse was non-sexual. Father claimed he did not share with Mr. Gomez that the foster mother sexually abused Student, but that the foster mother abused Student by pulling her hair. Father also claimed that Mr. Gomez conducted himself inappropriately during Student's assessment by: (a) asking Student if the handwriting appearing in a questionnaire was Mother's handwriting; and (b) asking Student if she could demonstrate what her ticks looked like. Father claimed Ms. Clark's

speech and language assessment was inappropriate because, at the May 20, 2016 IEP team meeting, he believed Ms. Clark: (a) found the assessments boring; (2) relied on “real world” experiences over standardized test scores; and (3) disliked the semantics part of the assessment because it made her brain “feel like scrambled eggs.” Father was also displeased with what he perceived as Dr. Passantino laughing during a description of Student’s atypical behaviors at the May 20, 2016 IEP team meeting.

LEGAL AUTHORITY AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This due process hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)⁴; Ed. Code, § 56000, et seq.; and 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 to 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); 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 IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17) “Special education” is instruction specially designed to meet the unique needs of a child

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

⁴ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

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 as may be 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 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, and which sets forth 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 Dist. v. Rowley* (1982) 458 U.S. 176, 200 [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*, to date, 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 or 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)(f) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; 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); Ed. Code, § 56505, sub. (l).)

5. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA due process hearings is preponderance of the evidence].) In this case, District has the burden of proof as to its issues.

ISSUE ONE: PSYCHO-EDUCATIONAL ASSESSMENT AND REPORT

6. District contends its psycho-educational assessment and report were appropriate. Student disagrees and contends she was entitled to a District funded independent psycho-educational assessment.

7. To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, §56381,

subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable to the student, explain the assessments that the district proposes to conduct, and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) A school district must give the parents and/or the student 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).) The proposed written assessment plan must contain a description of any recent assessments that were conducted, including any available independent assessments and any assessment information the parent requests to be considered, information about the student's primary language and information about the student's language proficiency. (Cal. Code Regs., tit. 5, § 3022.)

8. The assessment must be conducted in a way that: (1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; (2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and (3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; (3) used for purposes for which the assessments are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The determination of what tests are required is made based

on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds.(c) & (e).) Assessors must be knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd.(g).)

9. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent (Ed. Code, § 56329, subd. (a)(3)), and an IEP team meeting must be held to consider the assessment. (Ed. Code § 56302.1, subd. (a).)

10. A student may be entitled to an independent educational evaluation⁵ if he or she disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].) In response to a request for an independent evaluation, an educational agency must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an independent evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

11. District demonstrated by a preponderance of the evidence it complied with all required procedures regarding notice, parent consent, and timeliness. District sent Parents a proposed written assessment plan with a copy of the Parents' Rights in response to Father's request for an initial assessment. Father signed and returned the assessment plan. District timely completed the assessments and held its initial IEP team meeting to provide Parents with the reports and discuss the results of all assessments, within 60 days, excluding spring break, upon receipt of the signed assessment plan.

⁵ Federal law uses the term "evaluation" instead of the term "assessment" used by California law, but the two terms have the same meaning and are used interchangeably in this Decision.

District also held a continuation IEP team meeting on June 13, 2016, to allow Mother the opportunity to participate in the discussion of the assessment results and District's conclusions regarding eligibility. District timely filed for due process shortly after Father responded to Mr. Bartfield on August 2, 2016, that he disagreed with District's assessments, and wanted independent evaluations.

12. District demonstrated by a preponderance of the evidence that Mr. Gomez properly conducted the 2016 psycho-educational assessment and the resulting report was appropriate and for the proper purpose of determining eligibility. Mr. Gomez was a licensed school psychologist qualified to perform the assessments, and interpret their results. District used a variety of tools to assess Student including standardized tests, screening test, rating scales, observations of Student, a variety of interviews, and records review. The assessments resulted in a comprehensive written report that included all observations, assessment results, consideration of Student's cognitive abilities, visual-motor abilities, visual-perceptual abilities, visual memory abilities, academic strengths and weaknesses, adaptive skills, daily functional abilities, behavior and social emotional presentations. The report included a reasoned conclusion that Student did not qualify for special education services under the specific learning disorder, other health impairment for ADHD, emotional disturbance, or speech and language disorder. The assessment results consistently supported findings that Student was within the average range in intellectual, processing, behavior, and social/emotional areas, and her educational performance or her ability to access her education was not affected by those factors. The psycho-educational assessment yielded information about Student that was useful and sufficient for the IEP team to conclude that, while Student had challenges, her challenges could be adequately addressed in the general education setting, with supports that were available to general education students, and or with a Section 504 Plan.

13. District met its burden of demonstrating that the psycho-educational assessment was properly conducted and reviewed by the IEP team, such that Student was not entitled to a District funded independent psycho-educational evaluation. Father's displeasure with Mr. Gomez's and Dr. Passantino's questions, attitudes, and comments to, and about, Student did not prove that the psycho-educational assessment was incomplete, inappropriate or conducted in a discriminatory manner. Father did not present any expert testimony or other persuasive evidence supporting a finding that the psycho-educational assessment did not meet all requirements for an appropriate assessment.

ISSUE TWO: DISTRICT'S SPEECH AND LANGUAGE ASSESSMENT AND REPORT

14. District contends that its speech and language assessment and report were appropriate. Student disagrees and contends he was entitled to a District funded independent assessment in speech and language.

15. Legal Authority and Conclusions seven through eleven are incorporated by reference.

16. District demonstrated by a preponderance of the evidence that Ms. Clark properly conducted the 2016 speech and language assessment and her report was appropriate. She administered the assessment to determine whether Student qualified for special education services based on Student's speech and language needs. Ms. Clark was a qualified assessor with the proper experience and speech and language pathologist credentials. The assessment was based on a variety of tools including observations, records review, standardized tests, informal assessments and conversation; and resulted in a comprehensive written report with a reasoned conclusion that Student's speech and language skills did not adversely impact her access to her education. Student's speech and language assessment scores were well within the average range. Student was 100 percent intelligible, and conversed appropriately. The

speech and language assessment yielded information about Student that was useful and sufficient for the IEP team to conclude that, while Student had challenges, her challenges could be adequately addressed in the general education setting, with supports that were available to general education students, and or with a Section 504 Plan.

17. District met its burden of demonstrating that the speech and language assessment was properly conducted and reviewed by the IEP team, such that Student was not entitled to a District funded independent speech and language evaluation. Father's displeasure with Ms. Clark's comments at the May 20, 2016 IEP team meeting did not support his contention that the speech and language assessment was incomplete, inappropriate or conducted in a discriminatory manner. Father did not present any expert testimony or other persuasive evidence supporting a finding that that the speech and language assessment did not meet all requirements for an appropriate assessment.

ORDER

District's psycho-educational and speech and language assessments were appropriate. Therefore, Student was not entitled to independent educational evaluations in the areas of psycho education and speech and language 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 was the prevailing party as to its Issues 1 and 2.

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: January 23, 2017

_____/s/_____
SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings