

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021010166

ROUND VALLEY UNIFIED SCHOOL DISTRICT,

v.

STUDENT.

DECISION

April 15, 2021

On January 7, 2021, Round Valley Unified School District, filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing, naming Student. On February 2, 2021, originally scheduled as the first day of hearing, Parent stated that he did not have notice of the hearing. OAH vacated the hearing dates and re-set the timelines effective February 2, 2021.

Administrative Law Judge, Deborah Myers-Cregar, heard this matter by videoconference on March 2 and 3, 2021.

Damara Moore, Attorney at Law, represented Round Valley. Ryan Weidaw attended all hearing days on Round Valley's behalf. Parents received proper notice of the hearing but did not answer the videoconference calls and did not participate in the hearing.

OAH continued the matter at Round Valley's request to April 1, 2021, for written closing briefs that Round Valley timely filed. OAH notified Parents of their right to submit a closing brief, which they did not. The record was closed, and the matter was submitted on April 1, 2021.

ISSUES

1. May Round Valley Unified School District assess Student without parental consent, in accordance with the February 5, 2020 assessment plan, in the areas of academic achievement, intellectual development, health, speech and language, motor development, social emotional development, and adaptive behavior?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulations are to the 2006 version. The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- 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

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Round Valley filed the request for due process hearing, so it has the burden of proof.

The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 12 years old at the time of hearing. Student resided within Round Valley's geographic boundaries at all relevant times. Student lived with both Parents.

Student was eligible for special education based upon autism and a speech and language disorder. He also demonstrated an intellectual disability with significant global delays and had a severe disorder in receptive and expressive communication skills. Student stopped talking at age two and a half after a significant trauma to his

mouth and teeth. Student had emerging verbal skills, spoke one and two word phrases, required prompting to speak, and had very limited skills using a picture exchange communication system. He had sensory-seeking behavior and did not like to wear shoes. He did not use plates, cups, utensils, or napkins. Student required assistance with toileting and needed maximum support throughout his school day. He was placed in special education his entire school day, until he stopped attending school by August 2018 and Parents kept him home.

On February 5, 2020, Round Valley offered Parents a triennial assessment plan to prepare for Student's triennial individualized educational program team meeting due in May 2020. An individualized education program is called an IEP. The triennial assessment plan included the areas of academic achievement, intellectual development, health, speech and language, motor development, social emotional development, and adaptive behavior. On February 7, 2020, Parent signed the certified receipt for the February 5, 2020 triennial assessment plan. Parents did not sign and return consent to the triennial assessments. On March 4, and 13, 2020, Emergency COVID-19 Executive Orders for lock-down and county health department orders closed school campuses.

ISSUE: MAY ROUND VALLEY UNIFIED SCHOOL DISTRICT ASSESS STUDENT WITHOUT PARENTAL CONSENT, IN ACCORDANCE WITH THE FEBRUARY 5, 2020 ASSESSMENT PLAN, IN THE AREAS OF ACADEMIC ACHIEVEMENT, INTELLECTUAL DEVELOPMENT, HEALTH, SPEECH AND LANGUAGE, MOTOR DEVELOPMENT, SOCIAL EMOTIONAL DEVELOPMENT, AND ADAPTIVE BEHAVIOR?

Round Valley seeks authorization to assess Student pursuant to the February 5, 2020 triennial assessment plan, without parental consent. Round Valley asserts it provided Parents with a triennial assessment plan on February 5, 2020, and Parents did not consent. Round Valley explained current COVID-19 restrictions allow in-person assessments. Round Valley asserts all criteria for overriding the lack of parental consent have been fulfilled. Round Valley claims that it needs to conduct a triennial assessment of Student to have sufficient information to develop an appropriate special education program with the IEP team.

Additionally, Round Valley seeks an Order declaring that if Parents do not timely present Student for an assessment, then Round Valley shall not be obligated to provide any special education and related services to Student, or to confer Student with the rights of a special education student, until Parents comply with the Order authorizing Round Valley to reassess Student.

Parents did not appear, did not present a defense, and did not file written closing argument.

A free appropriate public education, called a FAPE, means special education and related services that are available to an eligible child that meets state educational

standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd.(a) and 56363 subd.(a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].

A school district must conduct a reassessment at least once every three years, unless the parent and the agency agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) The district must also conduct a reassessment if it determines that the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1),(2).)

Assessment of a student requires parental consent. To obtain parental consent, school districts must follow procedural safeguards. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must provide proper notice to the parents. (20 U.S.C. § 1415(b)(3), 34 C.F.R. § 300.304(a).

School districts must give notice of the proposed assessment plan and a copy of the parents' procedural safeguards, a copy of parental procedural rights under the IDEA

and related state laws. (20 U.S.C. § 1415(c),(d), Ed. Code, § 56321, subd. (a).) They must explain the evaluation procedures and the areas of proposed reassessment. (20 U.S.C. § 1415(c), 20 U.S.C. § 1414(b)(1).)

The assessment plan must be in language easily understood by the public and in the native language of the parent; explain the types of assessments to be conducted; and state that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); 20 U.S.C. § 1415(b)(3)&(4); see also 34 C.F.R. § 300.9(a).) The district must give the parent at least 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

If parents do not consent to a reassessment plan, the district may request judicial override by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).) Without an order after a due process hearing, reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).)

A school district must establish it made reasonable efforts to obtain consent by keeping a record of its attempts to obtain consent, such as detailed records of telephone calls made or attempted, and the results of those calls; copies of correspondence sent to parents and any response from them, and detailed records of visits made to the parents' home or work, and the results of those visits. (34 C.F.R. §§ 300.300(d); 300.322 (d).)

STUDENT'S MAY 25, 2017 TRIENNIAL ASSESSMENTS AND IEP RENEWED HIS ELIGIBILITY AFTER HIS MAY 30, 2014 INITIAL ASSESSMENTS AND IEP

Student was initially found eligible for special education and related services on May 30, 2014. Student's most recent comprehensive triennial assessments were conducted for his May 25, 2017 IEP team meeting. The May 2017 triennial assessments included Student's academic achievement, health, intellectual development, language and speech communication, motor development, social emotional development, and adaptive behavior.

At the May 25, 2017 triennial IEP team meeting, the IEP team discussed Student's continued eligibility for special education and related services. Student continued to show symptoms of autism and speech and language impairment, both of which affected his ability to access his educational curriculum. Additionally, through alternative assessments, the psychologist opined Student's low cognition and low functional skills were in the intellectually disabled range, but formal assessments could not be administered due to Student's lack of verbal responses.

On June 1, 2017, the IEP team met again and finished reviewing Student's triennial assessments. The IEP team renewed Student's eligibility for special education and related services. Round Valley offered Student continued placement in a special day class for the entire school day. Round Valley offered Student 1,125 minutes per year of individual language and speech therapy sessions by telehealth videocalls, and 300 minutes per year of individual occupational therapy sessions by telehealth videocalls.

On June 5, 2017, Parent signed Student's May 25, 2017 triennial IEP. Parent signed the triennial IEP and consented to his continued and renewed eligibility, and the provision of special education, supports, and services, as described in the triennial IEP document.

The following school year, 2017-2018, Student attended 156 out of 179 school days. By June 2018, Student stopped attending school after his preferred educational aide applied for a different job in the district and was hired. Parents were upset with the change in Student's aide and did not send him to school for the entire 2018-2019 school year. For the 2019-2020 school year, Student attended 19 of 117 school days. Student was absent the entire 2020-2021 school year.

Round Valley has no current information about Student's present levels of performance in his areas of unique need, and whether he has developed new areas of need because he has not attended school for three years.

FEBRUARY 5, 2020 TRIENNIAL ASSESSMENT PLAN FOR STUDENTS MAY 2020 TRIENNIAL REVIEW

On February 5, 2020, Round Valley mailed Parents an assessment plan in preparation for a late May 2020 triennial IEP team meeting. The February 5, 2020 triennial assessment plan proposed to assess Student in the following areas, by the following types of professionals:

- academic achievement, explained as assessment measuring reading, spelling, arithmetic, oral and written language skills, and/or general knowledge, to be evaluated by a credentialed special education teacher;

- intellectual development, explained as measuring how well Student thought, remembered, and solved problems, to be evaluated by a school psychologist;
- health, explained as information and testing gathered to determine how Student's health affected school performance, to be evaluated by a school nurse;
- speech and language communication development, explained as measuring Student's ability to understand and use language and speak clearly and appropriately, to be evaluated by a speech and language pathologist;
- motor development, explained as measuring how well Student coordinated body movements in small and large muscle activities, and possibly measuring perceptual skills, to be evaluated by an occupational therapist;
- social/emotional, explained as identifying how Student felt about himself, got along with others, and took care of personal needs at home, school, and in the community, to be evaluated by a school psychologist; and
- adaptive behavior, explained as how Student takes care of personal needs at home, school, and in the community, to be evaluated by a school psychologist and an occupational therapist.

The assessment plan included an alternative means of assessment by observation. These are the same areas Round Valley evaluated in Student's 2017 triennial assessments. These assessments are necessary to consider Student's continued eligibility for special education and related services and provide Student with a FAPE.

Round Valley established that it provided Parents with proper notice requesting consent to the February 5, 2020 triennial assessment plan and provided proper notice of their procedural rights and safeguards. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3),(c)(1); 34 C.F.R. § 300.304(a); Ed. Code, §§ 56321, subd. (a).) As required, Round Valley's notice to

Parents consisted of the proposed assessment plan, and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).)

Round Valley also established that it made reasonable efforts to obtain parental consent. On February 5, 2020, Round Valley sent, by certified letter, the proposed assessment plan and notice of procedural safeguards to Parent's P.O. Box, their address of record. Parent signed the certified letter on February 7, 2020. Therefore, Parents received actual notice of Round Valley's proposed assessments and of Student's and their rights related to the assessments. Beginning March 4, and 13, 2020, Emergency COVID-19 Executive Orders N-20-20 and N-26-20, and county health department orders closed school campuses which delayed Round Valley's ability to conduct in-person assessments. When finally allowed, Round Valley made subsequent efforts to obtain parental consent before the due process hearing began on March 2, 2021. Round Valley contacted Parents through a letter attached to the due process complaint, and several text messages.

On January 7, 2021 Round Valley filed the subject due process complaint. On January 8, 2021, Round Valley's counsel used the FedEx delivery service to deliver the complaint with a cover letter to Parents' home. The cover letter offered to dismiss the case if Parents signed the assessment plan and offered to go to mediation to help settle the matter. The letter explained that if Parents signed the assessment plan, there was no need to go forward with the case. FedEx did not obtain a signature but confirmed it delivered the package. Parents did not respond to the due process complaint.

On January 12, 2021, Round Valley's Special Education Director Ryan Weidaw sent text messages to Parent's cell phone requesting consent to assess Student. Weidaw wrote the school missed working with Student and would like to work together

to resolve the case by consenting to the reassessments. Parent did not respond until Weidaw sent him another text several weeks later.

Parent also received notice of Round Valley's request to assess on the record. On February 2, 2021, the original first day of hearing, the Administrative Law Judge called Parents on their cell phones to join the videoconference hearing, with Round Valley's attorney and Special Education Director Weidaw present. The Administrative Law Judge asked Parent to join the hearing and explained Round Valley wanted OAH's authorization to assess Student because Parents had not consented yet. Parent insisted they did not know anything about the hearing, and he was not willing to participate. Parent stated he and his wife only receive mail at a P.O. Box, as the U. S. Postal Service does not deliver to their home. Parent asked the Administrative Law Judge to call the other Parent instead, because only she dealt with the school issues. Parent represented that his wife was immediately available. The Administrative Law Judge called the other Parent within minutes. However, the other Parent did not answer despite repeated attempts.

On February 3, 2021, Weidaw sent a second text message to Parent, explaining the February 2, 2021 hearing was continued so Parents could participate. Weidaw offered to wait one more day before serving the complaint to Parents' P.O. Box, and offered the option of signing the assessment plan to move forward to work collaboratively on an agreed upon IEP. Weidaw asked Parent to respond by the following day, as they needed to serve him. This time, Parent responded that he was not the one to talk to as his wife dealt with "school stuff." Weidaw explained he wanted to provide Student with an education and wanted parent collaboration. Parent replied he would let his wife know, and he wanted what was best for his child. Parents did not contact Round Valley after those text messages.

On February 4, 2021, Round Valley re-served the due process complaint to Parents' address of record.

On March 2, 2021, neither Parent answered the calls for the videoconference due process hearing.

Parent was afforded more than 15 days to review, sign, and return the assessment plan before Round Valley filed a request for a due process hearing to obtain authorization to assess Student without parental consent. Parents were afforded one year before Round Valley filed for a due process hearing to override the lack of parental consent. Round Valley established it made reasonable efforts to obtain parental consent. (34 C.F.R. §§ 300.300(d); 300.322 (d).)

Round Valley established that it properly initiated the process to conduct Student's three-year assessment, and that the reassessment was necessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd.(a)(2).) Round Valley mailed Parents the February 5, 2020 assessment plan to prepare for Student's triennial review to be held before May 25, 2020.

Round Valley established Student's February 5, 2020 triennial reassessment was necessary and appropriate to determine Student's continued eligibility and current education or related services needs for the triennial IEP team meeting. The areas Round Valley proposed to assess were the same areas of assessment Round Valley conducted in 2017 for Student's triennial review and were appropriate and necessary to provide Round Valley with updated information about Student to help it develop and offer an appropriate educational program.

Round Valley established Student's educational and related services needs warranted a reassessment. Round Valley did not know what Student's present levels of performance were in any area of known or suspected disability as he had not attended school in three years. Round Valley had no alternative sources of data to use because he was not in the classroom. There were no daily or weekly classroom logs, quarterly report cards, or other information to consider as a basis for evaluating Student's continuing eligibility for special education and related services. Round Valley had no information to develop Student's goals and offer placement and services reasonably calculated to afford him educational benefit appropriate in light of the circumstances. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1),(2).)

Round Valley established it needed to reassess Student and was lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).) Each of the school personnel described in the February 5, 2020 triennial assessment plan were qualified to conduct the proposed assessments. (Cal. Code Regs., tit. 5, § 3001.) The school psychologist, speech-language pathologist, occupational therapist, and Student's former special education teacher each persuasively explained their credentials and experience which qualified them to administer the assessment tools they each intended to use. The school nurse also had the proper credentials to conduct a health assessment.

The February 5, 2020 assessment plan was in English, Parents' native language, in language easily understood by the public, explained the types of assessments to be conducted, and stated that no special education services would result from the assessment without parental consent. Parents spoke to Round Valley staff in English and spoke to the Administrative Law Judge in English, were fluent, and easily understandable. Parents attended and participated in Student's IEP team meetings

which were conducted in English. Parents read and signed the IEP documents and prior assessment plans in English. There was no evidence that English was not Parents' native language. (Ed. Code, § 56321, subd. (b)(1)-(4); 20 U.S.C. § 1415(b)(3)&(4); see also 34 C.F.R. § 300.9(a).)

All criteria have been satisfied for Round Valley to be authorized to conduct assessments pursuant to the February 5, 2020 triennial assessment plan, without Parents' consent.

ROUND VALLEY'S REQUEST TO BE RELIEVED OF LIABILITY FOR FAILING TO ASSESS STUDENT IF PARENTS DO NOT MAKE STUDENT AVAILABLE FOR REEVALUATION

Round Valley seeks an Order that if it prevails and Parents do not cooperate with the Order allowing them to assess Student, that it be relieved of liability for failing to assess Student and the consequences of its inability to assess.

Round Valley requests an Order that if Parents do not present Student for an assessment, or do not timely complete and return requested documents, then Round Valley would not be obligated to provide Student with any special education and related services, or confer Student with the rights of a special education student, until Parents comply with the Order to reassess.

Round Valley cites the Decision and Order in *Trivium Charter School v. Student* (2020) OAH Case No. 2020010158, and *Elk Grove Unified School District v. Student* (2016) OAH Case No. 2016020899, which contained an Order that if Parents did not cooperate with the assessments, then the school district would not be required to

provide special education and related services to the student until the parents complied. Round Valley requests the same or similar Order. Round Valley did not propose a timeline for Parents' cooperation. However, OAH Decisions and Orders are not precedential and binding on other Administrative Law Judges. (Cal. Code Regs., tit. 5, § 3085.) Each student has unique needs, and each case must be analyzed under the IDEA and corresponding Education Code sections and regulations.

Round Valley argues case law supports its request for relief from liability and cites *Gregory K. v. Longview School Dist.* (9th Cir.1987) 811 F.2d 1307, 1315, (*Gregory K.*), *Johnson v. Duneland School Corp.* (7th Cir. 1996) 92 F.3d 554, 558, (*Johnson*), *Dubois v. Connecticut State Bd. of Educ.* (2d Cir.1984) 727 F.2d 44, 48, (*Dubois*), *Andress v. Cleveland Independent School Dist.* (5th Cir.1995) 64 F.3d 176, (*Andress*), *Patricia P. v. Board of Educ. of Oak Park and River Forest High School. Dist. No. 200* (7th Cir. 2000) 203 F.3d 462, 468, (*Patricia P.*) and *Dubois v. Connecticut State Board. of Educ.* (2d Cir. 1984) 727 F.2d 44, 48, (*Dubois*).

It is well settled that parents who want their children to receive special education services must allow reassessment by the school district, with assessors of its choice. (*Johnson, supra*, 92 F.3d at p. 558) ("If a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation."); *Dubois, supra*, 727 F.2d at p. 48 (2d Cir.1984) ("[T]he school system may insist on evaluation by qualified professionals who are satisfactory to the school officials."); *Patricia P., supra*, 203 F.3d at p. 468, (Parents who do not cooperate and allow the school a reasonable opportunity to evaluate their disabled child forfeit their claim for reimbursement for a unilateral private placement.)

However, these cases do not involve triennial assessments and the resulting loss of eligibility when parents refuse to consent to the assessments before the three-year deadline expires, which is central to Student's case.

Gregory K., supra, and *Andress, supra*, addressed the mandatory triennial assessments and the importance of parental consent allowing their child to be tested. Both cases were filed by the parents alleging the districts denied them a FAPE. *Gregory K.* ruled the parents' refusal was a complete defense to their FAPE denial claims, and they were not entitled to reimbursement. *Andress* held the parents' refusal to allow timely district triennial reassessments resulted in their child's eligibility expiring and invalidating their FAPE denial claim and reversing their reimbursement award.

In *Gregory K., supra*, the school district appealed a decision that it denied student a FAPE by asserting as a defense that the parents did not allow their child to be reassessed. The Ninth Circuit addressed the school district's request to compel testing of the student for a mandatory triennial reassessment. "If the parents want [the student] to receive special education under the Act, they are obliged to permit such testing." *Supra* at p. 1315. *Gregory K.* denied the parents request for reimbursement for private tutoring. The *Gregory K.* court did not directly address the effect of the parents' refusal to allow reassessments on his continued eligibility.

Andress, supra, went further than *Gregory K., supra*, and addressed how a parent's refusal to allow timely triennial reassessments impacted their disabled child's eligibility and claim. In *Andress*, the school district appealed an order requiring it to pay for the student's private school, when the parents refused to consent to the triennial assessments. The Fifth Circuit addressed the mandatory nature of the triennial reassessment.

In *Andress, supra*, the parents did not consent to the school district's triennial reevaluation of their child to establish his continued eligibility. Instead, they hired their own evaluators. The court ruled that the parents' refusal to allow the school district to reevaluate student using their own staff, beyond the triennial review deadline, resulted in the expiration of that student's eligibility for special education. (*Andress, supra*, 64 F.3d at 179.) Like in *Andress*, Parents did not consent to Student's triennial evaluation. Like in *Andress*, Round Valley did not have authority to proceed with the assessments it was legally required to conduct before May 25, 2020.

A student whose parent does not consent to a comprehensive reevaluation at least once every three years loses eligibility for special education and related services upon expiration of the last triennial evaluation. (*Andress, Id.* at p. 179.) ["A handicapped student must be reevaluated every three years to determine his continuing eligibility for special education under IDEA. A parent who desires for her child to receive special education must allow the school district to reevaluate the child using its own personnel; there is no exception to this rule. [The student]'s parents refused to allow the school district to reevaluate him. Therefore, [the student] was not eligible for special education after March 1988, when his reevaluation was due."].)

Andress establishes that a triennial assessment must be conducted every three years unless the parents and the school district agree not to reassess the student. A school district is entitled to conduct its own assessments using its own qualified staff. If the parents fail to consent, even if the parents do not formally withdraw their child from special education, then the student's eligibility may expire unless or until the parents consent to assessments.

In this case, Parents failed to consent to Round Valley's February 5, 2020 triennial assessment plan and failed to sign authorizations for exchange of information provided with the assessment plans. Round Valley did not have authority to proceed with assessments it was legally required to conduct before May 25, 2020 for the triennial IEP team meeting.

Round Valley seeks an advisory opinion determining how special education law should be applied in a hypothetical situation. Round Valley anticipates Parents may not comply with an OAH Order allowing them to assess Student, based upon their history of removing Student from school for three years, and not responding to the February 5, 2020 triennial assessment plan or requests to discuss returning Student to school.

This case is different from *Gregory* and *Andress* because in those cases, the parents filed complaints alleging the school districts denied student a FAPE. Here, Student has not alleged a denial of FAPE. *Gregory* and *Andress* ruled that the parents' refusal to consent to district triennial assessments acted as a complete defense to the parents' claim that the district's denied the students a FAPE. Those factors are not present in this case and are not controlling as Student has not presented any claims requiring a complete defense. Further, in those cases, the school districts established their complete defense at the administrative hearing as to the parents' refusal to make their child available to be assessed, which has not yet happened in this case.

Student's eligibility was not raised in this complaint. It is premature to rule on the availability of any potential affirmative defense to any potential claim Student might file. It is also premature to anticipate the outcome of any action filed by Round Valley

to exit Student from special education, based on Parent's refusal to cooperate in signing the February 5, 2020 assessment plan as part of this Order. District's request is denied.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Issue 1: Round Valley may assess Student without parental consent, in accordance with the February 5, 2020 assessment plan, in the areas of academic achievement, intellectual development, health, speech and language, motor development, social emotional development, and adaptive behavior. Round Valley prevailed on Issue 1.

ORDER

1. Round Valley may assess Student without parental consent.
2. Round Valley shall notify Parents, within 20 business days of the date of this decision, of the days, times, and places Parents are to present Student for assessment, and Parents shall reasonably cooperate in presenting Student for assessment on those days and times, and in those places.
3. Parents shall timely complete and return any documents reasonably requested by Round Valley as a part of the assessment process.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

DEBORAH MYERS-CREGAR

Administrative Law Judge

Office of Administrative Hearings