

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN LEANDRO UNIFIED SCHOOL
DISTRICT,

v.

GUARDIANS ON BEHALF OF STUDENT.

OAH Case No. 2017060144

DECISION

San Leandro Unified School District filed a request for due process hearing on June 2, 2017, naming Guardians on behalf of Student. Administrative Law Judge Rita Defilippis heard the matter in San Leandro, California, on August 8, 9, and 10, 2017.

Leah Smith, Attorney at Law, represented San Leandro throughout the hearing. Colleen Palia, San Leandro's Director of Special Education, attended the hearing on San Leandro's behalf.

Legal Guardians represented Student throughout the hearing. Guardians will hereafter be referred to as Parents.

A continuance was granted for the parties to file written closing arguments and the record remained open until August 29, 2017. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

1. Is San Leandro's March-April, 2017, psychoeducational evaluation

appropriate within the legal definition?

2. Is San Leandro's March-April, 2017, speech and language evaluation appropriate within the legal definition?

3. Is San Leandro's March-April, 2017, academic evaluation appropriate within the legal definition?

4. Is San Leandro's March-April, 2017, functional behavior assessment appropriate within the legal definition?

5. Is San Leandro's March-April, 2017, occupational therapy evaluation appropriate within the legal definition?

SUMMARY OF DECISION

San Leandro filed for hearing to show that the assessments completed met all legal standards. Parents claim that the assessors were biased in favor of finding that Student did not qualify for special education services; were incomplete due to the lack of Guardian input; Ron Thompson was not qualified to conduct Student's academic assessment and that the assessments painted an inaccurate picture of Student as successful at school which was not consistent with their perspective of Student's functioning in the home.

San Leandro proved, by a preponderance of the evidence, that San Leandro's March-April, 2017, psychoeducational, speech and language, academic, occupational therapy, and functional behavior assessments were legally appropriate in that they met all legal requirements. The assessors were qualified to conduct the assessments, and multiple assessment tools which were valid were used. The tests themselves were not sexually, culturally, or racially discriminatory, and were administered in that way. Each of the assessors who evaluated Student produced a written report with recommendations. All of the testing was administered according to the test publisher's directions to the extent necessary to produce valid results.

FACTUAL FINDINGS

JURISDICTION

1. Student has attended general education classes in the San Leandro Unified School District since 2013, pursuant to an inter-district transfer agreement. Student is currently enrolled as a middle school student in general education classes with 504 accommodations due to disabilities including Posttraumatic Stress Disorder, Reactive Attachment Disorder, and Attention Deficit Hyperactivity Disorder, Combined Type.

2. On January 10, 2017, Parents made a written request to San Leandro's Director of Special Education, Ms. Victoria Forrester¹, for a comprehensive psychoeducational special education assessment for Student including academic, psychological, occupational therapy, and sensory needs.

3. On February 1, 2017, Ms. Forrester responded to Parents' request for testing in an email agreeing to assess Student but asserting that, from San Leandro's point of view, there are no areas of suspected disability. Ms. Forrester recommended a Student Success Team (SST) meeting be convened to discuss Parent concerns and to develop an assessment plan.

4. On February 1, 2017, Parent sent a reply email to Ms. Forrester explaining Parent concerns about Student. Parents believed that Student had several missing classroom and homework assignments, lacked organizational skills, was not meeting state standards in math, and her attention deficit was impacting her learning. Parents declined the SST meeting and requested an assessment plan.

5. On February 13, 2017, San Leandro sent an assessment plan to Parents.

¹ Ms. Forrester is no longer San Leandro's Director of Special Education. She was replaced by Ms. Colleen Palia in February 2017.

The assessment plan had boxes checked for evaluation areas including academic achievement, health, intellectual development, motor development, and social-emotional.

6. On February 27, 2017, Parents faxed the signed assessment plan back to Ms. Cindy Perales, the school psychologist. They had added evaluation areas including speech and language, occupational therapy-sensory, and adaptive behavior. Parents explained that the additional testing was needed due to Student's ongoing problems with following multi-step directions, frequent questions about word meanings, lack of understanding of homework, and uncompleted assignments. Parents attached the January 10, 2017, letter and February 1, 2017, email correspondence, regarding their assessment request, to the signed and modified assessment plan.

7. In February 2017, Ms. Colleen Palia replaced Ms. Forrester as Director of Special Education for San Leandro Unified School District. Ms. Palia first became aware of Student when Ms. Perales, the school psychologist, contacted her to discuss the assessment plan modifications made by Parents. Ms. Perales sent Ms. Palia the assessment plan which was modified by Parents and signed. Ms. Palia reviewed the modified assessment plan as well as Parents' January 10, 2017, letter and February 1, 2017, correspondence between Parents and the prior Director of Special Education. After reviewing the documents, Ms. Palia directed Ms. Perales to draft a new assessment plan which incorporated all of Parents' requested testing, and send it to Parents.

8. On March 10, 2017, Parents signed the new assessment plan which required San Leandro to assess Student in the areas of academic achievement, health, intellectual development, language/speech communication, motor development, social/emotional, adaptive/behavior, and "other", which included occupational therapy/sensory. The assessment plan signed by Parents called for an evaluation in

academic achievement by an education specialist; a health assessment² by the school nurse; an intellectual development, motor development and social emotional assessment to be done by the school psychologist; a speech and language assessment by a speech therapist; a functional behavior assessment to be done by a behaviorist; and a sensory/occupational therapy assessment by an occupational therapist.

IEP MEETING TO REVIEW ASSESSMENTS AND REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

9. Following the completion of the assessments, on April 28, 2017, San Leandro convened an individualized education program team meeting to review the assessments. Parents were not provided notice of this meeting and did not appear for the meeting. Parents were contacted and another IEP meeting was scheduled for May 4, 2017. Notice was provided to Parents for the May 4, 2017, meeting. There was no substantive discussion at the April 28, 2017, IEP meeting.

10. On May 4, 2017, an IEP meeting took place to review the assessments requested by Parents. All assessors attended the IEP meeting and presented their reports, with the exception of the occupational therapy assessor, whose assessment report was presented by another occupational therapist because the assessor was no longer an employee of the agency contracted to do the assessment. The San Leandro IEP team members determined that Student was not eligible for special education, occupational therapy or behavior intervention services, based on the findings of the assessments, which will be discussed below. Parents disagreed with the assessments and requested independent assessments, at the expense of San Leandro, in the areas of

² Student did not challenge the health assessment, so no findings about this assessment are made in this Decision.

psychoeducational, speech and language, academics, behavior, and occupational therapy.

11. After Parents' request for independent educational evaluations at the May 4, 2017, IEP meeting, Ms. Palia collected the test protocols, reviewed the assessment reports, and consulted others in the district with experience conducting assessments and writing assessment reports, in order to analyze the assessments for legal compliance. On May 30, 2017, San Leandro sent Parents a detailed Prior Written Notice denying their request for an independent educational evaluation in all areas requested stating that they believe that San Leandro's assessments are "appropriate, thorough, and defensible". San Leandro mailed the notice with a copy of their procedural safeguards.

12. On June 2, 2017, San Leandro filed a request for due process and mediation with OAH, requesting an order that San Leandro's assessments are appropriate, and that Student is not entitled to independent educational evaluations at public expense in any of the areas assessed.

SAN LEANDRO'S ASSESSMENTS

13. All assessors were trained and qualified to assess Student. All standardized assessments administered to Student pursuant to the assessment plan were administered in her native language of English, according to the publishers' instructions, and were chosen and administered in a manner so as not to be racially, culturally or sexually discriminatory. All assessments were valid and reliable for the purpose in which they were used and included multiple measures. All assessors interviewed Student's teachers and counselor. The assessment team conducted classroom observations in formal and informal settings. All assessors were aware of Parents' concerns underlying their request for assessment.

Psychoeducational

14. School psychologist, Cindy Perales, conducted the initial psychoeducational assessment of Student. In 2007, Ms. Perales received her Education Specialist Degree in School Psychology. She received a teaching credential in 1997 from the University of California, Irvine. Ms. Perales received her Bachelor of Arts Degree in Sociology from California State University, Fullerton, in 1989. Ms. Perales has been a fully credentialed school psychologist with San Leandro Unified School District for the last eight years. Ms. Perales also holds a multiple subject teaching credential. Prior to becoming a school psychologist, Ms. Perales taught school for 13 years in elementary and middle schools. Ms. Perales is qualified to conduct special education psychoeducational assessments.

15. Ms. Perales testified at hearing about her psychoeducational assessment of Student. Her testimony was detailed and thorough. Ms. Perales was able to take the time with Student to establish rapport and trust, which resulted in Student fully engaging in the assessment process. This provided her with the opportunity to understand and appreciate Student's unique strengths, her strong character, and her insight related to her learning style and school experience. Ms. Perales sought and considered information from Parents which allowed her to get a good sense of Parents' concerns underlying the request for assessment. Ms. Perales also sought and considered information from all of Student's teachers. She conducted classroom observations in both structured and unstructured settings. She administered and discussed several standardized tests in her assessment report. All test scores were consistent with the raw data on all testing protocols admitted as evidence at hearing. Her comprehensive assessment, her testimony, and her professional opinions and conclusions were therefore given great weight.

16. Ms. Perales became involved in the assessment of Student following a

referral from Parents. Parents were concerned about Student's auditory processing, her inability to complete school classwork, and her difficulty paying attention. Parents were also concerned about Student's need for organizational skills; she took a long time to do anything including dressing and chores. Parents noticed Student had problems following multi-step directions for math, problems with elongated assignments stretched over time, and procrastination. Records reviewed by Ms. Perales revealed that Student had a history of Attention Deficit-Hyperactivity Disorder-Combined Type; Posttraumatic Stress Disorder; and Reactive Attachment Disorder.

17. Ms. Perales conducted the psychoeducational assessment over five sessions. She administered the Differential Abilities Scales-Second Edition; the Beery-Buktenica Developmental Test of Visual-Motor Integration-Sixth Edition; Test of Auditory-Processing Skills, Third Edition; Test of Visual Perceptual Skills-III; Wide Range Assessment of Memory and Learning-Second Edition; and the Developmental Neuropsychological Assessment, NEPSY- Second Edition. She had Parents and teacher complete the Behavior Assessment System for Children-Second Edition, the Connors-3 Rating Scales--Short Version; and the Piers-Harris Children's Self-Concept Scale--Second Edition. Student also did the Sentence Completion test, and Ms. Perales conducted interviews and reviewed records.

18. Ms. Perales first reviewed multiple completed questionnaires by Parents and briefly telephoned Parents to further understand their concerns and reasons for referring Student for assessment. She then talked to Student's teachers, followed by a review of her cumulative education file. All teachers expressed surprise that Student was being assessed for special education services and had no concerns about Student. All teachers provided feedback that Student is conscientious, did her work and accepted suggestions for making her work better. Overall, teachers communicated that Student is a pleasure to have in class. Her math teacher shared that while Student is still

performing at grade level, he is taking a closer look at her because she is struggling a little bit, but not enough to warrant an assessment. Student's history teacher said that Student does well, sometimes does not pay attention, but not to the point that it is impeding her learning. Student's grades were A's and B's.

19. Before beginning the test session, Ms. Perales conducted school observations of Student in her history class, art class, and at lunch. In her history class, the teacher gave Students an instruction for a specific task. Student was focused. There were 20 students in the class. When it came time for students to work independently, the teacher walked around and asked students if they needed assistance. When he asked Student, she shook her head "no." Then Student later approached the teacher to inquire how long the report had to be. Student did not require prompts to get started on tasks. Student's questions and behavior were appropriate. In art class, Student was very comfortable. Music played as students worked on the art activity and she sang along appropriately while working on her project. During lunch, Student ate lunch with a friend. After eating, they both went to the library to work on a class project. Student looked happy and was interacting with her friend and giggling.

20. Ms. Perales chose the Differential Abilities Scales to assess Student's intellectual functioning, in part because Student is African-American. Ms. Perales explained that San Leandro Unified and other districts have approved this test as part of an assessment of intellectual functioning of African American students. The Beery-Buktenica Developmental Test of Visual-Motor Integration- Sixth Edition was used to measure the developmental level of visual fine motor skills as required for paper and pencil tasks. Student scored in the average to high range on these tests.

21. The Test of Auditory Processing Skills-Third Edition was used to measure Student's functioning and ability to perceive auditory stimuli, process stimuli, which includes the ability to understand, interpret and express. It measures a student's ability

to process auditory information: phonological processing; memory; and cohesion, or higher order thinking. Ms. Perales administered this test due to Parents' concern that she had difficulty with auditory processing and following multi-step directions. Student scored in the average range on all portions of this test with the exception of phonological blending and auditory reasoning, which were in the above average range.

22. The Test of Visual Perceptual Skills-III was used to measure Student's visual perceptual, non-motor, skills. Student's visual perceptual skills range from average to the above average range. Her ability to recall visual information, to visualize incomplete forms in their complete states, and to discriminate between shapes that have been changed in a meaningful way, is well developed in all areas as compared to her same age peers. Student's visual processing skills for sequencing, as well as basic and complex visual processing are well developed as compared to her same age peers.

23. The Wide Range Assessment of Memory and Learning, Second Edition, assessed Student's verbal memory, visual memory and attention/concentration. This test was administered by Ms. Perales due to Parent concerns regarding Student's auditory processing and ability to follow directions. Student scored from the average to high range on all subtests. These scores indicate that Student is able to use her visual memory, verbal memory, and attention and concentration skills to learn and retain information.

24. Two subtests of the NEPSY-Second Edition, the animal sorting test and the auditory attention and response set, were used to assess Student's neuropsychological development in the functional domains of attention and executive functioning. Ms. Perales chose these two subtests due to Parent concerns with Student's attention, distractibility and executive functioning. Student scored in the expected level range. The scores on these tests indicate that Student has the ability to formulate basic concepts, to transfer the concepts into action, and to shift from one concept to another. Her scores

also indicate that she demonstrates selective auditory attention and can sustain that attention.

25. To assess Student's social emotional functioning, Ms. Perales gave Student an informal interview. Student's eye contact and conversational skills were found to be excellent. Student demonstrated her ability to self-advocate, asking not to be pulled from her science class to be assessed. Student enjoyed answering questions about herself and communicated her interests, shared her desire to be a fashion designer, and described her hobbies including video games and music, specifically, jazz, blues, hip hop and rock. Student shared personal stories about the importance of her family and discussed her relationships. Ms. Perales was impressed by Student's maturity and how much she cares about her family, her friends and school. No concerns were indicated.

26. The Behavior Assessment System for Children is a rating scale which assesses behaviors associated with a variety of behavioral and emotional disorders. Rating scales were given to Student, Parent, and all of her teachers³. Based on all of the information provided, including the Sentence Completion test described below, Student was found to have age appropriate interests and relationships with peers and school staff. Results show that Student appears to struggle mildly with relationships in the home setting, though not to the degree which is indicated as clinically significant.

27. The Sentence Completion test consists of sentences with beginnings but no endings which tap a child's thoughts, attitudes, outlook, perceptions, and feelings about a variety of topics. Some of Student's responses include: "I like my aunt's cornbread;" "School is fun;" "My grandmother is funny;" "I hope one day I can be a

³ The PE teacher had not responded by the time Ms. Perales' report was written. Student's Language arts teacher also did not respond as the teacher was a substitute teacher who did not know Student well enough to respond.

singer or a fashion designer.” The results of this test did not indicate any concerns. Student’s responses indicated that she feels pressure to do well and she wishes she had more independence.

28. The Connors-3 Rating Scales-Short Version assesses Attention Deficit Hyperactivity Disorder and evaluates problem behavior in children and adolescents. The rating scales were completed by Parent, Student and three teachers, including Christopher Love, science teacher, Roy Cormier, math teacher, and Sylvia Colt, art teacher. Elevated scores were reported by Parent in the home setting in all domains. Student’s math teacher rated her as “at risk” in the areas of Inattention, and Learning Problems/Executive Functioning. Student rated herself “at risk” in the domain of Inattention and “clinically significant” in the domain of Family Relations. Ms. Perales noted that Parent actually expanded the rating scale by writing in a higher rating than the assessment contained, in the areas including “loses things”, “has short attention span”, “has trouble concentrating”, and “Inattentive, easily distractible”. The highest number allowed by the test was used for these items to preserve the standardized nature of the test instrument. In the school setting, there were no scores in the clinically significant range and therefore no need for intervention was indicated.

29. The Piers Harris Children’s Self-Concept Scale--Second Edition is a standardized self-report questionnaire for children from age seven to 18. Items are statements that express how people may feel about themselves. The total score is the general measure of the respondent’s overall self-concept. The domains assessed include Behavioral Adjustment, Intellectual and School Status, Physical Appearance/Attributes, Freedom from Anxiety, Popularity, and Happiness and Satisfaction. Student’s responses were in the average range for all domains except for Intellectual and School Status which was in the above average range. The above average score indicates that Student has few difficulties on specific school-related tasks. Student’s score on the Family

Relations domain, which measures how she feels about her family, suggests that she feels that she is loved, though she feels her Parents are strict with her and too critical.

30. The psychoeducational report summarized Student's academic testing scores resulting from her academic assessment given by Ron Thompson, which will be discussed in more detail below. Student scored in the average to above average range in all academic areas assessed.

31. Taking into consideration all of Parents' concerns, interviews of teachers, assessments, and her review of Student's records, Ms. Perales considered Student for special education eligibility under three eligibility categories including specific learning disability, emotional disturbance, and other health impairment. Ms. Perales carefully and fully considered all the criteria for these eligibility categories and ruled out Student's eligibility under any of the three categories considered. Her analysis was detailed in her assessment report and was discussed with the IEP team when she presented her assessment on May 4, 2017.

32. Ms. Perales ruled out eligibility under specific learning disability because, although there was a discrepancy between Student's conceptual ability in the area of verbal ability, which was in the high or superior range, and her nonverbal reasoning, Spatial, and Special nonverbal composite, which were all in the average range, Student is performing at her age and grade level. There was also no evidence of Student having a processing disorder. Student was found to be functioning academically well within the average range. Based on this, Student did not qualify for special education as a student with a specific learning disability.

33. Student did not qualify for special education with emotional disturbance because Student did not exhibit an inability to learn, an inability to build or maintain satisfactory relationships, and she did not demonstrate inappropriate types of behaviors or feelings or a general, pervasive mood of unhappiness or depression. Student also had

no tendencies to develop physical symptoms or fears associated with school. Although Parents questionnaires reveal that Student sometimes says she thinks that she is sick, has headaches, or gets sick, the symptoms or complaints did not appear to be associated with school and no such fears or symptoms were reported by teachers or were demonstrated in the school setting or across settings.

34. Student did not qualify for special education under the category of other health impairment due to her attention deficit hyperactivity disorder. Although Parents reported Student to have Clinically Significant difficulties in the area of Attention in the home setting, Student and one teacher reported attention issues falling in the "At Risk" range. In the school setting, Student was found to pay attention and to listen to directions. Student's Attention and Executive Functioning in the school setting is at an expected level for her age. Test items addressing auditory processing, attention, concentration, and memory, reveal Student's skills to be well developed compared to her peers.

Speech and Language

35. Elaina Munzar, speech therapist, assessed Student in the area of speech and language. Ms. Munzar has been a speech and language therapist for San Leandro Unified School District since 2002. Ms. Munzar received her Masters of Science in Speech and Language Pathology and Audiology from California State University, Hayward, in 2002. Ms. Munzar earned a Bachelor of Arts in German, from San Francisco State University, in 1990. She also earned an Associate of Arts in Business Administration in 1987 from Merritt Junior College, Oakland. Ms. Munzar has conducted speech and language assessments and has provided speech therapy for students for the last 15 years.

36. Ms. Munzar testified at hearing that while preparing for her testimony, she reviewed her assessment report and found errors. She therefore presented a revised

report at hearing to correct the errors. Both reports were admitted into evidence without objection by Parents. One error which was on the report presented to Parents at the May 4, 2017, IEP meeting was incorrect scoring of the grammatical judgement subtest of the Comprehensive Test of Spoken Language. Ms. Munzar did not give Student credit for the sections of the test that were skipped due to the age of the Student. This error resulted in a score in the 27th percentile, which is in the average range. The correct score, which gave Student credit for the lower age questions that were skipped, is in the 87th percentile, which is in the high average range. Ms. Munzar testified about this scoring error while referring to the actual answer sheet for Student and clearly detailed the correct scoring using the test protocol that was admitted as evidence at hearing. The other errors, which were minor, included referring to Student by her last name instead of her first, not including all tests discussed in the report on the initial list of tests administered, and one description of a subtest was confused with another.

37. Ms. Munzar's testimony at hearing was sincere, detailed, and thorough, and reflected the significant time she spent with Student during her assessment. She conveyed an informative window into Student's communication abilities demonstrated at school and during the assessment. Ms. Munzar was able to describe her assessment tools and her reasoning for her selection of her testing instruments for Student as they relate to Parents' communication concerns. Parent, when questioning Ms. Munzar at hearing implied that Ms. Munzar intentionally chose a test which allows the assessor to repeat an instruction so that Student would score higher, given Parents' concern that they often have to repeat things for Student. Ms. Munzar, surprised by this, assured parents that she chose the tests in order to dig deeper into concern areas. Ms. Munzar appeared nervous when explaining her mistakes in her original report. The errors were overall minor in nature and did not affect the outcomes in the summary of the

assessment. Her explanations for the revisions in her corrected report were reasonable and communicated her desire to better explain her testing results. Based on the thoroughness of her assessment, her testimony regarding her professional conclusions based on her assessment was given great weight.

38. Ms. Munzar assessed Student over the course of five sessions totaling 5.5 hours in length. She began her assessment by talking to Student to get to know her and to establish rapport. Student came to the session willingly and had a good attitude. Student easily engaged in conversation and shared stories about her life. Student demonstrated a nice sense of humor. Student communicated that she likes to eat cornbread and she likes to draw and design clothing, and she hopes to someday be a fashion designer. Student shared some drawings with Ms. Munzar which she had in her backpack. Student also conveyed that she would also like to be a singer. When asked about school, Student said that school is ok and she mostly likes people and things she gets to do in art and physical education. Student self-advocated and showed responsibility by asking if she could be assessed during her class where she had a substitute so that she would not miss time in her other classes. After the first subtest was given, Student asked if she could do something else while she is assessed, explaining that she gets bored easily and distracted and she “needs a certain level of distracted” to listen. Testing continued and Student played with marbles and drew to help her focus. Student engaged in the testing in this way, without any problems. Ms. Munzar found that this indicated that Student has good insight into her learning style and weaknesses.

39. Ms. Munzar communicated with Student’s science, history, math and art teachers regarding Student’s classroom performance. All teachers reported that Student works independently, has the academic skills to complete assigned work, is well liked by her peers, relates appropriately to peers and adults, completes her homework,

completes or makes an effort to complete class assignments, and obeys rules. Student was reported to have an "A" in history and art and a "B" in math. No grade was given by Mr. Love, the science teacher.

40. Ms. Munzar administered the Comprehensive Assessment of Spoken Language, the Goldman Fristoe Test of Articulation, the Monterey Assessment of Vocabulary Acquisition, and did informal probing, and informal language analysis. The Comprehensive Assessment of Spoken Language was chosen as it is approved for use to assess African American students. Ms. Munzar contacted Parents to try to understand what their specific concerns were that triggered Parents' request for a speech and language assessment. Alternative scoring was provided for each test administered and a non-standardized informal assessment of Student's ability to follow directions and answer "how" questions were also used to assess Student. All test protocols were provided at hearing and raw data was consistent with documented scores. Student scored in the average to the very superior range on all standardized tests. Student's test results on informal measures and language sample indicated no areas of concern and appropriate functional communication in the school setting.

41. Based on reports from teachers and the results of all of the formal and informal speech and language assessments, Ms. Munzar concluded that Student did not qualify for speech and language services as she did not meet the eligibility criteria required for special education eligibility under speech and language impairment.

Academics

42. Mr. Thompson conducted the academic evaluation of Student. Mr. Thompson received his Special Education Credential from Fortune School of Education. He received his Bachelor of Science in Criminal Justice from California State University, East Bay. Mr. Thompson has completed the Verification Process for Special Settings which qualifies him to teach math at the middle school level. He has also passed the

California Subject Examination for Teachers. He has worked as a special education teacher and case manager for special education students in San Leandro Unified School District. He currently is the case manager for 20 special education students. He co-teaches math with a general education math teacher and is responsible for the special education students in the math class. Mr. Thompson is currently the Department Chairman for Special Education. He has conducted over 50 special education academic assessments over the last five years. Mr. Thompson is qualified to administer academic evaluations as part of psychoeducational assessments.

43. Mr. Thompson assessed Student's academic functioning after she was referred by Parents for assessment due to their concerns that Student was not learning at an appropriate rate and had academic deficiencies which required special education. Mr. Thompson spoke to Student's English, math and art teachers as part of his assessment and they did not have any concerns about Student's academic functioning and were surprised that Student was being tested for special education. Mr. Thompson had never met Student before and sat with her to talk and get to know her before he began testing. Student was concerned about missing her other classes while being assessed and she negotiated times for assessment with Mr. Thompson. During the test, Mr. Thompson observed Student to be very attentive to her performance of tasks on the test.

44. Mr. Thompson used the Woodcock-Johnson Tests of Academic Achievement, Fourth Edition. He chose this assessment because it is a strong and well established measure of academic functioning. Mr. Thompson administered subtests for Broad Reading skills, Phoneme/grapheme knowledge, Reading Comprehension, Reading Rate, Math Calculation, Math Problem Solving, Basic Writing Skills, Written Expression, Brief Achievement, and Academic Fluency. Student's scores on all subtest areas were in the average to superior range. All test protocols were provided at hearing

and raw data was consistent with documented scores. To double check all of his scoring on the English language arts portion of the assessment, Mr. Thompson had English teacher, Ilham Myrdal, review and go over scoring of Student's test answers on the subtests for Sentence Fluency and Writing Samples. Mr. Thompson has never consulted with another teacher to review scoring of the Woodcock-Johnson Test, but in this case, he wanted another set of eyes on the test materials, as he was aware that the situation regarding Student was contentious.

45. Roy Cormier, Student's general education math teacher, testified at hearing. Mr. Cormier has a teaching credential in mathematics. He received his Bachelors of Science in Civil Engineering in 2009, from the University of the Pacific, Stockton, California. Mr. Cormier currently teaches seventh grade general education math. This is a pre-algebra math class. He has been a seventh and eighth grade math teacher with San Leandro Unified School District for four years. Mr. Cormier has also completed 40 units of continuing education coursework since receiving his teaching credential.

46. Mr. Cormier has been Student's math teacher for the last year. This past year, Student received two B's and a C plus in his math class. Mr. Cormier considers Student to demonstrate average skills as compared with other students in Student's math class. If Student struggles on a test or a skill, most of the other students struggled as well. She participates more than the average participation of other students in her class. Student has never had behavior problems in math class. Mr. Cormier has never had to put her name on the board or have her stay after class. Mr. Cormier is aware of Student's 504 plan and her accommodations to assist her with organization and provide extra time to complete assignments. Student's performance in his class is well within expectations for general education math. Mr. Cormier reviewed Student's scores on the math sections of the academic assessment performed by Mr. Thompson. Student's

performance in Mr. Cormier's math class was consistent with her scores on the math subtests of the academic assessment.

Behavior

47. Larry Winfield-Perez conducted Student's functional behavior assessment at the request of Parents. Mr. Winfield-Perez received his mild/moderate special education credential from Brandman University. He has a clear credential with autism certification and a clear credential with English Language Arts certification. He received his Bachelor of Arts in English from New York Institute of Technology. From 2011 until the end of the 2016-2017 school year, he has been a special education teacher with San Leandro in self-contained and inclusive classrooms. For the last year, he was a behavior specialist for San Leandro, has written and facilitated functional behavior analysis reports, and has presented behavior trainings to the district. Mr. Winfield-Perez has completed a 40 hour on-line behavior intervention training called Relius. He also completed 20 hours of training with a licensed behavior specialist, who also supervised him in the handling of his caseload.

48. Mr. Winfield-Perez conducted a functional behavior analysis to determine whether Student has behaviors that are in direct conflict with school rules, school procedures, or social norms, and which interfere with either the Student's learning or the learning of others. His assessment consisted of a records review, including disciplinary records, information in the Aeries online portal, attendance records, grades, and 504 plans. There were no records of discipline for Student. He also sent out functional assessment interview tools to school staff regarding any student behavior problems. Student's English, PE, history, science, art, and math teachers provided feedback. All feedback from teachers reported no behavior problems at school. Teachers reported either through the interview form or in person. Student was reported to follow the expectations of her classes and to perform as expected within the classroom setting.

Many reported Student to be a helper in the class. Her PE teacher was especially impressed with Student as she was the only female student in the more structured and competitive games, and she was voted captain by her teammates.

49. Mr. Winfield-Perez conducted observations of Student during lunch, art, PE, science, and English class. In each setting, Student was on task, on time, and followed all procedures. When given a directive, Student immediately and appropriately responded. She went through many transitions smoothly. She was observed to be extremely helpful. In art, when she was done with materials, she asked other students if they needed them. The students expressed thanks to her for the materials. In one class Student was paired with another student. That student was observed to try to get the answers from Student. Student informed her partner that she could not give him answers but she assisted him to work through his assignment. Once he did that, he showed Student his answer and she told him it was right. Student was also observed in some of the competitive games referred to by the PE teacher. She interacted with peers appropriately in all settings.

50. Based on his behavior analysis, Student's strengths are that she is well prepared to learn and to be successful in school. She is well liked by her peers and teachers and other adults. Her behavior is appropriate in social and academic situations. The only thing the assessor noticed was that it took Student about 30 seconds to locate an assignment in her binder that needed to be submitted. There seemed to be extra papers in her binder. Other than that, she is someone teachers would love to have as a student in their class. There were no maladaptive behaviors observed and therefore no need for behavior intervention.

51. Mr. Winfield-Perez provided his behavior report to Parents prior to the May 4, 2017 IEP meeting. He attended and presented his report at the meeting. Parents were not satisfied with the behavior assessment because Mr. Winfield-Perez did not

contact them or include their input in the assessment. Parents also asserted that Student required a behavior plan to assist her to complete all of her missing assignments and to fill out her planner. Mr. Winfield-Perez responded that he does not contact families for information to maintain his objectivity for his assessment. He does not want to go into an assessment with preconceived ideas about Student. As for the request for a behavior plan, he responded that completing classwork is not considered the type of behavior that he provides services to remedy, as it is not a violation of school rules, school procedures, or social norms. He also does not reach out to the family if he does not observe any behavior problems necessitating a behavior plan. He only speaks to the family if he develops a behavior plan for a student. Mr. Winfield-Perez explained that there are many less restrictive ways to address Parent concerns than the development and implementation of a behavior plan. Parents disagreed with his assessment and requested an IEE for the functional behavior assessment.

52. Mr. Winfield-Perez' testimony was forthright and confident. His assessment of Student involved extensive personal observations and communications with Student's teachers. His testimony demonstrated his detailed knowledge of behavior analysis and his testimony regarding his behavior assessment of Student and his assessment conclusions were accorded great weight.

Occupational Therapy

53. Krupa Panchmatiya Kuruvilla conducted the occupational therapy assessment of Student. Ms. Kuruvilla earned her Master's in Occupational Therapy from the University of Southern California in 2009. She earned her Bachelors in Occupational Therapy at the Dr. D.Y. Patil College of Occupational Therapy in Mumbai, India, in 2008. She is certified by the National Board of Certification in Occupational Therapy, and she is registered with the American Occupational Therapy Association. Ms. Kuruvilla is a licensed occupational therapist in the State of California. Since April 2017, Ms. Kuruvilla

has been employed as the Director of Rehabilitation for Affirma Rehabilitation. Before that, she worked as an occupational therapist for Ascend Rehabilitation Services for a year. Ms. Kuruvilla has provided occupational therapy services for various companies over the last eight years and has completed occupational therapy evaluations for many school districts.

54. In March 2017, Ascend Rehabilitation Services was contracted by San Leandro to perform an occupational therapy assessment of Student, following a referral for assessment by her Parents. On March 22 and 27, 2017, Student was assessed by Ms. Kuruvilla, who is employed by Ascend Rehabilitation Services, using the Bruininks-Oseretsky Test of Motor Proficiency, second edition; the Sensory Processing Measure, Main Classroom Form; Classroom observations; teacher interviews; Student interview; and review of records. Ms. Kuruvilla talked directly to teachers following her observations of Student in her history, art, and math classes. She also solicited information via email to teachers containing questions about Student's functioning in the classroom such as her work behaviors, transitions, how she handles changes in routine, her attending skills, her ability to follow directions, and questions related to Student's sensory processing. Ms. Kuruvilla prepared an assessment report documenting her assessment results.

55. Ms. Kuruvilla testified at hearing about her assessment of Student and her assessment report. Ms. Kuruvilla introduced a revised report due to a one word typographical mistake in her original report, which had been presented to the IEP team on May 4, 2017. This was a typographical error which Ms. Kuruvilla did not catch until it was brought to her attention following the May 4, 2017, IEP meeting by the occupational therapist, Angeline Fernandes, who presented the report at the meeting.

56. Ms. Kuruvilla observed Student in her history class where Student was typing an assignment. Student demonstrated good posture while seated at her desk and

typing a research paper. She was focused on her work at all times and was not distracted by her peers talking and discussing things next to her. Ms. Kuruvilla also observed Student in her math class where she was observed to follow directions and concentrate on her work, and take notes when applicable.

57. Student was formally tested in a conference room during a 30 minute testing period. She followed all directions, without distraction, and timely completed all subtests. Student's input, as part of the assessment, included that Student disliked math as a subject, especially Algebra, and found it to be difficult. Student said that she liked science and when asked, Student did not share any particular like or dislike towards writing.

58. Ms. Kuruvilla interviewed Student's counselor and her history, math, and art teachers. Her teachers reported that they did not notice any difficulties with Student's functioning in their classes or in the school environment. The art teacher did express that Student loves tactile exploration and this results in Student taking time to explore mixing paints, using glitter, etc. which causes her to start and restart activities. However the art teacher said that Student is easily redirected and this did not prevent Student from completing her assignments in class.

59. Student was informally assessed in the areas of fine motor, prewriting/writing, visual processing, sensory motor, and endurance. Student's work behaviors were assessed through teacher report. Teacher reports documented that Student does well with transitions and changes in routine; she works independently, is able to follow directions 90 percent of the time, sometimes drifts off and starts doodling but is self-controlled and has no behavioral problems. Student is able to attend to an activity for an average of 10 to 15 minutes a task. Student was not observed to have any difficulty in the area of self-regulation in the classroom, is able to organize her work, and needs no assistance with sequencing or completing tasks. Student tolerates wet media

as well as dry media equally well. In the classroom, she does not demonstrate any sensory defensiveness to different textures. Student was observed by assessor to sit in class for the entire class period without demonstrating fidgety behavior, and without getting out of her seat. Student did well on all informal measures and her functioning was typical and within normal limits.

60. Standardized tests, including the Test of Motor Proficiency and the Sensory Processing Measure, were administered as part of the occupational therapy assessment. The Test of Motor Proficiency was used to assess Student's fine motor precision, fine motor integration, manual dexterity, and upper limb coordination. Student scored average to well above average range on all tests. The Sensory Processing Measure formally assessed Student's sensory processing issues, praxis, and social participation. It is a rating scale with response options of never, occasionally, frequently, and always. The only person who completed the SPM was Student's counselor, Ms. Thuy Minh Nguyen. Student scored in the typical range on eight sensory system subtests.

61. Ms. Kuruvilla did not provide Parent with a Sensory Processing Measure because her assessment was to determine if Student had sensory or motor difficulties that were interfering with her learning at school. Ms. Kuruvilla only provides parents a checklist if her assessment of a student at school did not provide sufficient information. In Student's case, she felt that her assessment resulted in getting a good picture of Student's functioning and she did not need to get more information.

62. Overall, Ms. Kuruvilla's testimony was thorough and detailed. She testified confidently and without hesitation in her answers. Her testimony, based on her total assessment of Student, was given great weight. Her testimony regarding the typographical error in her report was corroborated by Ms. Angeline Fernandes, as discussed below.

63. Based on all of the information gathered from the occupational therapy

assessment, Ms. Kuruvilla concluded that occupational therapy services were not indicated for Student at this time because she is able to access her curriculum at school without the need for occupational therapy services.

64. Thuy Minh Nguyen testified at hearing. Ms. Nguyen is employed as a school counselor at Student's school. Ms. Nguyen has a California Teaching Credential and a Pupil Personnel Services Credential. Ms. Nguyen has been involved with Student over the past two years. Ms. Nguyen has provided individual counseling for Student during sixth grade and at least three times during the last year, spending about 10 minutes each time with Student. She participated in Student's student success team and 504 meetings. Ms. Nguyen has also seen Student around school and in her classes at times when Ms. Nguyen was doing classroom presentations.

65. Ms. Nguyen completed the Sensory Profile Measure checklist for Student at the request of Ms. Kuruvilla, the occupational therapist. Ms. Nguyen completed the checklist because she sees Student often and knows Student well. Ms. Nguyen completed the checklist based on her knowledge of Student and her observations of Student over the last two years. Ms. Nguyen marked "never" on the checklist if she has never observed the behavior. All other items on the checklist were based on her direct observation of Student engaging in the particular behavior for the item.

66. Teacher's input gathered by Ms. Kuruvilla, as well as Ms. Kuruvilla's own observations of Student, corroborated Ms. Nguyen's answers on the checklist which resulted in a scores indicating Student's "Typical" sensory processing in the school setting. Ms. Nguyen's testimony was hesitant and sometimes she was not able to remember information, but her testimony overall regarding her knowledge and observations of Student was credible and was given due weight.

67. Angeline Fernandes testified at hearing. Ms. Fernandes has been an occupational therapist with Ascend Rehabilitation Services since 2008 and worked with

Ms. Kuruvilla at Ascend during the time of Student's occupational therapy assessment. On May 4, 2017, Ms. Fernandes presented Ms. Kuruvilla's assessment to Student's IEP team because Ms. Kuruvilla was no longer an employee of Ascend Rehabilitation Services. Ms. Fernandes presented the occupational therapy report at the IEP meeting up to the point in the report of the typographical error discussed above. Based on her discussion of Ms. Kuruvilla's report up to that point, she immediately realized that the statement in the endurance section of the report that Student is able to access her school environment with supervision, must have been a typographical mistake. She shared her belief with the IEP team. There was discussion about possibly correcting the report. However, Ms. Fernandes was not comfortable with changing Ms. Kuruvilla's report and agreed to contact Ms. Kuruvilla regarding the suspected mistake. At this point, Parents became concerned and asked Ms. Fernandes to end her presentation of the report because she did not have personal knowledge of the actual assessment. Ms. Fernandes agreed to stop and was excused from the meeting. Parents requested an independent OT evaluation because they disagreed with the report because Student is very fidgety and has trouble being still and the occupational therapist should have included Parents input in the assessment. Parents were also offended that Ms. Kuruvilla was not present at the IEP meeting to present her own report.

68. On May 4, 2017, following the IEP meeting, Ms. Fernandes emailed Ms. Kuruvilla to share what happened at the meeting. Ms. Kuruvilla confirmed that Ms. Fernandes was correct that the report contained a typographical error. She confirmed that the endurance section of the report should have read that Student is able to access her school environment without supervision. The original occupational therapy report and the corrected occupational therapy report were admitted as evidence at hearing.

PARENT'S TESTIMONY

69. Parents each testified at hearing. They described Student's functioning

based on their perceptions of Student in the home setting. Parents described Student as being unsure of herself, resistant to their help and not open to their suggestions. They found her to be fidgety, disorganized, and often losing things. She frequently uses the word “thingy” due to the inability to think of the correct word and fillers such as “Uh”, “Uhm”. They reported Student as having behavior problems, including failure to complete classwork assignments, and signing Parents’ names on permission slips and teacher notes, without their knowledge. Parents said that Student needed prompts to bathe and to do chores, had sloppy handwriting, and was a couch potato while watching television or reading. They believed she was having difficulty with math and not studying for tests, she was a poor speller, and she had poor safety awareness regarding strangers. Parents believe that academically Student is struggling, but because Student is well behaved and kind, she is seen as academically successful.

70. Parents’ testimony was sincere and heartfelt. Their love and protection of Student was readily apparent. Parents’ concerns reflect their high standards across the board for writing, speaking, academics, personal ethics, classwork, homework completion, and safety. Parents’ standards exceed average academic standards. Their testimony also communicated a distrust of San Leandro, and a belief that all assessment results reflected a predetermination that Student did not qualify for any services.

LEGAL CONCLUSIONS

LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20

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

U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 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 higher education, 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 free and appropriate public education means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 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, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

3. In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education 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).)

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, 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).) As the petitioning party, San Leandro has the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

PROCEDURAL REQUIREMENTS FOR ASSESSMENTS

5. A district must give parent an assessment plan within 15 calendar days of referral, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation in excess of five schooldays, from the date of receipt of referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (a); 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c)(4).)

6. 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).)

7. The purpose of an initial comprehensive psychoeducational assessment is to determine whether a child is a child with a disability, as defined by 20 U.S.C. § 1401 (3), and the educational needs of the child. (20 U.S.C. § 1414(c)(1)(B)(i).)

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

9. 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].) 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).)

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

COMPLIANCE WITH LEGAL TIMELINES FOR ASSESSMENTS AND REQUESTS FOR INDEPENDENT EVALUATIONS

11. On January 10, 2017, Parents made a written request to San Leandro's Director of Special Education, Ms. Victoria Forrester, for a comprehensive psychoeducational special education assessment for Student including academics, psychological, occupational therapy, and sensory needs. On February 1, 2017, Ms.

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

Forrester, the prior special education director, responded to Parent's request for testing in an email agreeing to assess Student but asserting that, from San Leandro's point of view, there are no areas of suspected disability. Ms. Forrester recommended a Student Success Team (SST) meeting be convened to discuss Parent concerns and to develop an assessment plan. On February 1, 2107, Parent sent a reply email to Ms. Forrester declining the SST meeting and requesting an assessment plan. On February 13, 2017, an assessment plan was sent to Parents. On February 27, 2017, Parents faxed the signed assessment plan back to Ms. Cindy Perales, the school psychologist. The signed assessment plan contained additions by Parents of evaluation areas including speech and language, occupational therapy-sensory, and adaptive behavior. On March 10, 2017, Parent signed a second assessment plan which included all of Parents' requested assessments. San Leandro completed all of the assessments and held an IEP meeting on May 4, 2017, including Parents, where the assessments were presented.

12. San Leandro was legally required to provide Parents with an assessment plan within 15 days of Parents' January 10, 2017, written request for assessment. San Leandro failed to timely complete the first assessment plan because they produced an assessment plan on February 13, 2017, which was 34 days after Parents' request. The assessment plan, which was signed on February 27, 2017, with Parents' hand written additions of other assessment areas, was a new referral for testing by Parents. San Leandro timely provided an assessment plan within 15 days of that referral, which included all areas of assessment requested by Parents.

13. Although San Leandro's first assessment plan was not provided within 15 days, this procedural violation is of no legal consequence because, as set forth below, this decision finds the initial assessments by San Leandro concluding that Student is not eligible for special education, were legally compliant. (See *R.B. v. Napa Valley Unified School District* (9th Cir. 2007) 496 F.3d 932, 947, [holding that the district's procedural

violation of not including a special education teacher or provider of the child on the IEP team was harmless error because *R.B.* did not qualify as a child with a disability and therefore was substantively ineligible for IDEA relief.) Additionally, Parent was in the process of communicating with the exiting Special Education Director during the 39 days between the request for assessment and the late assessment plan. Lastly, Parent did not raise the procedural violation at hearing.

14. On March 10, 2017, Parents signed San Leandro's second assessment plan, which was provided within the 15 day timeline. An IEP team meeting was held on May 4, 2017, within the 60 day timeline, to review the results of the assessment.

15. The IEP meeting included all required team members, including Parents and assessors, or, in the case of the occupational therapy assessment, an occupational therapist qualified to discuss the assessor's report. Parents were provided a copy of the assessment reports and procedural safeguards and participated in the discussion of the assessments and corresponding findings and conclusions. Following Parents' request for independent educational evaluations at the May 4, 2017, IEP meeting, San Leandro responded within a reasonable time on May 30, 2017, denying the request with a detailed prior written notice, and filed for due process to defend its assessments without undue delay on June 2, 2017.

ISSUE 1: IS SAN LEANDRO'S MARCH-APRIL 2017, PSYCHOEDUCATIONAL EVALUATION APPROPRIATE WITHIN THE LEGAL DEFINITION?

16. San Leandro contends that the psychoeducational assessment complies with all legal assessment requirements. Parents contend that the psychoeducational assessment conclusion that Student completes her classwork did not consider all of her missing assignments. Parents contend that if all information was considered, there was a severe discrepancy between Student's ability and performance. Parents assert that Student does not successfully complete her classwork and that without home assistance

she would not be achieving satisfactory grades. Because the assessment conclusions are not consistent with their perception of Student in the home setting, Parents believe the assessment results were not accurate.

17. The psychoeducational assessment was conducted by Cynthia Perales, a qualified assessor, who has appropriate credentials, knowledge and experience conducting psychoeducational assessments. Ms. Perales thoroughly assessed Student in all areas that were indicated as suspected disabilities, and ruled out Student's eligibility based on all of the information gathered in the assessment. Ms. Perales was knowledgeable about the legal requirements for assessing African American students and chose valid, reliable, and appropriate assessments to determine whether Student has a disability requiring specialized educational services. The assessments were conducted in Student's native language, in accordance with the publisher's instructions, and in a manner so as not to be racially, culturally or sexually discriminatory. Ms. Perales gathered information from Parents and teachers, and conducted observations in structured and unstructured settings. She produced a written report of her assessment and detailed the basis of her findings and her analysis of all of Student's suspected disabilities in her report and for the IEP team, including Parents.

18. To determine if Student was a child with a disability, Ms. Perales considered Student under three special education eligibility categories, including: specific learning disability, emotional disturbance and other health impairment. Ms. Perales discussed the criteria in detail, for all three categories, in light of her assessment, and concluded that Student did not have a qualifying disability for any of the three categories considered, and therefore did not qualify for special education services.

19. San Leandro established by the preponderance of the evidence that the psychoeducational assessment by Cynthia Perales complied with all legal requirements. Student's cognitive, academic, and functional skills range from the solid average to the

high range. Student advocates for herself, has earned average to above average grades in the general education setting, and she has progressed in school along with her peers. All of Student's scores, though indicating relative areas of weakness, were all in the average or above average range. Parents expressed concerns about the psychoeducational assessment were not supported by the overwhelming evidence at hearing.

ISSUE 2: IS SAN LEANDRO'S MARCH-APRIL 2017, SPEECH AND LANGUAGE EVALUATION APPROPRIATE WITHIN THE LEGAL DEFINITION?

20. San Leandro asserts that their speech and language assessment of Student met all legal requirements. Parents contend that the assessment results and conclusions are not consistent with their experience of Student in the home where she demonstrates difficulty following multi-step directions, a lack of understanding of the meaning of words, refers to items as "thingy," fillers such as "huh" and "uh," and demonstrates poor social boundaries. Parents contend that because some tests allowed the assessor to repeat an instruction, the test could not therefore assess Student's receptive language, and specifically their concern that Student often asks them to repeat verbal instructions.

21. The speech and language assessment was conducted by Elaine Munzar, a qualified assessor. Ms. Munzar conducted the assessment in Student's native language of English and over five sessions for a total of five and a half hours. Ms. Munzar assessed with a variety of standardized test instruments which were valid and reliable for the purpose in which they were used and which were administered in accordance with the publisher's instructions. The tests were selected and administered in a manner so as not to be racially, culturally, or sexually discriminatory. Ms. Munzar also administered informal tests, and collected information from Student, teachers and Parents regarding Student's receptive, expressive, and social communication in class and at home.

22. Ms. Munzar first informally interviewed Student to establish rapport and to

get a sense of her pragmatic language skills. She then administered the core language subtests of the Comprehensive Assessment of Spoken Language. Because Student's scores on these subtests indicated average or above functioning, she contacted Parents to get a sense of why Student was referred by them for testing. Based on her feedback from Parents, Ms. Munzar chose to dig deeper and administer more subtests and informal tests which targeted the specific areas of Parents' concerns. She specifically targeted vocabulary, social pragmatics, following multi-step directions, and articulation. The assessment was comprehensive. Student scored from the average to very superior range on all tests. None of Student's teachers had any concerns regarding her communication at school, and all of her teachers were surprised that she was being assessed. Based on the comprehensive assessment, Ms. Munzar concluded that Student does not qualify for special education as a Student with a speech and language impairment.

23. There were errors in Ms. Munzar's speech and language assessment report. Ms. Munzar miscalculated the grammatical judgement subtest score. Her report, presented to Parents at the May 4, 2017, IEP meeting, contained a score of 27th percentile, which is in the average range; but the correct score was 87th percentile, which is in the high average range. At hearing, Ms. Munzar walked through the raw data and test protocol from Student's testing, to verify the correct score, which was substantially higher than the erroneous score, although both were in the average to above average range. Both the original and corrected reports were admitted as evidence at hearing. This error was very minor and did not affect the conclusions in the assessment.

24. Ms. Munzar provided Parents with a copy of her assessment report prior to the IEP meeting. At the meeting, she reviewed her report and discussed her results and conclusions with the IEP team, which included Parents. Parents had the opportunity to

read and review the report and ask questions about the report. Most of the mistakes in the report were minor careless errors. None of the mistakes affected the assessment conclusions that Student had no below average scores.

25. San Leandro proved by the preponderance of the evidence that the speech and language assessment met all legal requirements for assessments. Parents failed to introduce any expert testimony or evidence that the test protocol allowing the assessor to repeat an instruction resulted in the assessment being legally noncompliant or invalid.

ISSUE 3: IS SAN LEANDRO'S MARCH-APRIL 2017, ACADEMIC EVALUATION APPROPRIATE WITHIN THE LEGAL DEFINITION?

26. San Leandro contends that the academic assessment of Student complies with all legal requirements for assessments. Parents contend that Mr. Thompson is not a qualified assessor because he co-teaches math with a general education teacher and he consulted with an English teacher regarding the scoring of Student's writing sample. Parents also assert that the conclusion that Student was successfully completing classwork assignments was based on untruthful reports by teachers and that Student is not progressing in her classes and does not understand her math assignments. Lastly, Parents assert that because Mr. Thompson was informed that San Leandro does not agree that Student has a suspected disability warranting assessment, his test results were the result of his prejudgment that Student did not need special education services.

27. The academic evaluation was conducted by Ron Thompson, who is qualified to assess Student in the area of academics. Mr. Thompson is a certified special education teacher and he has completed over 50 academic assessments of students as part of psychoeducational assessments over the last five years. Mr. Thompson administered the Woodcock-Johnson Tests of Academic Achievement, Fourth Edition as part of the psychoeducational assessment of Student. He also spoke to Student's math,

English and art teachers, who expressed no concerns regarding Student, and were surprised that Student was being considered for special education. The Woodcock-Johnson is reliable and valid for the purpose for which it was used. The test was chosen and administered in a manner so as not to be racially, culturally, or sexually discriminatory. The test was given in Student's native language and in accordance with the instructions of the publisher.

28. Student scored in the average to above-average range on all 21 subtests administered. Mr. Thompson consulted with a special education English teacher regarding the scoring of Student's sentence fluency subtest and her writing sample. Although Mr. Thompson had not consulted with an English teacher in any of the other 50 assessments he conducted, he knew that this case was contentious and he wanted to consult with an English teacher about the scoring of these subtests to make sure of their correctness. Mr. Thompson completed an assessment report which was provided to Parents and discussed and presented to the IEP team, including Parents. Student's academic scores from this academic assessment were included in the psychoeducational assessment and were considered in making the determination that Student was not eligible for special education services.

29. San Leandro established by a preponderance of the evidence that Mr. Thompson's academic evaluation complied with all legal requirements for assessments. Parents failed to prove or reasonably explain the basis of their claim that Mr. Thompson is not qualified to assess Student's academic functioning, or that Student's scores were skewed due to some alleged predetermination. Parents also failed to establish that Student was not making sufficient academic progress in her classes, or was in need of special education services to access her academic classes.

ISSUE 4: IS SAN LEANDRO'S MARCH-APRIL 2017, FUNCTIONAL BEHAVIOR

ASSESSMENT APPROPRIATE WITHIN THE LEGAL DEFINITION?

30. San Leandro contends that the functional behavior assessment complied with all legal assessment requirements. San Leandro maintains that the fact that Student may not be completing all classwork assignments is not a behavior which requires a functional behavior analysis, or a behavior intervention plan, and other less restrictive interventions are more appropriate. San Leandro also maintains that Student is not exhibiting any behavior which interferes with her accessing or progressing in the general education curriculum. Parents disagree with the functional behavior assessment because the assessor did not include their input as part of his assessment. They also contend that Student is not completing many classwork assignments and has signed Parents' signature without Parent knowledge on school related forms, and therefore needs a behavior plan to address both of these behaviors.

31. The functional behavior assessment was conducted by Larry Winfield-Perez, who is qualified to conduct behavior assessments, based on his training and experience. Mr. Winfield-Perez did not use any standardized measures in conducting his assessment. His assessment consisted of a review of Student's educational records; observations of Student at lunch and in her art, PE, science, and English classes; and information obtained from Student's English, PE, history, science, art, and math teachers. Based on his behavior analysis, Student's strengths are that she is well prepared to learn and to be successful in school. She is well liked by her peers, teachers and other adults. Her behavior is appropriate in social and academic situations. The only thing the assessor noticed was that it took Student about 30 seconds to locate an assignment in her binder that needed to be submitted. There seemed to be extra papers in her binder. Other than that, she is someone her teachers love to have in their classes. Mr. Winfield-Perez's conclusion was that there were no maladaptive behaviors observed or reported at school, and therefore no need for behavior intervention.

32. Mr. Winfield-Perez documented his assessment results in a report that was provided to Parents and he presented his assessment results at the May 4, 2017 IEP meeting. His report, his findings, and conclusions were discussed by the IEP team, which included Parents. Parents expressed disagreement regarding Mr. Winfield-Perez's conclusion that Student did not demonstrate any behavior necessitating behavior intervention, and insisted that Student's behavior of not completing all work assigned was a behavior necessitating behavior intervention.

33. San Leandro proved by a preponderance of the evidence, that the functional behavior assessment was appropriate. Parents failed to prove that Student demonstrated behavior that interfered with her ability to progress and access the general education curriculum.

ISSUE 5: IS SAN LEANDRO'S MARCH-APRIL 2017, OCCUPATIONAL THERAPY EVALUATION APPROPRIATE WITHIN THE LEGAL DEFINITION?

34. San Leandro contends that the occupational therapy assessment was appropriate and complied with all legal requirements for assessments. Parents claim that the occupational therapy assessment was inadequate because it failed to include a Parent Sensory Processing Measure Checklist for Student in the home setting. Parents assert that the school counselor did not appropriately score the Sensory Processing Measure checklist. Parents also assert that Ms. Kuruvilla's conclusion that Student did not have a handwriting problem was not supported by examples of Student's written work.

35. Student's occupational therapy assessment was conducted by Krupa Panchmatiya Kuruvilla whose educational degrees, experience, and California license to practice occupational therapy qualify her to conduct the assessment. The assessments were administered in Student's native language of English. The assessments were chosen and administered in a manner so as not to be racially, culturally or sexually

discriminatory. Standardized measures were reliable and valid for the purpose in which they were used.

36. Based on Ms. Kuruvilla's assessment of Student, which included standardized measures, school observations and input from Student's teachers, Ms. Kuruvilla concluded that Student did not require occupational therapy services to access her general education curriculum, and therefore Student did not qualify for occupational therapy related services.

37. San Leandro proved by a preponderance of the evidence that the occupational therapy assessment complied with all legal requirements for assessments. Parents failed to provide any evidence that proved the Sensory Processing Profile Measure Assessment was not administered according to the instructions provided by the Publisher, or that the assessor's omission of Parent input, in the form of a Sensory Processing Profile Measure, would have changed the results of the assessment and conclusions. Lastly, Parent failed to present any expert to establish that Student's writing samples indicate a need for occupational therapy, or to establish that the occupational therapy assessment was noncompliant with legal requirements.

ORDER

San Leandro's psychoeducational, speech and language, academic achievement, functional behavior and occupational therapy assessments were legally appropriate in that they met all legal requirements. Therefore, Student is not entitled to independent educational evaluations in the areas of psychoeducation, speech and language, academic achievement, functional behavior, or occupational therapy.

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, San Leandro prevailed on all issues 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: September 21, 2017

/s/

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings