

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:  
PARENTS ON BEHALF OF STUDENT, AND  
ESCONDIDO UNION HIGH SCHOOL DISTRICT.

CASE NO. 2024020654

CASE NO. 2023110872

DECISION

June 18, 2024

On November 29, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Escondido Union High School District, called Escondido, naming Parent on behalf of Student. On February 20, 2024, OAH, received a due process hearing request from Parent on behalf of Student, naming Escondido. On February 22, 2024, OAH consolidated Escondido's case with Student's case. Administrative Law Judge Ted Mann heard this matter by videoconference on April 9, 10, 11, 17, 18, 19 and 23, 2024.

Attorney Wendy Dumlao represented Student. Student's mother, referred to in this decision as Parent, attended every day of the hearing. Attorneys Amanda D'Amico and Tiffany Santos represented Escondido. Orletta Nguyen, Escondido's Director of Special Education, attended every day of the hearing on Escondido's behalf.

At the parties' request the matter was continued to May 29, 2024, for written closing briefs. The record was closed, and the matter was submitted on May 29, 2024.

## ESCONDIDO'S ISSUES

1. Was Escondido's psychoeducational assessment, dated May 25, 2023, as amended on September 8, 2023, legally sufficient such that Parents are not entitled to an independent educational evaluation at public expense?
2. Was Escondido's speech and language assessment, dated May 30, 2023, legally sufficient such that Parents are not entitled to an independent educational evaluation at public expense?

## STUDENT'S ISSUES

1. Did Escondido deny Student a free appropriate public education, called a FAPE, when it failed to assess Student for autism from February 20, 2022, through February 20, 2024?
2. Did Escondido's psychoeducational assessment, dated May 25, 2023, as amended on September 8, 2023, fail to comply with the requirements of 34 CFR 300.304, by not being significantly comprehensive to identify all of a child's educational needs and or not utilizing assessment tools and strategies to produce relevant information that assists in the determination of a child's educational needs?
3. Did Escondido deny Student a FAPE beginning in March 2023 by failing to assess Student for autism and by failing to consider autism when designing Student's educational program?

4. Did Escondido deny Student a FAPE beginning in March 2023 by failing to adequately assess Student's speech and language needs?
5. Did Escondido deny Student a FAPE for the 2023-2024 school year by:
  - a. Failing to consider and adequately address Student's social/emotional needs; and
  - b. Failing to consider and adequately address Student's mental health needs?
6. Did Escondido deny Student a FAPE for the 2023-2024 school year by failing to offer Student an appropriate placement in a small, structured setting such as Winston?

## 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a 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. (5).)

At all relevant times, Student resided within Escondido's geographical boundaries. While attending eighth grade at Bear Valley Middle School for the 2021-2022 school year, Parents moved Student to Winston School in April 2022. Escondido placed Student at the Winston School for the 2022-2023 school year through a settlement agreement with Student, dated November 8, 2022. Parent privately placed Student at the Winston School for the 2023-2024 school year after giving written notice to Escondido on August 15, 2023.

(This space is intentionally left blank. Text continues on the following page.)

Student was 16 years old and in the 10th grade at the time of hearing. Student was eligible for special education under the other health impairment eligibility category, and had difficulties with communication, anxiety, attention, behavior, and socialization. Student had needs in the areas of social communication, organization, and behavior. Student was placed in general education classes and received an A to G, college prep, general education curriculum, with supports and accommodations.

## 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 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.)

(This space is intentionally left blank. Text continues on the following page.)

## ESCONDIDO'S ISSUE 1: WAS ESCONDIDO'S PSYCHOEDUCATIONAL ASSESSMENT, DATED MAY 25, 2023, AS AMENDED ON SEPTEMBER 8, 2023, LEGALLY SUFFICIENT SUCH THAT PARENTS ARE NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE?

Escondido contends it is not obligated to fund an independent multidisciplinary educational evaluation or educationally related mental health evaluation because its assessments of Student complied with all applicable laws. Escondido 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 Escondido's assessment and accompanying report was not legally compliant because it failed to adequately assess Student's autism, and overlooked or downplayed the impact of Student's Attention deficit hyperactivity disorder, also known as ADHD, and anxiety diagnoses on Student's education. Student also contends Escondido failed to adequately identify Student's social anxiety, social difficulties and attentional issues as they impacted Student's educational needs.

Escondido did not prove its May 25, 2023, multidisciplinary assessment met all legal requirements.

## 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).)

Escondido entered into a settlement agreement with Parent on November 8, 2022, which provided that Escondido would convene an IEP meeting for Student for the 2023-2024 school year. In preparation for the IEP meeting, Escondido would conduct a comprehensive multidisciplinary assessment in all areas of Student's suspected disability. Neither party challenged the existence of the settlement agreement or its terms.

Pursuant to this March 3, 2023, assessment plan, signed by Parent on April 4, 2023, Escondido undertook a multidisciplinary assessment of Student including

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

The assessment plan also included an educationally related mental health assessment. On August 25, 2023, Escondido convened an IEP team meeting where the assessment was presented to parents and discussed. On November 8, 2023, Parent wrote to special



education director Nguyen, disagreeing with the assessments and requesting Escondido fund independent educational evaluations of Student in all areas covered in the assessments.

The assessment plan proposed that a school psychologist would assess Student's intellectual development, motor development, social-emotional behavior, and adaptive behavior. (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 post-secondary transition, and Student's health and developmental information would be obtained by the school nurse. 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, teacher feedback, 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).)

Escondido established the March 3, 2023 assessment plan met the procedural requirements under IDEA and the California Education Code. Escondido also established it obtained Parent's consent to conduct the March 3, 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 assessment plan on April 4, 2023, and Escondido received the signed assessment plan shortly thereafter.

## 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).)

The procedural safeguards that protect parents' rights to be involved in the development of their child's educational plan are among the most important in the IDEA. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013), 720 F. 3d 1038, 1044.) And a district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Parental participation in the IEP process is also considered "(A)mong the most important procedural safeguards." (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882.) Parents have an adequate opportunity to participate in the IEP process when they are "present" at the IEP meeting. (34 C.F.R. § 300.322(a); Ed. Code, § 56341.5, subd. (a).)

Here, Escondido received the signed assessment plan in early April 2023. Escondido completed the multidisciplinary assessment on May 25, 2023 and attempted to hold the IEP team meeting to discuss the assessment results on May 25, 2023. Parent was unavailable on that date, and sought to reschedule to early June. Winston personnel were necessary participants in the IEP meeting, and they were unavailable in early June. Thereafter, Student's family was on vacation out of the county until mid-August. As such, Parent's unavailability including bereavement for the passing of a close family member, along with availability of other necessary IEP team members, and the family vacation delayed the IEP team meeting until August 25, 2023.

Escondido was faced with the choice of proceeding with the IEP in the Parent's absence or delaying the IEP until such time as the Parent could attend. Here, Escondido made the correct, albeit difficult, choice to delay holding the IEP meeting until Parent was available. Therefore, Escondido established it completed the multidisciplinary assessment and held Student's IEP team meeting in keeping with statutory requirements for timeliness of the post-assessment IEP meeting.

## 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).)

Education Code section 56381, subdivisions (b)(1) and (2), provide that as part of a reassessment, the IEP team and other qualified professionals, as appropriate, shall review existing data, current assessments and observations, and teacher and related services providers' observations, and input from the parents. The team should, on the basis of that information, identify what additional data, if any, is needed to determine whether the pupil continues to have a disability, and the present levels of performance and educational needs of the pupil.

## ESCONDIDO'S PSYCHOEDUCATIONAL ASSESSMENT WAS NOT LEGALLY SUFFICIENT

Escondido assigned school psychologist, Willow Ray, to conduct Student's 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 also completed by Ray.

Ray, a licensed educational psychologist, held a bachelor's degree in psychology, a master's degree in school psychology, and a pupil personnel services credential. She has worked with children for more than two decades as a youth specialist, special education technician, behavior support specialist and school psychologist, completing many psychoeducational assessments as a school psychologist. Ray's education, credentials, and experience rendered her qualified to

- conduct psychoeducational assessments,
- administer standardized tests,
- interpret the results,

- prepare assessment reports, and
- supervise school psychologist interns.

At hearing, Ray exhibited a professional understanding of assessment procedures and psychoeducational theory and practice. Ray answered Parent's attorney's questions about test protocols and perceived assessment shortfalls and scoring inconsistencies. Ray's testimony regarding the assessment and her conclusions were primarily based upon her exercise of her professional opinion, rather than data-driven, leading to numerous instances where data was minimized or downplayed.

Ray 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).)

Ray considered whether Student met eligibility criteria under multiple special education categories, including emotional disturbance, other health impairment, specific learning disability, and autism. Ray 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. Ray

conducted interviews with Student and obtained electronic survey responses from four of Student's teachers at Winston. She also obtained information from Parent; Winston's special education director, Reed; and two Escondido personnel previously familiar with Student. Ray 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.

Ray obtained Student's background and health information through an educational records review, and records provided by Parent. Ray sent a social emotional behavior questionnaire, a developmental interview form and a transition questionnaire home to Parent. Parent provided input in the multidisciplinary assessment through completing the social emotional parent questionnaire and assessment rating scales. Parent forgot to return the developmental interview form to Ray. Ray did not pursue follow up questions to Parent regarding Student's history and presentation in the social emotional questionnaire Parent completed, nor did Ray pursue getting Parent to complete the developmental interview questionnaire. Parent ultimately completed the developmental questionnaire but Ray did not have it for either the assessment report or at the time she amended her assessment report.

In the social emotional questionnaire, Parent reported that Student had struggled with anxiety and dysregulated behavior since kindergarten. The anxiety had worsened significantly by the third grade and Parents had Student evaluated by a medical doctor and placed on medication for anxiety. By fourth grade, Student was assessed for special education and placed on an IEP for her anxiety and ADHD. Student's struggles with

anxiety and attention culminated in eighth grade at Bear Valley. Student experienced suicidal ideation and attempted self-harm; significant social difficulties and bullying; and her grade point average dropped to 0.67 by February 2022.

In the social emotional questionnaire, Parent reported that Student had consistent, ongoing sensitivities to sounds and smells from an early age, and that as of Spring 2023 was overly sensitive to stimulation, and overreacts to or dislikes certain kinds of touch, noise, and smells. Parent also reported that Student was easily distracted in the classroom, and often out of their seat or fidgety, and often overwhelmed at school.

In the social emotional questionnaire, Parent reported that Student had reported thoughts of self-harm to Parents in eighth grade, during her severe struggles that year. Parent also reported that Student had indicated thoughts of suicide to Parents at that same time. Ray did not follow up during the assessment in any way with inquiries to Parent regarding Student's self-harm or suicidal thoughts. Ray testified she did not interview Parent for the assessment because of Parent's bereavement status. She did ask Student about Student's history during the Student interview during the assessment, but Student denied suicidal thoughts. Such a contradictory response should have triggered further inquiry by Ray.

Ray later obtained direct information from Parent and director Reed during the three IEP team meetings on August 25, 2023, August 30, 2023, and September 8, 2023, and amended her report to reflect some of that information, but never grasped the importance of the information Parent provided, nor used it to modify her recommendations for Student. As a result, there was limited, if any, consideration given to the difficulties Student experienced during eighth grade and a lack of solutions to those difficulties in the assessment report's analysis.



## OBSERVATIONS AND INTERVIEWS

Ray observed Student during an interview and test sessions. Student was cooperative and friendly, and Ray felt she established rapport with Student. Ray used an informal informational interview to screen for cognitive or emotional traits associated with autism. Ray reported that Student did not display traits associated with autism during the interview. Student was able to hold sustained, reciprocal conversations with Ray throughout the interview. Overall, Ray found the interview unremarkable and age appropriate.

During assessments, Student remained on-task and completed the assessment assignments timely. Student evidenced minimal anxiety, except for body movement and fidgeting hands during the assessments. Ray opined the testing sessions were age appropriate and test results valid.

Ray observed Student over three different days for approximately three hours total in different school-based settings at Winston. Overall, Ray concluded that Student appeared engaged and attentive during classes and displayed appropriate behavior and interactions with peers and staff.

On March 6, 2023, Ray observed Student in their math and English classes for 90 minutes. In math, there were three other students and the teacher. Student was generally attentive and responded correctly to teacher questions. Student fidgeted a bit towards the end of the math class. Student's English class was after the math class. The English class had nine students and a teacher. Student appeared to follow along and pay attention, but did not volunteer any answers or read aloud in the teacher led English class.

Ray observed Student for 50 minutes on March 9, 2023, in a combined activities and art class with six students and a teacher. The activities portion of the class was outside, where students used sidewalk chalk and some, not Student, played hopscotch or did cartwheels. Student focused on their chalk drawing and spoke quietly with their peers. The art portion of the class had 10 students and the teacher. Student worked on their drawing project and chatted quietly with a tablemate. Student did not appear to be distracted by several other students conversing loudly.

Ray observed Student for 20 minutes on April 13, 2023, in their culinary class and then for 25 minutes more during lunch. There were eight students and a substitute teacher for the culinary class. Student doodled while watching a video on preparing empanadas. Student split their lunch time between indoors and outdoors and appeared to socialize appropriately with peers in both settings.

## COGNITIVE AND PROCESSING ASSESSMENT

Ray selected an extensive array of cognitive testing to compare Student's learning ability with similarly aged peers. Ray 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 and 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 68th percentile, somewhat below the high average descriptor.

Ray 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, in the middle of 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 higher end of the 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 high average range.

Ray administered the working memory index, which measured Student's ability to

- register, through attention; auditory and visual discrimination; concentration; and
- 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 at the 79th percentile, within the high average range on this index.

Ray 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 at the 49th percentile, in the average range on this index.

Ray selected an assessment tool to measure Student's visual processing and fine motor skills. Ray 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.

Ray administered the Comprehensive Test of Phonological Processing, second edition, to measure Student's auditory processing skills, including Student's ability to perceive, analyze and synthesize patterns among auditory stimuli. Ray obtained index scores in phonological awareness, phonological memory, and rapid symbolic naming.

Student scored at the 79th percentile in phonological awareness, in the high average range. In phonological memory and rapid symbolic naming, Student scored in the average range.

## AUTISM AND ADAPTIVE BEHAVIOR ASSESSMENTS

Ray selected one assessment for autism associated behavior, the Autism Spectrum Rating Scales – Full Length Form, and one assessment for adaptive behavior, the Vineland Adaptive Behavior Scales, third edition. The Autism scales were a norm-referenced screening instrument designed to assist in the assessment of behavior associated with autism, as rated by parents and teachers. The Vineland assessment rating scales measured adaptive behavior based upon parent and teacher rating scale responses.

The Autism scales may be used to assist in the clinical diagnosis of autism as well as in an educational setting to assess eligibility for special education services under the disability category of Autism. The responses to scales are classified as very elevated, elevated, slightly elevated, average and low. Scores at or above 70 are very elevated while scores between 65 and 69 are deemed elevated, and between 60 and 64, slightly elevated. Scores of 59 down to 40 are classified in the average range.

Ray obtained rating scales from Student's Art teacher and Physical Science teacher, along with Student's Parent. Student's Art teacher's ratings resulted in a total score of 59, the highest score in the average range with ratings of slightly elevated or higher in

- unusual behaviors (64),
- peer socialization (62),

- atypical language (64),
- stereotypy (63), and
- sensory sensitivity (67).

Student's Physical Science teacher's ratings resulted in a total score of 56, in the higher range of the average range with no individual ratings above 58. Parent's ratings resulted in a total score of 67, in the elevated range with ratings of slightly elevated or higher in

- unusual behaviors (66),
- self regulation (69),
- adult socialization (67),
- social emotional reciprocity (61),
- atypical language (67),
- behavioral rigidity (61),
- sensory sensitivity (78), and
- attention (71).

Ray attributed Parent's higher scores to occurring in the home setting and thus not directly relevant to the educational setting. Ray relied on averaged total scores in the average range from Student's teachers to conclude that Student did not display clinically significant behaviors related to Autism in the classroom. By using averaged total scores, Ray was able to minimize the significance of any scores above average on the assessment.

The Vineland scales were a standardized measure of adaptive behavior, looking at the things that people do to function in their everyday lives. The ratings observations of those who know a child well, such as parents, caregivers and teachers, are used to compare a child's adaptive skills to same aged peers' adaptive skills. The stated purpose

of the Vineland ratings is to identify any discrepancy between a child's abilities in a controlled testing situation compared to what they actually do on a day-to-day basis in the home or school settings. This information allows the assessor to look at behaviors related to autism, including communication and socialization, and mental health conditions that impact daily functioning. The Vineland results are reported in three domains of communication; daily living skills and socialization; along with an adaptive behavior composite score. Scores in domains and composite scores are considered adequate for scores between 86 to 114. From 85 down to 71 is considered moderately low. Below 70 down to 20 is considered low.

Ray sought ratings scores from Parent and Student's ninth grade world history teacher. She was unable to get valid scores from the world history teacher due to an inherent function of the answering protocol generating too many guesses and invalidating the results. Ray substituted qualitative survey results for the world history teacher instead. For the Parent, the communication domain and adaptive behavior composite scores were similarly invalidated. In the daily living skills domain, Parent's score for Student was 69, a low score. In the socialization domain, Parent's score for Student was 71, a moderately low score, bordering on low. Ray cautioned that Parent's scores should be disregarded because of the validity concerns, and that the low reportable scores were not significant as they tracked Parent's questionnaire scores. Ray did not use another standardized measure to assess Student's adaptive behavior. Failing to use a different or replacement assessment for adaptive behavior resulted in insufficient standardized assessment information about Student with regard to adaptive behavior.

## SOCIAL EMOTIONAL AND BEHAVIORAL ASSESSMENTS

Ray selected three social emotional and behavioral assessments to assess Student's social, emotional and behavioral profile. The assessments were the Conners Rating Scales, fourth edition; the Behavior Assessment System for Children, third edition; and the Beck Youth Inventories, second edition.

The Conners Rating Scale, fourth edition, is an assessment tool to obtain information about the behavior and feelings of a youth about attention difficulties, behaviors associated with attention deficit hyperactivity disorder, often called ADHD, other emotional and behavioral difficulties, and executive functioning. Ray used rating scales responses from Student, Parent and Student's culinary arts and math teachers for the Conners. The score classifications for the Conners are the same scoring bands as the Autism Scales with scores from 60 up showing elevation, and scores over 70 classified as very elevated.

Based upon the responses of Parent, Student demonstrated elevated scores in most of the ratings scale areas. Ray attributed the Parents very high ADHD index to Parent's observations at home and did not find them significant for that reason. Ray also inappropriately dismissed Parent's report regarding suicide as a vestige of an earlier incident and did not find current concerns. Student demonstrated anxious thoughts in the ratings scales; otherwise, Student's scores were in the average range, and Student's ADHD index was in the low range. Both teachers' sets of scores were broadly average, with their ADHD indices scored borderline and low, respectively.



The Behavior Assessment System for Children, third edition, consisted of an integrated system of ratings and observations of Student's behavior, emotions, self-perceptions, and history through a systematic evaluation of Student, Parent, and two teachers' observations of Student's emotional and social functioning at home and at school. The scoring bands for the clinical scales of the Behavior Assessment were similar to the Autism Scales and the Conners, with scores of 70 and above rated clinically significant and scores of 60 and above rated at risk. For the adaptive scores, the scoring bands are essentially reversed with scores of 30 and below clinically significant and scores from 31 to 40 rated at risk.

Student's overall functional impairment index was 67, in the at-risk range. Parent's overall functional impairment index was 71, in the clinically significant range. The two teachers' index scores were in the average range. Parent's rating of Student produced a consistency index score that fell in the caution range. The consistency index was a diagnostic performed as part of the scoring of a responding person's answers that was used to analyze the consistency of the respondent's answers. The results show an inconsistency among some answers and indicates that caution should be used when interpreting Parent's scores. Ray dismissed Parent's reports on the Behavior Assessment because of inconsistency of Parent's response, and she did not further analyze Parent's responses. Based upon the Behavior Assessment results, and by dismissing the entirety of Parent's scores, Ray minimized the impact of Student's anxiety, executive functioning and ADHD on Student and concluded that difficulties were not noticeable by teachers and were not causing observable impairment in Student's academic performance or behavior.

The Beck Youth Inventories were self-report scales that were used to assess a youth's psychological well-being. The inventories produce three inventory scores in the areas of depression, anxiety and self-concept. Student's scores were average for depression, mildly elevated for anxiety and lower than average for self-concept. Ray did not find the Beck inventories to be significant for Student and affecting Student's ability to access their education.

## ACADEMIC ACHIEVEMENT

Keith Leighton, a district education specialist, administered the Woodcock Johnson Tests of Achievement, fourth edition, a norm-referenced test which measures academic achievement. Leighton administered the Woodcock Johnson tests to determine Student's academic strengths and weaknesses. He regularly administered the Wechsler Achievement test as part of his duties with Escondido. Although no specific credential was required to administer the Woodcock Johnson tests, Leighton held a mild-moderate special education credential since 2014. Leighton also held several single subject credentials and earned master's degree in multicultural education. He had been employed by Escondido since 2018.

On the Woodcock Johnson tests, Student displayed average range skills in reading, writing and fluency. Student's scores in math problem solving and calculation were in the below average range. Math was identified as an area of need as a result of the tests.

## PARENT'S PERSUASIVE OBJECTIONS TO THE PSYCHOEDUCATIONAL ASSESSMENT

Parent challenged the validity of the psychoeducation assessments at hearing and in her closing brief. Parent alleged that the sources and collection means of non-standardized assessment data was incomplete and shaded in favor of downplaying Student's attentional, social-emotional, and mental health needs in the educational setting. Parent alleged that standardized test results often looked at total scores, resulting in an averaging effect, rather than discretely analyzing specific areas of poor performance for their educational impact. Lastly, Parent alleged that, as a consequence of the deficiencies, the assessment was incomplete and the resulting report unreliable as it was not sufficiently comprehensive to identify all of Student's special education and related service needs.

Escondido failed to meet its burden of proof on this issue. The assessment results regarding Student's educational needs were consistently minimized or marginalized, and information conveyed by Parent, in particular, was either not adequately obtained, considered or was simply downplayed in the assessment report. The assessment report did not consider the effect of Student's current placement at Winston as opposed to a large, full-service high school such as the one the IEP team proposed Student attend. In particular, the assessment failed to analyze the effect of small, structured classes in a therapeutic setting affecting Student's performance at Winson, and how that experience would translate to Student's return to a large public high school.

Parent relied on her own testimony regarding the information that she reported to Ray and the IEP team. Parent's education and background are unknown, but she

testified clearly, knowledgeably, and articulately in advocating for her child. Although Parent had some difficulty with some areas of her testimony, her testimony regarding the information she conveyed to various Escondido personnel ahead of or during the three IEP meetings about Student's anxiety, attentional issues, and socialization problems was unimpeached.

Parent reported to Escondido personnel prior to and at the three IEPs of the nature, extent and severity of Student's anxiety, attentional issues, and socialization issues, including Student's suicidal ideation and self-harm in early 2022 while in eighth grade, and immediately prior to being removed from public school by Parents. Student had a well-documented history of anxiety at school since elementary school and was on medication for anxiety beginning in the third grade.

Parent reported that Student's anxiety and attentional issues came to a head in eighth grade and contributed to Student's removal from Bear Valley. Parent also reported Student experienced a series of socialization issues through her education leading up to the eighth grade at which time she experienced significant bullying that contributed to her removal from Bear Valley. Parent detailed her conversations with then special education director Saucedo regarding Student's mental health decline, academic decline, bullying, and problematic drawings to school psychologist Ray in 2022.

That information was reiterated during the three IEP meetings in 2023. During the three IEP team meetings, Parent specifically reported to the IEP team the concerns with Student's mental health, including Student's troubling drawings and thought of self-harm or suicide, that contributed to Student's removal from Bear Valley midway through the second semester of eighth grade. Parent also reported to the IEP team

continuing issues that Student was experiencing at Winston during the ninth grade, particularly with peer relations. Only selected pieces of the information ultimately made it into the amended assessment report, dated September 8, 2023, and that information was largely minimized or discounted in the report's evaluation of Student's needs.

Student also relied on the testimony of Holly Reed, Ph.D. and Jill Weckerly, Ph.D. regarding the psychoeducational assessments efficacy and the information available to Escondido from the assessment and at the three IEP meetings.

Reed was the former director of special education for the Winston School. She began to transition out of her position in January of 2024 as she had accepted a position at Grossmont College as the Program Director and Chair for the occupational therapy program. Reed had been the director of special education at Winston from August 2017 through January 2024. She has been an adjunct professor at Grossmont College since 2009. Reed holds a Ph.D. in educational leadership from San Diego State University, awarded in 2014. She also holds a master of arts in occupational therapy from the University of Southern California, and a bachelor of science in psychology from Arizona State. Reed testified clearly, thoughtfully and convincingly about Student's program at Winston and the needs that she continued to have even in that setting. Her testimony is given significant weight as a result.

Reed described Student's continuing difficulty with socialization and peer relations at the IEP meetings, including Student's peripheral membership in her peer group and her propensity to intrude on others' personal space or make off-putting remarks. To her credit, Reed did indicate that Student had made progress in her socialization needs during her time at Winston. Reed also described the overlapping and eyes on students approach to the program at Winston with the faculty and staff

keeping a close supervisory eye on students generally and Student specifically. Reed's opinion was that Student's continuing needs warranted continuing attendance at Winston in the small, structured setting it offered.

Weckerly was a consulting clinical psychologist that Parent had consulted with for approximately three years regarding Student's needs and the appropriate educational setting for Student. Weckerly holds a bachelor of arts in linguistics from UC Berkeley, and master of arts in linguistics from UC San Diego, a Ph.D. in cognitive science and linguistics from UC San Diego and a second Ph.D from UC San Diego in clinical neuropsychology. She has been licensed as a clinical psychologist in California since 2001. She has extensive experience with many levels of applied psychology throughout the last quarter century. Weckerly testified with authority regarding Student's problems with anxiety, attention, socialization and suspected autism, including her observations and assessments of Student, her comparison of the programs at Winston and San Pasqual High School and her review and analysis of Ray's assessments and assessment report. Weckerly's testimony was detailed, knowledgeable, sophisticated, and credible, and was therefore accorded significant weight.

Weckerly testified that Student is on the autism spectrum and that this circumstance ties together the difficulties Student has in the classroom, with aspects of adaptive behavior, and with socialization with peers.

At hearing, Weckerly answered questions candidly and exhibited a strong understanding of assessment procedures and psychoeducational theory and practice. Weckerly answered Parent's attorney's questions about test protocols and perceived

scoring inconsistencies. Weckerly's testimony regarding the assessment and its conclusions were well-reasoned, and supported Student's attempts to discredit the assessors, the assessment protocols, test scorings and the report preparation.

She did not credit Ray's assessment and report with identifying the range and depth of Student's educational needs. She testified convincingly and without refutation that female adolescents are much more difficult to diagnose with autism. She testified that based on her knowledge, assessment, and observations of Student and the two placement settings, San Pasqual and Winston, that Student was not likely to be successful at San Pasqual due to her history and specific needs. Weckerly's opinion was that Winston was an appropriate placement for Student and one that met Student's needs.

It is found that Escondido's multidisciplinary assessment and accompanying report were not legally sufficient. The assessment and report were incomplete, lacked suitable investigation and analysis, and failed to use adequate and appropriate means to gather information regarding Student. Ultimately, the assessment and report fail the most important test, by failing to adequately identify all of Student's educational needs.

## 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 Escondido multidisciplinary assessments. In correspondence to director Nguyen on November 8, 2023, Parent requested independent educational evaluations in psychoeducation and speech and language. On November 14, 2023, Escondido 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. Escondido informed Parent it would file a due process hearing request to defend the appropriateness of the multidisciplinary assessment and speech and language assessment.

Escondido filed a request for due process hearing on November 29, 2023, to defend the appropriateness of the assessments. This was approximately three weeks after Parent notified Escondido of her request for independent educational evaluations. Therefore, Escondido 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.)



## ESCONDIDO'S ISSUE 2: WAS ESCONDIDO'S SPEECH AND LANGUAGE ASSESSMENT, DATED MAY 30, 2023, LEGALLY SUFFICIENT SUCH THAT PARENTS ARE NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE?

Escondido contends it is not obligated to fund the independent speech and language assessment requested by Parent, because its own initial assessment of Student complied with all applicable laws. Escondido asserts it prepared an appropriate assessment plan to assess Student in speech and language, and used a qualified assessor to conduct an appropriate, timely assessment of Student that met all statutory requirements.

Student contends that Escondido's speech and language assessment and accompanying report was not legally complaint because it overlooked the impact of autism on Student's speech and language needs, particularly regarding pragmatic speech, and failed to accurately report assessment results, ultimately failing to identify Student's educational needs related to speech and language.

Escondido contracted for services with Pacific Coast Speech Services for a speech and language assessment. Pacific Coast assigned speech language pathologist Melissa McNutt-Eidson to conduct the assessment and prepare the accompanying report.

McNutt-Eidson, a licensed speech language pathologist, held a bachelor's degree in communicative disorders from 1992 and a master's degree in speech and language pathology from 1992, and an ASHA Certificate of Clinical Competence. She has worked with children for approximately 30 years as a speech language pathologist, conducting

assessments and providing speech and language services. McNutt-Eidson's education, credentials, and experience rendered her qualified to conduct speech and language assessments, administer standardized tests, interpret the results, and prepare assessment reports.

At hearing, McNutt-Eidson exhibited a professional understanding of assessment procedures and speech language pathology theory and practice. McNutt-Eidson answered Parent's attorney's questions about test protocols and perceived assessment shortfalls and scoring inconsistencies. McNutt-Eidson's testimony regarding her assessment and her conclusions were primarily based upon her exercise of her professional opinion, rather than data-driven, leading to numerous instances where data was minimized or downplayed.

McNutt-Eidson confirmed the assessment materials and procedures used during the speech and language 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.

McNutt-Eidson attempted to assess Student in speech and language in order to determine Student's present levels, whether Student demonstrated a disability and whether Student requires speech and language services to access their education. McNutt-Eidson considered whether Student met eligibility criteria under speech and language. McNutt-Eidson chose a modest variety of assessment tools to conduct Student's speech and language assessment, including two standardized tests, and observations of Student in the classroom setting and during assessments. McNutt-

Eidson attempted to interview Parent but was unsuccessful. Instead, she obtained a response from Parent to a short, cursory parent checklist for speech and language skills. McNutt-Eidson also had Student complete a short, cursory self-assessment, and conducted a brief interview with Student. She also obtained brief e-mail interviews with two of Student's ninth grade teachers. McNutt-Eidson also obtained some information from other members of the educational team. Once the IEP team meetings commenced on August 25, 2023, McNutt-Eidson obtained information from Parent and director Reed, and amended her report to reflect some of that information, but never grasped the importance of the information Parent and Reed provided, nor used it to modify her recommendations for Student.

McNutt-Eidson administered the Oral and Written Language Scales, second edition, to Student. The standardized scales assess a child's receptive and expressive language. It contains no direct measure and a minimum amount of information regarding a child's needs with regard to pragmatic language. Student scored in the average range in each of two subtests, listening comprehension and oral expression, and the oral language composite score.

McNutt-Eidson administered the Social Language Development Test for adolescents. The Social Language test is a diagnostic test of social language skills for adolescents from 12 through 17 years old. The assessment looks at an adolescents' needs in

- perspective taking,
- making inferences,

- problem solving,
- interpreting social language, and
- understanding idioms, irony, and sarcasm.

The assessment produced scaled scores in

- making inferences,
- interpreting social language,
- problem solving,
- social interaction, and
- interpreting ironic statements.

The assessment also produces an overall index score. Scaled scores between 8 and 12 are rated average. Index scores between 90 and 109 are considered in the average range.

Student's index score was in the average range, as were scaled scores in

- making inferences (11),
- interpreting social language (12),
- problem solving (8),
- social interaction (10), and
- interpreting ironic statements (12).

There was a dispute between Student's expert, Weckerly, and McNutt-Eidson over the correct scoring methodology and protocols for the making inferences scaled score subtest. Weckerly contended that McNutt-Eidson had incorrectly scored at least three individual questions on the subsection. McNutt-Eidson disagreed and asserted that she

had scored the test scenarios properly. Ultimately, the issue did not have to be resolved in this decision as a change of three answers from correct to incorrect would not change Student's scaled score in the average range.

McNutt-Eidson observed Student in a ninth grade science class for 25 minutes on May 8, 2023. Student was observed coloring another student's shoe bottoms for six minutes. Student was also observed telling the teacher that Student had not raised their hand and did not want to be called upon for an answer. Student was observed completing some class questions on a dry erase board and some additional off task behavior. McNutt-Eidson did note that Student was observed to have behavioral and attention challenges in class.

McNutt-Eidson summarized her assessment findings of Student. McNutt-Eidson's analysis of Student's speech and language needs were that Student did not have any that rose to the level of a speech language disability or that required speech and language services of any kind. The information shared with the IEP team by Parent and Reed during the three IEP team meetings barely registered in the speech and language assessment, and it was effectively ignored in the assessor's evaluation of Student's present levels or needs. None of Parent's or Reed's concerns regarding pragmatics or social skills were analyzed or otherwise followed up on. The assessment made no mention of the differences between the Winston placement and the San Pasqual placement proposed by the IEP team.

The speech and language assessment and report were incomplete, lacked suitable investigation and analysis, and failed to use adequate and appropriate means to gather information regarding Student. The speech and language assessment ultimately failed in its legal obligation to address Student's educational needs in the speech and

language arena. Escondido did not meet its burden of proof and failed to establish at hearing that the speech and language assessment was legally sufficient. Student prevailed on this issue.

STUDENT'S ISSUE 1: DID ESCONDIDO DENY STUDENT A FAPE WHEN IT FAILED TO ASSESS STUDENT FOR AUTISM FROM FEBRUARY 20, 2022, THROUGH FEBRUARY 20, 2024?

STUDENT'S ISSUE 3: DID ESCONDIDO DENY STUDENT A FAPE BEGINNING IN MARCH 2023 BY FAILING TO ASSESS STUDENT FOR AUTISM AND BY FAILING TO CONSIDER AUTISM WHEN DESIGNING STUDENT'S EDUCATIONAL PROGRAM?

Student's Issues 1 and 3 overlap and are therefore addressed together. The period for the alleged failure to assess for autism begins with the assessment plan on March 3, 2023, because the parties' November 8, 2022 settlement agreement specifically reserved from waiver the assessment and accompanying IEP. Therefore, this Decision only addresses the period from March 3, 2023, to February 20, 2024, the only relevant period under Issue 1 at hearing. The period between February 20, 2022, two years prior to Student's filing of a request for due process in this case, and March 2, 2023, is precluded by the parties' settlement agreement.

Student alleges under Issue 1 that Escondido denied Student a FAPE when it failed to assess Student for autism from March 3, 2023, through February 20, 2024. Student alleges under Issue 3 that Escondido failed to consider autism when designing Student's educational program in the three IEP meetings beginning on August 25, 2023.

Escondido contends that its psychoeducational assessment was legally sufficient, and assessed Student in all areas of need, including related to autism. Escondido further contends that it considered autism findings in the context of the assessments when designing Student's educational program in the three IEP team meetings.

Under California law, autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects a child's educational performance. Characteristics often associated with autism are repetitive activities, stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21 (*Timothy O.*)) That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 13 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

Here, the findings with regard to Escondido's Issue 1, regarding the legal insufficiency of its psychoeducational assessment control. As indicated, above, Escondido did not conduct a legally sufficient psychoeducational assessment of Student in the May 25, 2023 assessment and report. Escondido failed to comprehensively identify all of Student's special education and related service needs, whether or not commonly linked to their disability category. Escondido's assessor failed to follow up

on the invalid and unreportable Vineland assessment, interpreted the Autism Spectrum Rating Scales assessment in the narrowest possible way, ignoring significant index scale data from one teacher and Parent that at a minimum should have prompted further inquiry.

Escondido similarly failed to recognize or inquire about the significant amount of information provided by Parent and Reed regarding Student's history, along with Student's then current presentation, which included presentation and behavior that is commonly considered flags for autism. In particular, Parent's information provided for the assessment, along with her earlier discussions with Ray, put Escondido on notice that Student had behaviors suggestive of autism that had been occurring for many years. Further, the information provided by Parent and Reed at the IEP meetings was largely omitted in detail and in substance from the final psychoeducational assessment report, and thus Escondido failed to adequately investigate or assess Student for autism.

Escondido, by function of its insufficient psychoeducational assessment of Student could not effectively consider the presence of autism in Student in designing the program proposed for Student in the August 25, 2023 IEP. As such, pursuant to Student's Issue 3, Student established by a preponderance of the evidence that Escondido failed to consider autism in the August 25, 2023 IEP offer.

(This space is intentionally left blank. Text continues on the following page.)



STUDENT'S ISSUE 2: DID ESCONDIDO'S PSYCHOEDUCATIONAL ASSESSMENT, DATED MAY 25, 2023, AS AMENDED ON SEPTEMBER 8, 2023, FAIL TO COMPLY WITH THE REQUIREMENTS OF 34 CFR 300.304 BY NOT BEING SIGNIFICANTLY COMPREHENSIVE TO IDENTIFY ALL OF A CHILD'S EDUCATIONAL NEEDS AND OR NOT UTILIZING ASSESSMENT TOOLS AND STRATEGIES TO PRODUCE RELVANT INFORMATION THAT ASSISTS IN THE DETERMINATION OF A CHILD'S EDUCATIONAL NEEDS

Student contends that Escondido's May 2023 psychoeducational assessment of Student failed to comply with the requirements of 34 CFR 300.304 in not being significantly comprehensive to identify all of Student's educational needs and not utilizing assessment tools and strategies to produce relevant information.

Escondido contends that its psychoeducational assessment was legally sufficient and was sufficiently comprehensive to identify Student's educational needs as well as utilizing appropriate assessment tools and strategies to produce relevant information.

Escondido's May 25, 2023 assessment, amended September 8, 2023, was legally insufficient as described above in Escondido's Issue 1. Further, at hearing, Student demonstrated by a preponderance of evidence that Escondido failed to comprehensively identify Student's educational needs. As such, it is found that Escondido failed to comply with the requirements of 34 CFR 300.304, and Student prevailed on Student's Issue 2.

#### STUDENT'S ISSUE 4: DID ESCONDIDO DENY STUDENT A FAPE BEGINNING IN MARCH 2023 BY FAILING TO ADEQUATELY ASSESS STUDENT'S SPEECH AND LANGUAGE NEEDS?

Student alleges that Escondido denied Student a FAPE beginning in March 2023 when Escondido failed to adequately assess Student's speech and language needs.

Escondido contends that its speech language assessment was legally sufficient and adequately assessed Student's speech and language needs.

Escondido's May 30, 2023 speech and language assessment was legally insufficient as described above in Escondido's Issue 2. Further, at hearing, Student demonstrated by a preponderance of evidence that Escondido failed to comprehensively identify Student's educational needs with regard to speech and language. In particular, the assessment failed to adequately assess Student's needs in social skills and pragmatic language. As such, it is found that Escondido failed to comply with the requirements of 34 CFR 300.304, and Student prevailed on Student's Issue 2.

(This space is intentionally left blank. Text continues on the following page.)

STUDENT'S ISSUE 5: DID ESCONDIDO DENY STUDENT A FAPE FOR THE 2023-2034 SCHOOL YEAR BY (a) FAILING TO CONSIDER AND ADEQUATELY ADDRESS STUDENT'S SOCIAL EMOTIONAL NEEDS AND (b) FAILING TO CONSIDER AND ADEQUATELY ADDRESS STUDENT'S MENTAL HEALTH NEEDS?

Student alleges that Escondido denied Student a FAPE for the 2023-2024 school year by failing to consider and adequately address Student's social emotional and mental health needs.

Escondido contends that the IEP offer resulting from the three IEP team meetings offered Student a FAPE and both considered Student's social emotional and mental health needs and adequately addressed them.

A claim that an IEP failed to offer a FAPE is evaluated in light of information available at the time the IEP was developed; the IEP is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F. 3d 1141, 1149.) An IEP is a snapshot, not a retrospective. (*Ibid.*, citing *Fuhrmann, supra*, 993 F.2d at p. 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to

meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

A school District must provide "related services" to a special education student "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a); 34 C.F.R. § 300.34(a).) "Related services" means transportation, and developmental, corrective, and other supportive services required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1527 (*Union*).) Such services may include

- speech-language pathology,
- audiology services,
- interpreting services,
- psychological services,
- physical and occupational therapy,
- recreation, including therapeutic recreation,
- social work services,
- school nurse services,
- counseling services,
- speech and language services,
- occupational therapy services,

- physical therapy services,
- orientation and mobility services, and
- medical services. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a).)

Educational benefit is not limited to academic needs. Behavioral and emotional needs must be addressed through an IEP if they affect academic progress, school behavior, or socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*County of San Diego*).) When a child's behavior impedes his learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behaviors that impede a child's learning denies the child a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *County of San Diego, supra*, 93 F.3d at pp. 1467-68.)

Here, Student established by a preponderance of the evidence that Escondido denied Student a FAPE by failing to consider and adequately address Student's social emotional needs and Student's mental health needs for the 2023-2024 school year.

After the three IEP team meetings beginning on August 25, 2023 IEP, had been completed, Escondido offered Student the following for the 2023-2024 school year:

- Placement - general education for 100 percent of the school day at San Pasqual High School;
- Specialized academic instruction – 1,800 minutes monthly in co-taught Math, English and Science in a regular classroom;
- College awareness – 30 minutes yearly in a regular classroom;

- Career awareness – 30 minutes yearly in a regular classroom;
- Counseling and guidance – educationally related mental health services: 300 minutes yearly, including individual counseling for 150 minutes yearly and group counseling for 150 minutes yearly.
- Program accommodations including:
  - preferential seating;
  - extended time up to 150 percent to complete assignments and tests;
  - frequent checks for understanding;
  - break larger assignments into smaller tasks, visual and verbal cues, prompts and reminders;
  - access to fidgets and movement opportunities;
  - flexible seating such as standing or sitting on floor;
  - math visual and models of sample problems;
  - calculator in Math classes;
  - upon Student request, allow a pass to see a trusted adult on campus as needed for emotional regulation;
  - allow Student a break in class or out of class to utilize coping skills for anxiety or other emotional dysregulation;
  - give discreet prompts to support development of executive functioning skills

The IEP offer fails to consider and adequately address Student's social emotional needs and Student's mental health needs. The IEP offer completely fails to consider Student's experience at Bear Valley during the 2021-2022 school year, the last time Student was in a large, comprehensive public school. During that school year,

- Student's grade point average fell below 1.00,
- Student's anxiety became so severe that Student became extremely school resistant, began to have suicidal ideation, including at least one incident of self-harm, and
- Student experienced serious bullying due to their social dysfunction.

The IEP offer ignored the success and progress that Student had shown at the small, structured setting at Winston. The IEP offer is built upon a flawed psychoeducational assessment that discounted Student's past needs and struggles, and minimized Student's present needs, even as Student attends a small, structured program. School observations showed Student largely functioning well in the small class setting with extensive teacher contact and interaction, embedded supports, and a controlled, supervised social environment. Such placement allowed Student to regain her academic footing and afforded her the support and attention needed for Student to manage her anxiety, attentional issues and socialization issues.

Escondido's offer places Student on a large high school campus, in large general education classes with dozens of students in each class. Even in a co-teaching setting, Student will have vastly limited teacher support and interaction compared to the Winston program. Student's accommodations require a Student who struggles with self-advocacy to ask for passes to a counseling center to speak with a trusted adult.

That is a problem in itself, and also would create a situation that is reactive, not proactive. Although Student is highly reactive to and affected by noise and large groups, and has been for the vast majority of her educational career, the proposed classroom for Student is a typical large high school class. Although Student has socialization problems and experienced significant bullying in her prior public school, no program, service, or accommodation sufficiently supports Student's needs in this regard.

Parent, Reed and Weckerly, as previously described, testified clearly and convincingly that Student's educational needs were not adequately identified by the psychoeducational assessment and report. In their testimony, they provided myriad examples of areas in which Student has struggled and continues to struggle. That information was not adequately reported or considered in the assessment, and it was not adequately considered by the IEP team.

Parent, Reed, and Weckerly also testified that Student, although working largely successfully in the Winston program and having made progress, was still developing the necessary skills to navigate a large public campus. Parent, Reed, and Weckerly all testified clearly and convincingly that Student was not ready for a large public campus and that the program proposed by the IEP team did not address Student's educational needs, and falls well short of the program required to address those needs. As such, the proposed program fails to meaningfully consider or adequately address Student's social emotional or mental health needs and does not offer Student a FAPE.



## STUDENT'S ISSUE 6: DID ESCONDIDO DENY STUDENT A FAPE FOR THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER STUDENT AN APPROPRIATE PLACEMENT IN A SMALL, STRUCTURED SETTING SUCH AS WINSTON?

Student alleges that Escondido denied Student a FAPE for the 2023-2024 school year by failing to offer Student an appropriate placement in a small, structured setting such as Winston.

Escondido contends that it offered Student a FAPE in the least restrictive environment in the IEP offer resulting from the three IEP team meetings, and that the Winston program was not the least restrictive environment for Student.

The student's placement must be determined at least annually. The placement must be based on the child's IEP and be as close as possible to the child's home, unless the IEP of a child with a disability requires some other arrangement. In determining the educational placement of a child, the public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, and the meaning of the evaluation data. Ed. Code, § 56341.

Generally, the appropriate placement option is the least restrictive environment in which the child can be educated. The IDEA requires school districts ensure that children with disabilities are educated alongside their nondisabled peers "[t]o the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A).) School officials may remove a disabled child from the regular classroom "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and

services cannot be achieved satisfactorily.” (*Ibid.*) This provision reflects the IDEA’s “strong preference” for educating children with disabilities in a regular classroom environment. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834(*Poolaw*).)

Escondido’s offer to Student for the 2023-2024 school year of placement in general education at a large, comprehensive high school was not appropriate to meet Student’s unique needs. The district members were aware, or should have been aware, in the August 25, 2023 IEP meetings that Student was not ready to attend a large, comprehensive high school such as San Pasqual. Student’s needs in mental health, anxiety, socialization and attention required a small, structured, yet diploma track academic setting, combined with an interventionist and proactive social and pragmatic skills environment such as Winston.

There was no combination of academic instruction, services, supports, modifications, and/or accommodations that would have made San Pasqual an appropriate placement for Student in 10th grade. Student established that Escondido failed to offer them a FAPE for the 2023-2024 school year.

Student also established both that Winston was a reasonable alternative placement, and that Student’s placement at Winston provides Student with the services and placement she has needed to receive educational benefit. Parent, Reed and Weckerly, as previously described, testified clearly and convincingly that Student’s current placement at Winston provides Student with the setting, classrooms, support and services that allow Student to access her education and enable Student to make progress appropriate in light of the Student’s circumstances. Student’s sensory, mental

health, and pragmatic needs are met in the program at Winston. Student's complex profile presently precludes Student's placement at a large, full service high school as proposed by Escondido.

## 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.

### ESCONDIDO'S ISSUE 1:

Escondido's psychoeducational assessment, dated May 25, 2023, as amended on September 8, 2023, was not legally sufficient and Parents are entitled to an independent educational evaluation at public expense.

Student prevailed on Escondido's Issue 1.

### ESCONDIDO'S ISSUE 2:

Escondido's speech and language assessment, dated May 30, 2023, was not legally sufficient and Parents are entitled to an independent educational evaluation at public expense.

Student prevailed on Escondido's Issue 2.

(This space is intentionally left blank. Text continues on the following page.)

### STUDENT'S ISSUE 1:

Escondido denied Student a FAPE when it failed to assess Student for autism from March 3, 2023 through February 20, 2024.

Student prevailed on Student's Issue 1.

### STUDENT'S ISSUE 2:

Escondido's psychoeducational assessment failed to comply with the requirements of 34 CFR 300.304 by not being sufficiently comprehensive to identify all of Student's educational needs and by not utilizing assessment tools and strategies to produce relevant information.

Student prevailed on Student's Issue 2.

### STUDENT'S ISSUE 3:

Escondido denied Student a FAPE beginning in March 2023 by failing to assess Student for autism and by failing to consider autism when designing Student's educational program.

Student prevailed on Student's Issue 3.

(This space is intentionally left blank. Text continues on the following page.)

#### STUDENT'S ISSUE 4:

Escondido's speech and language assessment was not legally sufficient as it was not sufficiently comprehensive to identify all of Student's speech and language needs and by not utilizing assessment tools and strategies to produce relevant information.

Student prevailed on Issue 4.

#### STUDENT'S ISSUE 5 (a) AND (b):

Escondido denied Student a FAPE for the 2023-2024 school year by failing to consider and adequately address Student's social emotional and mental health needs.

Student prevailed on Student's Issue 5 (a) and (b).

#### STUDENT'S ISSUE 6:

Escondido denied Student a FAPE for the 2023-2024 school year by failing to offer Student an appropriate placement in a small, structured setting such as Winston.

Student prevailed on Issue 6.

## REMEDIES

Student prevailed on Escondido's Issues 1 and 2. Student also prevailed on Student's Issues 1, 2, 3, 4, 5 (a) and (b) and 6.

As remedies, Student requested in their complaint that Escondido publicly fund independent educational evaluations in psychoeducation and speech and language, that Escondido fund Student's placement at Winston for the 2023-2024 school year, including transportation, and that Student be placed at Winston.

Courts have broad equitable powers to remedy the failure of a local educational agency to provide a FAPE to a child with a disability. (20 U.S.C. § 1415(if)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct.1996]; *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove Sch. Dist., v. T.A.* (2009) 557 U.S. 230, 240 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (Ed. Code, §56175; 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Burlington v. Department of Ed.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (reimbursement for unilateral placement may be awarded under

the IDEA where the district's proposed placement does not provide a FAPE.) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [, 114 S.Ct. 36, 1126 L.Ed.2d 284] (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress).)

Reimbursement may be reduced or denied if, at the most recent IEP team meeting the parents attended prior to removing the child, the parents did not inform the IEP team they were rejecting the proposed placement, and state their concerns and intent to enroll their child in a private school at public expense; or at least 10 business days prior to the removal of the child, the parents did not give written notice to the public agency of this information. (Ed. Code, § 56176; 20 U.S.C. § 1412(a)(10)(C)(iii)(I); 34 C.F.R. § 300.148(e).)

The psychoeducational assessment conducted by Escondido was found to be inadequate. Parents are entitled to reimbursement for the Weckerly independent educational assessment in the amount of \$5,900.00.

The speech and language assessment conducted by Escondido was found to be inadequate. Parents are entitled to a publicly funded independent educational evaluation in the area of speech and language by a qualified assessor of their choice.

Parents appropriately informed Escondido on August 15, 2023 that Student would remain at Winston pending an IEP offer from Escondido at the upcoming IEP meeting on August 25, 2023. Given Escondido's failure to offer Student a FAPE at the August 25, 2023 IEP meetings, and the current decision that the August 25, 2023 offer by Escondido was not a FAPE, the parental placement of Student at Winston for the 2023-2024 school year was reasonable and will be reimbursed.

Parent credibly testified that Student was enrolled in Winston for the 2023-2024 school year. The yearly tuition for the 2023-2024 school year was \$32,750.00. Winston also required a non-refundable registration fee of \$995.00. The total owed to Winston by Parents for the 2023-2024 school year was \$33,745.00. Parents paid a short term payment of \$600.00 on November 8, 2023, leaving a balance owed to Winston of \$33,145.00. Student is also entitled to two round trips from their home address to Winston per day of attendance for the 2023-2024 school year.

Student is now without a current FAPE offer from Escondido after the conclusion of the 2023-2024 regular school year. As an equitable compensatory remedy arising from Escondido's failure to adequately assess Student or to offer Student a FAPE at the August 25, 2023 IEP meeting or at any point since, Student shall remain placed at Winston with registration, tuition and transportation paid by Escondido through the end of the first semester of the 2024-2025 school year. This is not ordered as a prospective placement for Student as a free appropriate public education, but as compensatory services for Student.

Such equitable remedy reflects the particular circumstances herein, and the unique balance of equities in this matter. Escondido largely disregarded information provided to it by Parent and others regarding Student's long-standing history and



presentation, Student's then current present levels of performance and needs during Escondido's assessments and at the IEP team meetings. Student is not ready to return to a large, full service high school campus such as San Pasqual. Winston has been a successful placement for Student during the 2023-2024 school year, and there is no current evidence that Student is ready to transition back to such a large, full service high school placement. In fact, the only credible evidence is that Student's placement at Winston is working and allows Student to access their education and enable them to make progress appropriate in light of Student's circumstances. The last placement for Student, at a large, full service public school during the 2021-2022 school year, found her with

- severe anxiety,
- suicidal ideation,
- self-harm,
- failing grades and
- severe socialization issues.

A return to such a placement, absent evidence supporting such a return, would be unconscionable under the circumstances.

In contrast, Student's continued placement at Winston for the first semester of the 2024-2025 school year will allow Escondido and Parent to have IEP meetings to review the Weckerly assessment and the forthcoming speech and language assessment. Such a time period will also allow Escondido to gather other, pertinent information regarding Student's present levels of performance and educational needs. Finally, such a time period will allow an Escondido arranged IEP meeting or meetings allowing Escondido to make an offer of FAPE to Student.

## ORDER

1. Escondido shall pay the balance of \$33,145.00 Parents owe to Winston school for the 2023-2024 school year either through payment to Parents or directly to Winston School within 15 days of the date of this order.
2. Escondido shall reimburse to Parents the \$600 short-term payment made by Parents to Winston for the 2023-2024 school year within 15 days of the date of this order.
3. Escondido shall reimburse Parents for roundtrip driving mileage at the District rate, as identified through Google Maps or a similar program or application, for two roundtrips for each day of attendance by Student at Winston for the 2023-2024 school year.
4. Escondido shall reimburse Parents for the Weckerly assessment in the amount of \$5,900.00 within 15 days of the date of this order. Escondido shall contract with Weckerly to attend an IEP team meeting not to exceed three hours.
5. Escondido shall contract with the parent's choice of a qualified assessor to conduct an independent educational evaluation of Student in speech and language. The Parents must notify Escondido of their choice of assessor within 15 days of the date of this decision. The District shall promptly enter into a contract for the assessment and for the assessor's appearance at one IEP team meeting not to exceed three hours.

6. Student shall attend Winston school through the end of the first semester of the 2024-2025 school year with Escondido funding Student's registration, tuition and transportation during that time. Parent shall be reimbursed for two round trips per day of attendance at the District mileage rate. During the first semester of the 2024-2025 school year, Escondido shall
- hold IEP team meetings to review the Weckerly psychoeducational assessment,
  - review the forthcoming independent educational evaluation in speech and language and
  - make an offer of placement, services and supports that provides Student with a FAPE to begin on January 1, 2025.
7. All of Student's other requests for relief are denied.

## 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