BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PLEASANTON UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2024010574

DECISION

May 29, 2024

On January 19, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Pleasanton Unified School District, called Pleasanton, naming Student. On February 2, 2024, OAH granted the parties' joint request for a continuance. On April 2, 2024, OAH granted Pleasanton's request for continuance, setting the hearing to begin on April 9, 2024. Administrative Law Judge Ashok Pathi heard this matter via videoconference on April 9, 10, and 11, 2024.

Attorneys David Mishook and Aisha Sleiman represented Pleasanton Unified School District. Dr. Jeni Rickard, Senior Director of Special Education, attended all hearing days on Pleasanton's behalf, except for a short time on April 10, 2024, when

Sohail Ahmed, Program Supervisor, attended in her place. Attorneys Marc Buller and Kelly Chacon represented Student. Parent attended all hearing days on Student's behalf. Student did not attend the hearing.

At the parties' request, the matter was continued to May 6, 2024, to give them time to submit written closing briefs. The record was closed, and the matter was submitted on May 6, 2024.

ISSUE

The issue decided at the due process hearing is stated below:

1. May Pleasanton Unified School District assess Student pursuant to a March 10, 2023 assessment plan without Parent's consent and without conditions placed on the assessment by Parent?

NARROWING THE SOLE ISSUE FOR HEARING AND DISMISSING PLEASANTON'S ISSUE 2

A prehearing conference, called a PHC, was held in this case on March 22, 2024. The administrative law judge, called an ALJ, who presided over that PHC also established a second issue to be addressed at hearing. The second issue established at the March 22, 2024 PHC was the following:

2. Is Pleasanton Unified School District excused from any obligations to Student, including providing Student a free appropriate public education, in the event Parent does not make Student available for assessment without condition?

At the start of the due process hearing, the undersigned ALJ and parties discussed the scope of Issue One. The ALJ heard arguments from both parties. Pleasanton confirmed its allegation that Parent had placed specific, enumerated conditions on his consent to the March 10, 2023 assessment plan. The ALJ determined those specific, enumerated conditions were the only conditions which would be analyzed within the Decision issued in this case.

The ALJ raised concerns that Issue Two was a remedy Pleasanton sought through the due process complaint, rather than a separate legal issue. Additionally, Issue Two requires the ALJ to make findings on Parent's future conduct, making the issue not presently ripe for adjudication. (*Scott v. Pasadena Unified Sch. Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [a claim is not ripe for adjudication "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'"[quoting *Texas v. United States* (1998) 523 U.S. 296 (quoting *Thomas v. Union Carbide Agric. Prods. Co.* (1985) 472 U.S. 568)]); see also *Patricia H. v. Berkeley Unified Sch. Dist.* (N.D. Cal. 1993) 830 F.Supp. 1288, 1298 ["The ripeness doctrine prevents courts from deciding theoretical or abstract questions that do not yet have a concrete impact on the parties."].) After hearing argument from the parties, the ALJ dismissed Issue Two. The hearing then proceeded only on Issue One.

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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).) Pleasanton had the burden of proof in this matter. 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).)

BACKGROUND

Pleasanton and Parent have a history of disagreements regarding Student's education. Student previously filed due process requests with OAH, as well as a civil suit in the Federal District Court for the Northern District of California, against Pleasanton and Contra Costa County Office of Education. The parties to those matters resolved all known and unknown disputes between them through a settlement agreement dated March 26, 2021, called the March 2021 Settlement Agreement. The March 2021 Settlement Agreement resolved all disputes and potential disputes between the parties through the last day of the 2023 extended school year, which was July 6, 2023.

In relevant part, the March 2021 Settlement Agreement indicated that Student's operative individualized education program, called an IEP, was her August 27, 2019 IEP. That IEP included several attachments, such as a guide to positioning Student, as well as various checklists for staff to help meet Student's physical and medical needs. The August 27, 2019 IEP also incorporated a process termed "familiarization." This "familiarization" process included staff training on any relevant doctor orders as well as the positioning guide and checklists. The March 2021 Settlement Agreement also included terms relating to how medical information would be requested and shared of between Student's medical providers and school staff through the end of the 2023 extended school year.

The August 27, 2019 IEP placed Student at Mauzy School, which is operated by the Contra Costa County Office of Education. She attended Mauzy School for a short time in the fall of 2019 and then again between January 2020 and March 2020, prior to the COVID-19 school closures. Student has not attended Mauzy School in person since March 2020. She received all her education virtually during the time COVID-19 shelter

in place orders were in effect. The record was not clear as to the date she stopped receiving services, but Student was not attending Mauzy School, or otherwise receiving educational services from Pleasanton, at the time of hearing.

During the hearing, Pleasanton requested that the ALJ take official notice of the Decision issued in OAH Case No. 2019100433, dated January 21, 2020. That matter involved Student, Pleasanton, and the Contra Costa County Office of Education. Student did not object. The ALJ deferred ruling on the request during the hearing, but now makes the following ruling. OAH may take official notice of previous OAH decisions. (*Hogen v. Valley Hospital* (1983) 147 Cal. App. 3d, 119, 125; Evid. Code § 452(c).) Therefore, Pleasanton's request for official notice of the Decision in OAH Case No. 2019100433, dated January 21, 2020, is granted.

Student was 15 years old and in ninth grade at the time of hearing. Student resided within Pleasanton's geographic boundaries at all relevant times. Student was initially found eligible for special education on December 21, 2011. Student was eligible under the categories of intellectual disability and orthopedic impairment.

Student has complex medical needs which significantly impact her education. She was born with Wolf-Hirschhorn syndrome, a chromosomal disorder which significantly impacts all areas of development. She demonstrated significant cognitive, fine motor, and gross motor impairments. Student was also nonverbal, visually impaired, and had seizures. She required specialized equipment for standing and sitting, and assistive technology to communicate. Student also required supplemental nutrition provided through a gastronomy tube, also called a gastric tube or G-tube.

ISSUE 1: MAY PLEASANTON UNIFIED SCHOOL DISTRICT ASSESS STUDENT PURSUANT TO A MARCH 10, 2023 ASSESSMENT PLAN WITHOUT PARENT'S CONSENT AND WITHOUT CONDITIONS PLACED ON THE ASSESSMENT BY PARENT?

Pleasanton contends that

- it is required to assess Student,
- the March 10, 2023 assessment plan meets all legal requirements,
- the assessors chosen are competent to perform the assessments, and
- the assessors are not required to abide by the conditions Parent placed on the assessments.

Student contends that Pleasanton has not demonstrated a need to reassess Student because her triennial evaluations were not due in March 2023. Yet, Student also contends that she should be reassessed because that information would be helpful to update her IEP. Student further contends that Pleasanton has not provided Parent with sufficient information to provide informed consent to the proposed assessments. Lastly, Student contends that all of Parent's requests are required to keep Student safe due to her unique needs and have been implemented successfully in the past.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel

develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services 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 Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

An assessment of the student's educational needs must be conducted before any action is taken to place a student with exceptional needs in a special education program. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) An assessment may be initiated by request of a parent, a State educational agency, other State agency, or local educational agency. (20 U.S.C. § 1414(a)(1)(B); Ed. Code, §§ 56302, 56029, subd. (a), 56506, subd. (b).) When conducting initial assessments and triennial reassessments, school districts must assess children in all areas of suspected disability and educational need. (20 U.S.C §§ 1414(a)(1)(A), 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) Assessments generally require parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c) (2008); Ed. Code, §§ 56021.1; 56381, subd. (f)(1).) California law defines consent consistent with federal regulations. (34 C.F.R. §300.9; Cal Ed. Code, § 56021.1)

School district evaluations of students with disabilities under the IDEA serve two purposes:

1. identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and

2. helping IEP teams identify the special education and related services the student requires. (20 U.S.C. § 1414(a); 34 C.F.R. §§ 300.301 (2007), 300.303 (2006); Ed. Code, § 56043.)

The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The terms are interchangeable. (20 U.S.C. § 1414(a); Ed. Code, § 56302.5.)

CONDITIONS PLACED ON THE ASSESSMENT PLAN INVALIDATE PARENT'S CONSENT

Parent provided written consent to the March 10, 2023 assessment plan on January 10, 2024. However, that consent was contingent upon specific conditions regarding the assessment process. Pleasanton asserts that Parent has invalidated his signed consent to the March 10, 2023 assessment plan by imposing conditions on those assessments which Pleasanton does not agree with.

If Parent's consent is valid, then the ALJ would not need to determine whether the March 10, 2023 assessment plan is legally compliant before determining whether Parent may lawfully impose those conditions. However, if Parent's conditions invalidate his signed consent, the ALJ must first determine whether the March 10, 2023 assessment plan is legally compliant such that Pleasanton can assess without Parent's consent.

If the statutory requirements for assessments are satisfied, school districts have significant latitude when conducting assessments. (See e.g. *M.T.V. v. DeKalb County School Dist*. (11th Cir. 2007) 446 F.3d 1153, 1160 [abrogated on other grounds].) The selection of particular testing or evaluation instruments is left to the discretion of state and local educational authorities. (*Letter to Anonymous* (OSEP Sept. 17, 1993) 20 IDELR 542; *M. W. v. Poway Unified School District* (S.D. Cal. Aug. 14, 2013) 2013 WL 4401673.) In general, parental conditions on assessment that the school district disagrees with "vitiat[e] any rights the school district ha[s] under the IDEA for the reevaluation process." (*G.J. v. Muscogee County Sch. Dist*. (11th Cir. 2012) 668 F.3d 1258, 1264; *R.A. v. West Contra Costa Unified Sch. Dist*. (N.D. Cal., August 17, 2015, Case No. 14-cv-0931-PJH) 2015 WL 4914795 [affd. mem. sub. nom. *R.A. by and through Habash v. West Contra Costa Unified Sch. Dist.*, (9th Cir. 2017) 696 Fed.Appx.171, [parents "effectively withdrew their consent by insisting on [an unreasonable condition.]"].)

In this case, Parent consented to the March 10, 2023 assessment plan on January 10, 2024, by marking the box indicating his consent. But, Parent's dated signature was located on a separate attachment, which included the following five "requests" quoted below:

- Parent is not required to provide a medical release. Parent will be the go-between between school and [medical providers] to provide school with doctors letters, school forms, and other forms of written communication. All medical information requested by school from [medical providers] must be mutually agreed-upon between parent and school.
- Assessments must be held at mutual agreed-upon days and times.

- Parents must be present with Student in the same room during all assessments and able to assist Student's one-to-one licensed vocational nurse, one-to-one aide, assessors and specialists with Student since they all are not familiar with Student's medical, safety, educational [and] physical needs and have not been familiarized on Student per the IEP.
- Student must be fitted for all of her equipment by [a specific provider] and Parents prior to any assessment.
- Parent may be able to record assessments.

Parent characterized the above five parameters as "requests." However, Parent's attachment to the assessment plan, as well as Parent's testimony, established that these items were conditions on Parent's consent. Even though Parent credibly testified he wanted Pleasanton to assess Student, and believed those assessments would be helpful for developing Student's IEP, Parent nevertheless mandated Pleasanton could not conduct the assessments without applying the five above conditions. Said another way, Parent did not disagree whether Pleasanton could assess Student, but he disagreed on how Pleasanton could conduct those assessments. However, the law treats those types of disagreements as the same. (*G.J. v. Muscogee County Sch. Dist.* (M.D. Ga. 2010) 704 F.Supp.2d 1299 [affd. (11th Cir. 2012) 668 F.3d 1258], (*G.J.*).)

In *G.J.*, the parents signed their consent to an assessment plan "as explained and granted in [an] addendum." (*Ibid.* at p. 1306.) The addendum included seven conditions imposed by the parents, including specifying the types of assessment tools to be used, the specific assessors who would conduct the assessments, the methods in which the assessments would be conducted, and demanded that one of the student's parents be present during the assessments. (*Ibid.* at pp. 1306-1309.) The school district did not

agree to the parent's conditions. The District Court found those conditions to have invalidated the parents' consent. (*Ibid*. at p. 1309.) The Eleventh Circuit agreed. (*G.J., supra*, 668 F.3d at p. 1265.)

Pleasanton does not agree with the conditions that Parent has placed on the assessments. Therefore, it is necessary to determine whether the conditions invalidate Parent's signed consent to the March 10, 2023 assessment plan.

PARENT AS INTERMEDIARY FOR MEDICAL RECORDS

Pleasanton asserts that its assessors require medical information regarding Student's many significant medical needs, and that it would be improper for Parent to be an intermediary between the assessors and Student's medical providers.

Student argues that the March 2021 Settlement Agreement controls the exchange of medical information. Student argues that the March 2021 Settlement Agreement requires Pleasanton to seek medical information from Parent, who will then retrieve that information from Student's medical providers and then make it available to Pleasanton.

Student's assertion that the March 2021 Settlement Agreement controls the flow of medical information from Student's medical providers to Pleasanton is not persuasive. While the March 2021 Settlement Agreement includes a provision regarding the exchange of medical information, Student did not prove that OAH can enforce that agreement, or that the March 2021 Settlement Agreement is still in effect.

Parents and local educational agencies have the right to present a complaint before OAH, "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029, (*Wyner*).)

This limited jurisdiction does not include claims alleging a school district's failure to comply with a settlement agreement. (*Wyner*, *supra*, 223 F.3d at p. 1030.) In *Wyner*, the parties reached a settlement agreement, during a due process hearing, in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student filed another due process hearing alleging the school district did not comply with the settlement agreement. A hearing officer determined that the issues alleging the failure to comply with the settlement agreement in the first case were beyond its jurisdiction. This ruling was upheld on appeal.

The decision in *Wyner* held that "the proper avenue to enforce Special Education Hearing Office orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, *et seq.*), and that "a subsequent due process hearing was not available to address … alleged noncompliance with the settlement agreement and Special Education Hearing Office order in a prior due process hearing." (*Wyner*, *supra*, 223 F.3d at p. 1030.)

However, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW; 2007 WL 949603, (*Pedraza*)), the District Court held that OAH has jurisdiction to adjudicate claims that allege a student was denied a free appropriate public education,

called a FAPE, as a result of the violation of a mediated settlement agreement where the parties acknowledged in the agreement that the services the school district agreed to provide constitute a FAPE. (*Ibid.* at pp. *4-5.) However, according to the Court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedures. (*Ibid*. at p. *4.)

Thus, OAH has the authority to interpret a settlement agreement to determine if the parties to the settlement agreement explicitly agreed its terms constitute a FAPE. If so, then OAH would only have jurisdiction to hear claims related to implementation of a settlement agreement pursuant to its terms that were designated as a FAPE. (*Pedraza, supra,* N.D. Cal. 2007, No. C 05-04977 VRW; 2007 WL 949603. at p. *4.)

Student did not prove the terms in the March 2021 Settlement Agreement related to the exchange of medical information were designated as providing Student a FAPE. As such, OAH does not have jurisdiction to enforce those terms of the March 2021 Settlement Agreement under *Pedraza*.

Moreover, Student failed to establish that the March 2021 Settlement Agreement is still in effect. The March 2021 Settlement Agreement unambiguously states it resolves

> "…any and all claims, however framed, known and unknown… through the last day of the 2023 extended school year, except for claims brought in a court of competent jurisdiction related to the implementation, enforcement or any denials of FAPE related to the [settlement agreement]."

Therefore, the March 2021 Settlement Agreement expired on July 6, 2023, the last day of extended school year 2023. Consequently, the March 2021 Settlement Agreement is no longer in effect.

Student lastly asserts the March 2021 Settlement Agreement established a "pattern and practice" regarding the "acceptable duty of care" for Student. This argument also fails. Student provided no persuasive authority as to how a provision in a bargained-for settlement agreement survives beyond the applicable term of that agreement, such that it creates a duty on Pleasanton that the law does not.

Absent an enforceable agreement to the contrary, Parent may not act as an intermediary between Student's medical providers and Pleasanton. (*Shelby S. v. Conroe Ind. Sch. Dist.* (5th Cir. 2006) 454 F.3d 450, 454-455 [cert. den. (2007) 549 U.S. 111], (*Shelby S.*).)

In *Shelby S.*, the school district requested permission to speak with the student's medical provider regarding recommendations they had sent to the school district. The parent agreed, but limited her consent to 14 specific written questions, which were subject to the parent's approval. The parent would then act as intermediary between the school district and the medical provider. Critically, the parent had edited some of the provider's answers before giving them to the school district.

Due to the parent's insistence on being an intermediary between the school and the student's medical providers, and her editing the provider's responses, the school district determined it was necessary to conduct a medical assessment. The Fifth Circuit concluded that the school district could not develop an appropriate IEP if the parent

interfered with the exchange of medical information. Therefore, the school district was entitled to conduct a medical assessment without the parent's consent. (*Shelby S.*, *supra*, 454 F.3d at pp. 454-455.)

Here, Parent's request to be the intermediary between Pleasanton and Student's medical providers raises the same concerns. Parent's intervention and opportunity to alter the responses from Student's medical providers impermissibly interferes with Pleasanton's obligation to assess Student and offer ultimately her a FAPE. Therefore, Parent may not be an intermediary between Student's medical providers and the school.

Nevertheless, Student argues that Parent must act as an intermediary because he is not authorized by Student's medical insurer to release Student's medical records to Pleasanton's assessors. This argument is not persuasive.

In California, health care providers and service plans must disclose a patient's medical records to the patient or the patient's representative. (Cal. Civ. Code, § 56.10, subd. (b)(7).) Parent is authorized to be Student's representative with her medical providers. (Cal. Health & Safety Code, § 123105, subd. (e)(1).) Federal regulations specifically allow a parent to act as a personal representative for an unemancipated minor, such as Student. (45 C.F.R. § 164.502(g) (2000).)

California law also permits medical records to be provided to "a school-linked services coordinator pursuant to a written authorization between the health provider and the patient or client that complies with the federal Health Insurance Portability and Accountability Act of 1996." (Cal. Civ. Code, § 56.10, subd. (c)(23).) The list of people eligible to be a school-linked services coordinator includes staff with a pupil personnel services credential and a credentialled school nurse located on a school campus. (Cal.

Civ. Code, § 56.10, subd. (f)(2)(A) and (B).) Records may also be shared with other health care providers, such as physicians, for treatment purposes. (Cal. Civ. Code, § 56.10, subd. (c)(1).) Therefore, there is no legal impediment preventing Parent from releasing Student's medical records to Pleasanton's assessors.

Parent appeared sincere in his belief that he is unable to sign a release of information for Student's medical providers to give records directly to Pleasanton's assessors. However, Parent's misunderstanding of the law does not support Student's position.

Based on the evidence presented at hearing, there is no legal or other valid impediment to Parent authorizing a release of Student's medical information to Pleasanton's assessors from Student's medical providers. Overall, this condition invalidated Parent's consent.

ASSESSMENTS ON MUTUALLY AGREED DATES AND TIMES

One of the core principles of special education law is that parents and school districts should work collaboratively in a student's education. (*Schaffer, supra*, 546 U.S. at p. 53 ["The core of the [IDEA] ... is the cooperative process that it establishes between parents and schools"].)

Accordingly, school districts must be flexible with parents when scheduling appointments related to the IEP process. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1044-1047; *Shapiro v. Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1077-1078 [superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B)].) Pleasanton does not dispute this general principle. Parent's condition that Pleasanton assess Student on mutually agreed upon dates and times is consistent

with Pleasanton's existing legal duties under special education law. However, both parties must cooperate to ensure the assessments are completed timely. Therefore, on its face, this condition does not invalidate Parent's consent.

PARENT BEING PRESENT DURING ASSESSMENTS

There is no legal requirement for a school district to allow a parent to see and hear a student during special education assessments. *(R.A. by and through Habash v. West Contra Costa Unified Sch. Dist.*, *supra*, 696 Fed.Appx. at p. 172.)

Throughout the hearing, Student sought testimony from Pleasanton's proposed assessors and her own expert regarding whether Parent could be in the same room as Student during the assessments. Student argued Pleasanton had granted this request during Student's 2021 triennial evaluation, and that it would not be an "undue burden" for Pleasanton to acquiesce again.

This assertion is not convincing. The question is not whether Pleasanton assessors may allow Parent to be in the room with Student during the assessments, but whether Pleasanton must do so. Student did not prove such a legal requirement exists. (*R.A.*, *supra*, 696 Fed.Appx. 171.)

By contrast, Pleasanton's assessors overwhelmingly testified that Parent's presence in the testing room could distract or otherwise affect Student, the assessor, or both. This distraction could potentially undermine the validity of the assessment results. Student did not successfully refute this evidence. Because there is no legal requirement that a parent can see and hear assessments, and Pleasanton proved that allowing Parent to do so could negatively impact the results of the assessment, Parent's condition that he must be present during Student's assessments invalidated his consent.

STUDENT MUST BE FITTED FOR SPECIALIZED EQUIPMENT

It is undisputed that Student requires specialized equipment for her to participate in educational activities, including assessments. It is also undisputed that Student's fitting needs have changed since her spinal fusion surgery in July 2023.

Pleasanton must address Student's need for specialized equipment that is relevant to her education. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500 [citing J.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. at pp. 56-58].) As with scheduling assessments on mutually agreeable dates and times, special education law contemplates that parents and school districts will coordinate in good faith in these situations. Again, Pleasanton does not disagree with this general principle. On its face, this condition did not invalidate Parent's consent.

RECORDING ASSESSMENTS

Student asserted Parent should be able to record the assessments because Pleasanton did not fully inform Parent about the details of the administration of the assessments. Parent specifically noted concerns about not knowing whether he could be in the room with Student during the assessments, and whether Parent would be able to "familiarize" staff who would be with her. Parent then disclosed Student's history of being injured several years ago in elementary school as a reason for this condition. However, those incidents did not occur during an assessment, and occurred prior to Student receiving individual aide support.

Student provided neither legal authority, nor logical rationale, to prove Pleasanton must allow Parent to record assessment administration sessions. Whereas several of Pleasanton's assessors indicated that recording would be inconsistent with general assessment practices, and some of the assessors felt it would create an intimidating environment. Student also failed to show that there was a legal requirement for Pleasanton to allow the recording. As such, Pleasanton is not required to allow Parent to record the assessments. This condition is unreasonable, and invalidated Parent's consent to the March 10, 2023 assessment plan.

As explained above, three of Parent's conditions were unreasonable and effectively invalidated Parent's signed consent to the March 10, 2023 assessment plan. Therefore, Pleasanton must demonstrate that the March 10, 2023 assessment plan meets legal requirements before it can assess Student without Parent's consent.

DEVELOPMENT AND ISSUANCE OF THE MARCH 10, 2023 ASSESSMENT PLAN

Pleasanton developed a triennial assessment plan, also called an eligibility evaluation plan, during the spring of 2023. The assessment plan was drafted by Sohail Ahmed, a Pleasanton special education program supervisor. Ahmed was Student's IEP case manager since the parties' execution of the March 2021 Settlement Agreement. Ahmed's duties as Student's case manager included developing assessment plans.

Pleasanton developed the assessment plan to update essential information about Student and her present levels of performance. This information was needed for her IEP team to develop a new offer of a FAPE. By spring 2023 Student had not attended Mauzy School in person for several years and Pleasanton staff did not have up to date

information on Student's needs and abilities. Moreover, the March 2021 Settlement Agreement would expire at the end of the 2023 extended school year, and Pleasanton planned to make a new offer of a FAPE based upon the assessment results.

Ahmed testified that he provided Parent with a copy of the March 10, 2023 assessment plan via email and through an electronic signature program called DocuSign. However, Ahmed did not recall the exact date he emailed Parent the March 10, 2023 assessment plan. Pleasanton proffered an email chain reflecting communications between Mr. Ahmed and Parents. The text of the email chain indicated that Ahmed sent an assessment plan to Parent on February 9, 2023 and on March 10, 2023. Notably, that email chain did not include any attachments or embedded record that documents, such as a copy of the assessment plan, a release of information, or a notice of rights and procedural safeguards, were attached to the emails.

Neither party provided a copy of any assessment plan dated on or before February 9, 2023. Rather, the only assessment plan introduced was the one dated March 10, 2023. Pleasanton did not explain the apparent date discrepancy between the February 9, 2023 email and the March 10, 2023 assessment plan.

Ahmed's testimony is not given much weight. Ahmed did not have much independent recollection or knowledge of events he was asked to recall and documents he was asked to authenticate. When responding to questions by counsel, Ahmed appeared to read from exhibits rather than provide information from memory. Additionally, when asked by Pleasanton's counsel whether a proffered three-page email chain between Ahmed and Parent included the email in which Ahmed provided Parent with a copy of the assessment plan, he was initially evasive in his response. Eventually Ahmed stated that he "did not recall" and did not provide a substantive answer to the

question. Ahmed also did not recall whether he provided Parent with a copy of the March 10, 2023 assessment plan in August 2023, following Student's spinal fusion surgery.

Ahmed was similarly evasive on cross examination. When asked if he could provide documentary evidence that he provided Parent with the March 10, 2023 assessment plan and release of information through DocuSign, Ahmed's response was "I could look for it." Ahmed also did not correctly remember that Parent signed the March 10, 2023 assessment plan on January 10, 2024. Ahmed instead indicated that it was signed approximately two months later. Overall, Ahmed's testimony was given little weight.

Nevertheless, the evidence established that Pleasanton provided Parent with a copy of the March 10, 2023 assessment plan in March 2023, and Parent signed it with conditions on January 10, 2024.

PLEASANTON IS CURRENTLY OBLIGATED TO ASSESS STUDENT

Pleasanton argues that it is obligated to assess Student because she has not attended school in person since March 2020 and Student's July 2023 spinal fusion surgery represented a significant change in circumstances that warranted reassessment.

Student argues that Pleasanton has not demonstrated a valid need to assess Student, because Student's triennial reassessment was not due in March 2023.

The IDEA provides for reevaluations to be conducted no more frequently than once a year, but at least once every three years, unless the parents and the agency agree that it is unnecessary. (20 U.S.C. §§ 1414(a)(2)(B)(ii), 1414(c)(4); 34 C.F.R. § 300.303(b)(2)

(2006); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) A school district must also conduct a reassessment if it determines that the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R § 300.303(a)(1) (2006); Ed. Code, § 56381, subd. (a)(1),(2).)

If the student's parents do not consent to the plan, the school district may conduct the reassessment only by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (34 C.F.R. §§ 300.300(c) (2008); Ed Code, §§ 56381, subd. (f)(3); 56501, subd. (a)(3); 56506(e).)

Student's last comprehensive triennial assessment was completed in March 2021. As a result, Student's triennial evaluation was due in March 2024, and is overdue. Neither party offered evidence that Pleasanton and Parent agreed that Student's triennial evaluation was not necessary. Rather, both Pleasanton and Parent believe Student should be reassessed. Therefore, it is not necessary for the undersigned to decide whether it was necessary for Pleasanton to assess Student in March 2023, or following Student's July 2023 spinal fusion surgery, because Pleasanton is currently obligated to conduct Student's triennial evaluation. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2) (2006); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).)

LEGAL REQUIREMENTS FOR ASSESSMENT PLANS

A reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c) (2008); Ed. Code, §§ 56021.1; 56381, subd. (f)(1).) California law defines consent consistent with federal regulations. (34 C.F.R. § 300.9; Cal Ed. Code, § 56021.1.) To obtain consent, a school district must develop and propose to parents an

assessment plan and include a statement of parents' procedural rights under the IDEA. (20 U.S.C. § 1414(b)(1); 34 C.F.R. § 300.304(a) (2006); Ed. Code, § 56321, subd. (a).) The assessment plan must:

- Be in language easily understood by the general public.
- Be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless to do so is clearly not feasible.
- Explain the types of assessments to be conducted, and
- State that no individualized education program will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subds. (b)(1)-(4).)

The school district must give the parent at least 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (c)(4).)

THE MARCH 10, 2023 ASSESSMENT PLAN DOES NOT MEET LEGAL REQUIREMENTS

Pleasanton's March 10, 2023 assessment plan was written in language easily understood by the general public. It was written in English, the language in which Parent communicated and testified. Neither party disputed that English was Parent's native language. The March 10, 2023 assessment plan broadly described the proposed assessments. Lastly, it included a statement that no IEP would result from the assessments without parental consent. (Ed. Code, § 56321, subds. (b)(1)-(4).)

Student claims that Pleasanton was required to provide Parent with additional information regarding the safety measures that would be in place for Student during the assessment process. However, Student did not provide persuasive legal authority to prove Pleasanton was obligated to provide this information in the assessment plan. Rather, Pleasanton proved it provided Parent with the legally required information. (Ed. Code, § 56321, subds. (b)(1)-(4).)

Parent received the assessment plan in March 2023, and Pleasanton did not file this due process request to override Parent's lack of consent until January 19, 2024. Therefore, Parent had significantly more than the required 15 days to review and consider the assessment plan. (Ed. Code, § 56321, subd. (c)(4).)

However, the March 10, 2023 assessment plan did not include assessments in all of Student's areas of suspected disability and educational need, as is required for triennial reassessments. (20 U.S.C §§ 1414(a)(1)(A), 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that particular disability or disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119.)

The evidence clearly demonstrated Student required an assessment by a teacher for the visually impaired, also referred to by the parties as a functional vision or vision therapy assessment. Student's previous triennial assessment, which took place in 2021, included a functional vision assessment conducted by a teacher for the visually impaired. Additionally, Pleasanton presented testimony from Amie Hankins, a teacher for the visually impaired, who credibly explained that Student's unique needs required a functional vision assessment.

Hankins held the licenses and credentials required to provide special education services to students with visual impairments in California, Montana, Wyoming, and Colorado. She held a master's degree in special education with a focus on teaching visually impaired students and had been a teacher for the visually impaired since August 2017. Her testimony was thoughtful and comprehensive. Overall, Hankins's testimony was afforded great weight. Despite the clear evidence that Student required a functional vision assessment by a teacher for the visually impaired, the March 10, 2023 assessment plan inexplicably did not include one.

The March 10, 2023 assessment plan also did not include a post-secondary transition assessment. At the time of the hearing, Student was 15 years old, and an IEP developed following those assessments would be in effect when she would be 16 years old. (20 U.S.C. § 1414 (d)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g); 56345, subd. (a)(8).) Thus, a post-secondary transition plan is necessary for that IEP and a post-secondary transition assessment is necessary to develop that plan. (20 U.S.C. § 1414(a)-(c); 34 C.F.R. §§ 300.301 (2007), 300.303 (2006); Ed. Code, § 56043.)

Lastly, the assessment plan does not include a provision for Pleasanton to conduct the vision and hearing screening required for all initial and triennial reevaluations. (Cal. Code Regs., tit. 5 § 3027.) Pleasanton's lead district nurse, Susan Han, credibly testified that a hearing and vision screening would typically be done as part of a health assessment conducted by a school nurse. Nevertheless, Han confirmed that the March 10, 2023 assessment plan does not include an assessment conducted by a school nurse.

The proposed medical assessment did not include a hearing and vision screening. The March 10, 2023 assessment plan specifically calls for a medical assessment to be conducted by a physician. Pleasanton's chosen assessor, Dr. Howard Taras, M.D., clearly testified he would not physically examine Student. Thus, there was no valid health assessor who would conduct either Student's hearing or vision screening.

A functional vision assessment also would not excuse Pleasanton's omission. Hankins credibly testified that her assessment was "very different" from a vision screening that a school nurse may conduct. Hankins explained that the vision screening focuses on a child's eye-based vision needs, whereas a functional vision assessment focuses on how a child's brain processes visual input. Therefore, even it was properly offered to Parent, Hankins's assessment would not satisfy the vision screening requirement for a triennial assessment. (Cal. Code Regs., tit. 5 § 3027.) Overall, the March 10, 2023 assessment plan does not meet legal requirements.

PLEASANTON FAILED TO PROVIDE PARENT THE REQUIRED NOTICE OF RIGHTS AND PROCEDURAL SAFEGUARDS

Pleasanton did not prove it provided Parent with the required notice of rights and procedural safeguards when it provided Parent with the March 10, 2023 assessment plan. (20 U.S.C. § 1414(b)(1); 34 C.F.R. § 300.304(a)(2006); Ed. Code, § 56321, subd. (a).)

Throughout his testimony, Ahmed stated he provided Parent with copies of the March 10, 2023 assessment plan only. He made no reference to the required notice of rights and procedural safeguards. In fact, the emails Ahmed sent to Parent regarding

the March 10, 2023 assessment plan do not indicate that the notice of rights and procedural safeguards were sent to Parent. The only document referenced as being attached to the emails was the March 10, 2023 assessment plan.

While the form Pleasanton used as a template for the assessment plan included a statement that a notice of procedural safeguards was enclosed with the assessment plan, the email chain proffered by Pleasanton did not establish the notice of procedural safeguards was sent to Parent. Parent credibly testified he did not receive any documents other than the March 10, 2023 assessment plan. This evidence was not rebutted by Pleasanton. Therefore, Pleasanton failed to establish it provided Parent with the required notice of rights and procedural safeguards. (20 U.S.C. § 1414(b)(1); 34 C.F.R. § 300.304(a)(2006); Ed. Code, § 56321, subd. (a).)

PLEASANTON FAILED TO PROVE THE ACADEMIC ASSESSOR IS COMPETENT TO CONDUCT THE PLANNED ASSESSMENT

Assessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils shall be made in accordance with Education Code section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324, subd. (a).) A health assessment must be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324, subd. (b).)

The March 10, 2023 assessment plan proposed assessments in the following areas:

- academic achievement,
- medical, intellectual development,
- language and speech communication development,
- motor development,
- social-emotional and behavior, and
- adaptive behavior.

Pleasanton did not prove its proposed academic assessor is competent to conduct the assigned assessment.

None of the witnesses testified as to who would conduct the academic achievement assessment. Pleasanton failed to provide any evidence regarding who would be conducting this assessment, or their education, background, training, or experience in assessing children like Student. Pleasanton did not establish that the proposed assessor was knowledgeable of Student's suspected disabilities.

While the March 10, 2023 assessment plan indicated an education specialist would conduct the academic assessment, Pleasanton did not establish what licenses or credentials an individual needed to qualify for that position. Pleasanton did not establish what training and experience the proposed individual had in conducting standardized academic achievement testing.

Academic assessments are sometimes conducted by school psychologists. Pleasanton's school psychologist, Allebasi Yu, clearly testified that he was assigned to conduct only the intellectual, social-emotional and behavior, and adaptive behavior

assessments. These were the assessments noted on the March 10, 2023 assessment plan as being conducted by a school psychologist. As such, Yu would not be conducting the proposed academic assessment. Overall, Pleasanton failed to prove that the proposed academic assessment would be conducted by a competent assessor.

THE PROPOSED MEDICAL ASSESSMENT IS BEYOND THE SCOPE OF A SPECIAL EDUCATION ASSESSMENT

Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(6) (2006); Ed. Code, § 56320, subd. (c).) The assessments used must be:

- selected and administered so as not to be discriminatory on a racial or cultural basis;
- provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
- used for purposes for which assessments are valid and reliable;
- administered by trained and knowledgeable personnel; and
- administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b)(3) & (c); 34 C.F.R. § 300.304(b), (c) (2006); Ed. Code, § 56320, subds. (a), (b).)

School district assessors must review existing evaluation data on the child, including information provided by the parents, current classroom-based, local, or State assessments, classroom-based observations, and observations by teachers and related service providers. (20 U.S.C. § 1414(c)(1); 34 C.F.R. § 300.305(a)(1); Ed Code, § 56381, subd. (b.)

Pleasanton's chosen medical assessor was Dr. Howard Taras, M.D. Taras is a member of the faculty in the Department of Pediatrics at the University of California, San Diego. Taras holds a current California medical license. The primary focus of his practice was school health. He explained school health is not a recognized specialty with a certification, but instead what Taras referred to as a "soft specialty." One of his primary roles was to act as a consulting physician to school districts who contract with the University of California, San Diego for physician services. While Taras has extensive medical education, training, and experience, he lacked education and training in special education, including special education assessments.

Taras explained the general purpose of a medical assessment was to evaluate the health and safety needs of a child on a school campus. Taras explained that referring school districts generally ask him to answer specific questions through his assessment. For example, Taras is regularly asked about the staffing level and training needed for personnel assigned to assist students with their medical needs.

When describing how he conducts assessments, Taras credibly explained he never physically examines students, and he often does not speak with parents. Rather, he speaks with that student's physicians and reviews up to two years of medical records. Taras expressed that he was a "representative of the school" when conducting assessments.

Taras repeatedly explained that part of his assessment included phone calls to a child's medical providers. Taras explained that during his calls, he would

> "inform the physicians of what schools can do, what they can provide, what they are obligated to provide, and then [he could] get a better sense of what the doctor was thinking when they wrote what they wrote [in their letter to the school]."

Taras also stressed that he preferred to have these conversations verbally, rather than in writing.

Taras's testimony was concerning. His admitted regular procedure of "informing" students' physicians as to what schools "are obligated to provide" and "clarifying how schools work" was an admission of Taras's desire to influence doctors to change their recommendations to be more amenable to the school district he represented. When directly asked if a student's doctors had changed recommendations following a phone call with him, Taras proudly responded, "[y]es, almost always."

Taras's practice is beyond the scope of any special education assessment, drifting instead into the realm of decision making. Such decision-making power is reserved exclusively for a student's IEP team, of which the parents are a required member. (20 U.S.C. § 1414(d)-(e); Ed Code, §§ 56341(b)(1); 56341.5; 56342; 56342.5; see also *Winkleman v. Parma City Sch. Dist*. (2007) 550 U.S. 516, 524 [127 S.Ct. 1994].) This practice is even more concerning considering Taras's admission that he is not an expert in any of Student's conditions. Thus, Taras's planned assessment appears to be little more than an opportunity for Taras to substitute his unspecialized opinion for those of Student's treating specialist physicians.

Even if such a practice was allowable under special education law, Taras was not competent to educate Student's physicians regarding special education. When asked about the source of his knowledge and understanding of "how schools work", Taras hesitantly explained that he had "sat in on" an unspecified number of IEP team meetings and "had been familiarized a little bit" on the IDEA and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C § 701, *et seq.*) He also pointed to his 25 years as a consultant for school districts. He did not, however, explain how being a consultant equated to receiving education or training in special education which would allow him to competently "inform" Student's physicians.

Moreover, Taras's testimony revealed his aversion toward parental input in the assessment process. Taras seemed hostile to the concept of parental input to an educational medical assessment. He explained he only speaks with parents "every now and then" or approximately "10 percent of the time" when conducting his assessments. When asked if he felt it was important to talk with parents who cared for children with medically complex needs, Taras dismissively testified parents often wanted to him to hear "their interpretation" of their child's needs. Throughout this line of questioning, Taras appeared to be against speaking with parents to obtain their input during the assessment process. Taras demonstrated a lack of understanding of the requirement to include such information in a special education assessment. (20 U.S.C. § 1414(c)(1); 34 C.F.R. § 300.305(a)(1); Ed. Code, § 56381(b)(1).)

When asked about parents being on the phone with him and their child's doctor, Taras explained that he felt that he could not be open and honest with a child's doctor or to "make the doctor understand" things about school. Taras then made a blanket statement that the doctors generally may not advocate for "the best wellbeing of the

patient" but would instead attempt to please the parent if the parent was on the call. This was pure speculation as applied to Student and demonstrated a significant bias on Taras's part.

Lastly, Taras testified that the cooperation of Student's private physicians was required for his assessment. Taras was seemingly unaware he could not force Student's physicians to participate. Moreover, it is not reasonable to assume that Student's private physicians would speak with Taras, or any assessor, free of charge. Taras did not testify, nor did Pleasanton otherwise establish, that Parent would not be forced to bear the cost of Student's physicians' time for any of Taras's proposed calls. Pleasanton must provide special education to Student free of charge. (20 U.S.C. § 1401(9)(a).) Taras's requirement that Student's physicians participate in the medical assessment directly contradicts this foundational principle of the IDEA and is therefore unlawful.

Overall, Pleasanton failed to establish that Dr. Taras understood the requirements of a special education assessment or that the scope of his proposed assessment was permitted under special education law.

Because of the significant defects discussed above, it is not necessary to analyze the remainder of the proposed assessors or other portions of the March 10, 2023 assessment plan. This Decision does not authorize Pleasanton to conduct the assessments pursuant to the March 10, 2023 assessment plan without Parent's consent.

Based on that determination, it is also not necessary to determine whether any of the conditions Parent imposed on the assessments would be required due to Student's unique needs. While both parties dedicated significant portions of their closing briefs to

the applicability or necessity of the conditions Parent placed on the assessments, this Decision does not need to undertake such an analysis and makes no findings on these points.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1:

Pleasanton's March 10, 2023 assessment plan was not legally compliant. Pleasanton may not assess Student pursuant to the March 10, 2023 assessment plan without Parent's consent. Because of that determination, this Decision makes no findings regarding the applicability of any of Parent's requested conditions due to Student's unique needs.

Student prevailed on Issue 1.

REMEDIES

Federal courts have broad latitude to fashion appropriate equitable remedies for violations of the IDEA. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385]; *Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The authority to order such relief extends to

hearing officers. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484; 174 L.Ed.2d 168].) Normally remedies are issued to redress denials of FAPE. However, hearing officers do have authority to remedy purely procedural violations of the IDEA. (See 20 U.S.C. § 1415(f)(3)(E)(iii) ["Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section."].)

As determined above, Student's triennial reassessment is overdue. Pleasanton must promptly reevaluate her. This Decision orders Pleasanton to issue Parent a new triennial assessment plan.

Staff training can also be an appropriate equitable remedy. (*Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1034.) Appropriate relief considering the purposes of the IDEA may include an award that school staff be trained in areas in which violations are found, to benefit the specific student involved, or to remedy procedural violations that may benefit other students. (*Ibid.*)

This Decision orders staff training to ensure Pleasanton staff do not repeat the errors and omissions in this matter, such that no further Pleasanton students may be subject to these procedural violations of the IDEA, including the proper and timely provision of parental rights and procedural safeguards.

ORDER

1. Pleasanton shall not assess Student pursuant to the March 10, 2023 assessment plan without Parent's consent.

2. Pleasanton shall issue a new assessment plan to conduct Student's triennial evaluation no later than June 14, 2024. This assessment plan shall include all areas of suspected disability and educational need, including, at a minimum,

- academic achievement,
- medical,
- intellectual development,
- language and speech communication development including augmentative and alternative communication,
- occupational therapy,
- physical therapy,
- adapted physical education,
- social-emotional and behavioral,
- adaptive behavior,
- functional vision by a teacher for the visually impaired, and
- post-secondary transition.

Pleasanton shall also include a vision and hearing screening. Nothing about this Decision prevents Pleasanton or Parent from requesting or agreeing to assessments in additional areas.

3. Within 30 calendar days from the date of this Decision, Pleasanton shall contract with an independent expert in state and federal special education laws, such as a non-public agency or independent law firm who regularly practices special education law, to provide no less than three hours of training to Pleasanton's special education administrators and staff responsible for developing and issuing assessment plans, including IEP

case managers and program supervisors, who work with Student and members of her IEP team. This training shall include requirements for initial and triennial assessment plans, including providing parents with the required notice of procedural rights and safeguards and ensuring that initial and triennial reevaluations address all areas of suspected disability. This training shall be completed by September 30, 2024. This training may not be completed by the law firm who represented Pleasanton at the due process hearing.

Nothing about this Decision prevents Pleasanton from requesting a due process hearing should Parent not consent to the new assessment plan.

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.

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings