

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ORINDA UNION SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2017060787

DECISION

Orinda Union School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 16, 2017, naming Parents on Behalf of Student.

Administrative Law Judge Ted Mann heard this matter in Orinda, California, on August 22, 23, and 24, 2017.

Jennifer Baldassari, Attorney at Law, appeared on behalf of District. Erin Fraser, Attorney at Law, of the same firm also attended. District's Director of Student Services Jen Woodman attended each day of the hearing on behalf of District. LaJoyce Porter, Attorney at Law, appeared on behalf of Student. Student's mother and father attended each day of the hearing.

At the request of the parties, OAH continued this matter to September 11, 2017, for written closing arguments. The record was closed upon timely receipt of written

closing arguments and the matter was submitted on September 11, 2017.¹

ISSUE

Was District's educationally related mental health services assessment of Student, and resulting assessment report, dated May 11, 2017, appropriate, such that Student is not entitled to an independent educational mental health services assessment at District's expense?

SUMMARY OF DECISION

District proved that the educationally related mental health services assessment of Student and resulting assessment report, dated May 11, 2017, referred to in this decision as the ERMHS assessment, was appropriate, such that Student is not entitled to an ERMHS assessment at District's expense. The assessment was conducted by a qualified assessor, who utilized a variety of comprehensive, non-discriminatory, tools and strategies, including direct observation, to gather relevant information about Student.

¹ District submitted a Motion to Strike two arguments from Student's Closing Brief. Student filed a Brief in Opposition to the motion to strike, and District filed a Reply Brief. To the extent Student's closing brief raised arguments concerning alleged limitation of Student's questioning of Ms. Levin at hearing and also raised for the first time the National Association of School Psychologists code of ethics as evidence, those issues were not raised at hearing , and are not addressed in this decision. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); County of San Diego v. California Special Education Hearing Office (9th Cir. 1996) 93 F.3d 1458, 1465.)

FACTUAL FINDINGS

1. Student moved into District shortly before the beginning of her kindergarten year in 2015, and went on to attend kindergarten and first grade at Glorietta Elementary within District. At the time of the hearing, Student was an approximately seven and one-half year-old girl. Student resided with her parents within District's boundaries at all relevant times.

2. Parents asked District to assess Student for special education eligibility in November 2016. District agreed to conduct an initial assessment for eligibility. Student's initial assessments began in December 2016. District school psychologist Amy Feldman, M. Ed., conducted a psycho-educational assessment as part of the initial assessments. The initial assessments are not at issue in this matter.

3. On February 21, 2017, Parents wrote to Jen Woodman, then District's Director of Personnel and Special Services, requesting an ERMHS assessment for Student. On March 9, 2017, District sent a proposed assessment plan to Parents. The assessment plan included an ERMHS assessment by District of Student.

4. District convened an individualized education program team meeting on March 14, 2017. District found Student eligible for special education under the primary category of specific learning disability, and a secondary category of other health impairment.

5. On March 20, 2017, Mother signed consent to the ERMHS assessment plan. District received the signed assessment plan on March 21, 2017.

DISTRICT'S ERMHS ASSESSMENT OF STUDENT

6. Ms. Feldman conducted an ERMHS assessment of Student and prepared a report of her findings. She assessed Student over six days in late April and early May of 2017, and documented her findings in a report dated May 11, 2017.

7. Ms. Feldman was qualified to conduct an ERMHS assessment, prepare an ERMHS report, and to testify as an expert based on her education, training and experience. She had a bachelor of arts in psychology, a master's of education in school psychology with a designation as a nationally certified school psychologist. She held a certificate in elementary education and a Pupil Personnel Services credential as a school psychologist in California. Ms. Feldman worked as a school psychologist for District from December of 2013 through June of 2017. She previously worked as a school psychologist for the Federal Way Public Schools from September of 2005 through August of 2008. She was experienced in conducting psychological assessments, having performed over 100 psychoeducational assessments of children. She routinely and regularly participated in IEP meetings, student support team meetings, Section 504 assessments, and student counseling.

8. Ms. Feldman was very familiar with Student. She provided school psychological counseling to Student beginning in approximately October of 2016, working with Student and one other child, one-on-one with Student and with Student and Mother. She conducted Student's initial psychoeducational assessment in December of 2016 and January of 2017, and prepared a psychoeducational report, dated February 16, 2017. The report included assessment data and her analysis and conclusions of the data. Her initial psycho-educational report was presented at the March 14, 2017 IEP team meeting that established Student's initial eligibility for special education.

9. Ms. Feldman was District's principal witness at the hearing. Her testimony was detailed and logical, based on substantial training and experience in assessing and evaluating students for special education, and was undamaged on cross-examination. It was credible throughout and is entitled to substantial weight here.

10. At the time of the assessment, Parents reported concerns with inattention, behavioral and same-age socialization problems, and learning problems. Ms. Feldman's

assessment was intended to evaluate whether Student had mental health issues, and, if so, whether the mental health issues interfered with Student's ability to access her education.

INFORMATION GATHERING

11. Ms. Feldman conducted a comprehensive ERMHS assessment. She reviewed Student's previous records, interviewed Mother and Father, interviewed Student's private therapist, conducted an informal interview with Student's classroom teacher, reviewed behavior tally sheets from Student's teachers, observed Student at school in multiple settings, observed Student's behavior during assessment, administered the Behavior Assessment for Children, Third Edition, and received rating scales from Mother, Father, and Student's classroom teacher. She also considered the recent results for Student from the Connors-3 rating scales completed by Mother, Father, and Student's classroom teacher for the recent psychoeducational assessment of Student.

12. Ms. Feldman used a variety of assessment tools and measures. She was trained to administer the tests and other assessment materials and did so in conformance with instructions. Ms. Feldman was knowledgeable of Student's disability and competent to perform the assessments. Assessment materials were validated for the specific purpose for which the materials were used, and were selected and administered so as not to be racially, culturally, or sexually discriminatory. The assessments were provided and administered in Student's primary language, English.

13. Ms. Feldman obtained input from the resource teacher and the general education teacher, Mother, Father, and an outside provider. She interviewed Student, Mother, and Father and obtained relevant functional, developmental, academic, and medical information about Student. She considered and eliminated environmental factors as a basis for assessment bias. Student was a willing participant in the

assessment process. The data obtained accurately represented Student's abilities and capabilities. Ms. Feldman obtained data that was sufficient, valid and reliable, and did not rely on any single measure to determine whether Student had mental health issues that impeded her ability to access her education.

14. Ms. Feldman obtained information on Student's background, health and development, and family issues from Mother by way of responses by her on a parent questionnaire, a discussion at a Student Support Team meeting on October 6, 2016, and from a parent interview on April 26, 2017. Ms. Feldman learned Student had a complicated birth, but generally met developmental milestones other than delays in crawling and walking. Student had an accompanying history of low muscle tone and sleep disruptions, particularly at bedtime. Student's brother had a history of seizures, and extended family history was relevant for attentional deficits, learning disabilities, depression, and anxiety. The family moved to District from Marin County just prior to Student's kindergarten year, and remained in a rental at the time of the ERMHS exam. Mother underwent two surgeries since the family moved within District boundaries.

INTERVIEWS

15. Ms. Feldman interviewed Mother on April 26, 2017, and Father on April 27, 2017. Mother and Father noted behavioral changes during Student's kindergarten year, with Mother attributing changes to the major events of that year including the move, continuing house-hunting, and the two surgeries. Student had not been exposed to significant trauma, but had witnessed Mother collapse at home at age two, and had witnessed her brother having multiple seizures. The family dog had also died within the last year.

16. Mother and Father both reported that Student's emotional reactions were often very intense, but that the reactions were also predictable and consistent with the situation; i.e. that there were certain triggers for emotional outbursts. The triggers did

not occur randomly. Both Mother and Father reported that Student's thought processes were logical and clear with no distortions of reality or rapid escalations or de-escalations of tempo of speech. Neither Mother, nor Father had seen evidence of obsessions, preoccupations, phobias, or hallucinations, although Student had strong preferences and dislikes. Student was able to express her feelings through words and was also able to self-regulate after big upsets fairly quickly. Student was reported to be very emotionally connected to the exterior world and sensitive to goings on around her. Overall, both Mother and Father reported that Student's mood and behavior had improved in recent months, and that getting a new dog seemed to have had a significant and positive impact on Student.

17. Ms. Feldman interviewed Student informally over three different counseling sessions on March 29, 2017, April 12, 2017, and May 3, 2017. Student had well-developed preferences and dislikes and a strong sense of self. She tended to describe her behaviors negatively, but could identify positive traits and behaviors with prompting. Her siblings tended to irritate her or make her mad at home. Student reported she had three good friends, and she had playdates with two of them. She also reported participating in group activities at recess at school.

18. Ms. Feldman found that Student displayed no evidence of thought-distortion and was able to explain herself clearly. Her self-reports of prior experiences, current home-life and school-life, and day-to-day experiences were consistent with information known to Ms. Feldman. Student displayed varied and appropriate facial affect, expected expression of emotion given the situation, appropriate eye contact, typical body movements, and expected responses to external stimuli. Her use of language was fluid and appropriate and she showed a very well-developed ability to express herself clearly.

19. Ms. Feldman interviewed Student's therapist, Dr. Deena Altshuler, a

pediatric psychologist, by telephone on May 3, 2017. Dr. Altshuler worked with Student and met Mother several times over the months prior to her conversation with Ms. Feldman, including the day before the telephone interview. Dr. Altshuler reported that Student met criteria for attention-deficit/hyperactivity disorder, combined presentation, with a formal diagnosis in early April of 2017. Dr. Altshuler's opinion was that the present primary challenges for Student included emotional dysregulation, impulsivity, difficulty connecting with peers, and outbursts at home that got her into trouble and impacted her self-esteem. Dr. Altshuler's opinion was that Student had some degree of depressed mood and anxiety based upon parental reporting, but that Student did not show evidence of significant depression or anxiety or meet diagnostic criteria in either of those mental health areas.

20. Ms. Feldman obtained information from Student's general education classroom teacher, Carol Levin, through a questionnaire. Ms. Levin reported that Student had made significant growth since the beginning of her first grade year. Student had politely learned to ask for help when needed, had developed a more positive attitude, and required less one-on-one support. Student also showed an improved attitude towards school, along with improved peer relationships. Emotional outbursts in class had been eliminated as well. Ms. Levin also collected behavioral data on a form prepared by Ms. Feldman that tracked the categories in the Behavior Assessment System for Children, Third Edition. During five school days between April 20, 2017 and April 27, 2017, Ms. Levin reported no observed occurrences of negative self-talk, work refusal, unkind words towards peers, unkind/disrespectful words towards teacher, or tantrums, and one display of frustration in the form of pushing work aside.

21. Ms. Feldman obtained information from Student's resource teacher, Marissa Hay, through a questionnaire. Ms. Hay reported that Student had shown much less resistance to working with her since Student was first tested by her for the

psychoeducational assessment in early 2017. Student was also reported to work well with the other student in the resource group, and was eager to help and to please while working hard and showing little or no prompting to begin work. Ms. Hay also collected behavioral data on a form prepared by Ms. Feldman that tracked the categories in the Behavior Assessment System for Children, Third Edition. During five resource sessions between April 12, 2017 and April 26, 2017, Ms. Hay reported no observed occurrences of negative self-talk, work refusal, unkind words towards peers, unkind/disrespectful words towards teacher, displays of frustration, or tantrums.

OBSERVATIONS

22. Ms. Feldman observed Student on April 27, 2017, for 30 minutes during a whole-class workshop in the general education classroom. Student displayed positive, adaptive behavior by responding appropriately to the teacher, following the pace of the lesson, and meeting behavioral expectations. Student tuned out for a two-minute interval, and acted impulsively, but with self-correction, several times. Student also moved too close to a neighboring student, but moved away at the other student's request appropriately and without issue. During the observation period, Student's emotional responses and facial affect were varied and appropriate to the situation, and Student was comfortable in the classroom and well-integrated with her classmates.

23. District school psychologist trainee Jahayra Molina observed Student on April 25, 2017, for 15 minutes during early-bird reading in the general education classroom. Student was working in a one-on-one setting with a teacher's aide during the reading. Student was responsive to the teacher's requests, and generally engaged in the task, but displayed inattention to task approximately 10 percent of the time with more body movement than normal for her. Student spoke to a classmate during transition time, but completed the transition appropriately.

24. Ms. Feldman observed Student on May 3, 2017, for 15 minutes during

recess. Student was comfortable and happy based on her relaxed body posture and smiling, upbeat voice. She ate her snack near but not fully integrated into a small group of girls. Thereafter, she engaged and participated appropriately with a group of boys who were searching for and finding bugs to eat ants that had infested a tree located in the recess area.

25. Ms. Feldman also observed Student during her small-group and individual counseling sessions each week. Ms. Feldman reported that both she and Ms. Molina had noted a significant positive change in Student's motivation and attentiveness during the small group sessions compared with previous refusal or push-back when activities were introduced. Student had begun arriving with expressed enthusiasm, a positive greeting for Ms. Feldman, an open, available demeanor, and was very responsive to the Zones of Regulation behavioral system lessons.

CONNERS-3 RATING SCALES

26. Ms. Feldman reviewed and analyzed the Conners-3 rating scales completed by Parents and Student's classroom teacher for the recent psychoeducational assessment. The scales were completed by Parents on December 6, 2016, and by Ms. Levin on January 6, 2017. The Conners-3 rating system was designed to facilitate the classification of attention-deficit/hyperactivity disorder and related problems with executive functioning, learning problems, aggression, and peer relations by rating them on 14 different scales that illustrate attention-deficit/hyperactivity disorder behaviors.

27. The assessment scales were provided to the persons completing the scales through an internet link. The scales were filled out online, and when complete were directly submitted to the company that produced the assessment. The company scored the rating scales and provided Ms. Feldman with a report containing the scores and an analysis of the scores that she downloaded and printed. The scores were validated by the cautionary indices that accompanied each individual report showing no evidence of

overemphasis, under-emphasis or other flags for validity. The scores provided by Parents also fit the information that they had provided to Ms. Feldman by other means such as interviews, questionnaires, or during meetings.

28. Parents reported very elevated scores for Student's behaviors in the areas of inattention, hyperactivity/impulsivity, executive functioning, defiance/aggression, and peer relations. Mother noticed problems with behavior related to learning while Father rated those behaviors as average. Ms. Levin reported very elevated scores for defiance/aggression and peer relations, and elevated scores for hyperactivity/impulsivity. Ms. Feldman understood the scores, taken together, to illustrate Student's attentional problems, as well as the impulse control issues Ms. Feldman observed.

BEHAVIOR ASSESSMENT SYSTEM FOR CHILDREN-3

29. Ms. Feldman obtained BASC-3 scores for Student from Mother, Father, and Ms. Levin. The BASC-3 was designed to provide information about the social-emotional health and observable behaviors of children from the perspective of parents and teachers, and to provide a norm-referenced comparison with same aged peers. The BASC-3 measures numerous aspects of behavior and personality, including internalizing problems, externalizing problems, and adaptive skills.

30. Mother and Father found Student in the average range overall for externalizing problems, although both of them identified hyperactivity issues, and Mother rated Student "at-risk" for aggression. Mother and Father found Student to be "at-risk" for internalizing problems, with both of them finding clinically significant levels of anxiety and depression. Mother and Father also found Student to be "at-risk" on the behavioral symptoms index that looked at attention problems, atypicality, and withdrawal. Both of them rated Student's adaptive skills to be in the average range overall.

31. Ms. Levin rated Student as broadly average over the entire range of areas assessed by the BASC-3, equating her behavior with that typically displayed by Student's same aged peers. Ms. Levin's scales actually indicated recent improvement in classroom behavior by Student compared with Student's behavior earlier in the school year, and were consistent with other information provided by Ms. Levin and Ms. Hay about improvements in Student's school-based behavior in the latter part of Student's first grade year.

FOLLOW-UP QUESTIONING OF PARENTS

32. Ms. Feldman conducted follow-up interviews with both Parents regarding their specific answers to the BASC-3 questions. The follow-up questioning was done during the general interviews with Parents described above. Ms. Feldman discussed with Parents panic attacks they observed in Student. Parents reported fast escalation of behavior, followed by relatively quick recovery/calming. Parents did not observe any evidence of hyperventilation, light-headedness, or unclear thinking patterns that would be expected to accompany panic attacks.

33. Ms. Feldman also followed up on Parents' comments that Student would claim to hate herself or wish she was dead. These statements by Student were categorized by Parents as impulsive and of the moment and not reflective of any self-harming or suicidal ideation by Student.

MS. FELDMAN'S ANALYSIS AND OPINIONS

34. Ms. Feldman concluded her report by addressing potential mental health issues and possible impact on Student's ability to benefit from her education. She found that there were no mental health issues impacting Student at the time of the report, and that mental health issues did not impact Student's ability to benefit from her education at the time of the report. It was Ms. Feldman's opinion that within the school setting

there was no clinical risk for continuing or increasing mental health disorders at the time of the report, including no reports of suicidal or homicidal ideation, no risk for victimization, and no risk for hospitalization related to a mental disorder. Student did not show evidence of thought-distortion, obsessions, preoccupations, phobias or hallucinations. There were observed issues with lower impulse control, difficulty with emotional regulation, and elevated intensity in emotional responses, but the services and supports from the initial IEP of March 14, 2017 were helping Student and decreased the observable behavioral issues.

35. In particular, Ms. Feldman looked at Parents' concerns about anxiety and/or depression in Student. Based on follow-up interviews with Parents and an interview with Student's therapist, she found that while Student showed some signs of depressed mood and anxiety, those signs were a product of the behavioral challenges experienced by Student, but were not consistent, overall, with clinical depression or anxiety.

PARENTS' REQUEST FOR AN INDEPENDENT ASSESSMENT AND DISTRICT'S PRIOR WRITTEN NOTICE

36. Parents requested an independent assessment at the May 11, 2017 IEP team meeting. District responded with prior written notice to Parents, dated May 17, 2017, indicating that District did not believe that Parents were entitled to an independent assessment as the ERMHS report was legally sufficient. District also indicated that it would file for due process to defend its ERMHS assessment within 30 days, and then proceeded to do so.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION - LEGAL FRAMEWORK UNDER THE IDEA²

1. This 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 (2006) et seq.,³ Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's 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 that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Supreme Court's recent decision in *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, ____ L.Ed.2d ____ (2017 WL 1066260) (*Endrew F.*)] reaffirmed that to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances; any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a

FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 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); Ed. Code, 56505, subd. (j).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, District, as the complaining party, bears the burden of proof.

DISTRICT'S ERMHS ASSESSMENT

5. District contends that the ERMHS assessment, and resulting May 11, 2017, assessment report, were legally appropriate, such that Student is not entitled to an independent educational mental health services assessment at District's expense. Student contends that District denied her a FAPE by failing to adequately conduct and/or report on the educationally related mental health services assessment.

6. Under certain conditions, a student is entitled to obtain an independent evaluation⁴ 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, §

⁴ An assessment under California law is equivalent to an evaluation under Federal law. (Ed. Code, § 56303.)

56329].) To obtain an independent evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent evaluation. (34 C.F.R. § 300.502(b)(1).)

7. When a student requests an independent evaluation, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate, or ensure that an independent evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

8. Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (34 C.F.R. § 300.301(a); Ed. Code, § 56320.) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).)

9. A district must ensure that a child is assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code § 56320, subd. (f).) Assessments must be conducted by individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined by the local educational agency." (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).)

10. Tests and assessment materials must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56320, subd. (a).)

11. The assessment must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6).)

12. A district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether he is eligible for special education, and what the content of his program should be. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) An assessment tool must “provide relevant information that directly assists persons in determining the educational needs of the child.” (34 C.F.R. § 300.304(c)(7).)

13. In selecting assessment tools, the assessor must do more than pick a generally valid instrument. Tests and other assessment materials must be used “for purposes for which the assessments or measures are valid and reliable.” (20 U.S.C. § 1414(a)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) Assessment tools must be “tailored to assess specific areas of educational need . . .” (Ed. Code, § 56320, subd. (c).) “Special attention shall be given to the [child’s] unique educational needs . . .” (*Id.*, subd. (g).)

14. Assessors must use “technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.” (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3).) ‘Technically sound instruments’ generally refers to assessments that have been shown through research to be valid and reliable.” (Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46642 (Aug.14, 2006).)

15. A district must ensure that the child is observed in her learning environment (including the regular classroom setting) to document her academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310(a).)

16. It is the duty of the IEP team, not the assessor, to determine whether a student is eligible for special education and related services. (20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. §§ 300.305(a)(iii)(A); 300.306(a)(1). 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 services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).) The report must be given to the parent or guardian, though that duty has no fixed time limit. (Ed. Code, § 56329, subd. (c).) Normally, an assessment must be completed within 60 days of the receipt of parental consent for it. (34 C.F.R. § 300.301(c)(1)(i), (ii); see Educ. Code, § 56302.1(a).)

17. Here, District established that it met the procedural and substantive requirements necessary for its ERMHS assessment of Student to be found legally sufficient, and to deny Student an independent assessment at public expense.

18. Following Parents' request for an ERMHS assessment of Student, District timely proffered an assessment plan. Upon receiving Parents' signed consent to the assessment plan, District timely completed the assessment. Once Student challenged District's assessment, District promptly and timely responded to Student's concerns, and thereafter timely filed its request for a due process review of the assessment's sufficiency.

19. Student was assessed in all areas of suspected mental health issues. A broad variety of assessment tools and methods were utilized to obtain comprehensive, valid, meaningful data on Student's mental health capabilities and difficulties. Assessments included, but were not limited to: review of education, medical, and assessment records; interviews with Parents, Student, and Student's outside therapist; objective assessment tools, including the use of assessment scales completed by Parents and Student's teacher; and observations of Student in the classroom and other educational settings.

20. Ms. Feldman selected and administered assessment tools so as not to be racially, culturally, or sexually discriminatory, and administered assessments in Student's primary language of English. She selected and used assessments according to the

purposes for which the assessments or measures were valid and reliable, were tailored to Student's specific areas of educational need, and were technically sound and reliable. Ms. Feldman was highly qualified, trained, and experienced in administering the assessments she used, and she was knowledgeable about Student and Student's suspected disabilities.

21. Ms. Feldman's judgment and recommendations, as related in the assessment report, were logical, well-considered, and evaluative. She considered all of the information she assembled in reaching her reasonable conclusions regarding Student's potential mental health issues and any impact of those potential issues on Student's ability to access her education in the school setting, and in concluding that Student did not have mental health issues that were impacting her ability to access her education.

22. In sum, District established by a preponderance of the evidence that it met all the procedural and substantive requirements for establishing the legal sufficiency of its assessment. As District has met the applicable legal requirements, and timely moved for a due process review of the sufficiency of the assessment, Student is not entitled to an independent assessment at public expense.

ORDER

1. District's requests for relief are granted.
2. District's assessment of Student is legally sufficient, such that Student is not entitled to an independent assessment 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. District prevailed on all issues presented.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

DATE: October 5, 2017

/s/

TED MANN

Administrative Law Judge

Office of Administrative Hearings