

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF
STUDENT.

OAH Case No. 2018030344

DECISION

Capistrano Unified School District filed a request for due process hearing with the Office of Administrative Hearings, State of California, on March 8, 2018, naming Parent on behalf of Student. OAH granted the parties' request for a continuance on March 26, 2018.

Administrative Law Judge Jackie C. Dai heard this matter in San Juan Capistrano, California, on May 10, 2018.

Danielle Gigli, Attorney at Law, and Ernest L. Bell, Attorney at Law, represented District throughout the hearing. Sara Young, Executive Director for District, attended the hearing on District's behalf. Student's mother represented Student.

At the close of the hearing, OAH granted the parties' request for a continuance to May 21, 2018 for the parties' filing of written closing arguments. The record was closed, and the matter was submitted for decision on May 21, 2018.

ISSUES

1. Was District's October 31, 2016 occupational therapy assessment appropriate such that Student is not entitled to an occupational therapy independent educational evaluation at public expense?
2. Was District's May 16, 2017 psychoeducational assessment appropriate such that Student is not entitled to a psychoeducational independent educational evaluation at public expense?

SUMMARY OF DECISION

District demonstrated both the October 31, 2016 occupational therapy assessment and the May 16, 2017 psychoeducational assessment met the legal requirements. District obtained Parent's consent to both assessments before assessing Student. The assessors were qualified to conduct, and to interpret, the assessments and used more than one assessment tool yielding valid results. The tests were not sexually, culturally or racially discriminatory and were administered in accordance with publisher's instructions. Each of the assessors who evaluated Student produced an appropriate written report with their recommendations. The assessments were provided to Parent and timely reviewed at individualized education program team meetings.

FACTUAL FINDINGS

JURISDICTION

1. Student is a five-year-old kindergartener who was eligible for special education and related services as a Student with a speech and language impairment. During the 2016-2017 school year, Student attended pre-school within District.

OCCUPATIONAL THERAPY ASSESSMENT

2. At the beginning of the 2016-2017 school year, Student attended a special day class taught by Education Specialist Giovana Constantino McFaul. Mother requested an assessment in the area of occupational therapy due to concerns about Student's fine motor and sensory processing skills. In response, Ms. Constantino McFaul prepared an assessment plan in the area of occupational therapy. Parent consented to the assessment on August 30, 2016.

3. Anne Braun, a California licensed occupational therapist from the District, completed an occupational therapy assessment of Student and prepared a report dated October 31, 2016. Ms. Braun worked for District for over 11 years and has performed between 250-300 occupational therapy assessments. She knew Student from his participation in her weekly occupational therapy group during Student's former pre-school special day class. Ms. Braun testified at hearing.

4. Ms. Braun's assessment included observations during classroom instruction and during recess on the playground, standardized and informal testing, Parent and teacher input, and a review of school records and a private assessment from outside provider Butterfly Therapies. Parent told Ms. Braun her biggest areas of concern were Student's behaviors and his fine motor grasping for pre-writing skills.

5. Ms. Braun observed Student to gather information regarding his behaviors, fine motor skills, gross motor skills, and attention. During her classroom and schoolyard observations, Student transitioned easily, followed the teacher's directions, was attentive, did not have any difficulty in testing, and was consistent with what Ms. Braun had seen in the classroom during her pre-school weekly occupational therapy group classes. Student followed along with his teacher in hopping, skipping, marching and imitated movements. He could climb up a rock wall and played in sand with his peers. Student followed the routine and instructions. He demonstrated fine motor skills

supporting his participation in different activities in the classroom including peeling stickers and putting them on round circles to form letters, cutting with scissors, and manipulating clothespins to put on a card with his name on it.

6. Ms. Braun administered the Peabody Developmental Motor Scales, 2nd edition to assess in the area of fine motor skills and visual skills. On the Peabody, Student scored in the poor range for grasping, above average range for visual motor integration, and the average of the two scores for grasping and visual motor integration was in the average range for total fine motor. Ms. Braun explained persuasively that Student's low score in grasping was not an accurate depiction of Student's abilities because the test jumped from a 16 month level to either a 41 or 42 month range for measuring skills in the area of grasping. If a person falls in between 16 months to either 41 or 42 months, this will result in a score of zero. A person must have a tripod grasp, which is the thumb and middle finger, or he or she will also receive a score of zero. Because Student fell between these ranges and did not have a tripod grasp, he received a score of zero which was not representative of his true abilities. Ms. Braun explained that Student's tripod grasp was appropriate for his age based on her observations throughout the school year from his participation in her weekly occupational therapy group in his classroom and her observations in the classroom but this particular assessment tool did not give him credit for that.

7. Ms. Braun administered the Sensory Processing Measure-Preschool Home and School Forms to assess in the area of sensory processing. On the Sensory Processing Measure, Student scored as having more issues at home than at school. In Ms. Braun's opinion, when score results reflect a big difference between home and school, the results suggest that the needs are not related to sensory processing but a different source. In her opinion, if someone has sensory processing issues, those issues would likely be present in both home and school.

8. The assessment tools administered by Ms. Braun were selected and administered without racial, cultural, or gender discrimination. The tests were used in conformance with testing instructions and each test was valid for the purpose for which the test was used. No single test or procedure was used to determine Student's eligibility for special education or to determine his educational program.

9. Ms. Braun reported the results of the tests, Parent and teacher input, her observations of Student during classroom instruction and during recess, her conclusions, and her recommendations in a written assessment report. This written assessment report was provided to Parent. Ms. Braun concluded that gross motor was an area of strength for Student. In fine motor, Student scored in the average range and could use different patterns, had a functional grasp on short broken crayons and markers, and completed bilateral coordination tasks such as stringing beads, building with Legos, cutting with scissors, and opening and closing containers. Student did not have any sensory processing needs given his score in the average range. Overall, Ms. Braun did not see any areas of need that required occupational therapy services.

NOVEMBER 2, 2016 AND JANUARY 30, 2017 INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETINGS TO REVIEW OCCUPATIONAL THERAPY ASSESSMENT

10. On September 23, 2016, Parent signed an agreement to extend the 60 day timeline to hold an annual IEP team meeting and to review the assessments, because she was unable to attend on the date proposed by District. On November 2, 2016, District held Student's annual IEP team meeting and to review District's occupational therapy assessment. Ms. Braun attended and presented her assessment results and recommendations. Parent asked questions and expressed concerns that she had about the assessment.

PSYCHOEDUCATIONAL ASSESSMENT

11. Ms. Constantino McFaul's classroom was comprised of three, four, and some five-year-old students who had not transitioned to kindergarten. Although Ms. Constantino McFaul usually taught students in groups based on their chronological age, she sometimes moved a student up or down depending on their readiness level. Student began the 2016-17 school year in his chronological age group of three-year-olds. Student did very well with that group and Ms. Constantino McFaul advanced Student to the four-year-old group. Student did very well in that group. Because Student was doing so well towards the end of the 2016-2017 school year in Ms. Constantino McFaul's special day class and with a general education class during mainstreaming opportunities, the IEP team decided to advance the date of his triennial review.

12. District created and presented to Parent a triennial review assessment plan including various psychoeducational assessments. Parent signed the assessment plan on March 5, 2017. District received the signed assessment plan on March 8, 2017.

13. Ms. Constantino McFaul, licensed school psychologist Brett Ellison, and licensed school psychologist Pam Ender administered the psychoeducational assessment. Mr. Ellison had 25 years of experience conducting psychoeducational assessments, and Ms. Ender had over 13 years of experience as a school psychologist.

14. Ms. Constantino McFaul conducted the Brigance Inventory of Early Development, 3rd Edition-Standardized to measure Student's pre-academic skills. Ms. Constantino McFaul was qualified to administer the Brigance because she had the requisite special education credentials in mild to moderate disabilities and moderate to severe disabilities. She had administered the Brigance about three times. Ms. Ender administered the Bracken and Beery-Buktenica Developmental Test of Visual Motor Integration. Mr. Ellison administered the Wechsler Preschool and Primary Scale of

Intelligence-Fourth Edition, Behavior Assessment System for Children, 3rd edition, Social Skills Improvement System, Autism Spectrum Rating Scales, and the Autism Diagnostic Observation Schedule Module 3.

15. On the Brigance, Student scored in the above average to average range in the area of pre-academics of literacy and math. This was consistent with Ms. Constantino McFaul's observations of Student in her special day class.

16. In conducting the psychoeducational assessment, Mr. Ellison obtained information about Student from various sources including Student's general education teacher, special education teacher, and speech and language pathologist and direct observations of Student during testing, at recess, and in the classroom. Mr. Ellison obtained information from Parent. Mr. Ellison received Parent input through profiles that she completed, and developmental history. The purpose of Mr. Ellison's part of the assessment was to help the IEP team consider whether Student continued to be eligible for special education; to evaluate Student's progress in the special education program that he was in for the 2016-2017 school year; to see if Student had any special education needs that continued to exist; and to develop an education plan.

17. Mr. Ellison was thorough in observing Student across settings. He observed Student's attention in different environments, how he behaved in different settings, his social interactions with peers on the playground and in the classroom, how Student conducted himself during non-preferred activities, how he responded to teacher requests, and whether he followed teacher directives during non-preferred activities. Student was very cooperative.

18. Mr. Ellison's observations of Student during private testing were consistent with Mr. Ellison's observations of Student at school. During classroom instruction, Student followed along with the classroom routine during circle time, danced with the teacher, and when the teacher's attention had to be diverted to another student,

Student continued to do activities he was supposed to be doing. Student transitioned easily between activities, was able to do structured activities with another peer appropriately, and responded appropriately to teacher's questions. Student's attention was good, his participation was good, he was not fidgeting in his seat, and was not disruptive to the class. During recess, Student asked another peer to play with a big toy and showed a lot of initiation and social awareness to do things he was doing at recess.

19. Mr. Ellison used the Wechsler to test Student's cognitive functioning. He used the Social Skills, Behavior Analysis, and Autism Spectrum rating scales to assess Student's social-emotional functioning. The Behavior Analysis scale assessed any behavioral or social issues. The Social Skills scale looked at social skills, problem behaviors, and academic competence. The Autism Spectrum rating scale looked at whether Student had any autistic behaviors. Mr. Ellison used this rating scale because Parent was concerned about Student having characteristics of autism. Lastly, Mr. Ellison administered the Autism Diagnostic rating scale which provides an objective measure from which the assessor can observe Student's actual behaviors.

20. Student could sustain his attention and worked for up to 40 minutes of work time during testing, he had verbal skills, and could answer questions. Overall, the majority of Student's scores on Mr. Ellison's tests were in the average to above average range. Student's scores on Mr. Ellison's testing were consistent with testing results on other portions of the multidisciplinary psychoeducational assessment administered by his teacher, speech pathologist, and both school psychologists. Mr. Ellison concluded Student had no unique needs that could not be met in a general education setting. He recommended that Student no longer qualify for special education.

21. Ms. Ender, a licensed school psychologist and the lead school psychologist for District, consulted with other District school psychologists and conducted some testing as needed. She also reviewed requests for independent educational evaluations.

Ms. Ender assisted Mr. Ellison in performing the Bracken and the Beery Visual Motor assessments of Student. Ms. Ender observed Student during testing. Student had no difficulty separating from teacher or classroom and was attentive. She looked at any difficulties that he had regarding the educational environment-learning disability, behavior issues, or autism spectrum disorder. Ms. Ender administered the Bracken to identify Student's school readiness skills-colors, shapes, recognition, sizes, comparisons, letters, and numbers. Student was in the advanced range when compared to his same age peers for school readiness on the Bracken. The Beery Visual Motor addresses eye hand coordination. Student scored in the average range on the Beery Visual Motor. Ms. Ender reported Student's scores on these two tests to Mr. Ellison who included the results in the full psychoeducational assessment. In sum, all of the assessors found Student to be in the average to above average range in all areas assessed and that he did not require any special education to access his education.

22. Mr. Ellison prepared a written report of the psychoeducational assessment which included his recommendation that Student no longer qualified for special education because he did not have any unique needs which could not be met in a general education setting. The report was dated May 16, 2017. The report was provided to Parent.

MAY 8, 2017 AND SEPTEMBER 8, 2017 IEP TEAM MEETINGS TO REVIEW PSYCHOEDUCATIONAL ASSESSMENT

23. On May 8, 2017, District held a triennial IEP team meeting to discuss the psychoeducational assessment. District staff reported Student was doing very well in school socially, academically, and behaviorally. The IEP team reviewed Parent's outside providers' reports. Student's functioning in the school environment was consistently in the average or high average range across the board. Parent shared that she could not stay for the entire meeting and wanted to continue the meeting on another day. Parent

also shared that she was concerned that Student's private occupational therapist and speech and language pathologist reported that Student was showing deficits in different areas.

24. District continued the meeting and the team reconvened on September 8, 2017. Ms. Constantino McFaul and Mr. Ellison again reported that Student scored in the average to above average range on all of the assessments. Therefore, District staff did not believe Student required special education to access his education. Parent requested time to review the IEP and assessments. Parent also raised concerns that Student was showing behaviors at home that were inconsistent with what the educators were seeing at school.

25. District made unsuccessful attempts via phone and email to reach Parent to discuss her concerns with the IEP. District sent a letter dated October 13, 2017, confirming the attempts District made to contact Parent to discuss her concerns.

JANUARY 30, 2018 IEP TEAM MEETING AND REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

26. District reconvened the IEP team meeting on January 30, 2018. The purpose of the meeting was to discuss Parent concerns with District's occupational therapy and psychoeducational assessments. At this meeting, Parent expressed disagreement with the District's occupational therapy and psychoeducational assessments of Student and requested publicly funded independent educational evaluations in these areas.

27. District reviewed both the occupational therapy and psychoeducational assessments to determine whether the assessments were conducted appropriately after District received Parents' request for independent educational evaluations. Ms. Braun reviewed the occupational therapy assessment and protocols for any errors and did not find any errors in scoring or information that she put in her assessment report and

concluded the assessment was appropriate. Ms. Ender reviewed the District's psychoeducational assessment. She reviewed the assessment process, the results and the report. She concluded the District's psychoeducational assessment was appropriate. As a result, District filed for due process to defend the two assessments on March 8, 2018.

PARENT TESTIMONY AT HEARING

28. At hearing, Parent disagreed with the assessors in a number of areas. According to Parent, Student did not make good eye contact and had little eye contact at the time of testing. Parent pointed to a notation by Mr. Ellison in his psychoeducational assessment that Student was fidgety and had to be redirected which played into his sensory issues and difficulties with attention span at the time of testing. Parent disputed that Student initiated play with other students in playing a game of duck, duck, goose because, based upon her observations, Student did not know how to play this game or know how to initiate play with other children at the time of testing. Parent observed that Student was unaware of personal space and would oftentimes grab other students. Parent provided District with full copies of private reports and not just the progress reports at the time of testing. Parent's perceptions were based upon her observations in the home setting.

LEGAL AUTHORITIES AND CONCLUSIONS

LEGAL AUTHORITIES

Introduction Legal Framework under the IDEA¹

1. This hearing was held under the Individuals with Disabilities Education Act (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)² 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 (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 individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34

¹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

² All subsequent references to the Code of Federal Regulations are to the 2006 version.

C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education 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 District 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.)

4. The Supreme Court's recent decision in *Endrew F. v. Douglas County School. Dist. RE-1* (2017) 580 U.S. __ [137 S.Ct. 988] (*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.

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the

identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (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).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; *see* 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) District is the petitioning party and has the burden of proof on all issues.

Assessments

6. Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) Thereafter, a special education student must be reassessed at least once every three years, or more frequently if conditions warrant, or if a parent or teacher requests an assessment. (Ed. Code, § 56381, subd.(a).) 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).)

7. Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); Ed. Code, § 56320 subd. (b)(2),(3).) In California, a test must be selected and administered to produce results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) A district must ensure that a child is assessed in all areas related to a suspected disability. (Ed. Code § 56320, subd. (c),(f).)

8. Assessments must be conducted by individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area. (Ed. Code, §§ 56320, subd.(g), 56322; see, 20 U.S.C. § 1414 (b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).)

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

10. Upon completion of an assessment, the district shall provide parents with a copy of the evaluation report and the documentation of determination of eligibility. (20 U.S.C. § 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2); Ed. Code, § 56329, subd. (a)(3).) The personnel who assess a student must prepare a written report that includes: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) for students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; and (7) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage. (Ed. Code, § 56327.)

11. District assessments must be completed and an IEP team meeting held within 60 days of receiving consent, exclusive of school vacations in excess of five school days, unless the parent consents in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); 34

C.F.R. § 300.301(c); Ed. Code, §§ 56043, subds. (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

12. Under certain conditions, a student is entitled to obtain an independent educational 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 IEE 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 IEE].) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

13. When a student requests an independent educational 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 IEE is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code § 56329, subd. (c).)

ANALYSIS

ISSUE 1: OCCUPATIONAL THERAPY ASSESSMENT

14. District contends that its October 31, 2016 occupational therapy assessment was appropriate and complied with all legal requirements for assessments. Parent contends that the occupational therapy assessment was not an accurate evaluation of Student's needs because it was conducted in a quiet room setting free from any distractions. Parent also argued that the occupational therapy assessment was completed in October 2016 and is not indicative of how Student was currently

performing in the area of occupational therapy because there has not been any further testing by District after October 2016.

15. District's occupational therapy assessment met all state and federal requirements, and yielded valid results, resulting in a written report, that the IEP team considered and discussed with Parent at an IEP meeting. Parent requested the assessment at the beginning of the 2016-2017 school year because she was concerned with Student's occupational therapy needs. District timely assessed Student and held an IEP team meeting to discuss the results of the assessment. Ms. Braun was both knowledgeable of Student's disability based upon his participation in her group sessions during pre-school and competent to perform the assessment based upon her education, experience and occupational therapy license. Ms. Braun tested Student in Student's native language of English. Ms. Braun selected the Peabody and the Sensory Processing Measure because they were reliable instruments and valid for the purpose in which they were used. Ms. Braun administered the tests in accordance with the publisher's instructions.

16. Ms. Braun's assessment included more than one standardized measure by using the Peabody to assess fine and gross motor skills and the Sensory Processing Measures to assess sensory processing. Ms. Braun gathered relevant functional and developmental information related to Student's occupational therapy needs by conducting school observations on the playground, outside the bathroom during recess, in the classroom, reviewing records, receiving teacher and Parent input, and considering a private assessment provided by Parent from an outside agency. Ms. Braun's written assessment report was thorough, because it included her findings and provided reasons for her conclusion that Student did not need individual occupational therapy. Student did not require occupational therapy because his abilities in fine motor, gross motor and

sensory processing were assessed as sufficient to allow Student to participate in the general education setting.

17. Parent's contention that the occupational therapy assessment did not produce accurate results because it was conducted in a quiet room with no distractions does not invalidate District's occupation therapy assessment. Undisputed evidence demonstrated that Ms. Braun conducted the assessment in a quiet room free of distractions in accordance with the publisher's instructions on how to administer the assessment and obtain valid results.

18. Parent's contention that the October 2016 occupational therapy assessment did not reflect Student's current skills and that District has done no further testing does not demonstrate that the October 2016 assessment was inappropriate at the time. There was no evidence that conditions warranted further assessment or that Parent or any teacher had requested further assessment. Accordingly, the argument Student's current skills are different than the skills obtained in the October 2016 assessment does not invalidate the assessment.

19. District proved by a preponderance of the evidence that the occupational therapy assessment complied with all legal requirements for assessments.

ISSUE 2: PSYCHOEDUCATIONAL ASSESSMENT

20. District contends that the psychoeducational assessment complied with all legal assessment requirements. Parent contends Mr. Ellison's observations inaccurately described Student and the assessment conclusions were inconsistent with Parent's perception of Student in the home setting.

21. District's psychoeducational assessment met all state and federal requirements, and yielded valid results that the IEP team considered and discussed with Parent at an IEP meeting. Ms. Constantino McFaul, Mr. Ellison, and Ms. Ender had appropriate credentials, and were qualified to conduct and interpret the results of the

assessments based upon their knowledge and experience in conducting psychoeducational assessments. Both Mr. Ellison and Ms. Ender are licensed school psychologists. Both Mr. Ellison and Ms. Ender chose valid, reliable and appropriate assessments to determine whether Student has a disability requiring specialized educational services. For example, Mr. Ellison and Ms. Ender used a variety of different assessment tools including: a review of school records, observations in informal and formal settings, and administered standardized tests and rating scales. The assessors conducted their assessments in Student's native language of English, in accordance with publisher's instructions, and in a manner not to be racially, culturally, or sexually discriminatory. A report dated May 16, 2017, contained all of the psychoeducational assessment results, the assessors' findings and recommendations. District gave the report to Parent and the assessment was discussed at IEP team meetings.

22. Mr. Ellison assessed Student's cognitive functioning and processing through the Wechsler. Ms. Ender administered the Bracken and Beery Visual Motor. Ms. Constantino McFaul assessed Student's pre-academic skills using the Brigance. She selected the Brigance for Student because it was age appropriate and assesses students in the area of pre-academics. Student was performing in the average to above average range based on all standardized scores that measure cognitive and academic abilities.

23. Mr. Ellison used a combination of different assessment tools to assess Student's social-emotional functioning including a review of his school records including past assessment results, Parent and teacher input, and observations of Student at school during both structured and unstructured time. He administered the Social Skills and Behavior Assessment to measure social skills and behaviors. Parents shared concerns regarding Student's behavior including not understanding personal space by grabbing other students, and not initiating play with other students. In order to ensure that Mr. Ellison obtained a thorough picture of Student's social-emotional functioning at school,

at home, and in the community, he requested that Parents and Ms. Constantino McFaul complete ratings scales for parents and teachers on the Social Skills and Behavior Assessment. On the Social Skills rating scale, Parents reported average scores in social skills and above average range in problem behaviors. In contrast, Ms. Constantino McFaul rated Student in average range for both social skills and problem behaviors indicating that Student may act differently at home in comparison to at school. On the Behavior Assessment rating scale, Parents reported Student at risk range in aggression, attention problems, and activities of daily living. Ms. Constantino McFaul did not report any concerns about Student's behaviors in the school setting. Overall, Student's social-emotional functioning was in the average range in the school setting.

24. To address Parent's concern that Student might have autism, Mr. Ellison selected the Autism Spectrum rating scale and Autism Diagnostic rating scale to see if Student would qualify under the category of autistic-like characteristics. On the Autism Spectrum rating scale, a discrepancy existed between what Parent saw and what Ms. Constantino McFaul saw. Parent reported Student as in the elevated range while Ms. Constantino McFaul reported Student to be in the average range. The test results suggested Student acted differently at home compared to at school. Mr. Ellison also administered the Autism Diagnostic rating scale to glean more information about Student's social, communicative, and language behaviors.

25. Parent's disagreement with the assessment results at hearing did not demonstrate the assessments failed to meet legal standards. There was no evidence Student had the same behaviors during assessment or at school that Parent observed at home or in other environments; and no evidence that Parent observed Student during the assessments or at school during the relevant time period. Much of Parent's testimony was directed towards Student's skills at the time of hearing. This testimony, while it may indicate a need for reassessment, did not demonstrate the assessments

failed to comport with the legal standards when the assessments were conducted.

26. District proved by a preponderance of the evidence that the psychoeducational assessment complied with all legal requirements.

ORDER

1. District's occupational therapy assessment dated October 31, 2016, and psychoeducational assessment dated May 16, 2017, met all legal requirements.

2. Student is not entitled to independent educational evaluations in the areas of occupational therapy and psychoeducation.

PREVAILING PARTY

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

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: June 13, 2018

_____/s/
JACKIE C. DAI
Administrative Law Judge
Office of Administrative Hearings