

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2018080568

DECISION

Poway Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on August 14, 2018, naming Student. On August 27, 2018, Poway filed a corrected due process hearing request, naming Student.¹

Administrative Law Judge Rommel P. Cruz heard this matter in Poway, California on January 8, 2019.

Justin Shinnfield, Attorney at Law, represented Poway. Jodi Payne, Director of Special Education, attended the hearing on behalf of Poway.

Mother, Father and Student did not attend the hearing.²

¹ Poway did not serve Parents with the original due process hearing request. The corrected due process hearing request was served on Parents on the date it was filed with OAH. The 45-day timeline for issuing this Decision is based on the date Parents were served with the corrected complaint.

² On December 28, 2018, neither Mother nor Father appeared for the telephonic

At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Did Poway's June 4, 2018 psychoeducational assessment comply with state and federal law such that Student is not entitled to an independent psychoeducational evaluation?

SUMMARY OF DECISION

This Decision holds that Poway met its burden of proof that the June 4, 2018 psychoeducational assessment was legally compliant. The assessment was administered by qualified assessors, using a variety of valid and reliable instruments, tools, and strategies. The psychoeducational assessment met all legal requirements, and accordingly, Student is not entitled to independent psychoeducational and academic evaluations at public expense.

prehearing conference. The Order Following Prehearing Conference dated December 28, 2018, which provided the date, time, and location for hearing was timely served on Parents. OAH left voice messages for Mother regarding the hearing on January 3, 4, and 7, 2019. OAH did not receive a response from Mother. On January 8, 2019, at approximately 9:10 a.m., OAH telephoned Mother but was unable to reach her or leave a voice message as her voicemail was full. Father's telephone was not in service during this period.

FACTUAL FINDINGS

BACKGROUND

1. Student was 11 years old at the time of the hearing. Mother and Father were divorced and lived apart. Student resided equally with Mother and Father, and Father resided within Poway's boundaries at all relevant times. Student's primary language was English. Mother reported to Poway that Student had struggled to stay on task and complete assignments. She also expressed concern over Student's writing. Mother requested Poway evaluate Student for special education services.

2. Poway provided Parents with an initial assessment plan dated April 16, 2018, and a supplemental assessment plan dated April 19, 2018. The assessment plans were written in English, Parents' native language. Both plans described the possible tests and procedures to be conducted. They also explained the information being sought through the evaluation of the various areas. The plans were written clearly and in terms understandable by the general public. The plans were clear in that no special education services would be provided to Student without Parents' written consent. The April 16, 2018 assessment plan proposed to evaluate Student in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social emotional/behavior, and adaptive behavior. The school psychologist was responsible for evaluating the areas of intellectual development, motor development, social emotional/behavior and adaptive behavior. The resource specialist would assess Student's academic achievement. Father provided written consent to the assessment plan on April 17, 2018, and Mother consented in writing shortly thereafter.

3. The April 19, 2018 supplemental assessment plan proposed to add an evaluation in the area of processing, to be conducted by the school psychologist. Father provided written consent to the April 19, 2018 assessment plan on April 23, 2018, and

Mother consented in writing to the additional assessment soon after.

JUNE 4, 2018 PSYCHOEDUCATIONAL ASSESSMENT

Assessors

4. Carol Moore was a credentialed school psychologist for 16 years. Ms. Moore possessed a master's degree in educational psychology and a pupil personnel services credential in school psychology. Ms. Moore conducted approximately 80 to 120 psychoeducational assessments each year, amounting to over 1,000 psychoeducational assessments conducted in her 16-year career as a school psychologist.

5. Chad Garhartt was a resource specialist with Poway for approximately two years. Mr. Garhartt was credentialed in special education and possessed a master's degree in industrial organizational psychology. He taught special education for five years prior to joining Poway. As a resource specialist for Poway, Mr. Garhartt conducted 20 to 25 academic assessments each year, and roughly 15 to 20 academic assessments previously as a teacher.

Records Review and Interviews

6. For the assessment, Ms. Moore gained a better understanding of Student's background through a review of Student's school records, a health questionnaire completed by Mother, and interviews with Student's teacher Norma Carter, Mother and Father. Poway found Student eligible for a Section 504 plan³ on May 7, 2018, due to

³ A Section 504 plan is an educational program authorized under Section 504 of the Rehabilitation Act of 1973, designed to assist a child limited by physical or mental impairments access their education. (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et. seq. (2000).)

attention deficit hyperactivity disorder, sensory processing, and developmental health problems which impacted her learning and ability to access her education. Interviewees described Student as kind, creative, a good communicator, and a leader. However, Student was consistently off task when doing non-preferred assignments. Mother reported that Student got frustrated easily, could not sit still and relax, overreacted, and was compulsive. Father shared that she had friends but got teased on occasion.

7. A review of Student's health and developmental history revealed that Student had a history of coughing and possible pulmonary difficulties. She had difficulty maintaining an activity for any length of time. Student received Dialectal Behavior Therapy and participated in individual therapy once a week and family therapy once a week.

Observations

8. Student was observed on two occasions by Amy Oh, Poway school psychologist intern. The first observation took place over recess and lunch time and lasted approximately 35 minutes. Student sat with a group of six friends and appeared to enjoy her time with them. She listened more than she spoke in the group. The second observation took place in the classroom for 45 minutes. The teacher prompted Student to line up, and she complied without incident. She engaged in a game of "I Spy" and led a group of two other students in a game of "Predator/Prey."

9. Ms. Moore noted Student's behavior, demeanor, and willingness during testing. Student was cooperative and respectful. Rapport between Ms. Moore and Student was established effortlessly and maintained throughout the testing. Ms. Moore tested Student in a quiet room with minimal distractions. Student was friendly, talkative, engaged, and maintained good eye contact. She tried on most tasks, but at times quickly gave up when she was uncertain of the response.

Testing

10. Ms. Moore spent 10 to 12 hours, over three days, testing Student. Ms. Moore administered the Wechsler Intelligence Scale for Children, Fifth Edition, to assess Student's intellectual ability. The Wechsler Intelligence Scale for Children is an individually administered clinical instrument for assessing the intellectual ability of children aged six years through 16 years and 11 months. It consists of several subtests, each measuring a different facet of intelligence. The instrument provides composite scores that represents intellectual functioning in the areas of verbal comprehension, visual spatial, fluid reasoning, working memory, and processing speed. The Wechsler Intelligence Scale for Children also provides a score that represents a child's general intellectual ability (Full Scale Intelligence Quotient). Student's composite scores were in the high average range in the areas of verbal comprehension, fluid reasoning, and working memory. She scored in the average range in the areas of visual spatial and processing speed. Student's Full Scale IQ score of 108 was also in the average range.

11. Ms. Moore administered three additional tests to assess Student's processing, specifically her visual-motor processing, auditory processing, and visual perception. The Berry-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition, identifies significant difficulties in a child's ability to integrate or coordinate visual perceptual and motor abilities. Student's score of 110 was above average.

12. The Test of Auditory Processing Skills is an individually administered assessment of auditory skills necessary for the development, use, and understanding of language commonly utilized in academic and everyday activities. Student's overall auditory processing standard score of 107 fell in the average range.

13. The Test of Visual-Perceptual Skills, Fourth Edition, measures seven visual-perceptual skills of children between the ages of four and 18 years and 11 months. The seven skills measured are visual discrimination, visual memory, visual-spatial

relationships, visual form constancy, visual sequential memory, visual figure-ground, and visual closure. Student scored in the average range in all skill areas, with an overall visual processing standard score of 103, which was average.

14. The Behavior Assessment Systems for Children, Third Edition, measures the behavior and self-perceptions of children and young adults ages two through 25. Ms. Carter and Parents completed the rating scales. Ms. Carter identified the following concerns and behaviors in the school setting: conduct problems, somatization, attention problems, learning problems, adaptability, and study skills. Mother identified the following concerns and behaviors at home: hyperactivity, attention problems, atypicality, withdrawal, adaptability, and activities of daily living. Father identified the following concerns and behaviors at home: hyperactivity, conduct problems, depression, attention problems, atypicality, withdrawal, adaptability, and leadership.

15. The Behavior Rating Inventory of Executive Functioning is designed to provide a better understanding of a child's self-control and problem-solving skills by measuring domains of executive functioning. The assessment utilizes questionnaires which were completed by Parents and Ms. Carter. Ms. Carter's responses revealed concerns related to Student's ability to resist impulses, react to events appropriately, begin an activity, sustain working memory, appropriately plan and organize her approach to solve a problem, to be appropriately cautious in tackling a task, checking for mistakes, and keeping her belongings reasonably organized. Mother and Father reported the same concerns as Ms. Carter, with additional concerns regarding Student's ability to be aware of her functioning in social settings and her ability to adjust well to changes in environment, people, plans, or demands.

16. The Scales for Diagnosing Attention-Deficit/Hyperactivity Disorder is a norm-referenced, reliable, and valid measure of attention deficit hyperactivity disorder. The instrument measures a child's behavior in three areas: inattention, hyperactivity, and

impulsivity. Ms. Moore completed the Sentence Completion Form with Student. Student was asked to complete questions that Ms. Moore started. Ms. Carter and Parents completed the rating scales. Ms. Carter's completed rating scale, when scored, reflected that it was possible for Student to have attention deficit hyperactivity disorder. Mother's scored rating scale showed the probability was extremely high, and Father's scored rating scale reflected the probability was high.

17. Ms. Moore has extensive experience administering and interpreting the instruments she administered to Student. She administers most of the instruments at least 70 times each year, except for the Scales for Diagnosing Attention-Deficit/Hyperactivity Disorder which she administers approximately 50 times a year and the Behavior Rating Inventory of Executive Functioning which she administers roughly 20 times a year. All the instruments are reliable and widely accepted assessment tools, and are not racially, culturally, or sexually discriminatory. Ms. Moore administered each of the instruments in English, Student's primary language. She also administered and interpreted all the instruments in accordance with the publishers' protocols and yielded valid results. Ms. Moore did not rely on any single measure, tool, or score to support her findings and recommendations.

18. Mr. Garhartt contributed to the psychoeducational assessment by administering the Woodcock-Johnson Tests of Achievement, Fourth Edition. The tests were administered to Student for approximately one and a half to two hours over two sessions on the same day. The Woodcock-Johnson Tests of Achievement measures academic achievement in the areas of reading, mathematics, and written language. The resulting scores shows how well a student performs compared to a group of children the same age across the country. Mr. Garhartt administered the tests in English. The tests are reliable and widely accepted assessment tools, and are not racially, culturally, or sexually discriminatory. Mr. Garhartt administered and interpreted the tests in

accordance with the publisher's protocols, yielding valid results. Furthermore, he did not rely on any single measure, tool, or score to support his findings and recommendations. Student's academic achievement scores on the Woodcock-Johnson Tests of Achievement were classified as "average," compared to other children at her age and grade level in every skill area related to reading, mathematics, and writing.

19. Ms. Moore prepared a written psychoeducational assessment report dated June 4, 2018, which reported the results of the testing she and Mr. Garhartt performed, summarized their findings, and offered recommendations. Ms. Moore determined Student did not meet special education eligibility under Specific Learning Disability, but might qualify for special education under the category of Other Health Impairment due to her attention difficulties that adversely impacted her writing and contributed to off-task behaviors.

JUNE 4, 2018 INDIVIDUAL EDUCATION PROGRAM TEAM MEETING

20. Poway convened an individualized education program team meeting on June 4, 2018, to review the assessment report and determine whether Student was eligible for special education. All required IEP team members, including Parents, Ms. Moore and Mr. Garhartt attended the meeting. Parents were provided a copy of the June 4, 2018 psychoeducational assessment report. Ms. Moore presented the report to the IEP team. Poway determined that Student exhibited a disability that impacted her academically; however, Poway opined that Student did not require special education services to make progress. Poway and Father agreed that accommodations through a Section 504 plan could meet Student's educational needs. The IEP team determined Student did not qualify for special education services at the time. At the meeting, Mother requested an independent educational evaluation in the area of psychoeducation.

21. On June 12, 2018, Poway provided Parents a letter informing them that

Poway's Independent Educational Evaluation Team would meet and review the June 4, 2018 psychoeducational assessment report. Poway would then inform Parents if it would agree or deny Mother's request for Poway to fund an independent psychoeducational evaluation. On July 19, 2018, Poway provided Parents prior written notice of its decision not to fund an independent psychoeducational evaluation.

22. Poway's last day of instruction for the 2017-2018 school year was June 14, 2018. Poway's first day of instruction for the 2018-2019 school year was August 22, 2018.

LEGAL CONCLUSIONS

INTRODUCTION – 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 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁵ 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 further 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).)

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

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an individualized education program 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 Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

5. In *Andrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Andrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstances.” “[E]very child should have a chance to meet challenging objectives.” (*Ibid.*) *Andrew F.* explained that “[t]his standard is markedly more demanding than the ‘merely more than de minimis’ test [¶] . . . The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in *Andrew F.*, as the Court was “[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided[,] [W]e decline to interpret the FAPE provision in a manner so plainly at odds with the Court’s analysis in that case.” (*Id.* at p. 1001.) The Court noted that “[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed that its FAPE standard comports with *Andrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

6. 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].) Here, Poway requested the hearing in this matter, and therefore Poway had the burden of proof as to its sole issue.

ISSUE: APPROPRIATENESS OF THE JUNE 4, 2018 PSYCHOEDUCATIONAL ASSESSMENT

7. Poway contends its June 4, 2018 psychoeducational assessment met all legal requirements. For that reason, Poway asserts that Student is not entitled to an independent psychoeducational evaluation. Student offered no contentions.

Request for Independent Educational Evaluations

8. 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 independent educational 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 educational evaluation].) "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).)

9. 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 independent educational evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

10. The school district may inquire as to the reason why parent disagrees with the independent evaluation, but cannot require parent to provide an explanation or unreasonably delay either providing the independent evaluation at public expense or filing its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).) Further, except for requiring that an independent evaluation at public expense meet agency criteria regarding evaluations (to the extent those criteria are consistent with the parent's right to an independent evaluation), the district may not impose conditions or timelines related to obtaining an independent evaluation at public expense. (34 C.F.R. § 300.502(e); *Letter to Anonymous*, 55 IDELR 106 (OSEP August 13, 2010) [Districts may not require parents to provide written notice, to discuss the district’s evaluation at an IEP meeting, or to discuss their request at an IEP meeting before obtaining the evaluation].)

11. Whether the length of time that has passed before a district initiates a due process hearing or provides the independent evaluation at public expense constitutes “unnecessary delay” is a question of fact, based upon the circumstances of the particular case. (*J.P. v. Ripon Unified School Dist.* (E.D. Cal., Apr. 15, 2009, Case No. 2:07-cv-02084-

MCE-DAD) 2009 WL 1034993 (*Ripon*.) In *Ripon*, the court determined that the school district's due process request filed more than two months after the request for an independent evaluation was timely, as the parties were communicating regarding the request for the evaluation in the interim and did not come to an impasse on the issue until less than three weeks before the school district's filing. (*Supra*, 2009 WL 1034993 at *7-8.) In contrast, in *Pajaro Valley Unified School Dist. v. J.S.* (N.D. Cal., Dec. 15, 2006, Case No. C 06-0380 PVT) 2006 WL 3734289 (*Pajaro*), the school district did not file its due process complaint to defend its assessment until approximately 11 weeks after the request for an independent evaluation. The school district offered no explanation as to why it delayed for 11 weeks in filing its complaint, or why that delay was "necessary." The *Pajaro* court found that the school district's "unexplained and unnecessary delay in filing for a due process hearing waived its right to contest [s]tudent's request for an independent educational evaluation at public expense, and by itself warrants entry of judgment in favor of [s]tudent and [parent]." (*Supra*, 2006 WL 3734289 at *3.)

12. The term "unnecessary delay" as used in title 34 Code of Federal Regulations, part 300.502(b)(2) is not defined in the regulations. It permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (*Letter to Anonymous*, 56 IDELR 175 (OSEP August 13, 2010).) Some delay in the provision of an independent evaluation is reasonable if the school district and the parents are engaging in active communications, negotiations or other attempts to resolve the matter. (See *Horne v. Potomac Preparatory P.C.S.* (D.D.C. 2016) 209 F.Supp.3d 146, 153-155.) The determination of "unnecessary delay" is a fact-specific inquiry. The facts of each case are therefore critical. (*Ibid.*)

13. Although there are no provisions that specifically suspend the timelines when a school district is to file a request for due process after a parent asks a district to

fund an independent educational evaluation, California special education law allows for certain timelines to be suspended during school vacations in excess of five school days. For example, the requirement that a school district must provide a student's parent with a written proposed assessment plan within 15 days of the referral does not include days between the pupil's regular school sessions or, terms or days of school vacation in excess of five school days from the date of receipt of the referral. (Ed. Code, § 56321, subd. (a).) Similarly, the requirement that a school district is to complete an assessment or reassessment and hold an IEP team meeting to review the results within 60 days of receiving written parental consent to assess, excludes school vacations in excess of five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

14. Poway did not unnecessarily delay its request for a due process hearing under the circumstances. Mother requested an independent psychoeducational evaluation at the June 4, 2018 initial IEP team meeting. On June 12, 2018, Poway provided a letter to Parents explaining its process in reviewing the independent educational evaluation request and indicating it would contact Parents regarding its decision to either deny or agree to fund an independent psychoeducational evaluation. Poway's last day of instruction for the 2017-2018 school year was June 14, 2018. On July 19, 2018, Poway provided Parents prior written notice that it was denying funding for an independent psychoeducational evaluation. Poway's first day of school for the 2018-2019 school year was August 22, 2018, and Poway filed its request for a due process hearing the following day on August 23, 2018. Although 82 days elapsed between the request for an independent psychoeducational evaluation and the date Poway filed its complaint, Poway was on summer vacation for 68 of those days. Furthermore, only 35 days elapsed from the time the prior written notice was provided to Parents and the date the complaint was filed. Accordingly, the weight of the evidence demonstrated that

Poway's request for due process hearing to demonstrate the appropriateness of its psychoeducational assessment was filed without unnecessary delay in light of Poway's summer break.

Requirements for Assessments

15. 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.)⁶ 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).)

16. A school district must make reasonable efforts to and obtain informed written consent from a parent before conducting the initial evaluation of a student to determine whether the child is a child with a disability. (34 C.F.R. § 300.9; 34 C.F.R. §§ 300(a)(1)(i), (iii).) A local educational agency must provide written prior notice to the parents of a child whenever it proposes to initiate the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. §§ 1415(b)(3), and (c).)

17. If a district decides to assess a student, it must give the parent a written 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

⁶ An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

of five schooldays, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (a); 56321, subd. (a).) The plan must explain, in language easily understood, the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b).) The parent then has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c)(4).)

18. 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); (*Timothy O. v. Paso Robles Unified School Dist.* (9thCir. 2016) 822 F.3d 1105, 1119).)

19. 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).) School districts are required to ensure that the assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of a child. (34 C.F.R. § 300.304(C)(1)-(7).)

20. Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student’s primary language or other mode of communication unless

this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56320, subd. (a).)

21. An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

22. Once a student has been referred for a reassessment, a determination of eligibility and an IEP team meeting shall occur within 60 days of receiving parental consent for the assessment. (See 20 U.S.C. § 1414(a)(1)(C); Ed. Code, § 56302.1, subd. (a).)

23. Poway's June 4, 2018 psychoeducational assessment report, and the IEP team meeting when the report was reviewed, were timely and appropriate. Mother requested Poway assess Student for special education services and Poway responded by providing Parents with two assessment plans, one on April 16, 2018, and a second on April 19, 2018. The assessment plans met all legal requirements. Poway timely conducted and presented its psychoeducational assessment findings and recommendations to the IEP team within 60 days of receiving parental consent to assess.

24. Furthermore, the June 4, 2018 psychoeducational assessment was performed by qualified assessors. Ms. Moore and Mr. Garhartt possessed the necessary training, education, and experience, to competently administer, score, and interpret the assessments. Poway established that the all the instruments are validated, properly normed, and not racially, culturally, or sexually biased. Ms. Moore and Mr. Garhartt used the assessment instruments for the purposes they were designed for and administered the tests in accordance with the instructions provided by the producers of the tests, and their results were accurate. No single assessment tool or procedure was the sole criterion for any decision or recommendation. Ms. Moore prepared a report summarizing the findings and offered recommendations which was shared with Parents and the IEP team. Accordingly, Poway met its burden of proving by a preponderance of

the evidence that the June 4, 2018 psychoeducational assessment was appropriate.

ORDER

Poway's June 4, 2018 psychoeducational assessment was legally compliant and therefore, Poway is not required to fund independent educational evaluations related to that assessment.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party had prevailed on each issue heard and decided. Here, Poway was the prevailing party on the issue 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: January 31, 2019

_____/s/_____

ROMMEL P. CRUZ

Administrative Law Judge

Office of Administrative Hearings