

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022010227

CABRILLO POINT ACADEMY,

v.

PARENTS ON BEHALF OF STUDENT.

DECISION

June 7, 2022

On January 10, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Cabrillo Point Academy, referred to as Cabrillo Point, naming Student as respondent. On January 19, 2022, OAH granted the parties' joint request to continue this matter.

Administrative Law Judge Jennifer Kelly heard this matter by videoconference in California on April 19, 20, and 21, 2022. Attorney Courtney Brady represented Cabrillo Point. Cabrillo Point's Director of Special Education, Pamela Gandara, attended the

hearing each day on Cabrillo Point's behalf. Father and Mother attended the hearing each day on Student's behalf. They were self-represented. Student did not attend the hearing.

At the parties' request, OAH continued this matter to May 16, 2022 for written closing briefs. The parties timely filed closing briefs, the record was closed, and the matter was submitted on May 16, 2022.

ISSUE

Was Cabrillo Point Academy's August 2021 psychoeducation assessment appropriate such that it is not required to fund an independent education evaluation at public expense?

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 et seq. (2006) [All references herein to the Code of Federal Regulations are to the 2006 version unless otherwise indicated.]; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) 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, referred to as FAPE, 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 FAPE to the child. (20 U.S.C. § 1415(b)(6) and (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).) In this case, Cabrillo Point filed the due process complaint and had 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).)

At the time of the hearing, Student was 16 years old and in 10th grade. Student was enrolled in Cabrillo Point, a charter school which offered a home-based program. Student had not previously been assessed or found eligible for special education.

LEGAL FRAMEWORK

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 individualized education program, referred to as 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 which are 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].)

ISSUE: DID CABRILLO POINT ACADEMY PROVIDE AN APPROPRIATE PSYCHOEDUCATION ASSESSMENT SUCH THAT IT IS NOT REQUIRED TO FUND AN INDEPENDENT EDUCATION EVALUATION?

Cabrillo Point contends its August 30, 2021 psychoeducation assessment was administered by qualified assessors and met all statutory requirements. For that reason, Cabrillo Point asserts it is not obligated to fund an independent psychoeducational assessment for Student.

Parents contend Cabrillo Point's psychoeducational assessment was not appropriate because Cabrillo Point failed to: hold the initial IEP team meeting within 60 days of Parents' consent to the assessment plan; observe Student in an in-person classroom environment as opposed to via videoconference; use qualified providers to perform assessments of suspected auditory processing and visual processing deficits; and have a teacher complete the Behavior Assessment of Children ratings scale.

STUDENT'S RECENT EDUCATIONAL HISTORY

Student was home schooled through Cabrillo Point since seventh grade. At Cabrillo Point, parents acted as their child's learning coach and were responsible for overseeing the day to day instruction of their child. Parents also had discretion to select their child's curriculum. For children such as Student, who were in a general education program, a Cabrillo Point credentialed general education teacher regularly consulted with parents and students about curriculum, attendance, and progress. The general education teacher was referred to as a home study teacher and provided parents course outlines, reviewed course expectations, completed assignments and assessments, and assigned grades in collaboration with parents. The home study teacher met with the parents and student approximately every 20 days to monitor progress.

Student was in a general education setting throughout her education and was extremely conscientious and hard-working. No teacher expressed concerns about Student's academic abilities or work during her enrollment at Cabrillo Point. Student's home study teacher described Student as exemplary and praised her ability to explain newly gained knowledge, use problem solving strategies to complete assignments, and grasp new ideas readily. Student's teacher considered Student to have strong reading, vocabulary, and comprehension skills. Student earned straight A's for the entirety of her seventh, eighth, and ninth grade years. She took courses at or above grade level. Student engaged in a variety of extracurricular activities, including swimming, sailing, running club, scouts, and surf club.

Parents did not express concerns about Student's academic abilities, behavior, or social skills before the events leading up to this due process complaint. Neither Parents, Student, or any teacher ever suggested Student needed specialized academic instruction or any special education related services.

Mother expressed a variety of concerns at hearing about Student's health, social skills, emotional well-being, and visual and auditory processing abilities. Mother believed although Student was doing well academically, Student was under immense pressure and demonstrated performance anxiety before and during tests and presentations. Mother was concerned about Student's anxiety and processing abilities impacting her future academic progress, particularly her ability to be successful on college entrance examinations.

CABRILLO POINT'S COMPLIANCE WITH PROCEDURAL REQUIREMENTS AND TIMELINES

Cabrillo Point is a public charter school. Cabrillo Point acted as its own lead educational agency responsible for ensuring that students with disabilities attending Cabrillo Point received a FAPE as required by the IDEA and California law. (Ed. Code, § 47646, subd. (a).)

A child with a disability is defined by statute to mean a child who has been evaluated and identified with one or more of a number of specific disability classifications, and "by reason thereof" needs to be provided with special education and related services. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a).) A student qualifies as an individual with exceptional needs and is therefore eligible for special education and related services if an IEP team determines that the results of a legally compliant

assessment demonstrate the child has a disability, and the degree of the child's impairment requires special education and related services that cannot be provided with modification of the regular school program. (Ed. Code §§ 56026, 56320; Cal. Code Regs., tit. 5, § 3030, subd. (a).)

A school district must assess the child in all areas of suspected disability before making a determination of whether a child qualifies for special education services. (20 U.S.C. § 1414 (b)(3)(B); 34 C.F.R. § 300.301(a); Ed. Code, § 56320, subd. (f).) The school district must follow statutory guidelines that dictate both the content of the assessments and the qualifications of the assessors. The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The two terms have the same meaning and are used interchangeably in this Decision. (34 C.F.R. § 300.300; Ed. Code, § 56302.5.)

An assessment may not be done without parental consent. To obtain parental consent for an assessment, the school district must provide proper notice to the student and their parent within 15 days of an assessment being requested by parents. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and in the native language of the parent, explain the types of assessments to be conducted and notify parents no IEP will result from the assessment without the consent of the parents. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subd. (b)(1)-(4).)

Parents requested Cabrillo Point assess Student for special education eligibility during the 2020-2021 school year by email correspondence dated May 3, 2021. Parents expressed concerns about, among other things, Student's

- performance anxiety,
- difficulty budgeting her time to complete work,
- communicating with teachers and peers,
- listening with background noise,
- copying from a whiteboard, and
- completing long sentences.

Student's twin brother had been diagnosed with autism spectrum disorder, and Parents were concerned Student was exhibiting symptoms of autism.

Cabrillo Point timely provided Parents with a special education initial assessment plan on May 18, 2021, to assess Student's intellectual development, academics, health, social-emotional behavior, and adaptive behavior by a school psychologist. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) A general education teacher would assess Student's academic performance. The plan also provided for evaluation of Student's health and development by a nurse and a language and speech assessment by a speech pathologist.

On May 19, 2021, Parents requested additional assessments be added to the initial assessment plan in the areas of occupational therapy, central auditory processing by a certified audiologist, and visual processing by a licensed developmental optometrist. Cabrillo Point sent Parents a prior written notice on May 26, 2021 declining Parents' request for evaluations by an optometrist and audiologist, explaining Student would be assessed in the areas of auditory processing and visual processing by a

credentialed and qualified school psychologist as part of the psychoeducation assessment. Cabrillo Point agreed to assess Student in the area of fine and gross motor skills by an occupational therapist.

The assessors would use standardized tests, interviews, record review, observations, and alternate assessments when necessary. The plan was in Father's native language of English, described the proposed assessments, and explained the assessments would be reviewed at an IEP team meeting before a program was proposed and, with Parents' consent, implemented. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subd. (b)(1)-(4).)

Parents acknowledged receipt of their procedural rights and returned the signed consent to the assessment plan on May 26, 2021. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) Parents did not dispute the assessment plan complied with the statutory requirements. Cabrillo Point established it properly obtained consent to a legally sufficient assessment plan for Student. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3), (c)(1); Ed. Code, § 56321, subd. (a).)

The purpose of an initial comprehensive psychoeducational assessment is to determine whether a child is a child with a disability, as defined by Title 20 United States Code section 1401(3), and the educational needs of the child. (20 U.S.C. § 1414(c)(1)(B)(i).) Here, both the assessment plan and the psychoeducational assessment report confirmed the assessment's purpose was to determine if Student was a child with a disability and eligible for special education services.

The assessment must be completed, and an IEP team meeting held to discuss the results of the assessment, within 60 days of the date the school district receives the signed assessment plan. (20 U.S.C. § 1414(a)(1)(c); 34 C.F.R. § 300.301(c)(1)(i), (ii); Ed.

Code, §§ 56043, subds. (c) and (f)(1); 56321.1, subd. (a), and 56344, subd. (a).) This does not count the days between the student's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parents' written consent for the assessment, unless the parent agrees in writing to an extension. (Ed. Code, § 56043, subd. (f)(1).) Here, Parents returned the signed assessment plan on May 26, 2021. Cabrillo Point completed the psychoeducational assessment and convened the initial IEP team meeting where the assessments were presented on October 22, 2021. Student contends the meeting was untimely. This issue is addressed further below.

The IDEA and California state law require the student's educational rights holder be part of any IEP team meeting charged with developing and implementing a student's IEP. (20 U.S.C. §§ 1401(14), 1414(d)(1)(B)(i); Ed. Code, § 56342.5.) Special education law places a premium on parental participation in the IEP process, and parents must have the opportunity to participate in meeting with respect "[t]o the identification evaluation and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) Mother, Father, and all requisite members attended the October 22, 2021 IEP team meeting. The meeting was continued for further discussion to November 18, 2021.

California law requires the assessment report be provided to the parent at the IEP team meeting held to review the assessment to allow for discussion and explanation. (Ed. Code, § 56329, subd. (a)(1).) Cabrillo Point provided Parents copies of the psychoeducational assessment report the day before the October 22, 2021 IEP team meeting.

The IEP team gave Parents the opportunity to ask questions and otherwise participate in the team meeting. The assessors presented their reports to the IEP team. School psychologist Henderson presented Student's initial psychoeducational assessment. Educational Specialist Katyanne Downing reviewed her academic assessment, and the school nurse reviewed her health report. Cabrillo Point met its statutory obligation of providing Parents with the assessment report and including Parents in the IEP team meeting's review of the assessments. (Ed. Code, § 56329, subd. (a)(1).)

PARENTS' REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

Under certain conditions, a parent may request an independent assessment at public expense if the parent disagrees with an evaluation obtained by the school district. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) In response to a request to pay for an independent evaluation, a school district must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or provide the independent assessment at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (b) and (c); *Baquerizo v. Garden Grove Unified Sch. Dist.* (9th Cir. 2016) 826 F.3d 1179, 1185.) If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent still has the right to obtain an independent educational evaluation, but not at public expense. (34 C.F.R. § 300.502(b)(3); Ed. Code, § 56329, subd. (c).)

Parents did not agree with the adequacy of Cabrillo Point's psychoeducational assessment. Parents requested an independent educational evaluation in the area of psychoeducation by email correspondence to Cabrillo Point on December 6, 2021. Cabrillo Point declined to fund an independent assessment and provided prior written

notice to Parents on December 15, 2021 pursuant to title 34 Code of Federal Regulations section 300.503. Cabrillo Point informed Parents it would file a due process hearing request to defend the appropriateness of the psychoeducation assessment.

Cabrillo Point filed a due process hearing request on January 10, 2022, to defend the appropriateness of the psychoeducational assessment; approximately one month after Parents notified Cabrillo Point of their request for an independent educational evaluation. Cabrillo Point acted without unnecessary delay in responding to Parents' request for independent educational evaluation and did not unnecessarily delay in filing to defend its assessment. (Ed. Code, § 56329; *see J.P. v Ripon Unified Sch. Dist.* (E.D. Cal. April 15, 2009, No. 2:07-CV-02084-MCE-DAD) 2009 WL 1034993.)

Parents requested further independent educational evaluations in the areas of central auditory processing and visual processing on February 10, 2022. Cabrillo Point declined to fund assessments in these areas and sent Parents a second prior written notice to this effect on February 15, 2022.

PSYCHOEDUCATIONAL ASSESSMENT RESULTS

Cabrillo Point contends its psychoeducation assessment was conducted by qualified assessors who appropriately administered and interpreted a variety of valid and reliable assessment instruments. Student contends Cabrillo Point's psychoeducational assessment was not valid because Cabrillo Point did not observe Student in an in-person classroom setting, comprehensively assess Student's auditory and visual processing abilities, and failed to obtain Behavior Assessment of Children ratings scales from Student's general education teacher or her club swimming coach.

In conducting an assessment, a school district must follow statutory guidelines that determine both the content of the assessment and the qualifications of the assessors. The school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The school district must select and administer assessment materials in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent personnel must administer the assessments in accordance with any instructions provided by the producers of such assessments. (20 U.S.C. § 1414(b)(A); 34 C.F.R. § 300.304(b)(1); Ed. Code, § 56320, subd. (b)(3).)

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, must conduct assessments of students' suspected disabilities. (20 U.S.C. § 1414(b)(3)(B)(ii); Ed. Code, § 56320, subd. (g).) A psychological assessment must be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, § 56324, subd. (a).) Assessors are prohibited from relying on a single measure or assessment as the sole basis for determining whether a child is eligible for special education or the appropriate content of an eligible student's IEP. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code, § 56320, subd. (e).) The evaluation must be

sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).)

School psychologist Hether Henderson conducted the initial psychoeducational assessment of Student and wrote a written report that also included the report of the health, academic, speech and language, and occupational therapy assessments. The report noted the assessment materials and procedures used during the assessment were selected so as to not be racially, culturally, or sexually discriminatory. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The effects of environmental, cultural or economic disadvantage were considered in the selection and administration of the instruments used. The materials and procedures were administered in Student's preferred language of English and were validated for the specific purpose for which they were used. (20 U.S.C. § 1414(b)(3)(A)(i) and (iii); Ed. Code, § 56320, subds. (a) and (b).) A variety of tools and strategies, including Parents' input were used to assess Student's behavior. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) No single procedure was used as the sole criterion for determining eligibility. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code, § 56320, subd. (e).)

Henderson was a credentialed school psychologist. She held a master's degree in industrial organizational psychology and a bachelor's degree in school psychology. Henderson was employed as a school psychologist at Cabrillo Point since 2019, and previously for three other school districts. Henderson held a pupil personnel service credential in school psychology. She conducted approximately 60 cognitive, behavioral, and academic assessments yearly and over the course of her career had conducted hundreds of psychoeducational assessments. Henderson's education, credentials, and

experience qualified her to conduct Student's psychoeducational assessment, administer standardized tests, interpret the results, and prepare the report. Henderson testified at hearing. Henderson answered questions directly, without reservation, and exhibited a strong recollection of the events she testified about. Her testimony regarding the assessment and her conclusions were thoughtful and well-reasoned. Her testimony and opinions were given substantial weight.

Henderson thoroughly assessed Student in all areas identified as suspected disabilities by Parents in the initial request for evaluation and general education teacher Sunny Schweers' referral form. Henderson chose a variety of assessment tools to conduct Student's psychoeducational assessment, including

- standardized tests,
- rating scales,
- observations of Student in the virtual classroom setting and during assessments,
- interviews with Student and Mother,
- review of Student's educational records, including grades and testing scores, and
- review of a development

14(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) Henderson solicited input from Student, general education teacher Schweers, Education Specialist Katyanne Downing, and Mother. She produced a written report of her assessment, detailing the basis of her findings and her analysis of Student's suspected disabilities and areas of educational need and reviewed her report with the IEP team. (Ed. Code, § 56327, subds. (a), (b).) Cabrillo Point established it met all procedural requirements for its assessment.

REVIEW OF RECORDS, PARENT INTERVIEW, AND HEALTH HISTORY

Henderson obtained Student's background information through a health and educational records review, interviews with Student and Mother, and a parent questionnaire. Mother participated in the collection of data through the parent questionnaire, an interview, and through assessment rating scales. An August 25, 2021 health assessment reported Student passed vision and hearing screening. Mother reported a variety of health concerns about Student, including

- numerous allergies,
- a metabolic disorder,
- lead poisoning,
- attention deficit hyper-activity disorder,
- migraines,
- kidney problems,
- celiac disease,
- central auditory processing disorder and
- anxiety.

Mother expressed concern Student might have autism.

Henderson reviewed Student's school records with input from Student, Mother, and Schweers. Student reported she liked school and her favorite subject was math. She liked waking up early to participate and enjoyed using the skills she learned at school. She had friends she spoke with but did not often socialize with them. Mother described Student as being interested in school and motivated to do well. Student worked extremely hard, and often completed two years of coursework in just one year. She started college classes through dual enrollment starting at age 14. Student had

difficulties with spelling and memorizing dates. Mother was concerned Student did not have friends, lacked social skills, and preferred to spend time alone. Student was close to her autistic twin brother.

Henderson reviewed a survey prepared by general education teacher Schweers. Schweers prepared the initial intake referral survey after Parents' May 3, 2021 request Student be evaluated for special education eligibility. Schweers did not identify any concerns about Student. Schweers collected work samples for Student in each academic area for the initial evaluation.

Schweers had been Student's general education teacher for approximately three years. Schweers met with Student and Mother approximately every 20 days during the 2020-2021 school year. Schweers was familiar with Student's courses, grades, and assessment results. Schweers testified at hearing. She described Student as conscientious, well-mannered, and hard-working. Student was a straight A student. Student performed above grade level in mathematics and language arts on the Renaissance Star 360 assessments used by Cabrillo Point to measure a student's progress and standards mastery in the areas of reading and mathematics. Student turned her work in on time and did not have attendance issues. Student sometimes had difficulties communicating with Schweers during their monthly check in meetings. Schweers did not report any behavior concerns.

Henderson gathered information about Student from numerous resources that informed her ultimate conclusions. This rendered this aspect of the assessment appropriate and legally compliant.

COGNITIVE PROCESSING AND ACADEMICS

Henderson administered the Wechsler Intelligence Scale for Children, Fifth Edition, called the Wechsler, to assess Student's overall intellectual and cognitive abilities. Student's full-scale intelligence quotient or IQ score was within the well above average range when compared to her same age peers. Student's full-scale IQ was consistent with her scores on the subtests of individual cognitive abilities. Student's verbal comprehension score, which measured the ability to access and apply word knowledge fell in the high-average range. Her ability to evaluate visual details, understand visual spatial relationships and fluid reasoning fell within the high-average range. Student's working memory, which measured the ability to register, maintain and manipulate visual and auditory information, fell within the high-average range. Student's processing speed, which measured the speed and accuracy of visual identification, decision making and decision implementation, fell within the average range. Cabrillo Point established the cognitive assessment was a valid and reliable representation of Student's cognitive abilities

Henderson assessed Student's strength and weaknesses in all academic areas, which included math, reading, and writing, using valid assessment tools including record review, interviews, standardized tests, and observations. Education Specialist Katyanne Downing administered the Wechsler Individual Achievement Test, Fourth Edition, referred to as the Achievement test, to measure Student's listening, speaking, reading, writing, and mathematics skills. Downing prepared a written report documenting her findings. Henderson considered the results of the Achievement test in her psychoeducational assessment.

Downing held a bachelor's degree in child development and an education specialist credential. She had worked as an education specialist for approximately 15 years. She worked at Cabrillo Point since 2021, and previously for three other school districts. Downing was responsible for, among other things, conducting assessments to determine eligibility for special education. Downing was appropriately credentialed and qualified to conduct Student's academic assessment. Downing testified at hearing. Downing had a detailed recollection of Student during the administration of the academic assessment, including conversations she had with Student. Downing offered thoughtful and reasoned explanations for her interpretations of Student's assessment results. Downing's qualifications, experience, and straightforward testimony rendered her testimony persuasive. Her testimony was given substantial weight.

Downing's assessment materials and procedures were free of racial, cultural, and sexual bias, and administered to yield accrual information on Student's academic abilities and achievement. (20 U.S.C. § 1414(b)(2) and (3); Ed. Code, § 56320, subd. (a).) She was trained in administering, scoring, and interpreting the results of the test instrument she administered. (20 U.S.C. § 1414(b)(3)(B)(ii); Ed. Code, § 56320, subd. (g).)

Student scored in the average range in all areas except for mathematics where she scored within the very high-average range and oral language where she scored within the high-average range. Student achieved lower scores than Downing believed actually reflected her abilities in some sub-domain areas. These were tests in which Student took her time to consider the correct answers to the questions and asked clarifying questions once the timer had started, disregarding the timed nature of the tests, which resulted in lower scores in these domains. Student worked very hard on the academic assessments. Student's perfectionism led her to persevere on responding to

every question correctly on untimed and timed tests. The testing outcomes did not indicate any academic concerns. Parents did not dispute the accuracy of the academic testing, which rendered valid results.

As part of her assessment, Downing observed Student over a two hour and 45-minute period during administration of the academic assessments. Downing documented her observations. Student was calm and polite. She established a positive rapport with Downing and shared that her favorite subject in school was mathematics, and her least favorite was writing. Student was friendly and provided Downing an amusing tip on how to keep her face mask from sliding off her nose. Student was eager to work and responded to the questions at a steady pace. She advocated for herself and requested water breaks. She transitioned easily between assessments and did not demonstrate frustration as the tasks became increasingly difficult.

Henderson incorporated Student's academic assessment data into her psychoeducational report. Henderson also considered Downing's observations of Student. Cabrillo Point established its assessments of Student in the area of academics were appropriately conducted.

VISUAL PERCEPTUAL SKILLS, AUDITORY PERCEPTION/PHONOLOGICAL PROCESSING, AND ATTENTION PROCESSING

Cabrillo Point contends it thoroughly assessed Student's processing skills in the areas of visual-perceptual, auditory perception/phonological, and attention through a variety of testing instruments. Parents believed the psychoeducational evaluation did

not adequately evaluate Student's visual and auditory processing abilities and Student should have been evaluated by a developmental optometrist and audiologist, respectively. Parents disputed Henderson's qualifications to conduct auditory and visual processing assessments.

Henderson administered a variety of valid assessment tools to evaluate Student's processing skills. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) These tools assessed how well a student processes information presented visually and auditorily and attends to relevant tasks.

Visual-perceptual skills determine how a student sees and processes information in everyday activities. Henderson administered the Motor-Free Visual Perception Test, Fourth Edition to evaluate Student's visual-perceptual skills. Student's scores on this assessment fell in the average range. Student's visual-perceptual skills also were evaluated on the Wechsler. Student's ability to evaluate visual details and understand visual spatial relationships fell within the high-average range. Student's working memory index, or the ability to register, maintain and manipulate visual and auditory information fell within the high-average range. On the processing speed index, which measured Student's speed and accuracy in visually identifying information and making decisions, Student scored in the average range.

Phonological processing is the use of sounds to process spoken and written language. Phonological processing abilities represent the building blocks for reading and support effective mathematical calculation and listening and reading comprehension. Henderson administered the Comprehensive Test of Phonological

Processing, Second Edition, referred to as the Phonological Processing test, to obtain information on Student's phonological and auditory processing skills. This assessment measured Student's phonological awareness, phonological memory and rapid naming ability. Phonological awareness is the ability to access oral language. Phonological memory is the ability to code information phonologically for temporary storage in working or short-term memory. Rapid naming is the ability to retrieve phonological information from memory and complete a sequence of operations quickly and repeatedly.

Student scored in the average range on the phonological awareness index, which evaluated the ability to access sound structure and demonstrate awareness of increasingly smaller phonological units of speech. Student scored in the average range on the phonological memory index, which measured the ability to temporarily store auditory information in working or short-term memory and the ability to learn new written and spoken vocabulary. Student scored within the poor range in the rapid symbolic naming index. The rapid symbolic naming index measured the ability to retrieve phonological information from long-term or permanent memory. This index also measured a student's attention processing skills.

The rapid symbolic naming index was comprised of two subtests: rapid digit naming and rapid letter naming. The rapid digit naming subtest measured the speed with which a student can name numbers. Student's score fell within the poor range. The rapid letter naming subtest assessed the speed with which a student can name letters. Student score on this subtest fell within the poor range.

At hearing, Henderson persuasively explained the possible reason for Student's poor scores in the rapid digit naming and rapid letter naming subtests. Henderson opined Student took her time to correctly name the numbers and letters rather than attempting to quickly complete the task, which was the objective of the subtests. Henderson's testimony was consistent with Downing's. Downing also observed Student take her time and carefully answer questions on the timed portions of the academic assessments.

To further delve into Student's processing abilities, Henderson administered the Wide Range Assessment of Memory and Learning, Second Edition, referred to as Assessment of Memory test, a test designed to assess memory ability. This tool assessed memory ability using three indexes: verbal memory index, visual memory index, and attention/concentration index to determine memory deficits which might interfere with learning. Henderson administered the portion of the Assessment of Memory test assessing Student's attention and concentration skills. Henderson administered two subtests: the finger windows subset which evaluated memory of a visual pattern, and the number letter subtest, which required the student to repeat a sequence of single digits and letters orally presented by the assessor. Student's overall score fell within the average range. Henderson also considered Student's phonological processing scores on the Wechsler in which Student scored in the average range.

Henderson analyzed and interpreted Student's scores from the Phonological Processing test, the Wechsler and the Assessment of Memory test and concluded Student had no relevant areas of need in phonological processing. At hearing, Henderson persuasively opined although Student performed in the poor range on the

Phonological Processing test on the rapid letter and symbolic naming indexes, she scored within the average range in the processing subtests on the Wechsler and Assessment of Memory tests. Henderson's interpretation of the test results, combined with her observations of Student during administration of the assessments, led Henderson to conclude Student did not have areas of need in the phonological processing.

Student's auditory processing skills were measured based upon several subtests. On the Phonological Processing test, Student's auditory memory score fell within the average range. Student scored in the average range on the digit span subtest of the Wechsler. Student scored within the average range on the sentence repetition subtest and in the extremely high range on the oral discourse subtest of the Achievement test. Henderson interpreted the results of these various subtests and concluded Student did not demonstrate educationally relevant areas of need in the auditory processing domain.

Student's attention processing skills were evaluated through review of several subtests on the Wechsler, Phonological Processing test, and the Assessment of Memory tests. Student's scores fell within the average range as compared to her same age peers. Although Student's attention processing was a relative area of weakness, Henderson concluded Student did not have areas of need in attention processing.

Parents believed Cabrillo Point's assessment was not comprehensive because it did not include evaluations by an optometrist or audiologist. Throughout the IEP team meeting and at the due process hearing, Parents expressed concern Student had not been properly assessed in the areas of visual and auditory processing. Mother also

challenged Henderson's qualifications to assess Student. Parents believed Student spent too much time on her schoolwork and was distracted by background noise. They suspected Student had deficits in auditory and visual processing.

School psychologists generally assess a student's visual and auditory processing in a psychoeducational assessment. Visual processing has a number of components, which were measured and evaluated by various standardized instruments typically administered in psychoeducational assessments. For example, the Wechsler measured Student's working memory, or her ability to register and use visual and auditory information. Student scored in the high range on this subtest. Student's auditory memory, digit span, and sentence repetition scores fell within the average range and her oral discourse score was in the extremely high range. Henderson persuasively opined at hearing Student did not demonstrate educationally relevant areas of need in the visual and auditory processing domains.

Student did not establish only a trained optometrist and audiologist were qualified to determine whether Student had educational deficits related to visual and auditory processing disorders. No expert refuted Henderson's credible opinions. Student offered no evidence challenging the appropriateness of Cabrillo Point's assessments in the areas of phonological, visual, and auditory processing, or how they were administered and scored.

Cabrillo Point established it administered assessments likely to yield accurate information about Student's processing skills. (Ed. Code, § 56320, subd. (b).) Cabrillo Point used technically sound instruments to assess Student's processing skills and

administered the assessments according to their instructions. (Ed. Code, § 56320, sub. (b).) Cabrillo Point tailored the assessments to assess Student in the suspected areas of disability. (Ed. Code, § 56320, subds. (c) and (f).) Cabrillo Point proved its processing assessments were appropriate and complied with legal requirements.

BEHAVIORAL OBSERVATIONS

Cabrillo Point contends the psychoeducational assessment included observations of Student in an appropriate setting and analyzed how Student's behavior related to her academic and social functioning. Student contends Cabrillo Point's failed to observe Student in an in-person classroom environment, rendering the behavior assessment invalid.

As part of an initial evaluation, the IEP team must review evaluations and information provided by the parents, current classroom-based assessments and observations, and observations by teachers and related service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1)(ii) and (iii).) A child must be observed in their learning environment, including the regular classroom setting, to document their academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310(a).) The California Education Code requires the written assessment report must include the relevant behavior noted during the observation of the pupil in an appropriate setting and the relationship of that behavior to the pupil's academic and social functioning. (Ed. Code, § 56327, subds. (a) and (b).)

Henderson's assessment included two virtual observations of Student in her independent study classroom environment. Each observation lasted approximately

30 minutes. One of the observations was through review of a pre-recorded study session provided by Mother, and the second live during Student's on-line British Literature class offered through a third-party educational vendor. Student was observed to be engaged, attentive, and participated when appropriate. Student raised her hand to answer her teacher's questions and answered questions posed. Student did not require redirection, prompting or supervision. Student successfully worked independently during her online lessons. Henderson could see how Student responded and interacted with her teacher in her usual online educational environment. Henderson did not observe any off-task or inappropriate behavior.

Henderson also observed Student in-person during administration of the assessments. Henderson's observations of Student during the testing were consistent with her observations of Student in the online classes. Student was attentive and remained on task. Student willingly participated and answered questions about herself when asked. She asked the assessor for clarification of instructions. Student worked diligently in completing the assessments. Student transitioned easily between tasks. Student sat at the table for the duration of the assessments and did not take a break even when offered by the assessor. Student took her time before responding and showed thoughtfulness in her responses.

Parents disputed the adequacy of the classroom observations conducted virtually because they believed they did not adequately reflect Student's behaviors with her teachers and peers. Parents believed Henderson should have observed Student in-person since Student took some classes in-person outside Cabrillo Point through third-party educational providers. At hearing, Parents generally expressed Student had

difficulties interacting with her teachers and did not have friends, except in extracurricular activities. Student did not offer persuasive evidence of how Student's behaviors or interactions with her teachers and peers negatively impacted her education, or why she required special education and related services to address these issues. None of Student's teachers or assessors reported any observed behavioral difficulties.

At hearing, Henderson explained the purpose of the class observation was to see how Student performed in her Cabrillo Point classroom environment and more particularly, how she responded to expectations and interacted with her teachers and peers. Unlike a brick and mortar in-person environment, Student's educational environment was independent study. Cabrillo Point established Henderson's online observations of Student in her independent study program, together with information obtained from Student, Mother, Schweers and the other assessors, was adequate for the school psychologist to draw conclusions regarding Student's ability to function in her usual educational setting. Cabrillo Point proved it satisfied its statutory obligation to observe Student. (34 C.F.R. § 300.310(a); Ed. Code, § 56327, subds. (a) and (b).)

SOCIAL EMOTIONAL, BEHAVIOR AND ADAPTIVE SKILLS

Cabrillo Academy contends it appropriately assessed Student's social-emotional behavior and adaptive skills. Parents contend the social-emotional assessments were not thorough and did not adequately assess Student's social-emotional deficits in communicating with her teachers and peers. Parents further contend Cabrillo Point should have given behavior rating scales to a teacher to complete.

A school district is required to broadly construe a student's educational needs as including her social, health, emotional, behavior, communicative, physical and vocational needs, in addition to her academic needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1501, *abrogated in part on other grounds by Schaffer v. Weast, supra*, 526 U.S. 49, 56-58.) The educational benefit to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

Henderson assessed Student's social emotional and adaptive functioning by interviewing Student and Mother, observing Student in-person during the administration of assessments and virtual observations of Student in the general education classroom environment, obtaining input from the general education teacher and other assessors, and interpreting rating scales from Student and Mother.

Henderson collected ratings questionnaires on a number of social-emotional assessment instruments to evaluate Student's social-emotional behavior, review her mental health status, and assess for attention deficits. Mother completed

- the Behavior Assessment System for Children, Third Edition, referred to as the Behavior Scale, to rate a variety of emotional and behavioral disorders;
- the Conners 3rd Edition Rating Scale, referred to as Conners, to rate Student's behaviors associated with attention deficit hyperactivity disorder;

- the Children's Depression Inventory, Second Edition, referred to as Children's Depression Inventory, to assess behavioral signs of depression; and
- the Multidimensional Anxiety Scale for Children, Second Edition, referred to as the Anxiety Scale, to evaluate possible anxiety issues.

Student provided self-assessments on the Behavior Scale, Connors, Children's Depression Inventory and the Anxiety Scale.

The Behavior Scale summarized scores given by the raters in the composites of school problems, internalizing problems, inattention/hyperactivity, emotional symptoms and externalizing problems. Mother rated Student in the clinically significant range for internalizing problems and behavioral symptoms index in the areas of anxiety, atypicality, and withdrawal. Mother rated Student at-risk in the areas of hyperactivity, depression, somatization, and attention problems. Henderson interpreted Mother's scores with high caution in accordance with the Behavior Scale's protocols due to Mother's response pattern indicative of rating Student's behavior in an inordinately negative fashion.

On the Connors, Mother rated Student in the very elevated range in the areas of peer relations, attention deficit hyperactivity disorder, and inattention. On the Children's Depression Inventory, Mother rated Student in the elevated range for emotional problems and in the average range for functional problems. Mother rated Student's anxiety level as elevated or very elevated in the areas of general anxiety disorder, social anxiety, obsessions and compulsions, and physical symptoms.

Student rated herself on the Behavior Scale in the clinically significant range in internalizing problems in the areas of atypicality, anxiety, attention problems, and somatization. Student rated herself at-risk in the domains of inattention/hyperactivity, social stress, and sense of inadequacy. Student's self-report on the Connors regarding anxiety rated her behavior as elevated in the area of inattention and very elevated for attention deficit hyperactivity disorder inattentive presentation.

On the Children's Depression Inventory, Student's self-rating indicated her functional and emotional problems were in the average range compared to her same aged peers. On the Anxiety Scale, Student rated herself as elevated or very elevated in the areas of general anxiety disorder, social anxiety, obsessions and compulsions, and physical symptoms.

Based upon the social-emotional assessment results, Henderson concluded Student evidenced social, emotional, and behavioral needs. More particularly, Student had needs in the areas of

- internalizing problems,
- atypical behavior,
- withdrawal,
- anxiety,
- attention problems, and
- interpersonal relationships.

Henderson determined these emotional, social, and behavioral difficulties did not adversely impact Student's academic progress including access to curriculum, interpersonal relationships or other areas relating to the academic environment. Student's academic performance was at or above grade level based on standardized

assessments, school-based assessments, work samples, and Mother's report. Student did not demonstrate social-emotional needs that required special education or related services. As a result, Henderson determined Student did not qualify for special education. (Ed. Code §§ 56026, 56320; Cal. Code Regs., tit. 5, § 3030, subd. (a).)

Student contends the psychoeducational assessment did not meet legal requirements because Henderson did not administer the Behavior Scale to Student's general education teacher or club swim coach. However, Henderson had reviewed Parents' numerous concerns and Mother's questionnaire. Henderson solicited input from Schweers in determining the scope and course of her assessment. Cabrillo Point offered persuasive evidence from Henderson at hearing that the Behavior Scale manual and protocol required a teacher who completed the rating scale to have had considerable, frequent contact with the student, such as a month of daily contact or six to eight weeks of several days-a week observations. Schweers did not have frequent enough contact with Student to appropriately evaluate Student under this rating scale. Although Schweers had been Student's teacher for several years, Schweers' contact with Student was roughly once every 20 days and not frequent enough to meet the requirements of a rater under the Behavior Scale's protocol. Therefore, under these facts, providing Schweers the Behavior Scale would have been inconsistent with the Behavior Scales' guidelines.

Student also did not establish Cabrillo Point should have provided the Behavior Scale to Student's swim coach. The teacher rating scale was designed to rate the child's behavior in the school setting. Henderson credibly explained although a physical education teacher can be an appropriate rater under some circumstances, here Student's club swim coach did not observe Student in an appropriate setting, and no

persuasive evidence was offered the swim coach was a credentialed teacher. Therefore, Cabrillo Point was not required to provide Student's swim coach the Behavior Scale and doing so would have deviated from the test producer's protocol.

Cabrillo Point established it had sufficient information, including rating scales from Mother and Student, Henderson and Downing's in-person assessment observations and Henderson's virtual class observations, to complete the report and obtain valid results for the behavior assessment without teacher scales. On these facts, Cabrillo Point met its burden as to the appropriateness of the Behavior Scale.

Student's adaptive behavior needs were assessed using the Adaptive Behavior Assessment System, Third Edition. This was a comprehensive, norm-referenced assessment of adaptive skills needed to effectively and independently care for oneself, respond to others, and meet environmental demands at home, school, and in the community. Mother rated Student in the average range in behaviors needed to communicate with others, apply academic skills and manage tasks. Mother rated Student in the below-average range in skills needed to engage in leisure and recreational activities, address personal and health needs and function in the community. Student's scores fell within the average range when compared to same age peers in the areas of behaviors needed to communicate with others, apply academic skills and manage and accomplish tasks. Student's scores also fell within the average range in the areas of communication, functional academics, and self-direction. Student's score on the social composite, measuring behaviors needed to engage in interpersonal interactions and use leisure time, fell within the below-average range.

Student's score on the practical composite, or behaviors needed to address personal and health needs and function in the community, also fell within the below-average range.

Henderson also considered portions of the Behavior Scale in evaluating Student's adaptive behaviors. Mother and Student's ratings in the areas of social and emotional development and independent adaptive skills did not fall within the clinically significant range. Henderson concluded Student's adaptive behavior skills were not areas of need.

Student challenged the validity of the social emotional portion of the assessment at hearing and in her closing brief. Student argued Henderson was generally unaware of the mental health counseling services available to general education students at Cabrillo Point, and this therefore invalidated her assessments. Student also contended the psychoeducational assessment was invalid because it failed to consider Student received mental health counseling services through Cabrillo Point starting around December 2021. The evidence established Student participated in mental health counseling services available to all general education students. Student did not offer persuasive evidence her participation in these services negated the statutory appropriateness of the assessments. Student did not impugn the qualifications or testimony of Cabrillo Point's assessors. In summary, Student did not refute by persuasive evidence the validity of the assessments or their administration. (Ed Code, § 56320, subd. (b)(1).)

Cabrillo Point established it used a variety of valid instruments to evaluate Student's social emotional, behavior, and adaptive behavior skills. (34 C.F.R. § 300.304(b)(1), (3); Ed. Code, § 56320, subd. (b)(3).) Cabrillo Point administered the

assessments in accordance with the test producer's instructions and protocols. (Ed. Code, § 56320, subd. (b)(3).) Cabrillo Point established the assessments produced reliable and valid information for Student's social emotional and behavioral needs. (34 C.F.R. § 300.304(b)(3); Ed. Code, § 56320, subd. (b)(1).) As a result, Cabrillo Point proved its assessments in these areas were appropriate.

AUTISM

Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(1)(i); Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (*Id.*)

Parents were concerned about the possibility of Student having autism because Student's twin brother had been diagnosed with autism. Mother reported Student engaged in numerous behaviors typical of persons with autism, such as not understanding social cues, compulsive rituals, and self-isolation. Parents were concerned Student was hyper-focused on her schoolwork and ignored bodily functions. More specifically, Parents asserted Student worked for hours without drinking water or taking bathroom breaks.

Henderson administered the following rating scales to assess the presence of symptoms, behaviors or features of autism spectrum disorder:

- Autism Spectrum Rating Scales, referred to as the Autism Scales, a norm-referenced assessment based on a nationally representative sample,

designed to identify symptoms, behaviors and associated features of the full range of autism spectrum disorders; and

- The Childhood Autism Rating Scale, Second Edition, referred to as Childhood Autism Scale, a behavior rating scale intended to help diagnose autism and differentiate children with autism from those with other developmental delays.

On the Autism Rating Scales, Mother rated Student below-average on behaviors needed to engage in interpersonal interactions, use of leisure time, and the ability to address personal and health needs. Mother rated Student below-average to average on all other categories, including

- conceptual skills,
- communication,
- functional academics,
- self-direction,
- social skills,
- functioning in the community,
- basic care of home or school setting,
- personal care and
- health and safety.

Overall, Student was able to meet her adaptive needs in all areas, with the exception of leisure skills, at an age appropriate level.

On the Childhood Autism Scale, Mother rated Student's behaviors as severe in the area of worrying about the same thing repeatedly. Mother rated Student age appropriate to mildly impaired in the areas of social emotional understanding and

relating to people, and age appropriate in the areas of emotional expression and regulation of emotions. Student's overall score on the Childhood Autism Scale fell within the minimal to no symptoms of autism spectrum disorder. Scores on this test demonstrated Student did not manifest behavioral characteristics similar to youth diagnosed with autism.

Henderson also considered the information obtained from her observations of Student in class and in assessments, as well as the observations of the other assessors, and Parents' concerns. Student did not demonstrate difficulties in

- verbal and nonverbal communication,
- social interaction,
- sensory sensitivity,
- repetitive activities,
- stereotypical movements, or
- resistance to change.

Student had weaknesses in the areas of unusual behaviors, peer socialization, behavioral rigidity, and sensory sensitivity. Henderson concluded these weaknesses did not affect Student's ability to access her academic curriculum or hinder her academic performance and Student therefore did not qualify for eligibility under the category of autism. At hearing, Henderson opined that although Student had some characteristics associated with autism, Student accessed her education, performed well academically, interacted appropriately with her teachers and peers, and did not require special education and related services.

Student generally disagreed with Henderson's interpretation of the autism assessment results. However, Student did not offer evidence the assessments were not

appropriate or were administered improperly. Cabrillo Point established it used a variety of technically sound instruments and tools, including information provided from Parents, to assess Student in the area of autism. (Ed. Code, § 56320, subd. (b)(2).)

Henderson was qualified to administer the assessments and administered the assessments according to the test producers' instructions. (Ed. Code, § 56320, subd (b)(3).) The assessments yielded accurate information about what Student could do academically, functionally and developmentally. (Ed. Code, § 56320, subd (b)(1).) Cabrillo Point established its assessments to consider Student's eligibility in the category of autism were appropriate and complied with legal requirements.

PSYCHOEDUCATIONAL REPORT

A child qualifies for special education if the assessments demonstrate that the degree of the child's impairment requires special education. (Ed. Code, § 56327, subd. (a) and (b); Cal. Code Regs., tit. 5, § 3030(a).) It is the duty of the IEP team, not the assessor, to determine whether a student is eligible for special education and related services. (20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. §§ 300.305(a)(iii)(A), 300.306(a)(1).) To aid the IEP team in determining eligibility, the personnel who assess a student must prepare a written report explaining the results of the assessment that includes, among other items:

1. whether the student may need special education and related services;
2. the basis for making that determination;
3. the relevant behavior noted during observation of the student in an appropriate setting;
4. the relationship of that behavior to the student's academic and social functioning;
5. the educationally relevant health, development, and medical findings, if any;

6. for pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services;
7. if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and
8. the need for specialized services, materials, and equipment for pupils with low incidence disabilities.

(Ed. Code, § 56327, subds. (a) and (b).) The report must be given to the parent or guardian after the assessment, though that duty has no fixed time limit. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

Henderson compiled her assessment information, including Downing's academic assessment report, and generated a written assessment report titled Multidisciplinary Assessment Report dated August 30, 2021. Henderson's report included the results of the interviews with Student and Mother, information from Schweers, and a detailed summary of Student's educational and health records and history. The report included the results from the various rating scales and standardized tests, and Henderson's and Downing's behavioral observations.

Henderson's report included an extensive analysis of whether Student met eligibility for special education and related services under the categories of specific learning disability, other health impairment, emotional disturbance, and autism. (Cal Code Regs., tit. 5, § 3030, subds. (a) and (b).) Henderson's report identified the legal eligibility criteria for each category. (*Id.*) Henderson explained the results of the testing, analyzed the various rating scales and described in detail Henderson's observations of

Student. Henderson detailed the results of the testing in narrative format, as well as included the assessment score reports. Henderson included educationally relevant health and developmental findings.

Henderson provided a thorough explanation of the relationship between Student's social emotional needs and her academic and social functioning. (34 C.F.R. § 300.310, Ed. Code, § 56327, subds. (c) and (d).) Henderson's report determined Student had areas of need in internalizing problems, atypical behavior, withdrawal, anxiety, inattention, and interpersonal relationships. Henderson concluded Student's weaknesses in these areas did not require specialized services or specialized academic instruction for remediation in the core areas of reading, writing or math or for Student to access her general education curriculum. Henderson recommended the IEP team review the report and determine the extent to which Student's needs could be met in the general education program, or the extent to which special education services or reasonable accommodations were required. Henderson further recommended the IEP team consider various general education intervention supports.

The IEP team discussed all areas of suspected disability at the October 22, 2021 and November 18, 2021 IEP team meetings when Henderson presented her assessment report to the IEP team. The report presented data based upon Student's areas of suspected disability in the areas of specific learning disability, other health impairment, emotional disturbance, and autism. Assessment data did not suggest additional areas of suspected need for further evaluation. The assessments and written report contained sufficient information for the IEP team to determine that Student was not eligible and did not require special education and related services. Cabrillo Point met its burden of proof that its psychoeducational assessment met all legal requirements.

ASSESSMENT TIMING

The assessment must be completed, and an IEP team meeting held to discuss the results of the assessment, within 60 days of the date the school district receives the signed assessment plan, exclusive of school vacations in excess of five schooldays and other specified days. (20 U.S.C. § 1414(a)(1)(c); 34 C.F.R. § 300.301(c)(1)(i), (ii); Ed. Code, §§ 56043, subds. (c) and (f)(1); 56302.1, subd. (a), and 56344, subd. (a).)

Parents assert the assessment was not timely. Cabrillo Point contends it timely assessed Student, prepared the psychoeducational assessment report, and convened the initial IEP team meeting. Cabrillo Point Academy concedes the initial IEP team meeting was held more than 60 days after Parents' signed consent to the assessment plan but asserts Parents consented to holding the meeting later and this short delay was a harmless error.

Parents acknowledged receipt of their procedural rights and returned the signed consent to the revised assessment plan on May 26, 2021. The last day of school for the 2020-2021 school year was May 28, 2021. The 2021-2022 school year began on August 16, 2021. The statutory deadline to hold the IEP team meeting was October 13, 2022, which was 60 days, not counting school vacation in excess of five school days, from the date Cabrillo Point received the signed assignment plan. The initial IEP team meeting held on October 22, 2021, therefore, was convened nine days after the statutory deadline. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subd. (c) and (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

A school district's violation of its obligation to assess a student is a procedural violation under the IDEA. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d

1025, 1031-1033.) A procedural error results in a denial of FAPE where it results in the loss of educational opportunity or seriously infringes the parents' opportunity to participate in the IEP formulation process. (*W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1991) 960 F.2d 1470, 1483.)

Cabrillo Point holding the meeting late did not deprive Parents of the opportunity to participate in the IEP development or deprive Student of educational benefit or her access to a FAPE. Parents meaningfully participated in development of the October 22, 2021 IEP. They attended the IEP team meeting, asked questions and voiced their concerns, and did not establish the nine-day delay had any impact on their participation. Cabrillo Point responded to Parents questions and concerns with detailed responses, including about Student's auditory and visual processing evaluations. No evidence was offered Student was deprived of educational benefit. (*Target Range, supra*, 960 F.2d at 1483.) Therefore, the procedural violation in holding the initial IEP team meeting nine days late did not invalidate the appropriateness of the psychoeducational evaluation. Cabrillo Point met its burden of proving that its psychoeducational assessment was appropriately conducted, rendered valid results, and was properly considered by the IEP team at an IEP meeting.

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:

Cabrillo Point Academy's August 2021 psychoeducation assessment was appropriate such that it is not required to fund an independent education evaluation in psychoeducation at public expense.

Cabrillo Point Academy prevailed on the sole issue in this matter.

ORDER

1. Cabrillo Point Academy's August 2021 psychoeducational assessment was appropriate.
2. Cabrillo Point Academy is not required to provide Student an independent educational evaluation at public expense in the area of psychoeducation, including auditory processing by an audiologist or visual processing by a licensed optometrist.

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/

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings