

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

MADERA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024070994

DECISION

September 23, 2024

On July 26, 2024, Madera Unified School District, called Madera, filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Parents on behalf of Student. Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference in California on August 20, and 21, 2024.

Attorney Kidd P. Crawford represented Madera. Pilar Bell, Special Services Coordinator for Madera, attended August 20, 2024, on Madera's behalf. Rebecca McHaney, Director of Special Services for Madera, attended on August 21, 2024, on Madera's behalf. Parent represented Student and attended all hearing days.

At the parties' request, OAH continued the matter to September 16, 2024, for written closing briefs. The record was closed, and the matter was submitted on September 16, 2024.

ISSUE

May Madera exit Student from receiving special education and related services as a student who does not meet the criteria for any eligibility category under the Individuals with Disabilities Education Act, called IDEA?

JURISDICTION

This hearing was held under the IDEA, 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 IDEA are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (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).) Madera had the burden of proof for the sole issue for 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).)

Student was five years old and entering kindergarten at the time of the hearing. Student resided within Madera's geographic boundaries at all relevant times. Student was eligible for special education under the category of autism.

ISSUE: EXITING STUDENT FROM SPECIAL EDUCATION

Madera's sole issue is if Student may be exited from receiving special education and related services without Parents' consent. Madera's request is based on a belief that Student does not meet the criteria for any eligibility category under the IDEA. Student responds that she should not be exited from special education because she requires special education and related services to access her education.

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

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

Once a child is found eligible for special education, unless specific statutory exceptions apply, a local educational agency shall evaluate a child with a disability before determining that the child is no longer a child with a disability. (20 U.S.C. § 1414(c)(5)(A).) Once the local educational agency completes the assessment, it is required to develop an IEP or disqualify the student if the reassessment demonstrates that the child no longer is eligible for special education services. (*V.S. ex rel. A.O. v. Los Gatos-Saratoga Joint Union High School Dist.* (9th Cir. 2007) 484 F.3d 1230, 1233).)

Legally compliant assessments are conducted by qualified assessors who select valid, reliable assessment instruments, and other means of evaluation, that avoid discrimination on the basis of sex, race, or culture. (20 U.S.C. § 1414(b)(A) & (c)(5); 34 C.F.R. § 300.304(b)(1); Ed. Code, § 56320, subds. (a) & (b).) The assessments must be administered according to the assessment producer's instructions, in a language and form most likely to yield accurate results regarding the student's academic, developmental, and functional abilities. (20 U.S.C. § 1414(b)(3)(A); Ed. Code, § 56320, subd. (a) and (b)(3).) Assessors are required to use a variety of technically sound

assessment tools and strategies to gather relevant information, including information provided by a parent, to assist in determining whether the child has a disability; and, if so, the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b); Ed. Code, § 56320, subd. (b).)

Assessments must be provided in the student's native language and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally. (20 U.S.C. § 1415(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); Ed. Code, § 56320, subd. (a).) Following the manufacturer's instructions is required. (20 U.S.C. § 1414(b)(3)(A)(v); Ed Code, § 56320, subd. (b)(3).)

A school district must make reasonable efforts to obtain informed consent from the parent before conducting an assessment. (20 U.S.C. § 1414(a)(1)(D)(i); 34 C.F.R. §§ 300.300(a)(1), 300.300(d)(5); Ed. Code, § 56321, subd.(c)(1).)

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) & (B); Ed. Code, § 56320, subd. (e).)

Failure to conduct a reliable, accurate assessment and provide accurate, thorough, and reliable reporting of the assessment results is a procedural violation that denies parents a meaningful opportunity to participate in the IEP development process. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043.) Without accurate assessment information a parent is unable to determine the types of services necessary or evaluate the services or placement recommended for a student.

THE 2023 ASSESSMENTS

Madera first assessed Student on January 17, and 31, 2023, and February 3, and 6, 2023. Student was three years, six months old and not attending school. Madera assessors included school psychologist Clarissa Campos-Melchor, special education teacher Iris Vazquez-Mendez, speech-language pathologist Carolina Hernandez, and school nurse Marisa Gutierrez.

Assessors reviewed Student's medical and family history, interviewed Parent, observed Student, and conducted testing in

- cognition,
- academics,
- adaptive behavior,
- social-emotional,
- speech and language, and
- autism.

During testing, Student had difficulty communicating, was overactive and easily distracted. School psychologist Campos-Melchor used standardized testing to measure Student's intellectual and cognitive functioning. Testing measured Student's sequential and simultaneous processing, learning, reasoning, and overall cognitive abilities. Results from this testing showed that Student was severely delayed when compared to her same aged peers, and scored at the two percent, or lower extreme level. Student had delays in associative memory, visual memory, spatial relations, nonverbal reasoning, and face recognition.

Campos-Melchor also assessed Student's adaptive behavior. This testing measured Student's adaptive skills needed to care for herself, respond to others, and meet environmental demands at home, school, and in the community. Student was severely delayed in this area, at the extremely low level. Student was severely delayed in her ability to communicate, including speech, language, and listening. Student was severely delayed in pre-academics, including basic reading, writing, and mathematics. Student was severely delayed in self-direction, including skills needed for independence, self-control and following direction. Student was also severely delayed in social skills, school and home living, health and safety, and self-care.

Campos-Melchor next assessed Student's behavior. Results showed that Student was at-risk in externalizing problems, hyperactivity, and internalizing problems, and was clinically significant, meaning seriously delayed, in depression, somatization, and atypicality. Overall, Student was at the clinically significant level for behavior.

School psychologist Candy Hernandez administered the Autism Diagnostic Observation Schedule, a semi-structured assessment for students suspected of having autism. Testing reflected Student's problems with language and communication, reciprocal social interaction, play, stereotyped behaviors, and restricted interests. This testing revealed Student had autism.

Campos-Melchor administered the Autism Spectrum Rating Scales, a norm-referenced, multi-informant assessment for identifying symptoms, behaviors, and characteristics of autism. This assessment found Student had serious delays, including elevated or very elevated scores, in each area assessed, including

- social communication,
- unusual behaviors,

- peer socialization,
- adult socialization,
- social emotional reciprocity,
- atypical language,
- stereotypy,
- behavioral rigidity,
- sensory sensitivity,
- attention and
- self-regulation.

This assessment confirmed that Student displayed significant traits associated with autism.

The special education teacher used standardized testing to assess Student's academic abilities. Student was below average in every area tested, including literacy and math. Student functioned at a one year, six-month-old age level for academics.

Speech-language pathologist Hernandez assessed Student's articulation, receptive language, and expressive language. Student was below average in each of these areas. She also administered a preschool language scale which assessed Student's expressive language, receptive language, and auditory comprehension. Again, Student was below average in each area tested.

The results of Madera's initial assessment found Student to be seriously delayed across various domains. The assessors unanimously determined Student qualified for special education and related services under the category of autism.

THE FEBRUARY 2023 IEP

On February 9, 2023, Madera held Student's initial IEP. Student was three years, six months old. Mother and Student's grandmother attended the IEP team meeting.

Madera attendees included

- special education teacher Vazquez-Mendez,
- school psychologist Campos-Melchor,
- speech and language pathologist Hernandez,
- school nurse Gutierrez, and
- assistant principal Cortney King.

The purpose of the IEP team meeting was to review the February 2023 assessments.

The school psychologist reported Student's mental processing was in the lower extreme range. The special education teacher reported Student's academic abilities were in the below average range. Results from a Parent behavior rating scale revealed Student was in the extremely low range in comparison to her same-aged peers. A behavior assessment for children showed that Student had significant problems in behavior, social and emotional development, and scored in the clinically significant range. Results from the Autism Diagnostic Observation Schedule, an assessment of communication, social interaction, play and restrictive and repetitive behaviors, showed Student had autism. Similarly, Autism Spectrum Rating Scales, completed by multiple raters to identify symptoms, behaviors, and characteristics of autism, found Student in the very elevated range for autism. The speech-language pathologist reported Student was in the below average range for both expressive and receptive language.

The IEP team found Student eligible for special education and related services under the category of autism. Student's disability impaired her ability to learn, communicate, maintain interpersonal relationships, and impacted her ability to progress in the general education curriculum. In particular, Student had needs in academics and social skills.

To meet those needs, the IEP team formulated three goals, including two academic goals and one social interaction goal. To help Student meet the goals, the IEP team offered program accommodations, including the use of visual icons, a visual schedule, supervised breaks, and preferred seating. The IEP team's offer of special education services included specialized academic instruction, 30 minutes per month, individually and in a small group, and placement in an early childhood program. Parents consented to the IEP offer.

THE 2024 ASSESSMENTS

On January 29, 2024, Madera sent Parents an assessment plan to reevaluate Student. The areas of assessment included academic achievement by a special education teacher, health by the school nurse, and intellectual development, social-emotional-behavioral aspects, and adaptive behavior by the school psychologist. The purpose of the assessments was to reevaluate Student for her transition from preschool to kindergarten. Parents consented to the assessment plan on February 7, 2024, approximately one month after the reassessments began on January 9, 2024.

Madera conducted the reassessments on January 9, February 13 and 16, and April 3, 2024. The assessments were completed by school psychologist Marissa Casillas, special education teacher Tamie Magee, and school nurse Alma Machuca. The

evaluation process included interviews with Mother and Student, observations, a review of records, and testing in intellectual and cognitive abilities, academic skills, adaptive behavior, and autism. The autism evaluations utilized the Autism Diagnostic Observation Schedule and the Autism Spectrum Rating Scales. Madera compiled the findings in a written report titled "Transition to Kindergarten Multidisciplinary Re-Evaluation." At the time of the assessments, Student was four years old and not enrolled in school.

Madera reviewed Student's records, which included a May 12, 2023, psychological evaluation from the Central Valley Regional Center, conducted by licensed psychologist Kelline L. Hiday, Psy.D., RPT. This evaluation showed that Student was significantly delayed in all tested areas. The standardized testing indicated severe deficits in

- verbal comprehension,
- visual-spatial processing,
- adaptive behavior,
- communication,
- daily living skills,
- socialization, and
- motor skills.

Student could not complete testing for working memory or a full-scale intelligence assessment due to low functioning. The Childhood Autism Rating Scale identified severe symptoms of autism spectrum disorder. Dr. Hiday diagnosed Student with autism spectrum disorder and language impairment. Since the evaluation, Student was a client of the regional center and qualified for services, including in-home applied behavior analysis therapy, an intensive behavior modification program.

Casillas interviewed Mother as part of the assessment process. Mother's statements during this interview were consistent with her testimony at the hearing, which was persuasive. Mother reported that Student had three siblings, two of whom were autistic, and the family was well-acquainted with the characteristics of autism. She described Student as being sensitive to noise, not initiating interactions, and having frequent tantrums, including throwing herself to the floor and hitting. Additionally, Student was not toilet trained and had a habit of sucking her fingers. Mother noted that Student had difficulty communicating, often being unintelligible even to her parents. Mother strongly believed that Student had autism and was experiencing significant delays in communication and learning.

Casillas observed and interviewed Student. During the session, Student needed multiple prompts to identify two colors, blue and pink, and initially could only repeat the names of the colors. After several prompts and attempts, Student correctly identified the two colors. Despite this, Student could not describe her favorite activities even with continued prompting from Casillas.

Casillas administered an adaptive behavior assessment of Student. The testing was designed to measure Student's ability to effectively and independently care for herself, respond to others, and meet demands at school, in the community, and at home. Student received extremely low scores for conceptual skills, which included subtests for communication, functional pre-academics, and self-direction. Student received extremely low scores for social skills, which included subtests for leisure and social interaction. Student received below average skills in the area of motor, which included fine and gross motor skills. Student was delayed in each area tested.

Casillas administered an intellectual assessment to evaluate Student's developmental levels across several areas, including cognition, communication, social-emotional development, physical development, and adaptive behavior. The results showed Student was significantly delayed, scoring poorly—at the third percentile—in conceptual skills, memory, planning, decision-making, and discrimination.

In another test focused on processing and cognitive abilities, Student also received below-average scores in mental processing, visual-spatial processing, and exhibited extremely low scores in conceptual thinking. Scores in learning information and memory were similarly below average and at the lower extreme range.

Additionally, Casillas assessed Student's nonverbal reasoning abilities. Student obtained below average and lower extreme scores in conceptual thinking, story completion, pattern reasoning, triangles, and hand movements. Overall, the cognitive and intellectual testing indicated Student experienced significant cognitive delays, which contributed to learning disabilities.

Casillas next administered the Autism Spectrum Rating Scales to measure Student's behaviors, symptoms, and features associated with autism spectrum disorder. This standardized, norm-referenced test covered a wide range of behaviors associated with autism. Student had very elevated scores in eight of 10 areas tested, including in

- social communication,
- unusual behaviors,
- peer socialization,
- social-emotional reciprocity,
- stereotypy,

- behavioral rigidity,
- sensory sensitivity, and
- attention-self-regulation.

Student had elevated scores in the remaining areas, including adult socialization and atypical language. These scores indicated Student had severe autism.

Special education teacher Magee administered a standardized academic assessment. This assessment only tested two areas, literacy and mathematics, which a student, including those with special needs, normally completes in one session. Student required two sessions on two separate days to complete this brief testing because she was easily distracted.

Student demonstrated significant delays in both areas tested, receiving scores at a weak level, indicating far below-average performance. Magee testified during the hearing that, had Student been in her special day class with these scores, she would have recommended specialized academic instruction. The results from Madera's 2024 academic testing confirmed Student had learning disabilities necessitating intervention through special education and related services.

School nurse Machuca conducted a health screening of Student as part of the 2024 reevaluation. Machuca testified during the hearing, and her testimony was consistent with her written report. Although Student did not have any significant health issues, she was unresponsive during the examination. Despite Machuca's attempts to engage her, Student did not communicate in any way with Machuca, and was unintelligible even when speaking to Mother, who accompanied her during the examination. Machuca credibly testified that Student's communication abilities were significantly impaired.

School psychologist Corinne Moua Levandowski administered the Autism Diagnostic Observation Schedule. While Casillas observed Levandowski, she did not administer the test due to her lack of experience with this assessment. The results from Levandowski's evaluation were inconsistent with all other autism-related assessments provided for Student, as Levandowski found minimal to no symptoms of autism spectrum disorder.

Levandowski briefly testified during the hearing but was unfamiliar with Student's prior and concurrent testing and had not reviewed Student's educational file. She met Student for the first time during her assessment and did not participate in the IEP team meeting after the spring 2024 assessments, to discuss her findings with Parents or the rest of the IEP team. Her report and testimony were brief and did not include details on whether she followed testing protocols and instructions, and no such evidence was presented at the hearing.

Levandowski did not attempt to contact other assessors and was unaware of Student's 2023 Autism Diagnostic Observation Schedule, the 2023 Autism Spectrum Rating Scales, the 2024 Autism Spectrum Rating Scales, or Dr. Hiday's psychological evaluation, all of which found Student demonstrated moderate to severe autism. Nor was she familiar with any other assessment conducted for Student. Levandowski did not address the reasons for the discrepancies between her results and those of prior and concurrent assessments, which identified Student with various and severe delays. Significantly, Levandowski was unaware that the 2023 Autism Diagnostic Observation Schedule yielded very different results from the same test administered by her in 2024,

and she could not explain the discrepancies between the 2023 and 2024 testing. Levandowski admitted it was unusual for a student to lose their eligibility for special education under autism and had never seen this occur for a child of Student's young age.

Mother, who was self-represented, did not cross examine her, and Levandowski provided little explanation to the Administrative Law Judge to support the reliability of her findings. For these reasons, little weight was given to Levandowski's testimony.

Except for the 2024 Autism Diagnostic Observation Schedule, the 2024 reassessments indicated that Student exhibited significant delays across multiple domains, including

- cognitive and intellectual functioning,
- learning and academic skills,
- communication,
- social-emotional development,
- adaptive living skills, and
- behavior.

Despite these findings, Madera concluded that Student should be exited from special education as a result of this reevaluation.

THE APRIL 8, 2024 IEP

Madera held an IEP team meeting for Student on April 8, 2024. Student was four years, eight months old. The purpose of the IEP team meeting was to review the spring 2024 assessments and plan for Student's transition from preschool to kindergarten.

Mother attended the meeting, and the Madera team included assistant principal King, special education teacher Magee, school psychologist Casillas, and school nurse Machuca.

The IEP document stated that Student was eligible for special education services under autism, which impaired her ability to learn, communicate, and maintain positive interpersonal relationships, thus impacting her involvement and progress in the general education curriculum, but also noted that Student was being exited from special education.

The IEP team reviewed Student's present levels of performance and the 2024 reassessments. Student was below average or far below average in cognitive, academic, social, and behavior. She had significant difficulty learning and understanding basic instructions, could only count to two, and did not comprehend numbers independently. Student could not identify colors and struggled with communication. She often displayed aggressive behavior toward other children. Student did not express emotions and sometimes fell while walking or running. Additionally, she often walked on the tips of her toes and was sensitive to noise. Student was not toilet trained and still wore diapers.

Student did not meet any of the three annual goals from the February 9, 2023 IEP, which included naming four letters in four out of five trials, counting to 20 in four out of five trials, and identifying uppercase letters in four out of five trials. Since the February 2023 IEP, when Madera found Student eligible for special education and related services, Student had not progressed. On the contrary, Student's academic levels in math and literacy had declined, and there was no evidence of progress in any other area.

Based on all metrics, except for the 2024 Autism Diagnostic Observation Schedule, including cognitive, academic, social-emotional, adaptive living, behavioral, and autism testing, Student was severely delayed and required special education and related services to access her educational program. Despite this overwhelming evidence supporting the need for special education, Madera proposed to exit Student from special education at the April 8, 2024 IEP team meeting. Parents disagreed with this decision, leading Madera to file the present complaint to exit Student from special education and related services without Parents' consent.

Madera called five witnesses to support exiting Student from special education. These witnesses included special education teacher Magee, school nurse Machuca, school psychologist Levandowski, assistant principal King, and school psychologist Casillas. Madera did not call as witnesses any of its 2023 assessors, including Madera school psychologists Campos-Melchor or Hernandez, special education teacher Vazquez-Mendez, speech-language pathologist Carolina Hernandez, or school nurse Gutierrez.

As discussed herein, Magee and Machuca's testimony did not support exiting Student from special education. To the contrary, Machuca testified Student had a significant communication deficit and Magee recommended special education services for Student given her low testing scores.

Also as discussed herein, Levandowski briefly testified at the hearing but lacked familiarity with Student's previous and concurrent assessments. She could not explain the significant discrepancies between her testing and all other testing for Student. She first met Student during her assessment and did not participate in subsequent

discussions with Parents or the rest of the IEP team. Her report and testimony did not confirm adherence to testing protocols or provide persuasive evidence of such at the hearing. Due to these factors, Levandowski's testimony failed to support exiting Student from special education.

King was an assistant principal who attended Student's IEP team meetings as a school administrator. She had never observed, assessed, taught, or provided Student services. She was not directly familiar with Student or her unique needs, and she was unable to offer an opinion regarding Student's assessments. King's testimony was brief and failed to support exiting Student from special education.

Casillas was not an experienced or careful assessor and provided unreliable testimony during the hearing. At the time of Student's spring 2024 assessments, Casillas had only been a school psychologist for six months and was not familiar with Student prior to the assessment. She did not consult with previous assessors, including school psychologists Campos-Melchor or Hernandez, or licensed psychologist Hiday, who had each identified Student as having autism and serious learning delays.

Casillas misled the court by claiming she did not observe any communication delays when she interviewed Student, and that Student was fully intelligible during her testing. In contrast, Casillas's written report indicated that Student required numerous prompts to identify just two colors and could not communicate her preferred activities despite multiple prompts. Mother, who accompanied Student during the testing, testified more persuasively that Casillas could not understand Student and frequently asked Mother to interpret Student's speech.

Additionally, Casillas misrepresented her consultation with school nurse Machuca, falsely asserting that Machuca reported Student had no communication delays. However, Machuca's written report and testimony described that Student did not communicate with her, even with numerous prompts, and was unintelligible when speaking with Mother.

Casillas also overlooked Madera's spring 2023 assessments, the May 2023 psychological evaluation by Dr. Hiday, and her own reassessments of Student in spring 2024, which, except for the 2024 Autism Diagnostic Observation Schedule, identified serious delays across various domains and autism. Instead, Casillas relied solely on the 2024 Autism Diagnostic Observation Schedule, an assessment she was not qualified to conduct or interpret, to support her claim that Student did not exhibit autism and did not qualify for special education and related services. As a result, Casillas was not deemed a reliable assessor or truthful witness, and her testimony was given no weight.

There were many problems with Madera's assessments of Student. First, Madera was required to make reasonable efforts to obtain informed consent from Parents before conducting any assessments. (20 U.S.C. §§ 1414(a)(1)(D)(i), 1414(c)(3); 34 C.F.R. § 300.300(c) and (d)(5); Ed. Code, § 56381, subd. (f)(1).) Madera presented the 2024 assessment plan to Parents on January 29, 2024, and Parents consented to the plan one week later, on February 7, 2024. However, Madera began the reassessments on January 9, 2024, approximately three weeks before Parents consented to the assessment plan. Consequently, Madera began the reassessments without Parents' consent.

Secondly, Madera failed to demonstrate that the 2023 or 2024 reassessments were conducted in a legally compliant manner. (20 U.S.C. § 1414(b)(3)(A)(v); Ed. Code, § 56320(b)(3).) Madera based the decision not to reassess Student in speech and

language as part of the 2024 reevaluation, on its 2023 speech and language assessment, but did not provide any evidence regarding the reliability of this assessment. The school's assessor, Carolona Hernandez, did not testify, and no other qualified witness offered testimony supporting the report's validity. Madera did not offer evidence demonstrating the 2023 speech and language assessment was conducted in accordance with legal requirements or that a reassessment was unnecessary to determine Student's eligibility for special education due to speech or language impairment.

Regarding the 2024 reassessments, neither Casillas nor Levandowski testified they performed their testing in a manner that met all legal requirements. In particular, Levandowski did not testify that she adhered to the manufacturer's instructions and testing protocols when administering the 2024 Autism Diagnostic Observation Schedule. Additionally, Madera did not present evidence, such as manufacturer's instructions or testing protocols, to show the testing was conducted correctly, including the use of appropriate prompting or breaks, and in accordance with the manufacturer's guidelines.

There were significant discrepancies between Levandowski's testing and all other autism assessments for Student, including the 2023 Autism Diagnostic Observation Schedule and the 2023 and 2024 Autism Spectrum Rating Scales, which indicated that Student had autism. Given these substantial discrepancies, it was essential for Madera to prove that Levandowski administered the 2024 Autism Diagnostic Observation Schedule correctly and with fidelity. The preponderance of evidence presented at the hearing did not establish this essential fact.

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

Thirdly, the totality of the evidence indicated that Student had substantial learning impairments across multiple domains, impacting her ability to access education without special education and related services. Contrary to the claim that Student was ready to be exited from special education, the evidence demonstrated significant delays in various areas:

- Communication: Student had considerable difficulty communicating, was easily distracted, and required more breaks during testing than her peers. She struggled with articulation, receptive and expressive language, and auditory comprehension.
- Cognitive Delays: Madera's cognitive testing revealed severe delays, with Student functioning at the two percent level compared to her peers. She was severely delayed in adaptive behavior, communication, basic academic skills (reading, writing, and mathematics), and self-direction. Testing showed extremely low scores in social skills, school and home living, health and safety, and community use.
- Behavioral Issues: Madera's behavior testing indicated Student was at risk for externalizing problems and hyperactivity and was clinically significant in depression, somatization, and atypicality.
- Autism: Madera's 2023 Autism Diagnostic Observation Schedule and the 2023 and 2024 Autism Spectrum Rating Scales showed severe autism symptoms and serious delays in social communication, behavior, and sensory processing.

- Outside Evaluations: A psychological evaluation by Dr. Hiday in May 2023 confirmed severe delays in verbal comprehension, visual-spatial processing, adaptive behavior, and other areas, with a diagnosis of autism spectrum disorder and language impairment.
- Teacher and Nurse Assessments: Special education teacher Magee found Student far below average in literacy and mathematics, and noted that Student required extra sessions to complete assessments due to distraction. School nurse Machuca observed significant communication difficulties during a health screening.

Overall, the evidence from various assessments demonstrated that Student experienced severe delays across cognitive, academic, behavioral, and adaptive domains, supporting the need for continued special education and related services. The assessments collectively and overwhelmingly established that Student should not be exited from special education.

Madera relied primarily on the 2024 Autism Diagnostic Observation Schedule as the sole criterion for exiting Student from special education. As discussed, Madera failed to show this assessment was reliable. Moreover, a school district is 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) & (B); 34 C.F.R. § 300.304(b)(1)-(2); Ed Code, § 56320, subd. (e).) Consequently, Madera's reliance on this sole test is insufficient to support its request to exit Student from special education.

Madera also contends Student's delays are due to her not attending school. Madera points out that it offered an IEP, including a school placement, as part of Student's initial 2023 IEP, but Parents did not take advantage of the placement. Consequently, Madera argues that any depressed scores in the 2024 testing are a result of Student not attending school.

However, education in California is compulsory for children aged six to 18. (Ed. Code, § 48200.) Because Student was only three years old when Madera offered the 2023 IEP, Parents were not obligated to enroll Student in school at that time. More importantly, Madera did not provide evidence that Student's delays were due to her lack of school attendance. Instead, substantial evidence demonstrated that Student was severely delayed when initially assessed by Madera in 2023, and exhibited similar delays during the 2024 reassessments. The evidence proved Student's delays were due to her disability, not to non-attendance at a school placement.

Based upon the forgoing, Madera failed to prove by a preponderance of the evidence that it may exit Student from receiving special education and related services as a student who does not meet the criteria for any eligibility category under the IDEA.

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:

Madera may not exit Student from receiving special education and related services as a student who does not meet the criteria for any eligibility category under the IDEA.

Student prevailed on the sole issue.

ORDER

Madera shall not exit Student from receiving special education and related services without Parents' consent.

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.

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings