

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. 2016100527

DECISION

On October 14, 2016, Los Angeles Unified School District filed a request for due process hearing naming Parent on behalf of Student. Administrative Law Judge Adrienne L. Krikorian heard this matter in Van Nuys, California on December 6, 2016.

Attorney Mary Kellogg represented District. Research and Resolution Specialist Anahid Sinanian attended the hearing on District's behalf. No one appeared on Student's behalf.¹ Spanish language interpreter Bernadette Buckley attended the entire hearing and translated documents written in Spanish into English where needed.

¹On the morning of the hearing, OAH staff made three attempts to reach Parents telephonically, and left messages in Spanish for Parents to contact OAH. Parents did not respond. The ALJ waited approximately 20 minutes after the scheduled hearing start time before opening the record.

At District's request, OAH granted a continuance to December 19, 2016, for District to file written closing arguments. The record remained open until District's closing argument was translated into Spanish and served on Parents. Upon timely receipt of District's closing argument and service of the translation on Parents, the record was closed on December 27, 2016, and the matter was submitted for decision.

ISSUE²

May District exit Student from special education without parental consent based on its determination at Student's May 12, 2016 individualized education program team meeting that Student was no longer eligible as developmentally delayed or as a child with a speech and language impairment?

SUMMARY OF DECISION

District conducted a multi-disciplinary triennial assessment of Student in spring 2016 to determine Student's continued eligibility for special education. The triennial assessment met all legal requirements. The assessors reported assessment results to Parents at an IEP team meeting on May 12, 2016. An interpreter simultaneously interpreted all verbal reports in Spanish for Parents and translated portions of the written reports during the meeting. Mother actively participated at the meeting, asking questions and expressing concerns. District IEP team members determined, based on all information available to the IEP team at the meeting, that Student no longer qualified for special education under any eligibility category, including as developmentally delayed or with a speech and language impairment. The District members of the 2016

²The issue has 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.)

IEP team recommended that Student be exited from special education. District provided translated copies of the May 12, 2016 IEP and 2016 assessment reports to Parents after the meeting and invited Parents to contact the assistant principal with any questions or concerns. Parents did not respond, and did not consent to exit Student from special education.

District proved Student was no longer eligible for special education. Therefore, this Decision finds that District may exit Student from special education without parental consent, and may cease providing special education services, accommodations and supports, including speech and language therapy.

FACTUAL FINDINGS

1. Student is a ten-year old male who resided within District at all relevant times. At the time of hearing, he was in the fourth grade at District's Camelia Avenue Elementary School. In November 2009, as a pre-kindergartener, District found him eligible for special education as developmentally delayed with needs in speech and language, specifically articulation.

2. District classified Student as a Level Four English Language Learner, meaning he was at the highest level as an English language learner. He spoke English exclusively at school and received all instruction in English. He spoke English at home to his siblings and Mother. Mother responded to him in Spanish.

2012 IEP MEETINGS, ASSESSMENTS AND ELIGIBILITY

3. In May 2012, Student was in a preschool-mix special education program. His IEP included articulation, social emotional and cognitive goals. In May 2012 the IEP team met and determined Student met those goals. The IEP team found his developmental milestones were within normal limits except in speech. He continued to have some difficulty pronouncing the "k" and "g" sounds, which the IEP team felt may

have some impact on his ability to participate in oral language activities in the general education curriculum. The IEP team recommended that Student remain eligible as developmentally delayed with articulation issues. District's offer of a free appropriate public education consisted of a general education curriculum in a preschool-mix special education setting for the remainder of the 2011-2012 school year with small group instruction and verbal prompts for articulation, a speech/articulation goal, 15 minutes a week of pull-out individual speech and language services, transportation and extended school year. The IEP team referred him to kindergarten for the 2012-2013 school year, and recommended assessments to determine continued eligibility for special education. Parents signed consent to the IEP dated May 11, 2012 and agreed to implement the May 11, 2012 IEP.

4. Student began kindergarten in August 2012. In fall 2012, District conducted a multidisciplinary triennial assessment of Student, including health, social emotional, cognition, academics and speech components, to determine continued eligibility. District reassessed children who had been classified as developmentally delayed at the age of five because, at that time, District did not use developmental disability as an eligibility category past the age of five.³

5. The IEP team met on November 9, 2012. In addition to required District staff, Mother attended the meeting assisted by a District-provided Spanish interpreter. Student was five years and 11 months old at the time of the meeting. The IEP team reviewed the triennial assessments and Student's present levels of performance. Student met his May 2012 articulation goal and objectives. He did not have significant

³District's practice later changed, consistent with changes in California law, when it began reevaluating eligibility for children at three years old who were previously identified with developmental delay eligibility.

articulation issues and made academic and social progress in school. He had no behavior issues or concerns. He made friends and interacted with them at school without significant incident. The District IEP team members recommended to Mother that Student no longer required special education services. Mother disagreed with the IEP team's recommendations; she expressed concern that Student needed more help with his articulation and pronunciation of certain words. Parents did not consent to the November 2012 IEP. District continued to provide Student with special education services under the May 2012 IEP through the first and second grades.

2015-2016 SCHOOL YEAR AND ASSESSMENTS

6. Student attended third grade in the 2015-2016 school year in Hilda Ramirez's classroom. Ms. Ramirez was a credentialed and bilingual English/Spanish general education teacher with more than 15 years of teaching experience at Camelia Avenue. She taught Student, implementing his May 2012 IEP, for the entire 2015-2016 school year. She was familiar with his health history, his ability and progress in school, and opined on his academic and social progress, and needs in the classroom. Student was happy at school; had no behavior issues; often volunteered to help his peers with academics; was successful academically including excelling in math; had no noticeable deficits in reading or writing; performed at grade level; and routinely achieved grades of three and four, meaning he was proficient or above average, in all areas. Because he was still eligible for special education under the May 2012 IEP, he received 15 minutes a week of speech therapy on a pull-out basis. However, Ms. Ramirez did not observe any noticeable articulation issues with Student's speech in her classroom.

7. Ms. Ramirez administered the Dynamic Indicators of Basic Early Literacy Skills test to all students three times a year. In the 2015-2016 school year, she tested Student twice between the start of the school year and his triennial review on May 12, 2016. Student met or exceeded the expected standards on all portions of the evaluation.

He demonstrated benchmark reading fluency skills and he exceeded the standard 100 words per minute by nearly 20 percent.

8. Jacqueline Román was assistant principal and instructional specialist at Camelia Avenue during the 2015-2016 school year. She attempted, beginning in March 2015, to obtain Parents' consent for triennial assessments to resolve District's disagreement with Parents over Student's eligibility for special education. Ms. Román, who was bilingual in Spanish/English, sent Parents multiple letters in Spanish. She noted that three years had passed since Student's last assessments, and explained the purpose of the assessments, the assessment process, and the IEP assessment review process. With each of her letters, she included a Spanish copy of a proposed assessment plan which included the areas of proposed assessment, and copies of Parents' procedural rights. Parents did not respond to Ms. Roman's multiple attempts to obtain consent for triennial assessments. District filed for due process on January 4, 2016. The parties reached a settlement agreement, and Parents signed an assessment plan for comprehensive triennial assessments for eligibility determination.

2016 Triennial Multi-Disciplinary Assessments

9. In April and May 2016, District conducted a triennial assessment of Student.

PSYCHO EDUCATIONAL ASSESSMENT

10. Rosalinda Salazar was a credentialed school psychologist employed by District for 11 years. She was trained and experienced in administering psycho educational assessments to determine special education eligibility. She was also familiar with the criteria for special education eligibility categories. Her education, credentials and experience qualified her to assess Student.

11. Ms. Salazar reviewed Student's educational records, cumulative file, and previous assessments, and consulted with and received reports from Ms. Ramirez, speech therapist Diana Ojales, and resource specialist Christina Salas. She observed Student in the classroom for approximately 20 minutes, and on the playground. She also interviewed Mother.

12. Ms. Salazar tested Student using current editions of standardized tests, including the Cognitive Assessment System; Test of Auditory Processing Skills - Third Edition; Motor Visual Perception Test - Third Edition; Beery-Buktenica Developmental Test of Visual Motor Integration - Sixth Edition; and teacher and parent rating scales of the Behavior Assessment System for Children - Second Edition.

13. Ms. Salazar gave Mother the parent Behavior Assessment rating scales to determine Student's behavior at home. Mother's responses were inconsistent with Ms. Ramirez's responses to the teacher rating scales in many areas. Mother rated Student's leadership in the average range. She rated him at risk and clinically significant in all other areas. Ms. Salazar noted internal inconsistencies in Mother's ratings, including: he made friends easily, but sometimes had trouble making friends; he sometimes bullied others, but was never cruel to others; and he almost always had good self-control, but sometimes acted without thinking. Ms. Ramirez reported Student's aggression was slightly elevated but he was making progress in relating to peers, which was typical of children his age. In all other areas of the rating scale, Ms. Ramirez reported Student's behaviors were in the average range. Ms. Ramirez reported that he had threatened to hurt others and hit another student in the past, but his behavior improved and was not an ongoing problem. Her ratings of Student fell within the acceptable range.

14. Ms. Salazar concluded Ms. Ramirez's reporting was more reliable as to Student's educational needs because of the inconsistencies in Mother's ratings.

Ms. Salazar's conclusion was based in part on Ms. Ramirez's experience with Student in the classroom, and because Mother had repeatedly sought to keep Student in special education based on concerns school staff had not observed at school.

15. Student's cognitive functioning was average. He had relative strengths in attention processing; above average skills in visual skills; and superior visual motor integration skills. In academic achievement, his skills were consistently above average; he performed at grade level in all academic areas and was consistent with work and homework habits. Student showed no evidence of social emotional or psychological needs that would have made him eligible for special education. He was respectful to adults and peers at school, had good attention skills, and showed good motivation in his learning. He worked independently, was easily redirected when talking to peers during lessons, and was learning to be friendlier in classroom activities and on the playground.

16. Ms. Salazar concluded after reviewing her assessment results, and collaborating with the other District assessors and Ms. Ramirez, Student did not demonstrate any needs that fell within any of the statutory eligibility requirements for special education. In her opinion, Student did not qualify for special education. Ms. Salazar documented Student's multi-disciplinary triennial assessment in a written report dated April 19, 2016.

LANGUAGE AND SPEECH ASSESSMENT

17. Ms. Ojales assessed Student in language and speech across four dates in April and early May 2015. She was a licensed speech therapist with a master of science in communication. She had experience providing therapy to and assessing children in language and speech and communication. She had the training and experience necessary to assess Student's speech and language needs, including knowledge of eligibility requirements. She was Student's speech therapist during the 2015-2016

school year and was familiar with Student's performance at school. She reviewed Student's educational records and prior assessment reports. She observed Student both during assessments and while providing therapy. She interviewed Ms. Ramirez, Mother and Student. Ms. Ramirez reported that she understood Student 100 percent of the time in the classroom.

18. Ms. Ojales administered current versions of standardized assessments, including the Oral Peripheral Examination; Lingui Sytems Articulation Test; Oral and Written Language Scales; Receptive One-Word Picture Vocabulary Test 4 – Spanish-Bilingual Edition; Expressive One-Word Picture Vocabulary Test 4 – Spanish-Bilingual Edition; and Stuttering Severity Instrument for Children and Adults - Fourth Edition. Ms. Ojales was qualified to administer the standardized tests and to interpret the test results. She also administered informal measures including a language sample and voice observation.

19. Ms. Ojales reported her findings in a report dated May 3, 2016, and provided a summary of her findings to Ms. Salazar to incorporate into the comprehensive multi-disciplinary report. Student could pronounce a variety of sounds and words without difficulty. Ms. Ojales observed Student actively participate in class, working independently, and without prompts for redirection. During therapy sessions, he engaged in conversations with adults and peers; asked questions; and shared ideas, comments and events that occurred during his weekend. Student was 100 percent intelligible across all levels. He was within the average range in listening comprehension, oral expression, vocabulary, language, voice and fluency. He demonstrated strengths in voice, fluency, articulation and language skills. Overall, his scores on standardized measures were average to above average. He reported to Ms. Ojales he no longer had articulation difficulties.

20. Ms. Ojales concluded Student did not demonstrate any needs in speech and language, and particularly articulation that met the statutory eligibility requirements for special education. In her opinion, Student was not qualified for special education as speech and language impaired and did not require speech therapy. She deferred to the IEP team for eligibility determination.

ACADEMIC ASSESSMENT

21. Resource specialist Christina Salas was a credentialed special education teacher at Camelia Avenue. She was the case manager for the school's special education students, including Student. She was familiar with Student, but did not provide him with any resource support because those services were not included in Student's May 2012 IEP. Her education, training and experience qualified her to assess Student's academic skills. Based upon her knowledge of Student, she opined that testing Student in Spanish would not have been appropriate because Student was fluent and more comfortable with the English language.

22. Ms. Salas reviewed Student's educational records; his health assessment and history; observed Student twice in class for approximately 20 minutes each session; interviewed and obtained a teacher input survey from Ms. Ramirez; and administered the Woodcock Johnson Test of Academic Achievement-Third Edition. Although the third edition of the Woodcock Johnson was not the most current, it remained a valid assessment tool which the test publisher continued to make available for educational assessments. Ms. Salas recorded her conclusions and recommendations in a report dated May 6, 2016, and summarized her findings for Ms. Salazar's multi-disciplinary report.

23. Ms. Salas's interview with Ms. Ramirez revealed data consistent with Ms. Ramirez's reporting to Ms. Salazar and her testimony at hearing. Student scored 96 percent, one percent above benchmark, on the Dynamic Indicators test at the beginning

of the school year, and 100 percent, which was four percent above benchmark, in the middle of the year. He was reading high frequency words at the fifth grade level. He computed math problems in his head, except when he reached word problems at the fifth-grade level and used scratch paper to assist him. On the Woodcock Johnson, Student scored at grade level or higher, and above average scores. Broad written language was in the 72nd percentile and broad math in the 83rd percentile. The grades Student earned in class were consistent with Ms. Salas's test results.

24. Ms. Salas concluded Student did not demonstrate any needs in the areas of academics, including language arts and math. Ms. Salas was familiar with the legal criteria for the eligibility category of specific learning disability. Student did not demonstrate any of those criteria during the assessment process, or based on his history and performance at school. In her opinion, Student did not qualify for special education eligibility as having a specific learning disability. Ms. Salas incorporated her opinion and a summary of her findings in the multidisciplinary report.

25. All the assessors were qualified to administer and interpret the results of the standardized tests selected. None of the materials and procedures used were racially, culturally, or sexually discriminatory in selection or administration. All instruments were administered in Student's primary language of English, which Student responded to comfortably. 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. None of the assessors relied upon any single measure, tool, or score in making recommendations for eligibility or services.

May 12, 2016 IEP Meeting

26. The IEP team met on May 12, 2016 to review the triennial assessment reports and evaluate Student's eligibility for special education. All required District staff attended the meeting, along with Parents and a Spanish interpreter, who provided

simultaneous interpretation for Parents with a headset. Parents excused the school nurse's attendance upon completion of her report. Ms. Ramirez reported Student's present levels of performance in the classroom. Ms. Salas, Ms. Salazar, and Ms. Ojales reviewed their assessment reports.

27. Mother actively participated during the IEP meeting. The District IEP team members listened and responded to Parents' questions and concerns about the reports. Mother expressed concern that assessment results differed from her understanding of Student's difficulty with sounds. She felt language was an area where Student still had needs. Mother informed the IEP team she had a report stating Student had difficulty with some sounds. She never provided District with a copy of that report. She asked about an earlier parent teacher conference where Ms. Ramirez informed her that Student had some behavioral concerns at the beginning of the school year. The IEP team explained Student's behavior had improved and, based upon Ms. Salazar's psychological assessments, the concerns no longer existed. Mother raised concerns she did not report on the Behavior Assessment rating scale. The IEP team members responded they did not observe those concerns at school.

28. The IEP team informed Parents they had concluded based upon assessment results that Student no longer qualified for special education. District offered an IEP exiting Student from special education. After presenting the offer, the IEP team excused Ms. Ramirez from the meeting but she was available throughout the meeting to discuss Student's academic and social performance in the classroom. Parents asked for time to think about the recommendation. Although Parents did not request translated versions of the assessment reports in the signed assessment plan or before the IEP meeting, District translated the IEP document and all assessment reports into Spanish, and sent those to Parents after the end of the 2015-2016 regular school year.

29. Ms. Román told Mother to call her if Mother had any questions or concerns about any of the reports or the IEP. Parents did not respond to Ms. Román about the assessment results or the May 12, 2016 IEP offer. On June 16, 2016, Ms. Roman followed up her request for Parents' consent to exit Student from special education by seeking their signatures on the May 12, 2016 IEP. Parents did not consent to exit Student from special education, which prompted District to file for due process.

LEGAL AUTHORITIES AND CONCLUSIONS

ISSUE: MAY DISTRICT EXIT STUDENT FROM SPECIAL EDUCATION?

1. District contends that it met all statutory procedural requirements for determining that Student was no longer eligible for special education. Based upon Student's results from the 2016 multi-disciplinary triennial assessments, District contends Student does not meet any eligibility criteria for special education services, including his previous eligibilities of developmental delay or speech and language articulation issues. Therefore, District seeks an order permitting District to exit Student from special education without parental consent.

Authorities

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

2. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it.

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

(20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁵et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

3. 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

⁵All subsequent citations to the Code of Federal Regulations is to the 2006 edition.

curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

4. In *Board of Education of the Hendrick Hudson Central School Dist. 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," 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.)

5. 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).)

6. 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].) Here District was the party filing the complaint and therefore had the burden of proof.

ASSESSMENTS

7. An assessment is the procedure used to determine whether a student has a disability and the extent of the child's need for special education and services. (71 Fed. Reg. 46548 (Aug. 14, 2006).) Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) A special education student must be reassessed at least once every three years, or more frequently if conditions warrant, or if a parent or teacher requests an assessment. (Ed. Code, § 56381, subd. (a).)

8. Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2), (3).) Under federal law, an assessment tool must provide relevant information that directly assists persons in determining the educational needs of the child. (34 C.F.R. § 300.304(c)(7).) In California, a test must be selected and administered to produce results that accurately reflect the pupil's aptitude, achievement level, or any other factors the

test purports to measure. (Ed. Code, § 56320, subd. (d).) A district must ensure that a child is assessed in all areas related to a suspected disability. (Ed. Code § 56320, subd. (c), (f).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).)

9. 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 school district, county office, or special education local plan area. (Ed. Code, §§ 56320, subd. (g), 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).) Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3).) Persons knowledgeable of the student's disability shall conduct assessments. (Ed. Code, § 56320, subd. (g).)

10. Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56320, subd. (a) & (b).) A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessment must use technically sound instruments that assess the relative

contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).)

11. An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

12. As part of any reassessment, the IEP team is required to review existing assessment data and, on the basis of that data, identify what additional data, if any, is necessary to determine whether the pupil continues to have a disability, the pupil's present levels of performance and educational needs, whether the pupil continues to need special education and related services, and whether any additions or modifications to the educational program are needed to enable the pupil to meet his annual IEP goals. (Ed. Code, § 56381, subd. (b).)

PARENTAL PARTICIPATION

13. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

14. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.)

15. A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.*, *supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

16. The IDEA and the Code of Federal Regulations do not require that a school district translate assessments or IEP documents from English to a parent's native language. Federal and state education law only require that school districts take any action necessary to ensure that the parent or guardian understands the IEP team meeting proceedings, including arranging for an interpreter if necessary. (34 C.F.R. §§ 300.9, 300.322(e); Ed. Code, § 56341.5, subd. (i).) The Office of Special Education Programs of the United States Department of Education has stated that, although the IDEA and corresponding Code of Federal Regulations do not require translations of IEP documents, providing such translations may help demonstrate in some circumstances that non-English speaking parents have been fully informed of the services the IEP offers. (*Letter to Boswell* (OSEP 2007) 49 IDELR 196; *City of Chicago School District 299* (Ill State Educational Agency 2010) 110 LRP 36565; *In re: Student with a Disability* (NM State Educational Agency 2011) 111 LRP 39015.)

ELIGIBILITY

17. For purposes of special education eligibility, the term "child with a disability" means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple

disabilities, and who, by reason thereof, requires instruction, services, or both, which cannot be provided with modification of the regular school program. (20 U.S.C. § 1402(3)(A)(ii); 34 C.F.R. § 300.8(a); 5 C.C.R., section 3030(b).)⁶Similarly, California law defines an "individual with exceptional needs" as a pupil who is identified by an IEP team as "a child with a disability" pursuant to 20 U.S.C. section 1402(3)(A)(ii), and who requires special education because of his or her disability. (Ed. Code, § 56026, subds. (a), (b).) California amended title 5 California Code of Regulations, section 3031, effective July 1, 2014, to limit the special education eligibility category of developmental delay to children from birth to younger than three years.

18. Not every student who is impaired by a disability is eligible for special education. Some disabled students can be adequately educated in a regular education classroom. Federal law requires special education for a "child with a disability," who is defined in part as a child with an impairment "who, by reason thereof, needs special education and related services." (20 U.S.C. § 1401(a)(3)(A)(ii); 34 C.F.R. § 300.8(a)(i).)

19. State law requires special education for "individuals with exceptional needs," who are defined in part as individuals whose impairment "requires instruction, services, or both, which cannot be provided with modification of the regular school program." (Ed. Code, § 56026, subd. (b).) When deciding whether a student needs special education, courts apply the *Rowley* standard and consider whether the pupil can receive some educational benefit from the general education classroom. (*Hood v.*

⁶The California state legislature updated and amended the special education eligibility categories and criteria under California law effective July 1, 2014. The legislature incorporated the updated eligibility categories and criteria into title 5 California Code of Regulations, section 3030(b)(1) through (13). Section 3030(b) is applicable to the analysis of Student's eligibility after July 1, 2014.

Encinitas Union School Dist. (9th Cir. 2007) 486 F.3d 1099, 1106-1107 [decided under former Ed. Code, § 56337].)

20. A school district shall refer a pupil for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.) A pupil shall not “be determined to be an individual with exceptional needs” if they do not meet the eligibility criteria under federal and California law. (Ed. Code, § 56329, subd. (a)(2).) The law defines an individual with exceptional needs as one who, because of a disability “requires instruction and services which cannot be provided with modification of the regular school program” to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subd. (b).) Thus, “a child is not considered a ‘child with a disability’ if it is determined that a child only needs a ‘related service’ and not special education.” (*W.H. v. Clovis Unified School Dist.* (E.D.Cal. June 8, 2009) 2009 WL 1605356, *21, citing 34 C.F.R. § 300.8(a)(2)(i) (2006).)

21. A child shall qualify as an individual with exceptional needs if the results of an assessment as required by Education Code section 56320 demonstrate that the degree of the child's impairment requires special education. The decision as to whether the assessment results demonstrate that the degree of the child's impairment requires special education shall be made by the IEP team, including personnel, in accordance with Education Code section 56341, subdivision (b). In determining eligibility, the IEP team shall consider all the relevant material which is available about the child.(5 C.C.R. §3030(a).)

Analysis and Conclusions

22. At the age of three, Student began school with a special education eligibility of developmental delay, specifically in communication, which was compliant at that time with title 5 California Code of Regulations section 3031. Student remained

eligible as developmentally delayed at the age of five in May 2012. In October 2012, District assessed Student to determine whether Student had needs that supported eligibility for special education. District staff conducted a multidisciplinary assessment, including in the areas of speech and language, health, academics, and psycho education. Student's October 2012 IEP team reviewed the assessment results with Parents, and recommended exiting Student from special education because he did not demonstrate needs requiring special education services. Parents did not consent to exiting Student; Mother expressed concern that Student continued to have communication and articulation issues. In the absence of parental consent to exit Student from special education, District continued to support Student for three years even though the IEP team did not believe Student needed the additional supports. District maintained the placement, communication goal and speech therapy services in his May 2012 IEP as the status quo. Student met his 2012 IEP goals and through the third grade demonstrated academic progress and received educational benefit under *Rowley, supra*, at pp. 200, 203-204.

23. Upon receiving Parents' consent to reassess Student in 2016, District procedurally complied with the IDEA by conducting a comprehensive multi-disciplinary triennial assessment in April and early May 2016. Ms. Salazar, Ms. Ramirez, Ms. Ojales, and Ms. Salas all testified credibly at hearing. They demonstrated a clear understanding and knowledge of Student's present levels of performance at the May 12, 2016 IEP meeting, and were familiar with Mother's concerns. Ms. Román similarly credibly testified at hearing and established that District communicated with Parents in their native language of Spanish.

24. Ms. Salazar was qualified to assess Student in the areas of psycho education, social emotional and behavior. Her assessment met all the required criteria for District assessments. She observed Student; reviewed his educational records;

considered parental and teacher input; and administered standardized and non-standardized tests in Student's primary language of English and in accordance with the producer's protocols and instructions. Her assessments showed no evidence of bias. Her test results were valid. She incorporated her test results into a written report, in which she evaluated potential eligibility based on state eligibility criteria. She credibly concluded Student showed no evidence of psychological, social emotional, behavioral or pragmatic needs supporting special education eligibility.

25. Ms. Ojales was similarly credible at hearing. She assessed Student in speech and language. She was qualified to assess Student based upon her education and experience. Her assessment met all the legal criteria for a valid assessment. She was familiar with Student as his speech therapist. She worked with him weekly. Results of standardized testing revealed scores of communication skills that were average or better. Ms. Ojales concluded from her assessment results that, despite Mother's concerns about articulation, Student did not demonstrate communication needs at school, he did not require further support in communication to access his education, and he did not meet the eligibility criteria for speech and language.

26. Resource support specialist Ms. Salas also assessed Student. She was qualified to assess Student, used standardized and non-standardized assessment tools, reviewed Student's educational history and records, consulted with Ms. Ramirez, and obtained valid assessment results. She recorded her results in a written report and summarized them in the multidisciplinary psycho educational report. She credibly concluded, consistent with Ms. Ramirez, Student had no academic needs requiring special education supports and services.

27. Ms. Ramirez was Student's general education teacher for the entire 2015-2016 school year. She was familiar with his educational and health history; prior assessments and grades; and qualified as an experienced teacher to offer opinions

about Student's present levels of performance. She informally assessed Student twice before May 2016 using standardized benchmarks. He read above the proficient level, wrote at the proficient level, and excelled in math. Ms. Ramirez worked with Student in the classroom, evaluated his class work and homework, graded him, and knew his abilities. While Mother occasionally expressed concern to Ms. Ramirez about Student's need to continue to work on speaking certain words, Ms. Ramirez did not observe those concerns in the classroom. Student performed at proficient or better, made academic progress, helped other students with their class work, and was successful in school. He communicated clearly in English and received all instruction in English. Ms. Ramirez reviewed the nurse's 2016 health assessment and she concurred Student had no medical needs that impacted his access to his education or required special education services or supports. In Ms. Ramirez's credible opinion, based on her observations and informal assessments, Student did not have needs that required special education services and supports.

28. In totality, District performed appropriate, comprehensive assessments in all areas of suspected need and obtained valid results. District properly convened an IEP meeting on May 12, 2016, to review those results with Parents. All required District team members were present throughout the meeting, or properly excused, including the assessors who had conducted the assessments. They considered Parents concerns, and made District's proposal to Parents to exit Student from special education while Ms. Ramirez was at the meeting and available to discuss Student's academic and social performance in the classroom. District provided a Spanish language interpreter, who interpreted discussions and translated portions of documents at the meeting for Parents. Parents participated in the meeting by asking questions and expressing concerns, to which District responded. District provided the IEP and all assessment reports to Parents translated into Spanish after the meeting. At Parents' request, District

gave Parents time to review and comment on the Spanish versions. Parents did not request further IEP meetings after receiving the Spanish documents, or ask Ms. Román any questions. Parents did not provide their written consent to exit Student from special education.

29. The 2016 triennial assessment results were consistent with those from October 2012, where the IEP team also concluded Student was not eligible for special education. In April 2016, Student was proficient or better in all areas of academics, communication and behavior. Accordingly, the evidence established Student had no needs requiring continued special education support. The May 12, 2016 IEP offer to exit Student from special education was supported by valid assessments in all areas of suspected need. District met its burden of proof, and is entitled to exit Student from special education.

ORDER

District may exit Student from special education without parental consent, and shall return Student to the general education setting without special education services or supports.

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 the only issue presented for hearing.

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 5, 2017

_____/s/

ADRIENNE L. KRIKORIAN

Administrative Law Judge

Office of Administrative Hearings