

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL DISTRICT,

OAH Case No. 2017060361

v.

PARENT ON BEHALF OF STUDENT

DECISION

Los Angeles Unified School District filed a due process hearing request (complaint) with the Office of Administrative Hearings on June 7, 2017, naming Parent on behalf of Student. On June 26, 2017, OAH granted District's motion to amend its complaint. On July 12, 2017, OAH granted the parties' joint request for a hearing continuance. Administrative Law Judge Sabrina Kong heard this matter in Los Angeles, California, on September 13, 2017.

Attorney Donald Erwin represented District. District's special education specialist Susan Weber attended the hearing on District's behalf. Neither Student, nor his advocate, Victoria Baca, attended the hearing.¹

¹ On September 11, 2017, Ms. Baca filed several motions to continue the hearing which was scheduled to start on September 12, 2017. The ALJ partially granted Ms. Baca's last-minute request for a hearing continuance granting a continuance from September 12, 2017 to September 13, 2017, and denied her request for a longer

A continuance was granted for the parties to file written closing arguments and the record remained open until October 4, 2017. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision on October 4, 2017.²

ISSUE³

1. Was District's psychoeducational assessment appropriate such that Student is not entitled to an independent psychoeducational assessment at the public's expense?

2. Was District's occupational therapy assessment appropriate such that Student is not entitled to an independent occupational therapy assessment at the public's expense?

3. Was District's functional behavior assessment appropriate such that Student is not entitled to an independent functional behavior assessment at the public's expense?

continuance. OAH called Ms. Baca on the morning of the hearing when no one appeared on Student's behalf. Ms. Baca confirmed with OAH staff that she would not attend. A Spanish interpreter was present throughout the hearing to interpret for Parent, who also did not attend the hearing.

² Student did not submit closing arguments.

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

SUMMARY OF DECISION

District proved that its psychoeducational, occupational therapy and functional behavior assessments were appropriate. Therefore, Student is not entitled to independent evaluations in these three areas.

FACTUAL FINDINGS

1. Student was eight years old, and resided within District at all relevant periods. He qualified for special education as a child with autism. Student attended Bryson Avenue Elementary School in the 2016-2017 school year in Grethel Ruelas's autism special day class, where he worked on the general education common core curriculum.

2. Student's triennial assessments were due in the spring of 2017. District sent a triennial assessment plan, in Spanish, and a copy of Procedural Rights and Safeguards, to Parent seeking consent to assess Student in the areas of health, general ability, academics, language and speech, occupational therapy, social emotional and functional behavior. Parent signed the assessment plan on February 2, 2017. Parent agreed in writing to a 20-day extension for District to conduct its assessments and hold an individualized education program team meeting. District conducted psychoeducational, occupational therapy and functional behavior assessments, along with other assessments not at issue in this hearing.

PSYCHOEDUCATIONAL ASSESSMENT

3. School psychologist Jin Ok conducted a psychoeducational assessment of Student on February 23, 2017. She held a master's degree in school psychology; had been District's school psychologist for approximately 10 years, where she provided counseling for District's students and had conducted hundreds of psychoeducational assessments. Ms. Ok was qualified to assess Student in the area of psychoeducation.

5. Ms. Ok used standardized testing instruments to assess Student. She also reviewed Student's health/medical, family, and educational history including prior assessments and IEPs; observed Student in the classroom, at recess, and during standardized testing; and interviewed Ms. Ruelas, Student, and Parent through a Spanish interpreter, as part of the assessment.

6. Ms. Ok administered the Cognitive Assessment System, Second Edition, to obtain information on Student's cognitive and intellectual function. She used the planning subtest to measure Student's cognitive control level. She used the attention subtest to measure Student's ability to focus and distraction resistance level. She used the simultaneous subtest to measure Student's response to visually presented information; and the successive subtest to measure Student's response to orally presented information. Because Student performed well below average in all areas of the Cognitive Assessment System, Ms. Ok administered another cognitive and intellectual function test, the Southern California Ordinal Scales of Development, which confirmed that Student's functional level was in the significantly low range. She also administered the Comprehensive Test of Phonological Processing, Second Edition, to obtain information on Student's phonological and auditory processing skills. The assessment consisted of a variety of tasks to measure phonological awareness and memory; and rapid symbolic and non-symbolic naming, which tested phonological information retrieval from long-term memory and execution of operations sequences. Student performed in the below average range and exhibited auditory processing difficulties.

7. Ms. Ok administered the Bender Visual-Motor Gestalt, Second Edition, to obtain information on Student's sensory-motor skills and visual-motor integration. She also administered the Motor Free Visual Perception Test, Third Edition, a non-verbal measure of visual perceptual and visual processing skills. Student performed in the

below average range under both tests.

8. Ms. Ok administered the Behavior Assessment System for Children, Third Edition, the Vineland Adaptive Behavior Scales, Second Edition, and the Autism Spectrum Rating Scales to Parent and Ms. Ruelas, and interviewed Student to evaluate Student's social emotional development and status. All three instruments provided consistent information showing that Student had autistic-like behaviors impacting his access to education. Ms. Ok also noted that Student could not respond to any questions about himself, his interest, and his family, and could only state his name. He repeated Ms. Ok's questions frequently and had difficulty remaining on task. Student was below average in communication, daily living skills and socialization.

9. The Cognitive Assessment System, Southern California Ordinal Scales of Development, Comprehensive Test of Phonological Processing, Bender Visual-Motor Gestalt, Behavior Assessment System for Children, Vineland Adaptive Behavior Scales, and the Autism Spectrum Rating Scales were all standardized testing instruments; yielded valid results; and were reliable and widely accepted assessment tools. Ms. Ok administered and interpreted them consistent with the publishers' protocols.

BILINGUAL SUPPLEMENTAL ASSESSMENT

10. Because Student's home language was Spanish, Ms. Ok referred Student for a supplemental bilingual assessment by Emma Villegas. Ms. Villegas held a master's degree in school psychology and counseling; a multiple subject bilingual teaching credential; had been District's bilingual school psychologist since 2005; and conducted hundreds of psychoeducational assessments with autistic, bilingual students. She was qualified to assess Student.

11. Ms. Villegas assessed Student on March 16, 2017, to determine Student's dominant language and overall academic oral language skills. She reviewed Student's health/medical, family, educational history, psychological assessments including Ms.

Ok's assessment, and Student's English levels tests including the California English Language Development Test. She talked with Student to build rapport and evaluate Student's spontaneous language skills. She administered the Woodcock-Munoz Language Survey, Revised Spanish Version, and found that Student: only responded to her in English; displayed language characteristics consistent with autism, such as echolalia, word repetition out of context, and limited eye contact; and was unable to participate in a reciprocal conversation or respond to conversational questions. She concluded that Student was English dominant and exhibited negligible academic Spanish oral language skills, both in listening and oral expression, with well below average skills in verbal analogies, understanding directions, picture vocabulary and story recall. Student demonstrated better developed listening and oral expression skills in English, compared to Spanish. His oral language communication deficits did not derive from limited English proficiency, but were consistent with his autism and his special education needs. Ms. Villegas did not administer an auditory processing assessment in Spanish because of Student's limited Spanish oral language skills. She opined that Ms. Ok's Comprehensive Test of Phonological Processing assessment accurately reflected Student's auditory perceptual abilities. Ms. Villegas also concluded that Ms. Ok's assessments were accurate and reflective of Student's overall abilities.

ACADEMIC ASSESSMENT

12. Ms. Ruelas assessed Student's strength and weaknesses in all academic areas which included math, reading and writing. She held a master's degree in special education; a special education teaching credential to teach students with mild to moderate disabilities; and was District's special education teacher since 2015, providing autism common core instruction from pre-kindergarten to the fifth grade. She was also trained to conduct functional behavior assessments as a part of her master's degree program and by District in its two-day functional behavior assessment training. She

worked as a behavior interventionist providing one-to-one instruction to students with autism spectrum disorders for a private agency for a year where she also conducted functional behavior assessments. Ms. Ruelas was qualified to assess Student in academics and functional behavior. She reviewed Student's health/medical, family, and educational history including prior assessments and IEPs; assessments by Ms. Ok and Ms. Villegas; observed Student's behaviors and academic performance in her classroom; and interviewed Parent and Student's classroom aide, Ms. Vega, in conducting the academic and functional behaviors assessments.

13. She reviewed Student's past performance on the Dynamic Indicators of Basic Early Literacy Skills, including the Dibels Oral Fluency, which measured Student's reading fluency, accuracy and retell abilities; the Text Reading Comprehension which determined Student's reading level; and the Daze which measured comprehension by having Student fill in the blank for missing words in a reading passage to get a historical perspective on Student's abilities. Student consistently performed well below benchmark levels in these past tests, and in Ms. Ruelas's 2016-2017 periodic classroom assessments of Student's knowledge of the alphabet, consonant sounds, short vowel sounds, consonant blends, and sight words. Ms. Ruelas also administered periodic classroom math assessments such as the ability to add single digit numbers within 10, the ability to skip count by 10s, and fill in the numbers from a number chart. Student demonstrated the ability to count up to 100 and his math skills including applied problems, calculation and math facts fluency were all in the very low range. Ms. Ruelas administered a spelling test where Student correctly wrote/spelled nine out of 15 words. Student was only able to write his name when asked to produce a written sentence for the writing sample evaluation. His spelling, sentence writing fluency and writing samples were all in the very low range.

14. Ms. Ruelas administered the Woodcock-Johnson IV Tests of Achievement

Form A, to assess Student's reading, decoding/comprehension, spelling, written expression, and math calculation/applications and oral language. The Woodcock-Johnson was a reliable and widely accepted standardized testing instrument. Ms. Ruelas administered and interpreted the Woodcock-Johnson consistent with the publishers' protocols and her assessment of Student yielded valid results. Student scored in the well below average range on all subtests, which validated the results she obtained from her periodic classroom assessments of Student in the areas of reading, math and writing.

15. Ms. Ok included and considered Ms. Villegas's and Ms. Ruelas's assessment findings in her March 21, 2017 psychoeducational report. Ms. Ok concluded that Student was eligible for special education under the categories of intellectual disability and autism.

FEBRUARY 14, 2017 OCCUPATIONAL THERAPY ASSESSMENT

16. Bettina McLaughlin conducted the occupational therapy assessment of Student on February 14, 2017. She held a master's degree in occupational therapy; a bachelor's degree in psychology; had been District's occupational therapist for approximately 19 years; worked with students with autism and intellectual disabilities; and conducted hundreds of occupational therapy assessments. She interviewed Ms. Ruelas, Student and Parent as part of the assessment. She reviewed Student's health/medical, family, and educational history including work samples, prior assessments and IEPs; and observed Student at school, while providing occupational therapy to Student during the 2016-2017 school year, and during standardized testing. She was qualified to assess Student in occupational therapy.

17. Ms. McLaughlin administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition, to measure Student's ability to interpret and translate visual information into an exact motor response. She administered both the

Test of Visual Perception and the Test of Motor Coordination subtests. The Test of Visual Perception assessed Student's visual perceptual processing ability, or the ability to interpret what he saw, such as pointing to a matching shape. The Test of Motor Coordination assessed Student's motor hand/eye coordination, such as tracing a shape without going outside a double-lined path. She evaluated Student's sensory modulation and discrimination abilities including the tactile system (sense of touch on the skin), the vestibular system (head position in relation to gravity and movements), and the proprioception system (sensations from the muscles and joints). She asked Student to sit, stand and balance from various positions, perform jumping jacks, and pick-up objects; observed him walking up and down the stairs, stringing beads, twisting on/off objects, writing, engaging in self-care tasks such as feeding, washing hands, adjusting clothes, and other materials/objects manipulation and management skills.

18. Student scored in the average range in the area of visual perception, and low in the areas of motor coordination and overall on the Visual-Motor Integration assessment. He had adequate postural control and balance to access the educational environment, but required supervision because of decreased safety awareness. He had adequate visual skills to track object movements and discriminate shapes and sizes. He could complete bimanual tasks, had functional fine motor grasp, could copy simple lines and shapes including all upper and lower case letters, could self-feed using utensils, and could use the restroom independently and required prompting for hand washing. Ms. McLaughlin concluded that Student presented with decreased fine motor skills impacting his functional writing abilities, and needed occupational therapy services to access his education.

19. The Beery-Buktenica Developmental Test of Visual-Motor Integration, was a reliable and widely accepted standardized assessment. Ms. McLaughlin administered and interpreted the Beery-Buktenica Developmental Test of Visual-Motor Integration

consistent with the publishers' protocols and her assessment of Student yielded valid results.

MARCH 10, 2017 FUNCTIONAL BEHAVIOR ASSESSMENT

20. Ms. Ruelas also conducted a functional behavior assessment to address Parent's concerns about Student's target/problem behaviors which included: off-task, where Student was not actively engaged on an academic task for more than five seconds; self-injurious and repeated scratching; failure to initiate conversation; and aggression such as pushing, hitting, or throwing objects at staff or other students. The purpose of the functional behavior assessment was: to identify environmental variables that foment the target behaviors, the functions for the target behaviors, and development of alternative replacement behaviors, and additional intervention strategies to reduce the target behaviors and increase appropriate behaviors. Another special education teacher conducted an ecological analysis of the environmental effects of Ms. Ruelas's class rules, curriculum, transitions, schedule, learning environment and motivation system as a part of the functional behavior analysis.

21. Ms. Ruelas collected Student's data from February 27, 2017 to March 3, 2017, for five consecutive days noting: target behaviors; antecedents, what occurred right before the target behaviors; and consequences, what happened right after the target behaviors. The data included the date, the class, the duration and percentage of time the target behaviors occurred. The data showed that the function, or purpose, of : (a) Student's off-task behaviors was to escape undesirable work and obtain adult attention; (b) Student's scratching was to relieve the stress from a high demand activity; and (c) failure to initiate conversation resulted from avoidance because of Student's inability to hold a conversation because of his verbal expression delays.

22. Even though Parent reported aggression at home, Student did not exhibit any aggressive behaviors at school. Student initiated approximately eight conversations

in one school day, the most during morning English/Language arts, and the least during writing. Student exhibited very low instances of off-task behaviors during most classes: English/Language arts (once for thirty seconds in an hour), recess (none), math (none), iPad time (none) writing (twice for five seconds during a 45-minute writing lesson) and physical education classes (none). Student had 30 off-task behaviors for a total of two and a half minutes during a 20-minute science/art class. Student did not exhibit scratching during English/Language arts or math classes. Student had an average of three occurrences of scratching during recess, writing, physical education, science/art, and five times during a 20-minute iPad session. Because Student's off-task behaviors and scratching occurred mostly during science/art class, Ms. Ruelas collected additional data of these two target behaviors during March 6, 2017 to March 14, 2017.

23. From the data taken, Ms. Ruelas suggested the following antecedent strategies to help Student acquire the necessary skills to stop the target behaviors: independent work at his ability level; provide adult support for more challenging work; provide verbal praise and/or snack reward; provide peer tutoring for positive role models; provide social skills instruction to initiate conversations; provide small group instruction; and provide a social narrative to encourage Student to ask for help verbally or using a sign. Student's preferred objects were iPad, Thomas the train toys, and Play-Doh. Immediate verbal praise was effective to motivate Student to engage in a desired behavior. She recommended small group instruction with aide support and providing Student with preferred objects and verbal praise to reward Student for disengaging in off-task behaviors. She recommended immediately stopping Student from scratching and giving him a preferred object to replace the scratching. She also recommended providing Student with group social skills lessons including step-by-step instruction on social skills strategies and conversation techniques, and providing an appropriate partner with whom Student could practice conversation initiation. Finally, Ms. Ruelas

recommended continued data collection to monitor Student's behavioral progress after instituting the recommended behavior interventions. District developed a proposed behavior support plan with the findings from the functional behavior assessment.

24. District attempted to schedule an IEP meeting within the timeline agreed to by Parents. However, Student's advocate, Ms. Baca, was not available on the dates District proposed, and the meeting had to be rescheduled twice because of her schedule. District sent a notice to Parents for a May 4, 2017 IEP team meeting in Spanish, which Parent signed on April 25, 2017 and agreed to attend. The meeting was scheduled 11 days after April 23, 2017, the last date the meeting should have been held.

MAY 4, 2017 TRIENNIAL IEP TEAM MEETING

25. Parents, educational advocate Ms. Baca, District's administrator Vinita Bhasin, Ms. Ruelas, Ms. Ok, Ms. McLaughlin, the school nurse, the speech and language assessor, a general education teacher, and a Spanish interpreter attended the May 4, 2017 triennial IEP team meeting. District provided a copy of the Procedural Rights and Safeguards to Parents in Spanish at the IEP team meeting, and informed them of their right to a written translation of the IEP.

26. Each of the assessors provided a copy of their reports to Parents, reported their assessment findings to the IEP team, and provided Parents and Ms. Baca an opportunity to ask questions and raise concerns. Parents and/or Ms. Baca asked the IEP team questions, and District IEP team members responded to their questions. District IEP team members found Student eligible for special education because his autism impacted his ability to access and progress in the general education curriculum. District presented a summary of Student's present levels of performance, proposed goals and offered Student a special day class placement on a general education site, a behavior support plan, accommodations, speech and language and occupational therapy services, parent counseling and training, extended school year, and home to school

transportation. Student would be in special education 72 percent, and general education 28 percent, primarily during fieldtrips, assemblies, nutrition, physical education, art, social studies and science.

27. Parents and Ms. Baca expressed that they did not agree with the IEP offer. Ms. Baca wrote on the IEP document that Parent disagreed with the IEP in its entirety, but consented to the implementation of goals and services. Ms. Baca further wrote on the IEP document that Parents requested independent evaluations in the areas of psychoeducation, speech and language, occupational therapy, and functional behavior; and requested Applied Behavior Analysis services, behavior intervention development and behavior intervention implementation, all from non-public agencies.

LEGAL AUTHORITY AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

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

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

⁵ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, and which sets forth the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp.

200, 203-204.) In a recent unanimous decision, the United States Supreme Court also declined to interpret the FAPE provision in a manner that was at odds with the *Rowley* court's analysis, and clarified FAPE as "markedly more demanding than the 'merely more than the de minimus test'..." (*Endrew F. v. Douglas School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988] (*Endrew F.*)). The Supreme Court in *Endrew F.* stated that school districts must "offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (*Id.* at p. 1002.)

4. The IDEA affords parents or local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6)(f) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C) & (D); Ed. Code, § 56505, sub. (l).)

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

DISTRICT'S ISSUES 1, 2, AND 3 - ASSESSMENTS

6. District contends its psychoeducational, occupational and functional behavior assessments were appropriate such that Student was not entitled to public

funded independent evaluations in those areas. Parent disagreed that the assessments were appropriate and requested independent assessments at the IEP meeting. Student did not participate in the hearing.

Legal Authority

7. Assessments are required to determine eligibility for special education, and what type, frequency and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service's needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

8. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56381, subd. (a).) Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).)

9. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4)

the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent (Ed. Code, § 56329, subd. (a)(3)), and an IEP team meeting must be held to consider the assessment. (Ed. Code § 56302.1, subd. (a).)

10. A student may be entitled to an independent educational evaluation⁶ if he or she disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].)

11. In response to a request for an independent evaluation, an educational agency must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an independent evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the

⁶ Federal law uses the term "evaluation" instead of the term "assessment" used by California law, but the two terms have the same meaning and are used interchangeably in this Decision.

parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

12. A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.)

Analysis common to all three assessments ISSUES 1, 2 AND 3

13. District's psychoeducational, occupational therapy and function behavior assessors were properly credentialed and had the necessary experience to conduct their assessments. The assessors used multiple assessments and a variety of assessment tools including observation, interview, and standardized and non-standardized instruments to evaluate Student in the areas of psychoeducation, occupational therapy and functional behavior. The assessment instruments chosen were designed to provide information about Student's special education eligibility, related services, and accommodations in his IEP. None of the assessments were racially, culturally, or sexually biased. The assessments were administered in English, which was appropriately determined to be Student's dominant language through a bilingual Spanish supplemental assessment. The assessment results were valid, and provided useful information regarding Student's cognitive abilities, visual-motor abilities, visual-perceptual abilities, visual memory abilities, academic difficulties, adaptive skills, daily functional abilities, and behavior problems. The assessment results consistently supported that Student exhibited below

average cognitive function and deficits which adversely affected Student's educational progress and performance.

14. All the assessors provided a comprehensive report of their assessments which included the basis upon which their determinations were made; noting relevant observations and behaviors; noting the relationship of their assessment findings to Student's academic and social functioning; noting educationally relevant health, development and medical findings; and determining that the assessment results were not primarily due to environmental, cultural or economic factors. Additionally, all the assessors summarized their findings in relevant portions of Student's IEP document, and provided recommendations based on their assessments to the IEP team. The IEP team considered the assessments to determine Student's present levels of performance, propose goals and a behavior intervention plan, and made an offer to Student at his May 4, 2017 IEP team meeting. The IEP team, including Parents and their advocate, considered all of the assessments in developing Student's IEP.

Analysis specific to Issue 1 – psycho-educational Assessment

15. District demonstrated by a preponderance of the evidence its psychoeducational assessment was properly conducted and the resulting report was appropriate. Ms. Ok's training and experience qualified her to assess Student's psychoeducational needs. The assessments addressed Student's intellectual, processing, and social/emotional needs. Ms. Ok used a variety of tools to assess Student including standardized tests such as the Cognitive Assessment System, the Southern California Ordinal Scales of Development, the Comprehensive Test of Phonological Processing, the Motor-Free Visual Processing Test, the Bender Visual Motor Gestalt, and questionnaires such as the Behavior Assessment System for Children, Vineland Adaptive Behavior Scales, the Autism Spectrum Rating Scales completed by Parents and Ms. Ruelas regarding their observations of Student, Ms. Ok's own observations, and a records

review. Additionally, she relied on Ms. Villegas' bilingual supplemental assessment, and Ms. Ruelas's academic assessment as a part of her psychoeducational report.

16. Both Ms. Villegas's and Ms. Ruelas's assessment findings validated Ms. Ok's findings of Student's deficits and special needs. Ms. Villegas used the standardized test of Woodcock-Munos, records review, observations, and interviews to identify Student's dominant language, and to assess his language skills; and persuasively concluded that Student's Spanish skills were negligible when he only responded to her in English and did not speak any Spanish during the assessment. Therefore, Ms. Villegas's decision not to conduct an auditory processing assessment in Spanish, and her reliance on Ms. Ok's assessment findings, including the Comprehensive Test of Phonological Processing in English as accurately reflecting Student's auditory perceptual abilities were reasonable and appropriate. Ms. Ruelas used the standardized test of Woodcock-Johnson, Student's performance on various non-standardized tests in her class, records review, observations, and interview as part of her academic assessment that yielded valid results about Student's abilities which were also consistent with Ms. Ok's assessment findings. All assessment results from Ms. Ok, Ms. Villegas, and Ms. Ruelas were consistent and reflective of Student's overall below average abilities. The psychoeducational assessment yielded valid information about Student that was useful and sufficient for the IEP team to develop an IEP for Student.

Analysis specific to Issue 2 – occupational therapy Assessment

17. District demonstrated by a preponderance of the evidence its occupational assessment was properly conducted by a qualified assessor, and the resulting report was appropriate. Ms. McLaughlin had the training and experience necessary to assess Student in this area of need. She appropriately assessed Student to address his visual and motor skills needed to access his education. Ms. McLaughlin used a variety of assessment tools including observation, interview, Student's work samples and

standardized tests such as the Beery-Buktenica Developmental Test of Visual-Motor Integration and its subtests to determine Student's visual perception and motor skills. The assessment instruments chosen were designed to provide information about whether Student required occupational therapy as a related service in his IEP. The instruments Ms. McLaughlin used required Student to perform different types of motor movements needed to participate in a classroom, navigate a campus, and assessed Student's strength, range of motion, writing/copying abilities, and sensory needs. The occupational therapy assessment yielded valid results and information about Student that was useful and sufficient for the IEP team to conclude that Student required occupational therapy as part of Student's IEP.

Analysis specific to Issue 3 - Functional Behavioral Assessment

18. When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b); Ed. Code, § 56341.1, subd. (b)(1).) The legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) A person recognized by the National Behavior Analyst Certification Board as a board-certified behavior analyst may, but is not required to, conduct behavior assessments and provide behavior intervention services for individuals with exceptional needs. (Ed. Code, § 56525, subds. (a) and (b).) An IEP that does not appropriately address behaviors that impede a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-68.)

19. District demonstrated by a preponderance of the evidence its functional behavior assessment was properly conducted by a qualified assessor and the resulting

report was appropriate. Ms. Ruelas had the training and experience necessary to assess students with autism who had suspected needs in behavior. She assessed Student's behaviors to address parental concerns that off-task, self-injurious scratching, failure to initiate conversation and aggressive behaviors were interfering with his educational access. Ms. Ruelas used a variety of tools, observations, interviews with Parent and Student's aides and teachers, including taking extensive data in all of Student's classes, charting each of the target behaviors' occurrence, duration, antecedent behaviors, consequences, and functions. Upon identifying that Student engaged in scratching and off-task behaviors, and did not initiate conversations during certain classes and times, she collected more data to obtain additional information. She also conducted an assessment of Student's preferred activities and objects to use as reward, or reinforcement, to obtain the desired behavior from Student. Another special education teacher evaluated Ms. Ruelas's classroom environment, providing an additional opinion contributing to a more comprehensive functional behavior assessment. The functional behavior assessment provided valid and necessary data and information regarding appropriate strategies for motivating and instructing Student in engaging in the desired behaviors. It also provided useful information for the IEP team and helped District develop a proposed behavior support plan to help Student access his education.

Timeliness of All Assessments

20. With regard to the timelines associated with all three assessments, District proved it procedurally complied with notice and due process filing requirements. Parents had appropriate notice of District's intent to assess Student. Parents consented to the assessments by signing the assessment plan on February 2, 2017. District's failure to hold the IEP meeting within the 60-day statutory time period was not a significant procedural violation. Parents agreed to extend the timeline to accommodate Ms. Baca's schedule. District made multiple efforts to schedule a meeting within the time frame

agreed to by Parents, but was not successful because of Ms. Baca's unavailability and Parents' desire to have her present at the meeting. Shortly after Parents disagreed with the May 4, 2017 IEP, and upon rejecting Student's request for independent evaluations, District timely filed a request for due process hearing on June 7, 2017.

21. In summary, District met its burden of proving by a preponderance of the evidence that it procedurally complied with the IDEA and its psychoeducation, occupational therapy and functional behavior assessments were appropriate.

22. Accordingly, Student is not entitled to independent evaluations in these three areas at public expense.

ORDER

District's assessments and reports in the areas of psychoeducational, occupational therapy, and functional behavior were appropriate such that Student is not entitled to independent educational evaluations at public expense.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District was the prevailing party as to all issues.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: October 13, 2017

/s/

SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings