

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2023020014
CASE NO. 2023030211

THE CONSOLIDATED MATTERS INVOLVING

PARENT ON BEHALF OF STUDENT, AND

TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.

DECISION

May 11, 2023

On January 31, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Temecula Valley Unified School District called Temecula. On March 8, 2023, Temecula filed a due process hearing request naming Student, along with a motion to consolidate Student's case and Temecula's case. OAH issued an order consolidating the two matters on March 10, 2023. Administrative Law Judge Ted Mann heard this matter in Los Angeles on March 21, 22 and 23, 2023.

Mother represented Student. She will be referred to as Parent in this decision. She attended all hearing days on Student's behalf. Attorney Tracy Petznick Johnson represented Temecula. Breck Hilton, Temecula's Director of Student Services, attended

all hearing days on Temecula's behalf, except for the testimony of witness Ashley Vella on March 23, 2023. Temecula program specialist Victoria Hirsch attended the hearing on behalf of Temecula for witness Vella.

At the parties' request the matter was continued to April 17, 2023 for written closing briefs. The record was closed, and the matter was submitted on April 17, 2023.

STUDENT'S ISSUES

1. Did Temecula deny Student a free appropriate public education during the 2022-2023 school year, through January 31, 2023, by:
 - a. Failing to find Student eligible for special education and related services under the eligibility category other health impairment beginning in November 2022;
 - b. Failing to offer Student educationally related mental health services beginning in November 2022; and
 - c. Predetermining that Student was ineligible for special education and related services?

TEMECULA'S ISSUE

Did Temecula conduct a legally compliant initial multidisciplinary team assessment and corresponding assessment reports such that Student is not entitled to individual educational evaluations 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 (2006) et seq.; 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 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).)

The parties bear their respective burdens of proof on their issues. 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 sixteen years old and in tenth grade at Chaparral High School at the time of hearing. Student resided within Temecula's geographic boundaries at all relevant times. Student was not eligible for special education, but did have a 504 plan under Section 504 of the Rehabilitation Act of 1973.

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 the 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. 386, 401.)

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TEMECULA'S ISSUE: DID TEMECULA CONDUCT A LEGALLY COMPLIANT INITIAL MULTIDISCIPLINARY TEAM ASSESSMENT AND CORRESPONDING ASSESSMENT REPORTS SUCH THAT STUDENT IS NOT ENTITLED TO INDIVIDUAL EDUCATIONAL EVALUATIONS AT PUBLIC EXPENSE?

Temecula's issue is addressed first because the factual and legal findings for this issue apply to the analysis of Student's issues.

Pursuant to a November 2022 settlement agreement between Temecula and Parent on behalf of Student, Temecula conducted a comprehensive initial multidisciplinary assessment of Student including

- cognitive,
- academic,
- processing,
- social-emotional/behavioral assessments and accompanying health/development information,
- review of records,
- observations and
- interviews.

The agreement also included an educationally related mental health assessment. At the January 31, 2023, initial Individualized Educational Program team meeting, called an IEP team meeting, held to discuss the assessments, Parent disagreed with both assessments and requested Temecula fund independent educational evaluations of Student in all areas covered in the two assessments.

Temecula contends it is not obligated to fund the independent multidisciplinary educational evaluation or educationally related mental health evaluation requested by Parent, because its own initial assessment of Student complied with all applicable laws. Temecula asserts it prepared an appropriate assessment plan to assess Student in all areas of suspected disability, and used qualified assessors to conduct an appropriate, timely assessment of Student that met all statutory requirements.

Student contends that Temecula's assessments and accompanying report was not legally complaint because it overlooked the impact of Student's diabetes diagnosis on his education, failed to address Student's intermittently low grades during the Spring 2023 semester, was made unreliable by the use of another name other than Student's name at points in the report, and was conducted by an assessor who had predetermined that the psychoeducational assessment would recommend finding Student ineligible for special education.

ASSESSMENT PLAN AND PARENTAL CONSENT

A child with a disability is 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 determining 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 requires 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 that 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).)

Temecula proved its November 28, 2022 multidisciplinary assessment plan met all legal requirements. Temecula entered into a settlement agreement with Parent on November 18, 2022 that required Temecula to conduct a comprehensive initial multidisciplinary assessment, including in the area of educationally related mental health, to determine if Student qualified for special education. The educationally related mental health assessment was based upon Parent's concerns related to two incidents involving allegations of Student's self-harm that occurred in May and

October 2022. The second incident had served as the impetus for Parent to request an initial IEP. The scope of the initial assessment was discussed and negotiated between Breck Hilton and Parent, and the assessment plan accompanied the settlement. Parent had specific concerns related to Student's difficulty attending school, anxiety and depression.

The assessment plan proposed that a school psychologist would assess Student's

- intellectual development,
- social-emotional behavior,
- processing,
- motor development, and
- cognitive development. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).)

A special education teacher would assess Student's academic achievement, and Student's health and developmental information would be obtained. The assessment would also include an educationally related mental health assessment to determine if Student had a mental health concern impacting their education. The assessment plan indicated the multidisciplinary assessment would include a review of school records, observations, and interviews. The assessors also would use

- standardized tests,
- interviews,
- record review,
- observations, and
- alternate assessments when necessary.

The plan was in Student's primary 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).)

Temecula established the November 28, 2022 assessment plan met the procedural requirements under IDEA and the California Education Code. Temecula also established it obtained Parent's consent to conduct the January 31, 2023 multidisciplinary assessment of Student. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3), (c)(1); Ed. Code, § 56321, subd. (a).) Parent signed the settlement agreement and the assessment plan on November 28, 2022, and Temecula received the signed assessment plan on November 29, 2023.

TIMELINESS OF ASSESSMENT

School districts must complete special education assessments and hold an IEP team meeting to discuss the results of the assessment within 60 days of the date the school district receives the signed assessment plan unless the parent agrees in writing to an extension. (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 timeline does not include the days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. (Ed. Code, § 56043, subd. (f)(1).)

Here, Temecula received the signed assessment plan on November 29, 2022. Temecula completed the multidisciplinary assessment and held the initial IEP team meeting to discuss the assessment results on January 31, 2023. There were 63 calendar days from receipt of the signed assessment plan until the IEP was held. Winter Break

was held from December 22, 2022 through January 6, 2023, totaling 16 days. Subtracting the 16 days of Winter Break from the 63 calendar days leaves 47 days. Therefore, Temecula established it completed the multidisciplinary assessment and held Student's initial IEP team meeting within the statutorily required 60-day timeline.

RESPONSE TO PARENT'S REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

Under certain conditions, a parent may request an independent educational evaluation 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 educational evaluation, a school district must, without unnecessary delay, either file a request for due process hearing to show that its evaluation was appropriate or provide the independent educational evaluation 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 evaluation was 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).)

Parent did not agree with the adequacy of Temecula's multidisciplinary assessments. During the January 31, 2023 IEP team meeting, Parent requested independent educational evaluations. On March 6, 2023, Temecula sent prior written notice to Parent declining her request for publicly funded independent educational evaluations. The prior written notice complied with the requirements set forth in title

34 Code of Federal Regulations section 300.503. Temecula informed Parent it would file a due process hearing request to defend the appropriateness of the multidisciplinary assessment and educationally related mental health assessment.

Temecula filed a request for due process hearing on March 8, 2023, to defend the appropriateness of the assessments. This was approximately five weeks after Parent notified Temecula of her request for independent educational evaluations. Therefore, Temecula acted without unnecessary delay in responding to Parent's request for an independent educational evaluation. (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.)

ASSESSORS AND PROCEDURES

In conducting an assessment, a school district must follow statutory guidelines for the qualifications of the assessors and the procedures for the assessment. 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).) 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).)

PSYCHOEDUCATIONAL ASSESSMENT

Temecula retained educational psychologist, Greg Nunn, Ph.D., to conduct Student's initial psychoeducational assessment and prepare a comprehensive multidisciplinary assessment report which included assessments in the areas of cognition, academics, processing, and social/emotional. A concurrent educationally related mental health assessment was completed by another assessor, and is addressed separately, below.

Nunn, a licensed educational psychologist, held a bachelor's degree in psychology, a master's degree in applied behavioral analysis, a doctorate in educational psychology, and a pupil personnel services credential. He was also a board-certified behavioral analyst. Nunn has worked with students for more than four decades as a clinician, program director, non-public school director, counselor, and school psychologist, completing many psychoeducational assessments as both a school psychologist and independent contractor. He taught at National University for six years. Nunn's education, credentials, and experience rendered him highly qualified him to conduct psychoeducational assessments, administer standardized tests, interpret the results, prepare assessment reports, and supervise school psychologist interns.

At hearing, Nunn answered questions candidly and exhibited a strong understanding of assessment procedures and psychoeducational theory and practice. Nunn answered Parent's questions about test protocols and perceived scoring inconsistencies. Nunn's testimony regarding the assessment and his conclusions were well-reasoned, and withstood Parent's attempts to discredit the assessors, the assessment protocols, test scorings and the report preparation. Nunn's testimony, corroborated by other witness testimony, was given significant weight.

Nunn confirmed the assessment materials and procedures used during the multidisciplinary assessment were selected so as to not be racially, culturally, or sexually discriminatory. 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 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 Parent's and Student's input were used to assess Student's strengths, weaknesses and 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).)

Nunn assessed Student in all areas of suspected disability. Nunn considered whether Student met eligibility criteria under multiple special education categories, including specific learning disability, other health impairment and emotional disturbance. Nunn chose a variety of assessment tools to conduct Student's psychoeducational assessment, including standardized tests, rating scales, observations of Student in the classroom setting and during assessments. Nunn conducted interviews with

- Student,
- Parent,
- all six of Student's then current teachers,
- Student's case carrier,
- Ashley Vella,
- Student's on-site social worker,
- Aura Contreras, Student's counselor,
- Tina Mey, and
- Student's educationally related mental health assessor, Cassandra Apple.

Nunn also reviewed Student's educational records, including grades and testing scores, Student's current health plan, and reviewed a developmental, health, behavioral and school history questionnaire completed by Parent.

Nunn obtained Student's background and health information through an educational records review, and records provided by Parent. Parent provided input in the multidisciplinary assessment through completing the parent questionnaire and assessment rating scales and participating in an interview.

OBSERVATIONS AND INTERVIEWS

Nunn observed Student during test sessions. Student was very respectful, cooperative and friendly and Nunn easily established rapport with Student. Student remained on-task and completed the assessment assignments timely and with an exceptionally good effort and persistence. Student evidenced no anxiety, depression, withdrawal or hyperactivity/restlessness during the assessments. Nunn opined the testing sessions were age appropriate and test results valid.

Nunn observed Student in their tenth-grade Spanish class with teacher Mr. Garcia. Student participated fully in class, including volunteering as one of five students in class to present on the whiteboard. Student volunteered a second time for the whiteboard activity later in the class. Student appeared attentive, well-organized and prepared. Student exhibited no signs of anxiety, depression or withdrawal during class. After class, Student walked to the courtyard and met a classmate with whom Student walked to their next class while laughing and talking.

Nunn observed Student in their digital media arts class with teacher Mr. Carlson. Student behaved appropriately upon entry to the classroom, taking their assigned seat and fully engaging with their computer Instagram assignment. Two students joined Student at Student's computer and they socialized and worked cooperatively. Student

exhibited no signs of anxiety, depression or withdrawal during class, including the group work. After class, Student walked with one of Student's group to the courtyard and then walked over to a group of friends to continue socializing.

Nunn observed Student in their world history class with teacher Ms. Mohr. Student took a seat at their assigned group table and began working on the assignment with the group. Student participated actively and attentively with the group as the group worked on the assignment. Student exhibited no signs of anxiety, depression or withdrawal during class, including the group work. Nunn recorded data during the class for on-task behavior, frequency of teacher prompts and compliance with teacher prompts for ten minutes using fifteen second intervals. Student was on-task for 100 percent of the intervals, and needed no prompts to pay attention or continue working.

Nunn observed Student the next day in the same world history class. Student arrived about 20 minutes late following the weekly check-in with the school social worker. Student joined their group and engaged in the group task both listening and offering their opinion as appropriate. Student was relaxed and comfortable during the group work. Student exhibited no signs of anxiety, depression or withdrawal during class. Nunn once again collected behavioral data, and Student was on task for 97.5 percent of the intervals and needed no prompts to pay attention or continue working.

Nunn observed Student in their chemistry class with Mr. Smith. Student entered and began class appropriately, attentively watching a video and listening to a lecture, and appearing to understand the material. Student exhibited no signs of anxiety,

depression or withdrawal during class. Nunn once again collected behavioral data, and Student was on task for 100 percent of the intervals and needed no prompts to pay attention or continue working.

Nunn interviewed Student, using the Sentence Completion Questionnaire to assess their emotional well being. Student reported their biggest school problem was getting up and getting to school on time. Student reported usually earning A's and B's, but felt average about school in general. Student reported difficulty with their relationship with their mother, but reported a close relationship with their brother and supportive friends.

Parent completed an interview questionnaire. Parent reported her primary concerns were with Student's mental health, attendance, anxiety and depression. Parent reported that she hoped that the assessment would result in Student having an IEP, case manager and educationally related mental health services. Parent expected that Student would get an IEP under the eligibility category of other health impairment. Parent reported Student as a wonderful person with many capabilities, but that their diabetes, anxiety and depression were standing in the way of Student's ability to achieve their greatest potential.

Student's six classroom teachers were given a teacher observation form to gather information about Student's then current classroom performance in terms of academic achievement and classroom behavior. Ratings ranged from 1 for lowest ten percent to 5 for highest ten percent compared to same age/grade level peers. In academic performance, the six teachers' median score was a 4 with 77 out of 96 data

points as 4's or 5's. In social/behavioral performance, the six teachers' median score was a 4 with 33 out of 48 data points as 4's or 5's. The six teachers assigned Student one C+, three B-, one B, and one A. Several teachers noted Student's attendance issues as weaknesses, but all generally considered Student a strong student and noted Student's ability to overcome their absences.

COGNITIVE TESTING

Nunn selected an extensive array of cognitive testing to compare Student's learning ability with similarly aged peers. Nunn administered the Wechsler Intelligence Scale for Children, fifth edition, referred to as Wechsler, an individually administered and comprehensive clinical instrument. The Wechsler assessed Student's intelligence in specified cognitive indexes including

- verbal comprehension,
- visual,
- spatial,
- fluid reasoning,
- working memory and
- processing speed.

The Wechsler also generated a full-scale intelligence quotient, referred to as IQ, composite score that represented Student's general intellectual ability. Student's full IQ measured toward the higher end of the average range, scoring in the seventy-fifth percentile, just below the high average descriptor.

Nunn administered the verbal comprehension index subtest which measured Student's ability to

- access and acquire work knowledge,
- reason verbally,
- solve verbal problems,
- retrieve information, and
- communicate knowledge effectively.

Student scored within the average range. On the visual spatial index, which measured Student's ability to evaluate visual details and to understand visual spatial relationships, Student scored within the high average range. On the fluid reasoning index, which measured Student's ability to detect the underlying conceptual relationship among visual objects and use reasoning to identify and apply rules, Student scored within the average range.

Nunn administered the working memory index, which measured Student's ability to register (through attention, auditory and visual discrimination, and concentration), maintain, and manipulate visual and auditory information in conscious awareness. In combination, these skills were used to identify and maintain visual and auditory information in temporary storage and resequencing it for use in problem-solving. Student scored within the average range on this index.

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Nunn administered the processing speed index to measure Student's speed and accuracy of visual identification, decision-making, and decision implementation. Student's performance in this area related to

- visual scanning,
- visual discrimination,
- short-term visual memory,
- visual-motor coordination,
- concentration, and
- basic clerical skills.

Student scored in the well above average range on this index.

Nunn selected additional assessment tools to measure Student's basic psychological processes in the areas of

- auditory working memory,
- nonverbal intelligence,
- general ability,
- cognitive proficiency and
- storage and retrieval.

Student ranged from average to high average to above average on these ancillary and complementary measures.

Nunn administered the Computer-Optimized Multimedia Intelligence Test, called the MEZURE, as a comprehensive measure of general intelligence. The MEZURE consisted of seven primary subtests and six supplemental subtests. Student's aggregate

cognitive scores were in the average range and the subtests all ranked in the average to above average range. Student scored in the average to above average range in subtests measuring attention, concentration and distractibility.

Nunn administered the Test of Auditory Processing Skills, fourth edition, to measure Student's auditory skills necessary for the development, use and understanding commonly utilized in academics and everyday activities. Nunn utilized the phonological processing index, comprised of basic phonemic skills, which measured Student's ability to discriminate between sounds within words, segment words into morphemes, and blend phonemes into words. The auditory memory index measured Student's ability to store, recall and manipulate auditory information, including sequencing. The listening comprehension index measured Student's ability to understand auditory information and make inferences, deductions, and abstractions of the meaning of the information. Nunn utilized the processing oral directions subtest and the auditory comprehension subtests, which utilized skills similar to those used during reading and listening comprehension. The results of the Test of Auditory Processing Skills placed Student's auditory processing skills within the average range.

Nunn administered the Test of Visual Perceptual Skills, fourth edition, to measure Student's visual-perceptual strengths and weaknesses, based on the evaluation of performance on non-motor, visual-perceptual tasks. Student scored average in the overall index with five subtests average and two low average.

Nunn administered the Bender Visual-Motor Gestalt Test, second edition, assessment. The Bender Gestalt measured Student's visual-motor integration skills,

testing visual perception, intake, reproduction and recall of visually acquired information. The results of the Bender-Gestalt placed Student's visual processing skills in the average to high average range.

SOCIAL EMOTIONAL AND BEHAVIORAL ASSESSMENTS

Nunn selected an extensive array of social emotional and behavioral assessments to assess Student's social, emotional and behavioral profile. Nunn selected the Behavior Assessment System for Children, third edition. This assessment consisted of an integrated system of ratings and observations of Student's behavior, emotions, self-perceptions, and history and through a systematic evaluation of Student, Parent, and six teachers' observations of Student's emotional and social functioning at home and at school.

Parent reported Student within the clinically significant range in many areas, including internalizing problems, anxiety, depression, somatization and withdrawal. Parent's rating consistency and response pattern were acceptable. However, Parent's rating of Student produced a F index score that fell in the caution range. The F index was a diagnostic performed as part of the scoring of a responding person's answers that was used to analyze the accuracy, reliability and credibility of the respondent's answers. Such a flagging of results indicates a negative overall view of Student's behavior and indicates that caution should be used when interpreting Parent's scores.

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Student's six teachers each reported their observations of Student's behavior in the school setting in the average range, including all areas of concern to Parent, along with

- attention problems,
- learning problems,
- adaptability,
- social skills,
- leadership and
- functional communication.

All six of Student's teachers rating consistency, response pattern, and F-indices were acceptable, indicating that teachers' ratings are likely a valid representation of Student's then current behavior/social emotional functioning. On Student's self-report, Student rated themselves average in all areas, except for somatization and relations with parents.

In the specific area of adaptive behavior, Parent rated Student at the clinically significant or higher level in

- anger control,
- developmental social disorders,
- emotional self control,
- executive functioning,
- negative emotionality and
- resiliency.

Each of the six teachers ranked each of those areas in the average range. On Student's self-report, they rated themselves average in all areas, except for somatization and relations with parents.

Nunn selected the Behavior Assessment System for Children, Parenting Relationship Questionnaire to assess Parent's perspective on the parent-child relationship. Scale scores in the lower extreme range denote significant relationship problems for which an appropriate intervention is probably warranted. Scores in the significantly below average range may indicate the presence of potential or developing relationship problems that should be monitored carefully and may require appropriate intervention. Parent rated all components of the scales in either the lower extreme range or significantly below average range, except for relational frustration.

Nunn selected the Children's Depressions Inventory-2 to obtain information regarding Student's behavior related to emotional problems and functional problems across settings. He obtained ratings scales from both Parent and Student. Parent's total score was very elevated as were Parent's scores for Student's emotional problems and functional problems. Student's self-rated scores were average in the same areas.

Nunn selected the Multidimensional Anxiety Scale for Children, Second Edition, a comprehensive, norm-referenced assessment of anxiety dimensions in children and adolescents to assess Student's anxiety levels. He obtained ratings scales from both Parent and Student. Parent's total score was very elevated with particularly high scores

in the areas of general anxiety disorder, physical symptoms and panic. Student's corresponding scores were all in the average range except for slightly elevated scores for physical symptoms and the associated tense/restless score. Nunn attributed the slightly elevated scores to Student's Type I diabetes and the physical impacts of that condition on Student.

Nunn selected the Conners Rating Scale, fourth edition, as an assessment tool to obtain observations of Student's behavior across settings from Parent's perspective. Based upon the responses of Parent, Student demonstrated average scores in

- inattention/executive dysfunction,
- hyperactivity,
- impulsivity,
- schoolwork, and
- peer interaction.

Parent rated Student in the high average range for family life. Parent rated Student as very elevated in emotional dysregulation, depressed mood, and anxious thoughts.

Nunn selected the Anger Regulation and Expression Scale, a comprehensive self-report assessment scale, to assess the regulation and expression of anger by Student. The assessment provides a total score, along with cluster scores in internalizing anger, externalizing anger and extent of anger. Student's total score was in the average range, but he did show some elevation in the internalizing anger cluster which looks at the individual's private physical sensations, experiences and thoughts during episodes of anger. On the extent of anger sub-scales, Student report Parent as Student's only trigger for anger.

Nunn selected the SSIS-SEL Edition assessment to measure Student's social-emotional scores across five competencies, including self-awareness, self-management, social awareness, relationship skills and responsible decision making. In addition to scores for the five competencies, the assessment provides a composite that represents an overall index of social-emotional functioning. Nunn obtained ratings from Student, Parent and Student's English teacher, Ciulla.

Ciulla rated Student in the high average range, with strengths in self-management, relationship skills and core skills. Student rated themselves as average across the competencies. Parent rated Student in the well below average range for the overall index score. Parent rated Student particularly low in the competencies of self awareness, self management, social awareness, relationship skills and core skills.

Nunn selected the Comprehensive Executive Functioning Inventory to assess Student's executive functioning skills across nine domains. Executive functions were described as mental processes that direct and control an individual's thought, action and emotion, particularly during active problem solving. He obtained ratings on this assessment from Parent. Parent rated Student below average overall with well below average scores in emotional regulation, initiation and planning.

Nunn selected the Adaptive Behavior System, Third Edition, a comprehensive, norm-referenced assessment of adaptive skills needed to care for oneself, respond to others, and meet environmental demands in all areas of life. The assessment produces a general adaptive composite score and scores on three adaptive domains of conceptual, social and practical. He obtained ratings on this assessment from Parent. Parent rated Student as below average overall with a low score in the social domain, and below average scores in the practical and conceptual domains.

Nunn selected the Rating Scale of Impairment to obtain Ciulla's observations of Student's levels of impairment in three life areas of school, social and mobility compared others in the same age group. Ciulla rated Student as without impairment in each of the three areas with a corresponding total score of no impairment.

ACADEMIC ACHIEVEMENT

Temecula proved its academic assessment of Student incorporated in the psychoeducation assessment was appropriate. Ashley Vella, a district education specialist, administered the Wechsler Individual Achievement Test, Fourth Edition, a norm-referenced test which measures academic achievement. Vella administered the Wechsler Achievement test to determine Student's academic strengths and weaknesses. She regularly administered the Wechsler Achievement test as part of her duties with Temecula. Although no specific credential was required to administer the Wechsler Achievement test, Vella had held a mild-moderate special education credential since 2014. Vella also held a multiple subject credential and earned master's degree in education. She had been employed by Temecula since 2007.

Vella testified at hearing to address questions raised by Parent and by Temecula's counsel regarding the administration of the Wechsler Achievement test, Student's demeanor, Student's test results, conduct of the initial IEP and her analysis of Student's eligibility for special education. Vella was highly knowledgeable about the Wechsler Achievement test, Student's performance on the test, and Student's potential eligibility for special education under one of three categories considered by the team. She provided a clear explanation of her assessment and scoring procedures. Her testimony was credible and persuasive.

Vella described Student as easygoing, friendly, complaint and trying hard without stressing during the assessment. Vella testified that the results were valid, reliable and an accurate representation of Student's ability. She also testified that she had no academic concerns about Student's performance on the assessment as there were no areas of struggle and no need for additional testing in her judgment. Overall, Student scored in the average and above average levels on the academic composite areas, and in the underlying subtest areas. Based on the convergence of Student's performance on cognition compared to achievement, she did not find any discrepancies and doubted that Student had a specific learning disorder.

Student's grades for middle school and the first year and one half of high school were included in the assessment, along with standardized test results. None of the standardized tests fell within the timeframe at issue in this case, and except for the PSAT test, all pre-dated high school. Grade wise, Student had strong grades in sixth and seventh grade, average grades in eighth grade during COVID. At the time of the hearing, Student had a cumulative grade point average of 3.1667, earning primarily B's with some A's and an occasional C grade.

PARENT OBJECTIONS TO THE PSYCHOEDUCATIONAL ASSESSMENT

Parent challenged the validity of the psychoeducation assessment at hearing and in her closing brief. Parent alleged that a few instances of the use of the name "Christopher" in the multidisciplinary report

- made the report unreliable,
- that the outcome of the assessments was predetermined, in particular by the use of Nunn as the primary assessor,

- that the assessment overlooked the impact of Student's diabetes diagnosis on his education, and
- that the assessment failed to address Student's intermittently low grades during the Spring 2023 semester.

Parent did not meet her burden of proof on this issue. Nunn and the other assessors testified credibly and convincingly that the infrequent error of the use of another student's name rather than Student's in the report did not diminish the report's credibility, although any error was always undesirable. The error crept in through the use of standard descriptive language in the report that was copied from a template and did not render the report unreliable.

Parent claimed that the use of Nunn as the primary assessor was evidence that Temecula pre-determined the outcome of the assessments. Nunn and director Hilton both testified credibly and convincingly that Nunn was not biased towards a particular outcome and had been given no such direction. He was often brought in for complex assessments or assignments where there has been disagreement between parents and the school. Hilton also testified that given the prior denial of an assessment by school psychologist Bryan Phung, and the disagreements about that denial that had arisen with Parent, that an outside assessor seemed appropriate. Notably, Nunn was able to spend considerably more time on the assessments and the report than the average school psychologist would have had available in their schedule. This allowed Nunn to prepare an exceptionally detailed report that evidenced skill and thoroughness, not pre-determination.

Parent claimed that the assessments and report overlooked the impact of Student's diabetes on his education. Each of the assessors, including Vella, were

significantly aware of Student's diagnosis. However, Student's diabetes had no discernable impact on the assessments conducted to prepare the multidisciplinary report, as Student performed well across a broad spectrum of settings including interviews, individual assessments and classroom observations. Evidence of Student's diabetes was noted regarding attendance, somatization and physical discomfort.

Parent claimed that Student's on-line progress reports or written progress reports were evidence of academic distress and struggle for Student. However, multiple witnesses testified as to Student's tenacity, focus and perseverance in always catching up if they got behind or missed class because of diabetes-related attendance issues. Student's academic records showed a pattern of successful grades at the semester level, and their teachers uniformly reported that they had the skills and focus to get caught up as needed.

EDUCATIONALLY RELATED MENTAL HEALTH ASSESSMENT

Temecula proved it conducted the educationally related mental health assessment appropriately. Temecula utilized a staff behavioral therapist, Cassandra Apple, to conduct the assessment and the portion of the report related to educationally related mental health.

Apple, a licensed marriage and family therapist, held a bachelor's degree in psychology, and a master's degree in marriage and family therapy. Apple had been a behavioral health therapist with Temecula since January 2018. She had previously served as a clinical and program director, assistant program director and case manager/therapist at Rancho Damacitas Children and Family Services in Temecula,

California. She held certificates in trauma focused behavioral therapy and dialectical behavior therapy. Apple's education, credentials, and experience rendered her well qualified him to conduct an educationally related mental health assessment.

At hearing, Apple answered questions candidly and exhibited a strong understanding of assessment procedures and educationally related mental health theory and practice. Apple answered Parent's questions about test protocols and perceived scoring inconsistencies. Apple's testimony regarding the assessment and her conclusions were well-reasoned, and withstood Parent's attempts to discredit the assessors and the report preparation. Apple's testimony, corroborated by other witness testimony, was given significant weight.

Apple chose a variety of sources of information to conduct Student's educationally related mental health assessment, including

- Student's grade, attendance and behavior records,
- Student's then current 504 Plan,
- Student's then current SEL Intervention Plan,
- a review of the psychoeducational assessment data from Nunn's psychoeducational assessment,
- interviews with Parent, Student, Student's therapist Kyle Royce, Temecula school social worker Aura Contreras and
- consultation and collaboration with Nunn.

CLINICAL INTERVIEWS

Apple conducted clinical interviews to gain information for the educationally related mental health assessment. She approached such interviews by looking through her clinical lens for

- diagnoses,
- symptoms,
- presentation,
- family dynamics,
- childhood dynamics and
- protective or risk factors.

Apple conducted a comprehensive interview with Student on January 13, 2023 in a room at the wellness center at Student's high school. Student was a willing participant in the interview, and she found it easy to establish a positive rapport with them. Student reported struggling much more with anxiety than depression, but that it was then currently much better. Student reported no difficulty making friends and that they had a group of friends, with one close friend and also a brother as their primary source of support. Student felt that they had moved on from where they were personally at the time of the two alleged self-harm incidents and that that time was behind them, and Student had learned a lot and grown from the experiences.

Apple conducted an interview with Parent on January 11, 2023 through Google Meet. Parent was concerned that Student was not achieving his full potential, although at the time Parent was more concerned with Student's mental health than their grades. Parent was particularly concerned about the two alleged self-harm incidents in 2022.

Parent believed that the solution for Student was an IEP and Educationally related mental health services through the IEP. Parent reported that Student had recently met with therapist Kyle Royce, but that Royce was only available now through telemedicine and Student wanted only in person therapy. Parent shared that she walks on eggshells at home because of Student's mood.

Apple conducted an interview with therapist Royce by telephone on January 25, 2023. Royce reported that he had two appointments with Student in June and July 2022, and then no further appointments were scheduled. Royce had diagnosed Student with adjustment disorder with mixed anxiety and depressed mood. Royce shared that Student's mood issues appeared to be impacted by family dynamics, and that no school-related problems were mentioned by Student during their sessions.

SUMMARY OF MENTAL HEALTH FINDINGS

Apple summarized her educationally related mental health assessment of Student. Relying on Royce she found that Student had been diagnosed with adjustment disorder with mixed anxiety and depressed mood. She found that Student was functioning well at that time based upon the Behavioral Assessment System for Children self-report. Apple did not find that Student's mental health was impacting Student's ability to receive an education. Student's grades were in the average range with a grade point average of 3.1 and Student was on track for graduation. Student's teachers did not report any problems with Student's behavior and the teachers' respective rating scales did not indicate any classroom issues with Student. Student did not report difficulties with social relationships with peers. Nunn's classroom observations also supported that conclusion. Apple opined that Student's 504 plan, along with Student's weekly check-ins with the school social worker, were sufficient and effective interventions to support Student at that time.

MULTIDISCIPLINARY ASSESSMENT REPORT AND IEP TEAM MEETING

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. 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).)

The multidisciplinary assessment report complied with statutory requirements. Nunn produced a written report of the multidisciplinary assessment, including Vella's academic assessment and Apple's educationally related mental health assessment. The report detailed the basis of the assessment findings, and Nunn's analysis of Student's suspected disabilities and areas of educational need. The report included detailed information about Student's educational and health history, input from Parent, and a summary of Student's psychological, educational, and behavioral abilities. The report also included detailed charts, tables, graphs and written discussion and interpretations of the results from the various informal and standardized tests, as well as the assessors' behavioral observations, both during testing and in the classroom.

The report analyzed whether Student met eligibility for special education and related services under the categories of emotional disturbance, other health impairment and or specific learning disability. (Cal. Code Regs., tit. 5, 3030, subds. (a) and (b).) The report identified the legal eligibility criteria for each category. (*Id.*) Nunn concluded

Student experienced impacts from his diabetes, but that the impacts were not significant enough to warrant special education services under any of the three eligibility categories considered. Similarly, each of the other assessors determined Student did not exhibit significant weaknesses nor did their assessment results indicate any additional areas of suspected need which required additional assessment. The report indicated that Student's IEP team would make the final determination regarding eligibility.

At Student's initial IEP team meeting on January 31, 2023, the IEP team discussed each component of the multidisciplinary assessment report. Nunn, Vella and Apple attended the IEP team meeting, and each presented their assessment results. (Ed. Code, § 56327, subds. (a), (b).) Parent and Student attended the meeting, and both had the opportunity to ask questions about the assessments and Student's eligibility for special education. The meeting concluded before the IEP team made its decisions on eligibility, because Parent objected to the assessments and ended the meeting.

As evidenced above, Temecula established it used a variety of valid instruments to evaluate Student's intellectual development, social emotional, behavior, academic achievement, motor development, and speech and language skills, which included appropriate standardized and informal assessments to address Student's areas of concern. (34 C.F.R. § 300.304(b)(1), (3); Ed. Code, § 56320, subd. (b)(3).) Temecula administered the assessments in accordance with the test producer's instructions and protocols. (Ed. Code, § 56320, subd. (b)(3).) Temecula established the assessments produced reliable and valid information for Student's educational, behavioral and mental health needs. (34 C.F.R. § 300.304(b)(3); Ed. Code, § 56320, subd. (b)(1).) As a result, Temecula proved its assessments in these areas were appropriate and met all legal requirements.

STUDENT'S ISSUE 1.A.: DID TEMECULA DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION DURING THE 2022-2023 SCHOOL YEAR, THROUGH JANUARY 31, 2023, BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER THE ELIGIBILITY CATEGORY OTHER HEALTH IMPAIRMENT BEGINNING IN NOVEMBER 2022

Student contends that Temecula denied Student a FAPE by failing to find Student eligible under the eligibility category of other health impairment. Temecula contends that while all agree that Student has diabetes, the evidence does not support that Student's diabetes affects their ability to access their education.

Parent and Temecula reached a settlement agreement, effective November 28, 2022, that waived any past liability on Temecula's part and provided for the multidisciplinary assessment, including the educationally related mental health assessment. As discussed above, Temecula's multidisciplinary assessment, including the educationally related mental health assessment, is found to be legally sufficient. The IEP team met to discuss the assessments, but the meeting was terminated by Parent and the team did not reach a determination regarding eligibility.

Here, Parent failed to meet their evidentiary burden in establishing that it was more likely than not that Student was eligible for special education under the eligibility category of other health impairment. To the contrary, the evidence at hearing established that although Student had diabetes, the medical condition did not affect Student's ability to access their education. The primary effect of Student's diabetes on their educational access was excessive absences. All of Student's teachers pointed to Student's resourcefulness and resilience in overcoming the absences and performing

well at school. Student was consistently able to utilize his 504 accommodations to catch up and to minimize or eliminate the effect of their absences. Vella, a credentialed special education teacher testified convincingly that Student did not need special education, particularly specialized academic instruction, to meet standards. Therefore, Temecula prevailed on Student's Issue 1.a.

STUDENT'S ISSUE 1.B.: DID TEMECULA DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION DURING THE 2022-2023 SCHOOL YEAR, THROUGH JANUARY 31, 2023, BY FAILING TO OFFER STUDENT EDUCATIONALLY RELATED MENTAL HEALTH SERVICES BEGINNING IN NOVEMBER 2022

Student contends that Temecula's denied Student a FAPE by failing to offer Student educationally related mental health services via an IEP beginning in November 2022. Temecula contends that Student already receives necessary supports through the 504 Plan and that educationally related mental health services pursuant to an IEP are not necessary, and that, in fact, Student does not qualify for such services based upon the educationally related mental health assessment and accompanying report.

The relationship between the duty to assess, the duty to provide special education services, and the duty to utilize general education resources where appropriate was concisely summarized in *Los Angeles Unified School District v. D.L.* (C.D. Cal. 2008)548 F.Supp.2d 815, 819-820:

To prevent districts from 'over-identifying' students as disabled, Congress mandated that states develop effective teaching strategies and positive behavioral interventions to prevent over-identification and to assist students without an automatic

default to special education. (20 U.S.C. § 1400(c)(5)(f).) Schools, however, are charged with the 'child find' duty of locating, identifying and assessing all children who reside within its boundaries who are in need of special education and related services. (20 U.S.C. § 1400(a)(3); [Ed. Code, §§ 56300-56303].) If a school district suspects that a general education student may have a disability, it must conduct a special education assessment to determine whether the student qualifies for special education services. (20 U.S.C. § 1414(a)(1)(a); [Ed. Code, § 56320].) However, a student 'shall be referred for special education instruction and services only after the resources of the regular education program have been considered, and, where appropriate, utilized.' ([Ed. Code, § 56303].)

Here, Student currently receives on campus counseling support through the 504 Plan in the form of weekly counseling support from Contreras. As discussed above, the educationally related mental health assessment and accompanying report were legally sufficient, and the finding that Student did not qualify for educationally related mental health services was based upon a thorough review of information regarding Student's mental health status and needs in relation to accessing their education. Both social worker Contreras and educationally related mental health services provider Apple testified convincingly and in detail that Student's 504 accommodations were sufficient for their needs and that Student did not need educationally related mental health services. On the other hand, there was no persuasive evidence presented by Student that they currently required such services. Other than Parent's concerns regarding the two incidents from 2022, the overwhelming evidence supported that Student was accessing their education without need of additional mental health services or support. Therefore, Temecula prevailed on Student's Issue 1.b.

STUDENT'S ISSUE 1.C.: DID TEMECULA DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION DURING THE 2022-2023 SCHOOL YEAR, THROUGH JANUARY 31, 2023, BY PREDETERMINING THAT STUDENT WAS INELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

Student contends that Temecula denied Student a FAPE by predetermining that Student was ineligible for special education by hiring assessor Nunn to conduct the multidisciplinary assessment, and by having the assessment overlook critical information. Parent contends this information included the impact of Student's diabetes diagnosis on his education, Student's two poor progress reports during the Spring 2023 semester, Student's purportedly inadequate standardized test results in middle school, and Student's prior self-injury issues.

Temecula contends its January 2023 multidisciplinary assessment did not predetermine Student's eligibility by manipulating the assessment. Temecula asserts its assessors thoroughly and appropriately considered the information obtained during the assessment, including the impact of Student's diabetes, Student's poor progress reports, Student's standardized test results, and Student's prior suicidal ideation.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p.1485.) "Participation must be more than mere form; it must be meaningful." (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted] ("*Deal*").) A school cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.) A school

district that predetermines the child's program, and does not consider parents' requests with an open mind, has denied the parents' right to participate in the IEP process. (*Deal, supra*, 392 F.3d at p. 858; *Ms. S., supra*, 337 F.3d at p. 1131.)

For IEP team meetings, predetermination occurs when an educational agency has decided on its offer prior to the meeting and is unwilling to consider other alternatives. (*Deal, supra*, 392 F.3d at p. 857-858; *H.B. v. Las Virgenes Unified School Dist.* (July 3, 2007, No. 05-56486) (9th Cir. 2007) 239 Fed. Appx. 342, 344-345 [nonpub. opn.].) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn.10.) Although school district personnel may bring a draft of the IEP to the meeting, the parents are entitled to bring to an IEP team meeting their questions, concerns, and recommendations as part of a full discussion of a child's needs and the services to be provided to meet those needs before the IEP is finalized. (*Assistance to States for the Education of Children Disabilities* (March 12, 1999) 64 Fed. Reg. 12478-12479.) School officials may permissibly form opinions prior to IEP team meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D.Ohio, January 17, 2013, No. 1:11-CV-398) 2013 WL 209478, *7.)

A child can only be denied a FAPE by a district's action or omission if the child is eligible for special education at the time of the district's conduct, or would be eligible for special education but for the district's conduct. (*R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 942 ("[A] procedural violation cannot qualify an otherwise ineligible student for IDEA relief.").)

Here, Parent's concerns about predetermination focus on the selection of assessor Nunn and the degree to which the assessors considered Student's diabetes diagnosis along with Parent's concerns about low interim grades, low standardized tests in middle school and Student's prior issues with self-injury. There was no persuasive evidence to support Student's assertion Temecula selected assessor Nunn in order to dictate the outcome of the multidisciplinary assessment or that the assessors ignored or minimized Parent's concerns.

As discussed above, there were reasonable, credible and logical reasons for Temecula to hire Nunn to conduct the multidisciplinary assessment. There was no persuasive evidence presented at hearing to support the conclusion that Temecula had any sinister motive or agenda in hiring Nunn. In fact, the available evidence strongly supported the conclusion that Nunn was highly qualified and experienced and an ideal candidate to conduct a thorough, exhaustive assessment.

The evidence also strongly supports that that was the actual outcome. As discussed above, the assessment and accompanying report were legally sufficient. Further, there was no persuasive evidence that the assessors ignored Parent's concerns. The available evidence did show that the assessment and accompanying report were extremely thorough, and that the accrued information supports the conclusion that the assessment work was fair, honest and professional.

Notwithstanding the absence of procedural error in the form of predetermination, Student was not eligible for special education. As discussed, above, with regard to Student's Issue 1.a., Student was not eligible for special education under the eligibility category of other health impairment. Likewise, with regard to Student's Issue 1.b., Student

was not eligible for educationally related mental health services. Student did not meet their burden of proof with regard to this issue. Therefore, Temecula prevailed on Student's Issue 1. c.

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.

TEMECULA'S ISSUE:

The multidisciplinary assessment and accompanying report were legally sufficient so that Temecula is not required to provide Student an independent educational evaluation at public expense.

Temecula prevailed on Temecula's sole Issue.

STUDENT'S ISSUE 1, SUBSECTION a:

Temecula did not deny Student a FAPE by failing to find Student eligible for special education under the eligibility category of other health impairment.

Temecula prevailed on Issue 1, subsection a.

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STUDENT'S ISSUE 1, SUBSECTION b:

Temecula did not deny Student a FAPE by failing to offer Student educationally related mental health services pursuant to an IEP.

Temecula prevailed on Student's Issue 1, subsection b.

STUDENT'S ISSUE 1, SUBSECTION c:

Temecula did not deny Student a FAPE by predetermining that Student was ineligible for special education and related services.

Temecula prevailed on Student's Issue 1, subsection c.

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.

Ted Mann

Administrative Law Judge

Office of Administrative Hearings