

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. 2018100019

DECISION

Capistrano Unified School District filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings on September 28, 2018. On October 11, 2018, OAH granted the parties' joint request for a continuance. The prehearing conference was held on November 26, 2018, with only District in attendance. OAH made four attempts to contact Parent for the PHC. Parent had not reported any inability to attend the telephonic PHC at the scheduled time, and, after OAH was unable to reach Parent despite multiple attempts, the PHC was held. Parent received a copy of the Order Following Prehearing Conference and did not subsequently request to be heard on any PHC issues.

Administrative Law Judge Chris Butchko heard this matter in San Juan Capistrano, California, on December 4, 2018.

Danielle Gigli and Justin Shinnfield, Attorneys at Law, represented Capistrano. Sara Cassidy, Special Education Legal Specialist, attended the hearing on behalf of Capistrano.

No appearances were made on behalf of Student at hearing. The start of hearing was delayed to allow additional time for Parent to appear. After a delay and three

unsuccessful attempts to contact Parent by telephone,<sup>1</sup> the hearing was commenced and completed on the same day.

At the request of Capistrano, OAH continued the matter for preparation of closing briefing. On December 21, 2018, after receipt of Capistrano's closing brief, the record closed, and the matter submitted for decision. Parent did not submit a closing brief.

## ISSUE<sup>2</sup>

Did Capistrano appropriately assess Student in its October 4, 2017 multidisciplinary assessment report, such that Student is not entitled to independent psychoeducational, academic, speech and language, and occupational therapy evaluations at public expense?

## SUMMARY OF DECISION

Capistrano met its burden of proof by showing its assessments were

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<sup>1</sup> Parent emailed counsel for Capistrano prior to the start of the hearing and the email entered into evidence. Parent wrote he would not attend the hearing because of the death of a family member in Zimbabwe. He stated he would not be in a position to make a reasonable defense to Capistrano's case, and therefore not attend the hearing. He did not request additional time to prepare for hearing or withdraw his request for independent educational evaluations. Parent did not contact OAH, answer when called by the ALJ on the record, or respond to the message left by the ALJ.

<sup>2</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

administered by trained and knowledgeable persons, using a variety of appropriate, technically sound, valid, and reliable instruments, tools, and strategies, and met all legal requirements. Accordingly, Student is not entitled to independent evaluations at public expense.

## FACTUAL FINDINGS

### JURISDICTION AND BACKGROUND

1. Student is a 12-year-old male of African-American heritage who at all relevant times resided with Parent within Capistrano's boundaries. At the age of three, while residing in Texas, Student exhibited cognitive delay and speech and language impairment and was given preschool special education support and services. Student was noted to display characteristics associated with autism.

2. Student's eligibility for special education services was confirmed at a triennial evaluation conducted by Capistrano in 2011. Assessments conducted at that time affirmed Student's cognitive delay, speech difficulties, and autistic characteristics. Parents reported less severe indicators of autistic characteristics than did school personnel.

3. Reassessment for the 2014 triennial IEP team meeting again reported poor academic skills, low language expression and comprehension abilities, and very poor motor and processing skills. Student displayed social and behavioral deficits, and Parents and school staff both reported behaviors that were very likely indicators of an autism spectrum disability. Parents did not agree with Capistrano's opinion that Student's primary eligibility for special education services should be intellectual disability, so Student's disability was reported as autism.

## ASSESSMENT PLAN

4. Student was attending middle school within Capistrano in the 2017-2018 school year and due for his triennial IEP team meeting. Capistrano generated an assessment plan, to which Parent consented on September 4, 2017. Student would be evaluated in the areas of intellectual development, academic achievement, speech and language, sensory processing, motor skill development, social and emotional functioning, adaptive behavior, and health.

## CAPISTRANO'S PSYCHOEDUCATIONAL AND ACADEMIC ASSESSMENTS

5. Student's intellectual development, adaptive behavior, social and emotional functioning, adaptive behavior, and academic achievement were assessed by Jocelyn Sukraw. Ms. Sukraw is credentialed as a school psychologist, having received her pupil personnel services credential in 2011. She received a bachelor of science degree in child and adolescent development from California State University at Fullerton and a master of arts degree in educational psychology from Chapman University.

6. Ms. Sukraw has worked as a school psychologist for Capistrano for approximately seven years. She conducted approximately 85 to 95 assessments of students each year she worked for Capistrano. She had extensive experience administering the main tests comprising her assessment, which were the Naglieri Nonverbal Ability Test, Second Edition; the Southern California Ordinal Scales of Development; the Beery-Buktenica Developmental Test of Visual Motor Integration; Beery VMI Developmental Test of Visual Perception; and the Beery VMI Developmental Test of Motor Coordination. Because Student has African-American heritage, Ms. Sukraw was prohibited from administering an intelligent quotient test to him.<sup>3</sup>

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<sup>3</sup> *Larry P. v. Riles* (9th Cir. 1984, as amended en banc 1986) 793 F.2d 969.

7. Ms. Sukraw was trained and experienced in administering standardized assessment instruments. Ms. Sukraw's education, training, knowledge, and experience as a school psychologist qualified her to assess Student, including the use of informal assessment tools and the administration of standardized instruments.

8. As part of her assessment procedure, Ms. Sukraw conducted record review, interviews, and distributed ratings scales to people knowledgeable about Student. She reviewed Student's educational records, including his grade reports, attendance, and academic testing results. She observed Student on two occasions and interviewed Parent and two of Student's teachers in September 2017. During the observations, Student was well-behaved and not disruptive, but was socially isolated, had difficulty with academic work, and frequently needed assistance.

9. Ms. Sukraw administered her testing battery to Student over two days. She established a rapport with Student prior to testing. Student conversationally interacted with Ms. Sukraw and requested help from her during testing. She found him friendly and cooperative. In an informal interview conducted by Ms. Sukraw, Student was responsive, but unable to state specifics such as his favorite class, the name of his favorite video game, or his favorite activity during recess. He answered all testing items, but as the questions became harder he answered impulsively without considering the answers.

10. Ms. Sukraw chose the Naglieri Nonverbal Ability Test for Student's assessment because he had a demonstrated shortfall in his expressive and receptive language ability. The test was designed to assess a person's learning ability independent of language skills. It tested ability to recognize sequences and causal relationships and to perform visual analogies. Student tested in the extremely low range, placing in the first percentile and at an age equivalent of less than six years.

11. Ms. Sukraw administered the cognitive assessment portion of the Southern California Ordinal Scales of Development. She chose that test because Student was reported to be performing academically below his chronological age, and the test allowed multiple trials to demonstrate knowledge. That procedure ensured that the testing results did not underestimate a student's ability. The test provided functional, basal, and ceiling testing level results. Student's functional and basal levels were at the preconceptual thought level, and his ceiling level was at the intuitive thought level. His overall developmental level was significantly below age-level expectation.

12. The Beery-Buktenica Test of Visual Motor Integration was given by Ms. Sukraw to evaluate Student's ability to process visual information using visual memory and motor coordination. Student performed in the very low range.

13. Ms. Sukraw administered the Beery VMI Developmental Test of Visual Perception to test Student's visual perceptual skills independent of his motor abilities. Student's results were at the very low range. Similarly, Student was given the Beery VMI Developmental Test of Motor Coordination to evaluate his motor skills independent of his visual perception. His results were within the very low range for motor ability.

14. Ms. Sukraw provided rating scales from the Behavior Assessment System for Children, Third Edition, to two of Student's teachers and to Parents. The scales measured whether a student had been observed exhibiting behaviors or problems with adaptive abilities that indicate maladjustment.

15. Parent reported that Student had behaviors that indicated clinically significant results in atypicality, functional communication, and social skills, and in the behavior symptom and adaptive skills composites. Parent also reported at-risk results in five other rating categories. One of Student's teachers reported clinically significant scores in ten areas and four indexes, but Ms. Sukraw's report noted that those scores should be interpreted with caution because they were possibly inordinately negative.

The other teacher rated Student as at-risk in six areas and under one index score. Ms. Sukraw summarized the results as showing Student had a functional age equivalent of two to four years and a ceiling level of four to seven years.

16. Parents and the same teachers also completed the Gilliam Autism Rating Scales, Third Edition, for Ms. Sukraw. The Gilliam was designed to identify individuals who have behavioral problems that may be indicative of autism. All three assessors reported scores that indicated Student was very likely to have an autism spectrum disorder. Parent reported the highest scores, indicating the most severe behaviors.

17. Similar results were found on the Vineland Adaptive Behavior Scales, Second Edition, which were given to the same assessors. The Vineland measured overall adaptive behavior in the areas of communication, living skills, socialization, and motor skills. Here, Parents reported that Student's skills were moderately low, while his teachers both described them as low.

18. Ms. Sukraw administered to Student the most current versions of the Naglieri Nonverbal Ability Test, the Southern California Ordinal Scales of Development, the Beery-Buktenica Developmental Test of Visual Motor Integration, Beery VMI Developmental Test of Visual Perception, and the Beery VMI Developmental Test of Motor Coordination, and distributed the most current versions of the Behavior Assessment System for Children and the Gilliam Autism Rating Scales. The tests and rating scales were administered in English, Student's primary language. They were reliable and widely accepted assessment tools, and were not racially, culturally, or sexually discriminatory. They were administered and interpreted consistent with the publishers' protocols and yielded valid results.

19. Ms. Sukraw shared responsibility for Student's academic achievement assessment with Katherine Chastain, an educational specialist working for Capistrano. In 2015, Ms. Chastain received a bachelor of arts degree in art history, with a minor in

education, from the University of California, Irvine. She earned an education specialist instruction credential and a master's degree in special education, both from Loyola Marymount University. She worked for a year as a special education teacher while studying for her instruction credential, and has worked for Capistrano following receipt of her master's degree. She has done roughly 13 to 15 academic assessments of students per year for Capistrano and was trained and experienced in the use of standardized testing.

20. In addition to reviewing Student's records, Ms. Chastain administered to him the Woodcock-Johnson Test of Achievement, Fourth Edition. She was trained and had experience in administering the Woodcock-Johnson test and was qualified to assess Student. Student scored in the well below average range, with percentile rankings ranging from beneath the first percentile to the eighth percentile. His basic reading skills were an area of relative strength.

21. Ms. Chastain administered to Student the most current version of the Woodcock-Johnson Tests of Achievement. It was administered in English, Student's primary language. It was a reliable and widely accepted assessment tool, and was not racially, culturally, or sexually discriminatory. It was administered and interpreted consistent with the publisher's protocols and yielded valid results.

#### CAPISTRANO'S SPEECH AND LANGUAGE ASSESSMENT

22. Andrea Ffrench was assigned to do Student's speech and language assessment. Ms. Ffrench worked part-time at Don Juan Avila middle school in Capistrano since 2007, and began working for Capistrano in 2000. She has been a certificated and state-licensed speech-language pathologist for 21 years. She received her bachelor of science degree in speech-language pathology summa cum laude from Ithaca College and held a master of science degree in communication disorders from the University of Redlands. Ms. Ffrench's education, training, knowledge, and experience

as a speech-language pathologist qualified her to assess Student, including the use of standardized instruments, surveys, checklists, and observation.

23. As a part-time employee, Ms. Ffrench conducts approximately 25 to 30 speech and language assessments per year. She was familiar with Student prior to conducting the assessment, as she had been giving him speech therapy for approximately two weeks upon his entrance into sixth grade.

24. Ms. Ffrench assessed Student in two sessions on September 13 and 14, 2017. In her assessment, Ms. Ffrench administered the Comprehensive Assessment of Spoken Language, Second Edition, and she distributed the Pragmatics Profile from the Clinical Evaluation of Language Fundamentals, Fifth Edition, to Student's teachers and gave the Children's Communication Checklist, Second Edition, to Student's Parent.

25. Ms. Ffrench administered the Comprehensive Assessment to Student with frequent reinforcement, play breaks, and repetition, with testing given in a smaller setting. Ms. Ffrench noted these modifications to the ordinary testing protocol in her report, acknowledged that the modifications might make comparison to the normative testing population inaccurate, and supplemented her testing with additional information to buttress the assessment's validity.

26. Testing through the Comprehensive Assessment was designed to provide an in-depth evaluation of a student's oral language skills in vocabulary and word relationships, grammar, non-literal language, and social communication. Student attempted and completed all testing.

27. The test results reported that Student had global and expressive language skills significantly below the average range. Student was significantly below age-level expectancy in his understanding of vocabulary and concepts, sentence formation, grammar skills, subtext and figurative language, and the rules and expectations for social interactions.

28. Ms. Ffrench administered the most current version of the Comprehensive Assessment and in English, Student's primary language. It was a reliable and widely accepted assessment tool, and was not racially, culturally, or sexually discriminatory. It was administered and interpreted with the publisher's protocols, except for the noted modification to the administration protocols. The testing yielded valid results when viewed with caution and interpreted with correlating information.

29. The Pragmatics Profile was a tool to identify verbal and non-verbal pragmatic deficits that may negatively influence social and academic communication. Student's teachers reported on the Pragmatics Profile that he had global pragmatic deficits in conversational skills, asking for and responding to requests for information, and interpreting and employing nonverbal communication.

30. Ms. Ffrench received a completed Children's Communication Checklist from Parents.<sup>4</sup> The checklist helped assess a child's pragmatics, syntax, morphology, semantics, and speech. It was also used to identify children who may have an autism spectrum disorder. The responses from Parent were collated and scored to get percentile ranks in index areas and a general communication composite. Ms. Ffrench found that Student's composite score placed him in the below average range.

31. Student was rated by Parent as average in syntax, nonverbal communication, and interests, but as below average in context and social relations. The scales allowed the formulation of a Social Interaction Difference Index, which can show the communicative profile characteristic of an autism spectrum disorder. Ms. Ffrench

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<sup>4</sup> The IEP team meeting report of October 4, 2017, stated in its discussion of the presentation of Ms. Ffrench's report that Parents were asked to complete a Children's Communication Checklist. It is unclear why this was necessary; the assessment report stated that Student's Mother completed the checklist during the assessment period.

noted that Student did not display such a profile based upon Parent's reporting of Student's skills.

32. The Pragmatics Profile and the Children's Communication Checklist were reliable and widely accepted assessment tools, and were not racially, culturally, or sexually discriminatory. They were distributed and interpreted in accordance with the publishers' protocols and yielded valid results.

33. Ms. Ffrench also obtained a conversational sampling in a one-to-one conversation with Student as part of her assessment. She noted that he avoided eye contact, did not orient his body to her, and used terse or imprecise language. However, Student was responsive to all questions, clarified statements when prompted, and exhibited a basic level of reciprocal communication.

34. Overall, Ms. Ffrench found that Student had significant receptive and expressive language impairments consisting of deficits in semantics, syntax, morphology, and pragmatics. In her opinion, Student's linguistic competence was commensurate with his overall developmental level of cognitive and adaptive skills.

#### DISTRICT'S OCCUPATIONAL THERAPY ASSESSMENT

35. Student's need for occupational therapy services was evaluated by Lindsey Morris. Ms. Morris received a bachelor of arts degree in sociology from Loyola Marymount University and a master of arts degree in occupational therapy from the University of Southern California. She has been licensed by the state of California as an occupational therapist since 2009 and holds a national credential as well. Ms. Morris' education, training, knowledge, and experience as an occupational therapist qualified her to assess Student, including the use of standardized instruments, in-person observation, and review of work samples.

36. Ms. Morris has worked for Capistrano as an occupational therapist since 2011. Part of her work involves assessing students for occupational therapy needs, and she has done approximately 25 assessments per year. She knew Student for roughly two years prior to the assessment, as he was on her caseload for services during his last two years in elementary school.

37. Student's occupational therapy assessment occurred in September 2017. The assessment looked at Student's fine motor skills, sensory processing, and adaptive living skills. Ms. Morris employed record review, testing, work sampling, caregiver input, and observation to assess Student.

38. Ms. Morris administered one standardized assessment, the Bruinicks-Oseretsky Test of Motor Proficiency, Second Edition. She modified the administration by repeating directions to Student, which was allowed by standardized procedures. She noted the modification in her report and validated her results by consideration of other assessment tools and results.

39. The Bruinicks-Oseretsky tests fine motor precision, fine motor integration, and manual dexterity. The test calls for fine drawing or cutting, replication of line drawings, and accurate and speedy completion of tasks with small objects. Student's fine motor skills were well below average and his manual dexterity was below average. In addition, Ms. Morris tested Student's graphomotor skill by having him write the alphabet, copy from near-point and far-point, write dictation, and compose a sentence. Student's graphomotor skills were significantly better, although he was at times illegible in his handwriting and some of his letters floated off the base line.

40. Parents did not return the occupational therapy input form provided to them, but Ms. Morris used the health and development questionnaire Parents submitted to Ms. Sukraw to supplement her prior conversations with Parents to understand their perception of Student's occupational therapy needs. Parents reported Student had

difficulty following complex directions, tended to get frustrated, and had difficulty working independently.

41. Student's teachers reported to Ms. Morris that he needed reminders and help, but followed classroom routine and worked hard. They did not report that he disrupted class, was unable to navigate in the classroom or school grounds, or exhibited repeated behaviors. They reported that his academic skills were at a second-grade level and that he struggled to keep up. Both teachers felt Student needed to become better at advocating for himself and seeking help.

42. Ms. Morris observed Student in his math and science classes. Student had difficulty organizing himself and following the teachers' instructions. He needed help finding a pencil, putting away his items, and finding his worksheet. Student talked to himself in class and commented aloud when he got the correct answers on a computer-administered math quiz.

43. Student socialized, received and processed information visually, and coped easily with being touched and touching items. Student did sometimes speak loudly, talk to himself, and engage in echolalia. His balance and body awareness were unexceptional, although he sometimes rocked when sitting.

44. Ms. Morris concluded that Student had substantial difficulties with fine motor activities and some difficulty with manual dexterity. She did not find he had any sensory processing differences that impacted his ability to participate in the school day.

#### REVIEW OF THE MULTIDISCIPLINARY ASSESSMENT REPORT

45. The IEP team met to discuss the assessment results on October 4, 2017. Parents and all required Capistrano IEP team members attended. Parents were provided with a copy of the multidisciplinary assessment report by the assessment team prior to the meeting. All contributors to the report presented their findings and discussed

Student's needs with the team. The IEP team found Student eligible for special education services as a student with an intellectual disability and autism. Parents preferred Student be qualified only as a student with autism, while Capistrano members of the IEP team felt intellectual disability should at least be included as a secondary eligibility category.

#### REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

46. On August 30, 2017, Student's Parents sent a letter to Capistrano requesting a number of independent educational evaluations: psychological (cognitive, behavioral, attentional), neuropsychological, functional behavior, educational (for reading, writing, math), speech and language, social skills, and occupational therapy.

47. Capistrano responded by letters dated September 6, 2018, and September 18, 2018. The later letter reported that Parents' request had been clarified by discussions between the parties to consist of a request for independent assessments in psychoeducational functioning, speech and language, and occupational therapy. Capistrano denied the requests in the letter, and filed this action on September 28, 2018, to defend its assessments.

#### LEGAL CONCLUSIONS

##### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>5</sup>

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

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<sup>5</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)<sup>6</sup> 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 employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In 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.*

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<sup>6</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

*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 had 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 were applied to define the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (Id. at p. 951, fn. 10.)

5. The Supreme Court’s recent decision in *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. \_\_\_, 137 S.Ct. 988 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. The Ninth Circuit further refined the standard in *M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir 2017) 852 F.3d 840, stating that that an IEP should be reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can

make progress, taking into account the progress of non-disabled peers and the child's potential.

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).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (j).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 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].) In this matter, District had the burden of proof on the issue presented.

#### ISSUE 1: CAPISTRANO'S MULTIDISCIPLINARY EVALUATION

7. District contends that its assessments were lawfully and properly administered by qualified assessors. For these reasons, District asserts it is not obligated to fund independent psychoeducational, speech and language, and occupational therapy evaluations for Student.

#### 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 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).)

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

10. Based upon the foregoing authority, Capistrano timely filed a request for due process hearing to show that its assessments were appropriate. Parents sent a letter to Capistrano on August 30, 2017, requesting independent psychoeducational and academic evaluations. On September 28, 2018, Capistrano responded to this request by filing the complaint for this matter. Capistrano’s filing to defend its assessments within 28 days of Student’s request for independent educational evaluations does not constitute unnecessary delay.

#### Requirement For Assessments

11. 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.)<sup>7</sup> 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).)

12. 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) & (c).)

13. 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).) Under federal law, an assessment tool must “provide relevant information that directly assists persons in determining the educational needs of the child.” (34 C.F.R. § 300.304(c)(7).) 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).)

14. Assessments must be conducted by individuals who are both

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<sup>7</sup> An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

“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).)

15. 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).)

16. 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).)

17. Parents consented to and signed the assessment plan. Although Capistrano has the burden of proof as to all elements of its case, Parents declined to appear at hearing and contest Capistrano’s proof.

18. Capistrano’s multidisciplinary assessment was appropriate. Responding to Parents’ request for assessment, Capistrano cooperated with Parents, prepared an agreed-upon assessment plan, and conducted a comprehensive and thorough assessment that assessed Student in all areas related to his suspected disability. The assessment was performed by licensed and credentialed specialists. As to all the assessment instruments used in the psychoeducational assessment, Capistrano established that the test instruments were validated, properly normed, and not racially, culturally, or sexually biased. The assessors used the instruments for the purposes for which they were designed, they were qualified to administer the assessment tools, they properly did so, and their results were accurate. No single assessment tool or procedure

was the sole criterion for any decision or recommendation. Ms. Sukraw, Ms. Chastain, Ms. Ffrench, and Ms. Morris jointly prepared a report summarizing their findings and making recommendations, which was shared with Parents and the IEP team and discussed at the IEP team meeting. Accordingly, Capistrano's multidisciplinary assessment was appropriate.

## ORDER

Capistrano's October 4, 2017, multidisciplinary psychoeducational, academic, speech and language, and occupational therapy assessment was appropriate and Student is therefore not entitled to independent educational evaluations in those areas at public expense.

## PREVAILING PARTY

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

DATE: January 17, 2019

*/s/* \_\_\_\_\_

CHRIS BUTCHKO

Administrative Law Judge

Office of Administrative Hearings