

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016090101

DECISION

Newport-Mesa Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on August 30, 2016, naming Parent on behalf of Student as respondent. The matter was continued for good cause on September 19, 2016, November 4, 2016 and January 31, 2017. Administrative Law Judge Penelope Pahl heard this matter in Costa Mesa, California, on January 31, 2017, and February 7 and 8, 2017.¹

Courtney Brady, Attorney at Law, represented Newport-Mesa. Maureen Cottrell, Newport-Mesa's Special Education Director for Resolutions, was present at all times during the hearing. Student was represented by Mother who was present at all times during the hearing.

On February 8, 2017, the matter was continued until February 22, 2017, to allow the parties to submit closing briefs. Newport-Mesa timely filed its closing brief. Student did not

¹ Presiding Administrative Law Judge Margaret Broussard observed the hearing on January 31, 2017, and until 3 p.m. on February 7, 2017.

file a closing brief. The matter was deemed submitted as of 5:00 p.m. February 22, 2017.

ISSUE

Did Newport-Mesa's May 23, 2016, Multidisciplinary Assessment of Student meet all legal requirements such that Student is not entitled to an independent Multidisciplinary evaluation at Newport-Mesa's expense?²

PROCEDURAL MATTERS

REQUESTS FOR CONTINUANCE

Father's Request for Continuance

On January 30, 2017, at approximately 3:45 p.m., Father called the Office of Administrative Hearings seeking a continuance of the hearing scheduled for January 31, 2017, on the grounds that he had received no notice of the hearing and had the right to attend.

Mother's Request for Continuance

On January 30, 2017, at approximately 4:00 p.m., Mother called the Office of Administrative Hearings stating she could not attend the hearing scheduled for January 31, 2017, on the grounds that her child was ill. The message was treated as a request for continuance by OAH.

Verbal Order of the Division Presiding Administrative Law Judge

On January 30, 2017, Division Presiding Administrative Law Judge Bob Varma

² The ALJ has re-worded the issue for the sake of uniformity and clarity. The ALJ has authority to reword and re-organize 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.)

considered both requests for continuance and issued a verbal order. The case manager was directed to contact all parties and read the order verbatim as, due to the late hour, there was no opportunity to formally serve the order prior to the beginning of the hearing. The Office of Administrative Hearings case manager contacted Father, Mother and a staff member for Newport-Mesa's counsel and read the order to each of them. The order declared that the hearing would proceed as scheduled on January 31, 2017, but would first address Father's motion to continue, then any other due process issues outstanding. Father was ordered to appear by telephone due to information that a restraining order was in place between Mother and Father, pending determinations by the ALJ hearing the case. The parties were ordered to provide copies of orders or other documents pertaining to custodial or legal rights.

Order on Father's Request for Continuance

On January 31, 2017, the hearing was convened and both requests for continuance were considered. Father submitted a declaration regarding his custodial and legal rights. Mother submitted a restraining order from the Orange County Superior Court, Judge Sarmiento presiding, dated February 27, 2015, granting Mother sole physical and legal custody of Student. Mother also submitted the court's September 1, 2015 order allowing Father access to educational records and the transcript from that hearing which explained the strict limitations on any contact Father was to have with school personnel in the course of obtaining those records, as well as a March 11, 2016 minute order, which granted Father limited shared physical custody of the children but continued Mother's sole legal custody per the February 27, 2015, order.³ Father's request to participate in the hearing and request

³ Mother submitted certified and file-endorsed copies of court documents, some of which were also later offered into evidence by Newport-Mesa during the hearing. No objection was made to acceptance of the documents into evidence for purposes of the

for continuance was denied, as the Orange County Superior Court's orders clearly prohibited his inclusion in the process.

Order on Mother's Request for Continuance

Immediately following the January 31, 2017, ruling denying Father's right to participate, Mother's request for continuance was considered. Mother had made a request to continue the case one week earlier at the time of the Prehearing Conference. That request had been denied. On January 31, 2017, Mother testified that both of her children were sick and that she was starting to come down with an illness as well. Given the multiple delays in the proceedings, however, Mother agreed to appear via telephone. The hearing was continued to 1:00 p.m. on January 31, 2017, for Mother to prepare for the hearing via phone. However, after two incidents of the telephone connection being unreliable, the first during Mother's opening statement and the second during the testimony of the first witness, it was agreed that the phone appearance was not adequate. The hearing was continued to the following week for appearances by all parties with no further continuances to be allowed.

SUMMARY OF DECISION

Newport-Mesa seeks an order that its May 23, 2016, Multidisciplinary Assessment met legal requirements such that it is not required to fund Student's request for an independent evaluation in this area. Newport-Mesa did not demonstrate that the Multidisciplinary Assessment met all legal requirements.

An assessment has to meet requirements specified by statute in order to be determined to have met legal standards. Newport-Mesa failed to establish that it met the prescribed burden. The assessment did not meet procedural requirements because Newport-Mesa denied Mother, the only legal educational rights holder, the opportunity to

motion by Newport-Mesa.

participate in the individualized education program team meeting where the assessment was explained and to ask questions about the assessment. Newport-Mesa also failed to hold the IEP team meeting in a timely manner.

Additionally, Newport-Mesa's assessments and report did not meet the standards required by the Education Code. Newport-Mesa failed to adequately describe the procedures the assessor followed, inappropriately relied on information from Father, failed to take into consideration some information provided regarding Student's abilities and emotional struggles, and presented a confusing report that included internal inconsistencies and a lack of clear explanations of information presented. As a result of these deficits in the assessment and reporting, the IEP team was unable to rely on the report to properly evaluate Student's eligibility for special education and related services. The totality of the inadequacies in the assessment and the written report, coupled with the procedural violations entitle Student to an independent assessment at public expense. The assessment shall consist of a psycho-educational assessment, a speech and language assessment, a health assessment and an academic assessment.

FACTUAL FINDINGS

JURISDICTION

1. Student is a six-year-old girl who has resided within the geographical boundaries of Newport-Mesa at all relevant time periods. Her last placement in Newport-Mesa was in a general education Kindergarten class at Anderson Elementary School where she attended class until April 11, 2016. On that date, Mother withdrew Student from Newport-Mesa and placed her in a private school. As of the hearing, Student attended the private school where she had been a student since April of 2016. The parties dispute whether Newport-Mesa's assessment appropriately evaluates Student's need for special education and related services.

ASSESSMENT PLAN

2. In March of 2016, Mother requested that Student be assessed for special education services. Mother had concerns that Student showed deficits in reading, math, speech, expressive and receptive language and that Student's emotional traumas had resulted in a lack of ability to communicate with peers or participate in class. A student study team meeting was scheduled to discuss Student's educational deficits. Mother did not attend the meeting. Michelle Pethtel, Newport-Mesa's school psychologist, prepared a wide-ranging assessment plan and presented it to Mother in her native language of English. Mother provided signed consent to Newport-Mesa's assessment plan on March 30, 2016. Newport-Mesa conducted the assessments in April and May of 2016. Newport-Mesa convened IEP team meetings to discuss the results of the assessments on May 26, 2016, and on June 17, 2016. On June 17, 2016, Mother requested an independent assessment of Student. On August 30, 2016, Newport-Mesa filed a Request for Due Process Hearing with the Office of Administrative hearings seeking a determination that the assessments leading to the report of May 26, 2016, met legal standards.

INFORMATION COLLECTED FROM FATHER FOR ASSESSMENTS

3. Newport-Mesa personnel sent Father multiple questionnaires which asked detailed questions about Student's personal care, academic progress and emotional well-being. The school nurse also conducted an in-person interview with him. The same questionnaires were provided to Mother who was also interviewed by the nurse.

4. Father had no contact with Student for several months prior to the dates the assessments were completed. In an order from the Orange County Superior Court dated March 11, 2016, Father was granted joint physical custody effective March 16, 2016. The custody order allowed visitation limited to the first, third, and fifth weekends of each month and Wednesdays, from the time school ended to the time it began the next school day, or from 3:00 p.m. to 8:00 a.m. on the last day of the visitation period if school was not in

session.⁴ Father had no custody rights during school hours as Mother was granted physical custody during all hours not otherwise specified in the order. When school was not in session, drop-offs and pick-ups of Student and her sibling were to be conducted at the local police station as a restraining order prohibiting Father from being within 100 yards of Mother remained in place. The restraining order also prohibited Father from any contact with Mother, either directly or indirectly, by any means including but not limited to contact by telephone, mail, email or other electronic means. The restraining order expires on February 27, 2018. As of the hearing, an acrimonious custody battle had been ongoing for an extended period of time.⁵

5. When the assessments began in early May, the March 16, 2016 custody order had allowed Father and Student to be together for approximately 16 total days after nearly a year of the court having prohibited contact between them. Several of those days were partial days. The limited shared physical custody granted did not change the legal custody status regarding Student. Mother had sole legal custody of Student at all times since Student began attending school in the Newport-Mesa district. As of the date of the hearing, Father had no educational rights. His only right, detailed in an order from the Orange County Superior Court and emphasized in a transcript of the hearing granting the right, was entitlement to copies of records pertaining to Student. The order, and the transcript of the

⁴ Alternate holidays and two weeks of summer were also allotted but those opportunities had not arisen at the time these assessments were completed.

⁵ The ALJ takes official notice of the certified copy of the restraining order submitted for purposes of considering Father's motion for continuance as well as the emergency orders requiring Father to return Student and her sibling when they were removed from Mother's custody without her permission or the permission of the court. All other orders referenced from the Orange County Superior Court are part of the evidentiary record.

court's comments in making the order, strictly limited Father's contact with the school to only that communication necessary to secure records. The court inserted a handwritten addition to the September 1, 2015 order limiting contact to securing records. In the transcript of the September 1, 2015 hearing, the court specifically prohibited Father from communications that would involve discussion, comments or attempts to influence school personnel. The order limiting communication with the school was not changed in the March 11, 2016 order granting joint physical custody. The March 11, 2016 order specifically incorporated all other terms of the restraining order which was noted to expire in 2018.

6. Ms. Cottrell, the Newport-Mesa Special Education Director for Resolutions, testified that she was aware of the court orders and had reviewed copies of the orders and the transcript but decided that the explanation of the court ordered limitation of contact contained in the transcript of the of the hearing was not a court order. Ms. Cottrell also testified that she read a letter sent by Father's attorney to Dr. Bray, the Principal of Anderson Elementary which stated, "the restraining order has been amended to remove the children so there is no restriction that [Father] be present at the children's school." Ms. Cottrell testified that she interpreted that letter to mean that Father would now be picking up and dropping off Student on days when he had custody of Student. However, she indicated in her testimony that she relied on the letter in making her decision to allow Father's participation in school activities. Ms. Cottrell determined that Father should participate in both the assessment process and in the IEP team meetings. This is not consistent with the court orders and transcript she had in her possession. Although Ms. Cottrell testified at hearing that she had instructed her staff not to allow Father to influence them, the testimony lacked credibility given that the assessments included information from Father and the point of including Father in the assessment process was to obtain information from him.

7. Despite being aware of the court orders, and his limited recent interactions with Student, Newport-Mesa personnel contacted Father to participate in Student's assessment process. Ms. Pethtel testified that the testing instructions did not provide a

standard for how long a parent had to be familiar with a student prior to being involved in the ratings; however, she believed applying the same familiarity standard required for a teacher, which is four weeks, was appropriate. On this basis, Ms. Pethtel decided enough time had passed since Student began spending time with her Father again for Father to be included in the assessment process, despite the fact that he had spent less than 16 full days with Student. She did not explain this discrepancy in her testimony. The limited amount of time Father had spent with Student prior to completing the ratings was not specified in the assessment report. Also not mentioned in the report were the orders of the Orange County Superior Court including the lengthy prohibition of contact between Student and her Father due to the restraining order which had only recently been lifted, the continuing limitations on contact with Student or the continuing restraining order in place prohibiting contact with Mother. Ms. Pethtel did not adequately explain why she failed to include this information in her report.

ASSESSMENTS CONDUCTED

8. On May 10, 2016, pursuant to the agreed upon assessment plan, Ms. Pethtel assessed Student in the areas of intellectual development, social-emotional functioning and behavior, adaptive behavior and perceptual processing. For purposes of this decision, this part of the assessment will be considered the psycho-educational assessment. Ms. Pethtel also compiled information from other members of the assessment team and wrote the multidisciplinary assessment report at issue here. At the time of the assessments, Student was five years and 10 months old. Assessments were conducted in Student's native language of English.

9. In addition to those areas of assessment conducted by Ms. Pethtel, other areas of assessment conducted in April and May of 2016 and included in the report at issue were a health assessment, a speech and language assessment, and an academic assessment. Student's general education teacher while at Anderson Elementary, Betsy Rovzar,

contributed to the academic achievement and social-emotional development sections of the assessment. Ms. Rovzar had been Student's teacher until April 11, 2016. The report noted that all teacher rating scales were completed while Student was still enrolled at Anderson. Student's other teacher at Anderson, Ms. Jacobs, was not consulted for purposes of the assessment. Newport-Mesa was not able to observe Student in her school setting at her private school or interview Student's teachers there as Mother withheld consent. Student had been attending the private school for approximately three weeks at the time the assessments were completed.

Health Screening, Memory and Gross Motor Abilities

10. The school nurse for Anderson Elementary is Andrea Jackson. Ms. Jackson is a registered nurse with a bachelor of science in nursing and a history of varied nursing practice beginning in 1998. Ms. Jackson holds a temporary School Nurse credential and is a certified School Audiometrist. She has been working as a school nurse since 2014. Ms Jackson oversees the health offices for three Newport-Mesa elementary school sites: Lincoln, Anderson and Newport Coast. For purposes of this evaluation, Ms. Jackson reviewed school health records, discussed Student with other team members⁶, reviewed questionnaires that had been collected from parents and then met briefly with both parents personally on different days. She was not given access to Student's outside medical records, due a lack of provided consent; however, this did not impede her evaluation as she would not normally consult outside providers unless there was a specific area of concern that arose in the course of her health evaluation. Ms. Jackson evaluated student in person for approximately 15 minutes and estimated the assessment took less than 30 minutes in total. Ms. Jackson was unable to recall when the evaluations and interviews took place but

⁶ The identity of team members and the subjects of discussions are not included in the report.

believed they occurred sometime between February and April of 2016. However, since the assessment plan was not signed until March 30, 2016, it is likely that the evaluations and interviews took place sometime between April 1, 2016 and the date Student last was enrolled in the public school, April 11, 2016.

11. Ms. Jackson had briefly encountered Student on two occasions prior to her health assessment for the report at issue: once for a bump on the head and once for a routine health and vision screening while Student was attending Anderson Elementary School. Ms. Jackson met with Student for approximately 15 minutes to conduct her assessment. School records and discussions with team members and Parents confirmed that Student's immunizations were up to date and that Student was in generally good physical health. Ms. Jackson met separately with both parents in person at the Lindbergh Center, a Newport-Mesa site where assessments of Student were conducted per Mother's request that they not be held at Anderson. Mother informed Ms. Jackson that Student was receiving outside counseling. Ms. Jackson saw the counselling as being a positive, proactive measure as parents were divorced and one noted area of concern from Mother was that Student suffered from anxiety. Ms. Jackson offered Mother a referral to a nutritionist based on Father's expressed concern that Student was a picky eater. Student's records indicated no problems with hearing or vision based on a November 2015 screening. New screenings were not completed for this assessment. Newport-Mesa has failed to demonstrate that the conclusions of the health screening are reliable or that the assessment process was likely to produce accurate results. Ms. Jackson notes that she discussed Student with other team members but fails to report who she spoke with, why she deemed the conversation necessary, what was discussed or how it impacted her conclusions about Student's health. Absent complete information about the basis for her findings, the IEP team has no means of forming an opinion about the accuracy of the conclusions. Furthermore, Ms. Jackson was in violation of a court order when she spoke with Father to gather information for the assessment. Ms. Jackson's rote affirmative response to a leading question that she was not

influenced by her discussions with Father lacks credibility especially in light of later testimony that she based a decision to refer Mother to a nutritionist on Father's expressed concerns that Student was a picky eater.

12. Testing for short term and long-term memory was included in the Kaufman Assessment Battery for Children. These tests were administered by Ms. Pethtel. The report indicates that Student scored in the average range for both long and short-term memory.

13. Assessments for motor coordination were included in the Burk's Behavior Rating Scale, which is described as identifying behaviors and the extent to which they are observed. This rating scale was completed by Student's former teacher, Ms. Rovzar and the ratings were assessed by Ms. Pethtel. None of the ratings reported indicated any concerns with Student's gross motor skills. Student's gross motor functions were not an area of concern reported by Mother or Father.

Speech and Language Assessment

14. Julianne Smith, Newport-Mesa's speech and language pathologist, conducted the speech and language assessment of Student. Ms. Smith has a bachelor of science degree and a master of arts degree in speech pathology. She is a credentialed Speech Pathologist and is licensed by the State of California. Ms. Smith had worked for Newport-Mesa for 14 years and in that time had conducted approximately 400 speech and language assessments of students, with 200 of those being assessments to determine eligibility for special education. Ms. Smith had not had any interactions with Student prior to her assessment. She worked with Student for approximately 90 minutes and completed all testing in that time frame. Ms. Smith did not conduct any outside observations of Student as she did not receive consent to observe Student in her current private school placement. Ms. Smith did not speak with Student's former teacher, Ms. Rovzar about Student.

15. Ms. Smith conducted testing of expressive and receptive language by administering the Expressive One-word Picture Vocabulary Test 4, 4th Edition and the

Receptive One-word Picture Vocabulary Test 4, 4th Edition. Student scored in the high average range for her age in the receptive language test and in the average range for her age in the expressive language test.

16. The Test of Language Development- Primary, 4th Edition, was used to measure Student's overall spoken language, including semantics, syntax, listening and speaking. Four subtests measuring Student's abilities in relation to identifying word relationships, vocabulary, syntax, described as the order of pictures presented, and morphological completion, which measured Student's use of plurals, past and future tenses and irregular verbs, were all in the average range, except for the morphological completion test on which Student scored in the above-average range.

17. Ms. Smith also administered the Goldman-Fristoe test of Articulation, 3rd Edition, which is used to measure speech sound abilities in the areas of articulation in children, adolescents and young adults. The "Sounds-in-Words" test measures the production of 23 consonant sounds and 17 consonant clusters in the initial, medial and final position of words. Student achieved a standard score of 90, which Ms. Smith described as average. This test put Student in the 25th percentile resulting in an age equivalency of 4.10 to 4.11 years old. In the assessment report, the test was noted to compare Student to age and gender matched peers. Student was 5.10 years old at the time the test was administered.

18. Student was noted to exhibit errors including gliding of /r/ and /r/ blends, gliding of /l/ and /l/ blends, and inconsistent mild sound distortion of the /s/ sound (a mild lisp). Ms. Smith testified the lisp was associated with a loss of front teeth and that it would not normally be addressed until a student was between seven and seven and-a-half years old depending on when she had permanent front teeth. Ms. Smith also testified that the problem with articulating /r/ sounds was not usually addressed until a student was near the end of age six or at the beginning of age seven, and the difficulties with /l/ sounds were not addressed until after a child turned six. The reporting of the speech and language

assessment was unclear and, at least with regard to the issue of missing teeth, inconsistent with Ms. Smith's testimony. Nowhere in the report is an impact of missing teeth on Student's speech capabilities noted. Moreover, the graph associated with the report was not titled nor was it clearly explained. The graph made no reference to the gliding or distortion of sounds and was followed by several observations regarding Student's speech that were not referenced in the graph at all. Ms. Smith testified that, overall, she would not worry about any of these deficits until a child was approaching eight years old.

19. Mother credibly testified that Student had all of her permanent front teeth at the time the speech and language assessment was completed and that student has a heavy lisp as well as difficulty with sound exchange.

20. Although Ms. Smith testified that Student had developmental errors typical of kindergarten students and that Parents did not mention specific concerns regarding speech and language capabilities, her testimony was not consistent with her own report and is therefore given little weight. Mother did relate her concerns to Ms. Smith as her concerns regarding Student's speech were noted in the assessment report. Furthermore, the report provides no explanation regarding the disparity between the age related articulation capabilities of Student and the Student's actual age at the time of the test. The report concluded that Student did not meet the eligibility criterion for special education services for speech and language and that "her articulation, voice and fluency abilities were at age expected limits." However, the results of the testing clearly show Student was not able to articulate at an age expected level. These errors result in the report being unable to be relied upon by the IEP team in their efforts to make decisions regarding Student.

Cognitive Ability Testing

21. Michelle Pethtel has a master's degree in school psychology, a master's degree in psychology with an emphasis in marriage and family therapy, and a bachelor's of arts degree in social ecology. Ms. Pethtel holds a California State Pupil Personnel Services

credential which authorizes her to conduct psychological and emotional evaluations and standardized testing. She has been a school psychologist for 10 years and has done over 300 assessments over the course of her tenure, approximately half of which were completed for the purpose of determining eligibility for special education services. Ms. Pethtel conducted a range of tests of Student's abilities and analyzed all of the ratings submitted for Student's assessments.

22. Ms. Pethtel conducted the Kaufman Assessment Battery for Children, Second Edition to measure cognitive functioning, specifically the subtests yielding the Fluid Crystallized Index. The Fluid Crystallized Index includes tests of short term memory including a number recall test and a word order test; visual processing including conceptual thinking, triangle assembly and pattern reasoning; long term retrieval consisting of identifying pictures with nonsense names and a rebus test using pictures with specified word meanings to make sentences. Also included in the group of tests were the tests of crystallized ability which included an expressive vocabulary test that required Student to name a pictured object and a riddles test which required Student to point to or identify a concrete or abstract verbal concept based on characteristics of the concept named by the assessor. Scores on the individual tests showed that Student performed in the average range on the assessments of short term memory, visual processing, and long term retrieval. Based on the combination of scores attained on all of these tests, Student attained a "Fluid Crystallized Index" composite score of 117 which is an above-average score compared to peers her age. This is considered Student's basic ability score for purposes of determining whether Student has a specific learning disability.

Sensory-Motor and Visual Processing, and Auditory Processing

23. Ms. Pethtel conducted the Beery Developmental Test of Visual Motor Integration – Fifth Edition to evaluate Student's ability to process sensory motor and visual information. Student scored in the average range on this test with a score of 102. The results

indicate Student's visual-perceptual processing, such as recognizing rotations and reversals of figures, finding hidden figures, or identifying incomplete or distorted figures, was within normal limits. Also within normal limits, according to this test, was Student's hand-eye coordination.

24. Student's auditory processing was measured using the Kaufman Crystallized Ability Index, described above, as well as the Wechsler Individual Achievement Test listening comprehension subtest. Student's score on the Kaufman was noted by the assessor to be in the above average range at 118. The report states that Student's result on the Wechsler was "within the higher end of average range". However, no explanation was provided in the report or through testimony as to how the Crystallized ability index measured Student's auditory processing. Nor was any evidence admitted describing the listening comprehension test or how it was scored. Without more information, Newport-Mesa failed to show that Student was properly assessed in the area of auditory processing.

Adaptive Behavior, Attentional Processing, and Social-Emotional Functioning

25. Ms. Pethtel based the evaluation of Student's adaptive behavior, attentional processing, and social-emotional functioning on ratings on the Behavior Assessment System for Children, Third edition, and ratings on the Conners Early Childhood Revised Long Form Teacher & Parent rating scales, from Ms. Rovzar and Mother and Father. Also considered were interviews with Student, Student's teacher, and discussions and consultations with District personnel. Although "discussions and consultations with District personnel" were noted in the list of educational records considered in the assessment report, no notes or descriptions of interviews, discussions or consultations, other than with Ms. Rovzar, were entered into evidence nor did the assessment report identify discussions or consultations with any additional District staff.

26. The Behavior Assessment System for Children is described as an integrated system designed to facilitate the differential diagnosis and classification of a variety of

emotional and behavioral disorders in children and young adults using a four-point scale of frequency of behaviors from “never” to “almost always”. The assessment report states that “at-risk” scores are described as indicating a significant problem that should be monitored to determine necessary strategies for intervention or strategies to assist the student. “Clinically significant” ratings are described as suggesting a high level of maladjustment that might warrant concern and require formal treatment.

27. The Conners Early Childhood Parent and Teacher Rating Scales are stated to be “multi-informant assessments of young children across multiple settings for use with children ages 2 to 6 years-old.” The assessment report indicates that “when used in combination with other information, results from the Conners Early Childhood can provide valuable information to aid in assessment and guide intervention decisions.” Newport-Mesa did not offer any evidence either via testimony or in documentary form as to what “other information” was included in the assessment of Student’s attentional functioning to supplement the Conners rating sheets received from Ms. Rovzar and Mother and Father. Exactly which areas of the assessment the Conners ratings were used to evaluate is unclear. Although discussed under the heading of Attentional Processing, the ratings also appear to have been used to evaluate social emotional and adaptive behavior.

28. No testing protocols, scoring data or scoring rubrics for any of these instruments were included in evidence with the exception of Mother’s Behavior Assessment for Children and Conners ratings.

29. The report does not clearly state how the various instruments were used to assess the categories of functioning delineated. Summary information was often contradicted by information provided in tables. In some instances, graphs and charts were not explained. Instead, the summary makes several broad statements that are not supported by the data.

30. Examples of the confusion in the assessment can be seen in the section of the report stated as being the evaluation of adaptive behavior. Ms. Pethtel testified that there

were no areas of concern indicated by the information she evaluated. That conclusion is repeated in the assessment report. However, the report indicates that Mother rated Student as “at-risk” for anxiety and withdrawal and “clinically significant” in the area of somatization, that is, complaints of physical problems, in Student’s case, being cold, and having headaches and stomach aches. Mother also rated Student as “clinically significant” in the area of internalizing problems. While the assessment report does not include anxiety and withdrawal in the elements considered pertaining to adaptive functioning, no testimony or documents, such as test protocols or scoring rubrics were introduced into evidence detailing which testing instruments were analyzed in coming to a conclusion regarding Student’s adaptive behavior functioning.

31. The report’s conclusion regarding functional communication is also at odds with the data presented. Two scores but no scale identifier is noted for Mother’s rating of functional communication. Ms. Rovzar provided ratings indicating Student was “at risk” in the area of functional communication. In the section of the report evaluating social emotional behavior, an interview with Ms. Rovzar repeats the teacher’s concerns. The interview revealed that “Student was very shy and quiet in class and therefore there were not a lot of opportunities to get more language from her. At times it was difficult for Student to explain her idea clearly and many times Student would not answer the teacher when called on”. Student’s kindergarten report card also includes narratives stating that student had communication difficulties in both reporting periods. No explanation was provided for the contradiction between these statements and the report’s conclusions that there were no areas of concern regarding functional communication. Nor was there an explanation for failing to discuss these specific functional communication deficits in the section of the report pertaining to Adaptive Behavior.

32. The table in the Adaptive Behavior section states that “Adaptive Skills are a composite of pro-social, organizational, study and other adaptive skills which facilitate positive adjustment.” A reader of the report could conclude that anxiety, withdrawal and

somatization might be included in the evaluation of adaptive behavior. One might also expect that an assessment of functional communication would be included in an evaluation of Student's adaptive behavior and any needs associated with that. However, no description of the combination of information that was considered about this Student's adaptive behavior, or how that information was reconciled, is included in the report which leaves the assessment's conclusions regarding the Student's needs in the area of adaptive behavior open to many questions. Further, no explanation was provided through testimony in the hearing.

33. Additional questions arise from the lack of attention paid to concerns expressed regarding this nearly six year-old student's toileting difficulties. The issue was raised in Mother's behavior ratings. Mother also credibly testified to multiple conversations with two Anderson Elementary School teachers regarding sudden difficulties with toileting accidents while a student at Anderson. Mother emphasized her requests that such incidents be documented in Student's records. The assessment report notes that Ms. Pethtel reviewed a "teacher report" in the course of conducting the assessments which was not introduced into evidence or discussed in the assessment report, so it is unclear whether the toileting issues were raised in that report. Student's cumulative education file was also noted as being reviewed for this assessment but no information identified as being from that file was specifically noted in the report. Ms. Rovzar's activities of daily living rating is missing from the Adaptive Behavior chart of ratings and no explanation was provided for its absence. Neither Ms. Rovzar nor Ms. Jacobs, Student's kindergarten teachers at Anderson, testified at the hearing, therefore no opportunity to question them about their experiences with Student in order to corroborate Newport-Mesa's conclusion that there were no concerns with adaptive behavior. Because the report ignored the toileting concerns and Newport-Mesa failed to offer evidence that corroborated its conclusion that Student did not have adaptive skills deficits, Newport-Mesa failed to meet its burden to show this portion of the assessment accurately described Student's level of functioning. Overall, the internal

inconsistencies in the report render its conclusions that there were no concerns regarding Student's adaptive behavior unreliable.

34. To assess attentional functioning, Ms. Pethtel analyzed the Conners ratings from Mother, Father and from Ms. Rovzar. The report states that attention measures included on the Behavior Assessment for Children were also evaluated. The attentional measures of the Behavior Assessment for Children included the ratings for hyperactivity and attention problems. The assessment report narrative indicates that "all raters noted average ratings in the areas of hyperactivity and attention problems." However, actual scores listed in the table indicate that Student's parents rated Student as low in the hyperactivity rating and that Father also rated her as low in the Attention problems rating while Student's teacher and Mother rated her as average in those areas. While the difference in the rating and how it was reported does not change the outcome of the assessment in the area of attentional function, it is another example of data being summarized inaccurately in the report, making the report less reliable as a whole.

35. Validity indexing, which measures overly positive, overly negative or inconsistent responses was noted to be "acceptable" for all three raters on the Behavior Assessment for Children. However, nearly all of Father's ratings on this assessment were "low." No scoring information or protocols related to the Behavior Assessment for Children ratings, other than Mother's rating sheets, were included in either the documentary or testimonial evidence admitted so there is no information with which to verify the validity of what would otherwise appear to be an anomaly. Further, as discussed above, Father had little contact with Student prior to being asked, inappropriately, to fill out these forms.

36. According to Ms. Pethtel's testimony, which was consistent with her report, validity indexing detected overly positive responses in Father's responses on the Conners.⁷

⁷ Despite being discussed under the category of attentional processing, the Conner's narrative focuses more on social emotional function than attentional processing.

The Conners results were the most extensively reported of all of the instruments analyzed for the assessment. Although Ms. Pethtel testified that the validity outcome was “taken into consideration” she did not testify as to how the questionable validity impacted her analysis of areas based on the Conners; nor did the assessment report explain how the evaluations were adjusted to account for the validity issues. No cautionary treatment of Father’s responses is indicated in the report findings or analysis. In fact, it is notable that Father’s responses are often highlighted in the report as the basis for conclusions.

37. Based on a preponderance of the evidence, however, it is clear that Father’s input into the assessment should neither have been solicited nor relied upon. Court orders prohibited Father from contact with the school with the specific exception of communications necessary to secure records and the order regarding communication did not change when the custody order changed. Ms. Cottrell’s decision to allow staff to include Father in the assessment process was a violation of that order. The order itself was clear on the point but the transcript made the court’s intention unmistakable. Testimony from Ms. Cottrell, and each of the assessors that Father could somehow be included in the assessment process but not “influence” District personnel thereby violating the court’s order was simply not credible. However, even if no court order had existed, many markers demonstrating the unreliability of Father’s assessments of Student were evident: Father had interacted with Student on an extremely limited basis in the timeframe leading up to the assessment. Furthermore, his history with Mother was troubled, especially in relation to the custody of the children. Assuming he would provide responses to the assessment that were not colored by the current custody struggles was an unreasonable assumption on the part of the school psychologist who should have identified the potential for biased information. What is more disturbing, however, is the fact that, given statistical results indicating that the information being provided was not valid, and the evident potential for bias, Ms. Pethtel chose to ignore those facts and not only use but heavily rely upon Father’s input despite all

of the indications of untrustworthiness. This decision calls into question Ms. Pethtel's objectivity rendering the conclusions of her report unreliable.

38. In addition to the concern regarding a lack of objectivity, the report's analysis of Student's social-emotional functioning and behavior is contradictory in many areas. In the report's conclusion, a broad statement that "[Student] presents with age appropriate behaviors including positive peer interactions follows directions well and participates in classroom activities." This kind of conclusion is also found in the Social Emotional narrative where the report concludes, "teacher's rating of Student within the average range in adaptability and social skills indicated that Student was able to compliment others, make suggestions for improvement in a tactful and socially acceptable manner and recover quickly from setbacks." These conclusions, however, are contrary to ratings on the Connors from Ms. Rovzar in the Attentional Processing section. Ms. Rovzar's ratings indicated that it is "pretty much true" that Student doesn't show her emotions; it is "just a little true" that Student smiles when others smile at her; it is "just a little true" that Student is happy for others when something good happens to them; that it is "just a little true" that Student tries to comfort others when they are upset and that it is "just a little true" that Student seeks help from others when needed. Student's difficulties in these areas are also supported by narratives from the teacher on Student's report cards.

39. Another example of data incongruity is found in Ms. Pethtel's comments stating that Mother noted a higher degree of maladaptive behaviors than either Father or Ms. Rovzar. This is not an accurate summary of the data. The narrative stated that there were two areas of elevated ratings by both parents and teacher on the Conners: social functioning/atypical behaviors, which were very elevated per Mother and elevated per teacher, and social functioning, which were elevated per both Mother and teacher. The narrative also notes Mother rated Student in the elevated range in anxiety and mood and affect, which the report states differs from Father and teacher. However, Student's teacher also rated Student in the elevated range in mood and affect. The report goes on to declare

that teacher did not rate Student as elevated in the area of social functioning after stating in the paragraph above that the teacher did rate Student as elevated in that area. The report concludes that "Ms. Rovzar and [Father] indicate all areas within the average range (with the exception of the social functioning scale on teacher's rating scale); however [Mother's] ratings of [Student] indicate some elevated scores in the areas of social functioning, atypical behaviors, anxiety and mood and affect suggesting high degrees of lability behaviors." This, also, is not an accurate summary of the data.

40. The information presented in the comparative table of the Conners ratings show that Student's teacher rated Student as elevated to very elevated in six areas including social functioning/atypical behavior, social functioning, mood and affect, communication, motor skills, play and pre-academic cognitive. More than once the narrative asserts an alignment between Father's ratings and Ms. Rovzar's, comparing them to Mother's and then dismissing Mother's concerns ostensibly because the Father and teacher agreed to the contrary. However, as in this example, the alignments asserted are not always supported by the data.

41. An additional discrepancy in the cumulative scoring is shown in the Conners table. Ms. Rovzar rated student with very high numerical ratings in a number of categories. Father's ratings were noted by validity testing to be questionably low; yet the total scores of teacher and Father are identical. Mother's scores in many areas were not that far from the teacher's and generally were closer to the teacher's scores than Father's were. However, Mother's total score is very different from the teacher's. No raw scoring data was included for verification in the evidence admitted and no testimonial explanation of this anomaly was presented by Newport-Mesa. Newport-Mesa did not show that the total scores as calculated were done correctly or in conformance with the manufacturer's instructions.

42. In relation to the court order limiting communication with Father, Ms. Pethtel testified that she was not influenced by her communications him. However, a second request for information was sent to both of Parents regarding Student's recent transition to

her new school. Despite the restricted interaction Father has had with Student due to restraining orders, information was accepted from Father about Student's overall school attendance and her attitudes and functioning at her new school. The assessment report quoted Father as describing Student's attendance as "atrocious" and stating that Student "simply has not been enrolled or involved in schooling as [Student] should be" with no further factual support provided. Ms. Pethtel noted in her report that Student had missed 10 days of school at Anderson, had early pick-up 11 days, that she was late on 10 days and "late tardy" (more than 30 minutes late) on two days. Mother testified that Student was picked up early to attend counseling meetings. However, Ms. Pethtel states several times in the report that "lack of educational exposure and inconsistent attendance may have negatively impacted Student's ability to access the general education curriculum and maintain grade level standards."The report does not identify whether student was two minutes late or 20 when she was tardy or picked up early by five minutes or 30. No mention is made of the fact that on at least some occasions, Student was being picked up early to attend counseling which was identified by the school nurse as a positive intervention given the family dynamic. Ms. Pethtel also refers to "environmental, cultural or economic disadvantage that may have impacted Student's educational performance at this time" but fails to explain the exact disadvantages being considered. During her testimony, Ms. Pethtel did not explain her conclusions or the data she used to come to these conclusions given her testimony that she was not influenced by Father's communications. Also, she did not explain how this relatively low number of days absent (10 days from September to April) could have such a profound effect on Student's learning. Therefore, Newport-Mesa did not meet its burden to show that this part of the assessment met legal standards.

Academic Performance

43. On May 5, 2016, Ashley Puffer, Anderson Elementary School Resource Specialist, conducted the academic testing for the assessment. Ms. Puffer has a master's

degree in special education and a bachelor's degree in psychology and social behavior with a minor in education. Ms. Puffer holds Education Specialist credentials for students with mild/moderate disabilities, Levels I and II from the State of California. She has been a special education teacher at Anderson for 12 years during which time she has completed approximately 120-150 assessments, about half of which were completed for the purposes of evaluating eligibility for special education and related services. In addition to teaching and conducting assessments, Ms. Puffer helps to develop IEPs for her special education students and provides direct or collaborative specialized academic instruction services.

44. Ms. Puffer administered the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) test to Student. Student had been administered the DIBELS test on two prior occasions: once in September 2015, by Ms. Jacobs and once in January 2016, by Ms. Rovzar. Ms. Puffer administered the DIBELS on May 5, 2016, and calculated scores for the end of the year benchmark as the end of school was approximately four weeks away. At that time, Student could correctly read 18 letter name sounds in one minute and could correctly segment 27 sounds on the Phoneme Segmentation Fluency measure. Student was able to identify eight correct letter sounds in one minute and read one whole word correctly. Student's overall score of 53 indicated that Student was "well below" the end of year benchmark of 119. Composite scores for the September and January tests were also "well below benchmark." In September of 2015, Student was able to correctly identify the beginning sounds of seven words in one minute and three letter names in one minute giving Student a composite score of 10. In January of 2016, Student was reported to have correctly identified beginning sounds in 29 words in one minute, correctly read 17 letter name sounds in one minute and correctly segmented 11 sounds on the Phoneme Segmentation Fluency measure. Student's overall score of 71 was in the "well below benchmark" range.

45. Ms. Puffer testified that Student's scores, while in the "well below benchmark" range were not worrying because Student had made significant progress since September.

Ms. Puffer did not address the fact that Student's scores decreased between January and May of 2016. In the section analyzing eligibility for a specific learning disability, the assessment report asserted "According to the DIBELS assessment, [Student] was making some progress from September to January; however, at the May assessment she began to regress which could be due to inconsistent school exposure and not receiving additional interventions from April 11 – present." This statement was not supported by any other data in the report. No explanation of the assertion was offered in evidence during the hearing. Student had attended Anderson from January until April 11, 2016. No evidence was offered of how many days Student missed school during the period of January to May 5, 2016 or how any absences might have impacted the DIBELS score.

46. Ms. Puffer also administered the Wechsler Individual Achievement Test. Several subtests resulted in low scores compared to Student's ability. Student's Early Reading Grade Based score was an 88, which is 29 points below Student's ability score of 117. Student's Spelling subtest resulted in a score of 91, which was 26 points below Student's ability score. Student's Expressive Vocabulary subtest score was 92, which was 25 points below Student's ability score. The Written Expression score was 96, 21 points below Student's ability score, and her Numerical Operations score in math was a 99, 18 points below Student's ability score. No explanation of why these disparities were not considered significant was presented in the report or at hearing. Ms. Puffer incorrectly focused on the fact that all scores were in the "average" range.

47. Ms. Puffer noted that Student was receiving "response to intervention" assistance in the classroom in reading. Despite the testing results and information that Student qualified for special assistance in the general education classroom due to her reading deficits, Ms. Puffer testified that Student was reading "in the average range based on classroom and normed peers." Student's kindergarten report card indicates that Student had minimal to only partial understanding of grade level standards in all areas as of the end of the 2d reporting period of the 2015/2016 school year. Comments from Ms. Rovzar

indicate that Student was given “individual group time,” (which is not further explained), to develop her academic skills as “[Student]is trying hard to improve her academic skills.”

48. Mother credibly testified that the assessment did not take into consideration all of the information available. Specifically, she mentioned Student’s poor reading ability as noted in the DIBELS test scores and on Student’s report cards from Anderson as well as her observation of Student’s reading ability at home and when Mother volunteered in the classroom at Anderson.

49. The Burks Behavior Rating Scale resulted in ratings provided by Ms. Rovzar noting the following behaviors “to a considerable degree”: “confusion in spelling and writing, confusion in number processes, gives illogical response, reading is poor, confused in following directions and confused and apprehensive about rightness of response; indecisive.” Neither Ms. Puffer, nor the assessment report, explained the disparities between the scores achieved by Student on the various standardized tests, Student’s report card results, the teacher’s ratings and the assessment conclusion that Student does not have any need for specialized academic instruction. Rather, the section in the assessment that evaluates the possibility of a specific learning disability quotes Father regarding Student’s limited preschool attendance, notes Student’s 10 days of absence from Anderson and attributes Student’s learning difficulties to her limited school exposure and experience. As there is inadequate evidence to conclude that limited school exposure has impacted Student’s learning difficulties, the failure to acknowledge the disparities between Student’s learning ability score and the scores on her standardized tests, in combination with all of the other evidence of Student’s academic deficits results in this report failing to accurately present Student’s present levels of performance thereby failing to meet the legal standards required by state and federal law.

THE IEP TEAM MEETINGS

The May 26, 2016 IEP Team Meeting

50. The assessment results were scheduled to be presented at a meeting to discuss Student's IEP. Mother and Father were provided with a copy of the assessment report on May 25, 2016. The original date set for the meeting was May 26, 2016. Newport-Mesa was informed the day before the scheduled meeting that Mother was not able to attend. Ms. Cottrell testified that the IEP team meeting was convened despite the fact that Mother could not be there in order to meet the deadline for conducting the meeting prescribed by statute. Present at the meeting were Ms. Cottrell, Ms. Jackson, Ms. Pethtel, Ms. Puffer, Ms. Smith and Ms. Rovzar. IEP notes indicated that Father was in attendance via telephone. It is unclear from the IEP notes how much of the assessment was discussed during the May 26, 2016, meeting. Extensive notes regarding the outcome of the assessments that appear to be connected to the May 26, 2016 meeting are included in the IEP document. The IEP notes state that the "IEP team met and adjourned to stay within the time line," however notes also indicate the meeting lasted 15 minutes. No notes indicate what was discussed during that time. There is no provision in the law which states that a meeting that is convened without the required participants, and with no expectation that a substantive discussion of the topics at issue will occur, satisfies the requirements of state and federal law regarding timely review of an assessment.

The June 17, 2016 IEP Team Meeting

51. On June 17, 2016, Newport-Mesa convened a second IEP team meeting. Present at the meeting were Ms. Cottrell, Ms. Jackson, Ms. Pethtel, Ms. Puffer, Ms. Smith and Ms. Rovzar. Father was invited by school personnel over Mother's objections and attended the meeting via telephone. Mother was present at the meeting for a short time. Upon arriving at the meeting, Mother asked that Father be required to discontinue his telephone connection to the meeting. Mother reminded Newport-Mesa personnel that she had sole

legal custody and that there was a restraining order in place that prohibited even telephone contact between the parties.

52. Mother's role as the sole legal custody holder was acknowledged by Ms. Cottrell; however, Ms. Cottrell declined to require Father to disconnect his telephone connection to the meeting. In testimony Ms. Cottrell stated that she had reviewed the court's orders several times and did not believe the orders prohibited Father from participating in the meeting. This same position was reflected in the IEP notes. Ms. Cottrell acknowledged having received a transcript of the hearing during which Judge Sarmiento of the Orange County Superior Court specified that Father's only contact with the school would be limited to communications necessary for securing copies of documents. That transcript includes a statement by the Judge that Father was not to discuss and comment or attempt to influence school personnel. Ms. Cottrell stated that she did not believe the transcript of the Judge's comments in court constituted a court order and would not require that Father be excluded from the meeting. A letter from Father's attorney had been sent to the school on March 11, 2016, which stated "the restraining order has been amended to remove the children so there is no restriction that [Father] be present at the children's school." Ms. Cottrell implied in her testimony that she relied on the letter in making her decision regarding Father's participation in the meeting. When Ms. Cottrell refused to exclude Father from the meeting, Mother requested an IEE. IEP notes indicate that Father stated he disagreed with the request and stated that he thought the assessment was thorough. As Father was not required to leave, Mother left the meeting. Mother submitted a second request for an IEE via email later that day.

53. The June 17, 2016, meeting continued after Mother's departure at the direction of Ms. Cottrell. Father was allowed to continue to participate despite not having legal custody of any kind including educational rights. Assessment results were presented and questions and comments were solicited from Father as well as members of the IEP team. According to the IEP notes, Ms. Pethtel "reviewed the analysis of eligibility and indicated

[Student] does not meet education code as student [sic] with a disability, and that she is therefore not eligible for special education services.” No attempt to discontinue the meeting to try to resolve Mother’s concerns about the participants was made by Newport-Mesa, nor did Newport-Mesa attempt to convene another meeting to discuss the assessment report and its recommendations with Mother. Newport-Mesa did not explain the authority under which they could convene an IEP team meeting and discuss Student and her assessment with someone who held no educational rights.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁸

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁹ et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. 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

⁸ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁹ All references to the Code of Federal Regulations are to the 2006 version.

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, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62.) In this case, Newport-Mesa, as the complaining party, bears the burden of proof.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

Assessment Notice

3. To obtain parental consent for an assessment, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. § 1414(b)(1); 20 U.S.C. § 1415(b)(3), (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of 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).)

4. Newport-Mesa's assessment plan was given to Parent and there was no allegation that Parent did not receive a copy of the procedural rights at the same time. The assessment plan was in language easily understood by the general public, was provided in Mother's native language of English, explained the types of assessments to be conducted, and indicated that no educational placement or services would result from the assessment without the consent of the parent. All statutory requirements of notice were met and the

assessment plan complied with the applicable statutes. A signed consent to the assessment plan was returned to Newport-Mesa on March 30, 2016 by Mother.

Procedural Requirements for IEP Team Meetings Regarding Assessments

5. Education Code section 56329(a)(1) requires that, upon completion of an assessment, an IEP team meeting must be scheduled that includes all required participants specified in Education Code section 56341. Education Code section 56302.1 mandates that the meeting must take place within 60 days of receiving parental consent for the assessment. The purpose of this meeting is to explain the assessment report and discuss the conclusions of the report.

6. IDEA and California state law explicitly require that student's educational rights holder be part of any IEP team meeting which is charged with developing and implementing a student's IEP. (20 U.S.C. §§1401(14), 1414(d)(1)(B)(i); Ed. Code, § 56342.5.) Special education law places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) The United States Supreme Court has recognized that parental participation in the special education process is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].)

7. California law acknowledges that court orders may change a biological parent's educational rights and, as such, defines the term "parent" with reference to a court's order. "If a judicial decree or order identifies a specific person to act as the parent of a child or to make educational decisions on behalf of a child, then that person shall be determined to be the parent for purposes of the special education law." (Ed Code, § 56028 subd.(b)(2).) Pursuant to court order, the only "parent" for purposes of the legal requirements regarding meetings and assessments related to this student was Mother.

8. In this case, the May 26, 2016, meeting proceeded without Mother, Student's sole educational rights holder. The assessment report was scheduled to be presented at an IEP meeting on May 26, 2016. The assessment report had been provided to Mother and Father the day before. On May 25, 2016, Mother contacted Newport-Mesa personnel and informed them she would be unable to attend the May 26, 2016 IEP meeting. The meeting was convened in her absence. Ms. Cottrell testified that it was convened "for compliance purposes only." However, it is unclear from the record how long the meeting lasted and what was discussed. The IEP document indicates the meeting lasted 15 minutes and that Father, who holds no educational rights, was in attendance via telephone. The document includes a substantial narrative of evaluation results under the notes for the May 26, 2016 meeting. Moreover, certain attendees are required at any IEP team meeting in order for it to meet legal requirements. One of those people is the educational rights holder. Having a parent in attendance who not only has no education rights per court order but whom the court has ordered to have no communication with the school other than that necessary to secure copies of records does not meet the requirement of Education Code section 56329(a)(1). While the statute mandating review of the assessment process within 60 days of receipt of parental consent to the assessments does include two exceptions to that deadline,¹⁰ there is no provision in the law that declares that the convening of a meeting that does not include all participants or which is specifically not intended to include any substantive discussion of the assessments and the report of those assessments in any way satisfies the deadline. Newport-Mesa's May 26, 2016 gathering of IEP team members and Father to announce a meeting was convened, sign a sign-in sheet and then announce the

¹⁰ Exceptions include additional time when a child enrolls in a new school after the prior school has begun the assessment process or a parent repeatedly fails or refuses to produce the child for assessment, neither of which applies in this instance. (Ed. Code §56302.1(b).)

meeting was adjourned was not an IEP team meeting. If substantive discussion of any type did occur, the meeting violated Education Code section 56329(a)(1), requiring Mother to be in attendance. Therefore, Newport-Mesa did not meet its burden of demonstrating that it held a timely IEP team meeting to discuss Student's assessment.

9. The IEP team meeting to discuss the assessment report was rescheduled to June 17, 2016. Mother did attend this meeting. At the outset, she objected to the participation of Father. Newport-Mesa had made arrangements for Father to participate via telephone despite their knowledge of the existence of a restraining order prohibiting Father from contact with Mother of any kind, direct or indirect, including via telephone. Newport-Mesa was also aware of the order from the court strictly limiting Father's communications with the school and more importantly, with Mother. Apparently relying on a letter from Father's attorney rather than the court orders, Newport-Mesa refused to exclude Father from the meeting. Based on this decision, Mother decided she could not participate in the meeting and made a request for an Independent Education Evaluation after which she left the meeting. Mother made another request for the Independent Education Evaluation via email later that same day.

10. The Ninth Circuit has found that school districts must make every attempt to secure the presence of a student's parents at IEP team meetings. In *Shapiro v. Paradise Valley Unified School Dist.* (9th Cir. 2003) 317 F.3d 1072, 1077, *superseded on other grounds by* 20 U.S.C. § 1414(d)(1)(B) (*Shapiro*), the Ninth Circuit noted that "[t]he importance of parental participation in the IEP process is evident." In *Shapiro*, the school district refused to reschedule the child's IEP meeting to a date requested by the parent who was not available on the date convenient to the district. The court in *Shapiro* held that the failure to reschedule the meeting constituted a procedural violation that amounted to a denial of FAPE. (*Id.* at p. 1075). The court further held that the fact that the school district subsequently sent the IEP document to the parent for approval did not cure the violation. The court declared that after-the-fact parental involvement was not sufficient given that IDEA

contemplates participation of the parent in the process of creating a plan to provide special education and related services. (*Id.* at p. 1078.) The Ninth Circuit reiterated its ruling in *Shapiro* in the case of *Doug C. v. Hawaii Dept. of Educ.* (9th Cir.2013) 720 F.3d 1038 (*Doug C.*), where a parent was unable to attend a scheduled IEP team meeting.

11. Courts have repeatedly held that educational agencies cannot excuse their failure to satisfy IDEA's procedural requirements by blaming the parents. *Anchorage School District v. M.P.* (2012) 689 F. 3d 1047, 1055; *Doug C. Hawaii Dept. of Education*, (2013) 720 F.3d 1038, 1045. Federal regulations specifically place affirmative obligations on the educational agency to prioritize parental participation in an IEP meeting. The regulatory framework emphasizes parental participation to such a degree that that a meeting may only be conducted without a parent if "the public agency is unable to convince the parents that they should attend." (34 C.F.R.§ 300.322(d).) In that circumstance, the agency must keep a detailed record of its attempts to include the parent. (34 C.F.R. §§ 300.322(c) and (d); 34 C.F.R. § 300.328.)

12. In this case, per court order, Mother is the sole educational rights holder for this minor student. In addition to the court having granted Mother sole right to make all legal decisions regarding Student's education, the court made two other orders: that Father should not communicate with the school except for the limited purpose of obtaining copies of records and that Father should have no direct or indirect contact with Mother via any means including via telephone. Courts do not grant long-term restraining orders without reason. Newport-Mesa personnel were aware of these orders and yet decided not to follow them. Rather, they appear to have relied upon a letter from Father's attorney which did not properly characterize the court's orders. Newport-Mesa put Mother in the extremely difficult position of having to refuse to participate in a meeting that was very important to her so that she did not have to be subjected to being in communication with Father from which she was legally protected. Mother should not have had to make such a Hobson's choice and forcing her to do so was a denial of her right to meaningful participation in the meeting

where the assessment was explained. She was denied her right to ask questions and to contribute to the discussion of the assessment. Newport-Mesa also failed to make any attempt to reconvene a meeting to discuss the assessment that included Mother. Newport-Mesa could have chosen to have separate meetings if they believed they should be in communication with Father. However, in refusing to exclude Father from the meeting at which Mother was a required participant, and further in failing to make any attempt to reconvene a meeting that included Mother, Newport-Mesa violated the requirements under state and federal law that Student's educational rights holder be present at the meeting to discuss the assessment.

13. Additionally, California law requires that the assessment report must be provided to the parent at the IEP team meeting regarding the assessment to allow for discussion and explanation. (Ed. Code, § 56329, subd. (a)(1).) This duty cannot be discharged by providing the report to a person with no legal rights to make decisions regarding Student, Father was neither able to sign an IEP or make a decision regarding whether an IEE would be requested. Therefore, Newport-Mesa failed to meet the requirement of Ed. Code, section 56329, subd. (a)(1) as simply providing a copy of the report to Mother without giving her an opportunity to discuss the assessment and hear explanations about it did not meet the legal obligations imposed by that code section. (See also, *Shapiro, supra*). By insisting on including Father, who not only had no legal right to be there but who was legally prohibited from participating, and by failing to schedule another meeting with Mother, Newport-Mesa foreclosed Mother from any opportunity to ask questions about the very confusing report or to offer additional insights, either of which might have changed the IEP Team's final determination regarding whether Student was eligible for services. Newport-Mesa failed to comply with the procedural mandates of both state and federal law. Newport-Mesa's procedural failures constituted a serious infringement on Mother's right to meaningfully participate in the IEP meeting where the assessment was reviewed and explained. Mother's requests for an IEE were properly made pursuant to California Code of Regulations, title 5,

section 300.502. As a result, Student is entitled to an Independent Multidisciplinary Evaluation including a psycho-educational assessment, a speech and language assessment, a health assessment and an academic assessment at Newport-Mesa's expense.

TESTING AND REPORT ACCURACY

Purpose of an Assessment

14. Even absent the serious procedural violations pertaining to the required meeting, the numerous questions left unanswered by the assessment support the order of an Independent Education Evaluation for Student. The purpose of an assessment is to explain to the IEP team, and particularly to a parent, what Student's present levels of performance and areas of strengths and weaknesses are and what, if any, deficits exist that are impacting Student's ability to learn. Assessment tools and strategies that provide relevant information to assist the IEP team in determining the educational needs of the child are required. (34 C.F.R. §300.304(c)(7).) Once those evaluations have been made, strategies can be developed to address any deficits impacting the student's ability to learn. In this case, the assessment report is very confusing. Little information was provided in the report that explained how conclusions were reached, summaries of information did not accurately represent data set forth in tables and in some instances key information was overlooked. The assessor also relied on data that was identified by the testing instrument as having questionable validity. As a result, the assessment report did not provide the IEP team with the assistance that was intended by the process nor did it meet the mandates of state and federal law.

The Assessment Met Some but Not All of the Legal Requirements

15. 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 subds. (b) & (c)(5); Ed. Code, § 56320, subds. (a) & (b).)

16. Newport-Mesa's administration of the Multidisciplinary Assessment met some but not all of the applicable legal standards. The report did not rely only on a single criterion for determining whether Student had a disability. The instruments were not administered in a manner that was racially or culturally biased and they were provided in Student's native language. The assessments were administered by trained personnel. Finally, Newport-Mesa used a variety of assessment tools and strategies to gather relevant information.

17. The assessment failed, however, by relying on information that there was reason to suspect was unreliable, by failing to show it followed testing protocols requiring accurate scoring and assessment of ratings, and by failing to present a written report that accurately depicted the results of the information gathered. The assessment further failed to adequately describe the procedures the assessor followed and did not provide an interpretation of the results of some of the assessment data that the team could rely on to assess Student's eligibility. Finally, the assessment failed to apply the eligibility criteria properly.

Unreliable Testing Data

18. Father was not a reliable source of information regarding Student. His long

estrangement from Student and active engagement in a bitter, long-term custody battle with Mother had resulted in a complete prohibition of contact with Student for many months. Just a few weeks prior to the assessments, shared physical custody with limited child visitation had been granted to Father. The history of this relationship and the continuing presence of disputes over custody which limited Father's access to Student, as well as the continuation of restraining orders despite the granting of shared custody, resulted in a likelihood that data Father provided would tend to be critical of Mother's parenting rather than insightful as to Student's educational needs. The hostility of the relationship between the Parents is demonstrated clearly in court orders that indicate Student was required to be exchanged for Father's visits at the police station if Father did not pick her up from school.

19. That Father had not been in contact with Student for nearly a year prior to the custody orders changing, and that he provided no basis for his hyperbolic statements regarding Student's lack of school attendance, made the statements suspect. Yet the comments criticizing Student's school attendance were relied upon heavily by the assessor, who appears to have made the decision that Student was excessively truant despite having only been absent from her kindergarten class on 10 days the entire year with no explanation as to why Student was absent. The source of the data supporting the assertion of 10 days of school absence is not identified in the assessment report and other information in the report, such as that referring to additional days being counted as absences due a lack of transfer paperwork, result in a lack of clarity as to how the number of absences was actually calculated. Even without reconciling those concerns, however, a kindergarten student missing 10 days of school over the course of a year does not rise to the level of shocking truancy. No evidence other than Father's comments was provided linking her educational deficits to her absences. Including Father as a source of data in the assessment did not demonstrate good judgement in the gathering of accurate information regarding Student. This was borne out in the fact that some of Father's ratings were determined to have validity

problems.

Questionable Testing Data

20. Other data compilations from Father have questionable outcomes that are not explained. Father's ratings on the Behavior Assessment for Children were almost uniformly "low" as to each area which would rate Student negatively and high as to those areas where asked about a positive attribute. While no validity issues were reported as to these ratings, no scoring rubrics or test protocols were entered into evidence to verify the tables in the report and no explanations of the anomaly were offered by Newport-Mesa.

21. Validity checks within the assessment protocols on the Conners indicated that Father's ratings of Student's abilities were unusually inflated. While Newport-Mesa's school psychologist, Michelle Pethtel, testified that this fact was "taken into account" she did not state how adjustments were made or to what extent the inflated ratings were still relied upon when reaching conclusions.

22. Overall, data from Father does appear to have slanted the results despite the rote testimony from Ms. Pethtel that Father "did not influence" her. Father's ratings were often used as a "tie breaker" in the assessor's conclusions (although those ties were often inaccurately stated as noted above). Throughout the assessment report, Ms. Pethtel tended to rely more heavily on information provided by Father, including the responses with questionable validity, in reaching conclusions. Data from Ms. Rovzar was summarized inaccurately and then combined with ratings from Father to support assertions that Student had no deficits which would require special education. Data from Father and teacher were also combined to form the basis of an assertion that, because the teacher and Father's data was the same, Mother's concerns could be dismissed as an outlier. However, more than once, the data from Ms. Rovzar was inaccurately described in the report. For instance, teacher's consistent ratings expressing concerns about Student's communication abilities were inaccurately described in multiple report summary sections. Her Behavior Assessment

for Children rating described Student's functional communication as "at risk" but the summary of adaptive behavior stated that adaptive functioning was not an area of concern despite corroborating communication concerns expressed on Ms. Rovzar's Burke's behavior ratings and her comments on Student's kindergarten report card.

23. In the section on social emotional behavior, the report stated that none of Ms. Rovzar's Behavior Assessment for Children ratings were reported within the "at risk" or "clinically significant" range. Yet Ms. Rovzar did rate Student as "at risk" for functional communication. Furthermore, the summary of the Conners ratings claimed that the ratings yielded a difference in how Father and Ms. Rovzar rated Student versus Mother. Mother was said to have noted a higher degree of maladaptive behaviors than the teacher and Father. Setting aside for the moment that these were the ratings that had questionable validity for Father, this conclusion misstates the data from Student's teacher. Ms. Rovzar actually rated Student in the elevated to very elevated range on six different rating areas of the Conners. The report attributes only two areas of elevated or very elevated ratings to the teacher. The summary concludes that the results from Father and teacher "indicate all areas within the average range with the exception of social functioning." This statement is simply inaccurate.

24. The assessment report refers on multiple occasions to Student's school exposure as being "limited" based on Father's disparaging comments about Student's attendance in combination with Student missing 10 days of class. However the report concludes several times that limited school exposure was the cause of Student's learning difficulties. The assessor fails to differentiate between non-compulsory preschool attendance and the 10 days of kindergarten missed. Neither the assessor nor the report offered evidence that Student's attendance impacted her learning difficulties.

25. Reliance on problematic data, especially when combined with inaccurately described data results in other areas of the report, results in Newport-Mesa failing to meet its burden of demonstrating that the testing resulted in accurate, reliable results. Finally, it is not inconsequential that including Father in the assessment process violated a court order.

Academic Performance Data

26. In the assessment report sections that discuss Student's academic performance, much focus is devoted to the fact that Student's test scores on the Weschler standardized tests were in the "average" range. However, whether or not scores are average is not the standard against which data is assessed for purposes determining eligibility for special education. In evaluating whether a student has a specific learning disability an assessment compares a student's academic ability score to the scores achieved on standardized tests. If the standardized test scores are 22 points lower than the Student's academic ability score (plus or minus the margin of error of 4 points), a specific learning disability is indicated. Taking into consideration the margin of error, this means that any score that is 18 points lower than Student's academic ability score indicates an area of specific learning disability concern. In the case of this Student, her Early Reading Grade Based score is an 88 which is 29 points below her ability score of 117. Student's Spelling subtest resulted in a score of 91, which is 26 points below her ability score. Student's Expressive Vocabulary subtest score was 92 which is 25 points below her ability score. The Written Expression score is a 96, 21 points below her ability score and her Numerical Operations in math are a 99, 18 points below her ability score.

27. Classroom data that was included in the assessment to provide further information about Student's abilities showed that Student's math assessments from the classroom swung wildly from scores that indicated minimal understanding in October of 2015 to scores that showed "thorough" understanding the following month and then reverting back to scores showing minimal understanding in January of 2016. Scores in March of 2016 demonstrated only partial understanding of grade level math concepts. Furthermore, the DIBELS scores indicate that Student was regressing in her reading readiness skills. While the assessment report attributes the regression of Student's DIBELS scores to lack of school attendance, no evidence was presented supporting that theory. Although Student was noted to have missed 10 days of school over the year, and the report

posited that perhaps Student had not had adequate supports during her time at the new school, no evidence was presented to explain why she would have regressed between January and May 5, 2016 when she was an Anderson student from January to April 11, 2016 receiving the additional RTI supports being provided in the classroom and then moved on to the private school where she was attending at the time she was assessed.

28. Ms. Rovzar's Burke Behavior Rating Scale also provided data raising questions about Student's academic difficulties. Ratings demonstrated that Student had a considerable degree of confusion in spelling, writing and number processes; gave illogical responses to a considerable degree; had poor reading; was confused in following directions; was indecisive to a considerable degree; and was confused and apprehensive about the rightness of her responses to a considerable degree. The information from these scores and ratings, when considered with the disparity between Student's academic ability score and her standardized testing results, was not explained in testimony nor was an explanation provided in the assessment report. Rather, the focus remained on Student's "average" scores. Conclusions that Student "does not appear to have any unique needs" and that "math is a relative strength" are not supported by the data presented. The disparity in the data leaves open questions as to whether Student has specialized academic instruction needs resulting in a conclusion that Newport-Mesa did not meet their burden of showing that the assessment met the requirements of the Education code that it provided accurate, reliable information upon which conclusions about Student's needs could be based.

Social-Emotional and Adaptive Behavior

29. Overall, it is unclear what conclusions are drawn in the area of social emotional behavior. The narrative portion of the report reiterates comments made pertaining to adaptive functional and attentional behavior but draws no clear conclusions about Student's social emotional behavior. Given the disparity between the data provided, the questions regarding use of data that raised validity concerns, and the summaries that ignore or

inaccurately state significant portions of testing data without explanation, the reader is left to guess whether social emotional difficulties are indicated by the scores. Given the significant questions raised by the disparity in the ratings and score total on the Conners, Newport-Mesa has not met their burden of showing the scores are accurate or that the report provides an accurate presentation of Student's attentional or social emotional functioning.

30. The evidence presented does not support that the report's conclusory statement that adaptive behavior was not an area of concern for this Student, especially in light of the broad explanation that "adaptive skills are a composite of pro-social, organizational, study and other adaptive skills which facilitate positive adjustment." Although Newport-Mesa argued that Mother did not raise the issue of toileting difficulties in her comments, it was noted on the Behavior Assessment for Children as a problem "sometimes" and Mother testified that she spoke to two teachers about the issue, including Ms. Rovzar. Evidence that student has functional communication deficits was also presented but dismissed by the assessment. Ratings by Ms. Rovzar stated the area of functional communication as being "at risk" and that was reinforced by her comments in her interview with Ms. Pethtel as reported in the assessment report. Narrative comments on Student's report cards also described significant difficulties Student had with communication. The lingering questions demonstrate that Newport-Mesa has not met their burden of demonstrating that this Student has been assessed in all areas of need or that the assessment in the area of functional communication is accurate.

Speech and Language

31. In evaluating Student's speech and language, the report failed to address Student's speech abilities which were scored on a developmental scale of articulation competency below that expected for her chronological age. The assessment also failed to discuss whether Student's speech deficits adversely affect educational performance. The

Goldman Fristoe Test of Articulation demonstrates that Student's age adjusted score is nearly a year behind what a child her age should be able to demonstrate. The test already adjusts for age appropriate errors. Therefore, dismissing the low score on the basis that Student exhibited age appropriate errors is an erroneous interpretation of the testing results. The conclusion that Student's voice was observed to be within age expected limits based on this testing data is inaccurate, resulting in Newport-Mesa failing to meet its burden of demonstrating that the testing in this area produced accurate results.

Inaccurate Application of Legal Standards to Testing Data

32. To aid the IEP team in determining eligibility, an assessor must produce a written report of each assessment that includes whether the student may need special education and related service and the basis for making that determination. (Ed. Code § 56327). The report must be furnished to a student without cost. Districts are required to provide to students, upon request, an explanation of interpretation of any answer sheet or other records related to the tests a student has completed. (Ed. Code § 56327 (a)(3).)

33. In this case, Newport-Mesa did not meet its burden to prove that it applied correct legal standards when evaluating the data resulting from the tests it administered. For instance, the report concludes Student does not meet the eligibility criteria for other health impairment, but the conclusions in the summary do not comport with the data that is presented. In evaluating whether Mother's concerns about somatization were concerns that should trigger eligibility, Father's concerns were combined with Student's former teacher's ratings to conclude that Mother's concerns should be dismissed because Student did not go to the school nurse or complain to staff. Yet, ratings from both teacher and Mother indicate Student rarely asked for help when she needed it. In dismissing eligibility for other health impairment, the assessment report notes that Student "has had limited school exposure and does not present with diagnosis at this time that negatively impacts her ability to access the general education curriculum." The report does not explain, however, how Student's 10 days

of absence factor into whether she has a health impairment that might limit her ability to access her education.

34. Another example is found in the report's conclusion that Student does not meet the eligibility criteria for emotional disturbance because "according to both parents and previous teacher Student is well liked by her peers and engaged in social interactions age appropriately and participates in group activities." Contrary to this statement, however, the report data indicates that both Mother and Ms. Rovzar cited concerns about Student's social interactions. The report also states that Father and Ms. Rovzar do not observe Student to be displaying any depressive or irritable type behaviors. However, Ms. Rovzar did provide information of concern about Student's affect in class and interaction with her peers as well as concern about her functional communication.

35. A third area in the assessment report that does not appear to have properly evaluated the data pertaining to Student's potential eligibility for special education and related services is the analysis of specific learning disability. Specific learning disability as a possible category of eligibility was dismissed solely on the basis that Student's score was in the average range on the Weschler; failing to consider other standardized testing results; the disparity between the Weschler scores and Student's academic ability score or the information reviewed from the classroom including Student's report cards; and the teacher comments thereon expressing concern about Student's academic progress. The assessment also summarily dismisses the possibility that Student has a disorder in one or more of the basic psychological processes despite specific concerns in teacher's Burkes, Connors and Behavior Assessment for Children ratings and Mother's concerns regarding Student's expressive language. Instead, the report recites that Student "has had limited school exposure and experience" noting the 10 days of absence, as well as vague references to tardy arrivals and early dismissals with no acknowledgment of the counseling appointments underlying at least some of the early dismissals, and quoting Father regarding Student's lack of preschool attendance. Setting aside the already discussed potential for biased

information being presented from Father, preschool attendance is not compulsory in California and, thus, should not be considered in this assessment. The specific learning disability evaluation concludes with the statement "Student does not present with a learning disability that negatively impacts her educational performance" despite the fact that "negatively impacting educational performance "is not an accurate articulation of the eligibility criteria. The IEP team is unable to evaluate the recommendations of Ms. Pethtel regarding eligibility when the recommendations in the assessment report are based on some information that was of questionable validity and other data that was inaccurately analyzed.

36. Finally, the report sets forth a laundry list of other potential eligibility categories that were summarily dismissed but provides no data to support those conclusions. The statement simply asserts that "it was the professional opinion on this evaluator that current assessment data does not support eligibility...". Included in that list is actually one area that was included in the report's earlier, more detailed analysis. Conclusions become suspect when a statement such as this indicates inattentive cutting and pasting in an assessment report.

37. Therefore, the Multidisciplinary Assessment was not legally compliant because it failed to meet the requirements that it conduct an objective assessment of Student with instruments that were administered according to the instructions and protocols mandated by the testing manufacturers in a manner most likely to yield accurate information about Student's present levels of performance, academic abilities and social-emotional and adaptive behavior deficits and health. The assessment further failed to assess Student in all areas of suspected disability.

ORDER

1. Newport-Mesa's May 2016 Multidisciplinary Assessment was not legally compliant. Therefore, Student is entitled to an independent multidisciplinary assessment at

public expense. The assessment shall consist of a psycho-educational assessment, a speech and language assessment, a health assessment and an academic assessment. Once the assessment report is completed, Newport-Mesa shall hold an IEP team meeting to discuss the assessment, if Mother requests an IEP team meeting.

2. Newport-Mesa shall immediately provide Mother with the independent assessment guidelines with which she is to comply. No assessment plan shall be required or utilized.

3. Mother shall notify Newport-Mesa within 30 days of receiving the guidelines the names of her chosen assessors. Without delay, Newport-Mesa shall contract with the chosen assessors. Beyond the initial contact necessary to arrange for an assessment contract, Newport-Mesa shall not be allowed to have any other communications with the assessor, except as needed and determined by the assessors. Newport-Mesa shall promptly comply with any requests from the assessors necessary to complete the assessments. The assessment reports when completed will be provided directly to Mother by the assessors.

PREVAILING PARTY

Pursuant to 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. Student prevailed on the only issue heard and decided.

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: March 14, 2017

_____/s/_____

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings