

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

CASE NO. 2025120666

DECISION ON REMAND

April 10, 2026

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, or ALJ, Ted Mann heard this matter by videoconference on April 9, 10, 11, 17, 18, 19 and 23, 2024.

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

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.

The following issues were the subject of the underlying hearing:

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?

On June 18, 2024, OAH issued the ALJ's decision in the consolidated cases finding for Student on Student's six issues and against Escondido on its two issues. Escondido requested the complete administrative record be prepared by OAH and thereafter Escondido appealed to the United States District Court.

On December 4, 2025, OAH received notice of remand by the Unified States District Court for the Southern District of California of OAH's June 18, 2024 Decision.

The remand order vacated the June 18, 2024 Decision and remanded for further proceedings consistent with the order. The Remand Order concluded that the ALJ's analyses were based on factual findings that were inconsistent with the record regarding Escondido's two issues. With regard to Escondido's first issue regarding its psychoeducational assessment, the Remand Order identified six areas of dispute. With regard to Escondido's second issue regarding its speech and language assessment, the Remand Order identified two areas of dispute. The Remand Order implicitly sought credibility assessments with regard to the central witnesses to the underlying case. To the extent that the ALJ's analysis of Student's six issues relied on the analysis of Escondido's two issues, the Remand Order directed the remand to consider those six issues as well.

On December 17, 2025, OAH issued a scheduling order setting a telephonic prehearing conference, known as a PHC, for December 22, 2025, and hearing for December 30 and 31, 2025. On December 18, 2025, the parties jointly filed a motion to continue the PHC and hearing dates. On December 18, 2025, OAH granted the parties' request for continuance, setting the PHC for February 6, 2026, and the hearing for February 18 and 19, 2026.

Both Student and Escondido filed PHC Statements asserting, among other things, that no additions to the Administrative Record, either testimonial or documentary, were necessary. On February 3, 2026, Student filed a Motion to Continue along with a Motion in Limine regarding independent educational evaluation costs were testimony to be required from Student's expert witness at a remand hearing. On February 6, 2026, Escondido filed an opposition to both motions.

On February 6, 2026, ALJ Mann held a videoconference PHC and determined the issues on remand did not require a hearing or additional evidence. The parties were ordered to file opening briefs by February 27, 2026, and reply briefs by March 13, 2026. The parties were ordered to address the following issues in their Opening briefs:

1. Whether the Administrative Record, hereafter called the AR, supports the District Court's concerns regarding the ALJ's "factual findings that are inconsistent with the record" with regard to District's psychoeducational assessment (six items) and District speech and language assessment (two items).
2. Whether credibility issues affect the testimony of the relevant witnesses as reflected in the District Court's Order and the extent to which that affects the weight of their respective testimony.
3. The effect of briefing issues 1 and 2 affecting any, some or all of the ALJ's underlying decisions on Student's and District's issues as reflected in the District Court's Remand Order.

The parties were ordered to cite specific, granular portions of the administrative record in support of their positions, considering the District Court's October 22, 2025 Remand Order.

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

JURISDICTION

This hearing and the remand proceedings were held under the Individuals with Disabilities Education Act, or 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 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,

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

163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) The parties bore their respective burdens of proof on their issues in the underlying OAH Case Nos. 2024020654 and 2023110872 and therefore have their respective burdens of proof on remand. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)5.)

At 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, a nonpublic 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.

Student was 16 years old and in the 10th grade at the time of original hearing. Student was eligible for special education under the other health impairment eligibility category, and had difficulties with

- communication,
- anxiety,
- attention,
- behavior, and
- socialization.

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

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 at Winston.

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 a preponderance of the evidence in the administrative record of the original OAH due process hearing demonstrates it is not obligated to fund an independent multidisciplinary educational evaluation or educationally related mental health evaluation because its assessment 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 the administrative record demonstrates Escondido's assessment and accompanying report were not legally compliant because Escondido failed to adequately assess Student in the area of autism and overlooked or downplayed the impact of Student's attention deficit hyperactivity disorder and anxiety diagnoses on Student's education. Student also contends Escondido failed to adequately identify the extent of Student's social anxiety, social difficulties, and attentional issues as they impacted Student's educational needs.

Escondido did not prove by a preponderance of the evidence that its March 3, 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.

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

§ 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,

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

- 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. Comprehensive, legally sufficient assessments are necessary for the IEP team to be able to make an appropriate FAPE offer at the IEP team meeting.

ESCONDIDO'S PSYCHOEDUCATIONAL ASSESSMENT WAS NOT LEGALLY SUFFICIENT

Escondido assigned school psychologist, Willow Ray, to conduct Student's psychoeducational assessment and prepare the applicable portions of the comprehensive multidisciplinary assessment report. The psychoeducational assessment of Student addressed their cognition, academics, processing, and social/emotional functioning. Ray also concurrently conducted an educationally related mental health assessment of Student.

Ray, a licensed educational psychologist, held a bachelor's degree in psychology, a master's degree in school psychology, and a California pupil personnel services credential. She had 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 in her role 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 both Escondido's and Parent's attorney's questions about test protocols and perceived assessment shortfalls and scoring inconsistencies. Ray's testimony under cross-examination become evasive and defensive, undercutting her credibility. Ray's testimony regarding the assessment and her conclusions were primarily based upon her exercise of her professional opinion, largely to the exclusion of data-driven criteria or analysis. This undermined Ray's credibility in the numerous instances in which data collected about Student was minimized, downplayed, or simply failed to support Ray's analysis.

In particular, she repeatedly downplayed Parent's reports and concerns about Student's possible

- autism,
- mental health problems,

- suicidal ideation,
- anxiety, and
- socialization issues.

Those issues had been present for many years at the time of the assessment, beginning in Student's earliest years and manifesting in an educational setting beginning in preschool and persisting thereafter. (AR: page 670; page 674 – 676) The Parent's consistent reports and concerns were largely ignored in the draft of the assessment reviewed at the August 2023 IEP team meetings and then continued to be downplayed in the revised draft of the assessment report that was finally circulated to IEP team members in September. Notably, according to Ray's e-mails and her testimony at hearing, the IEP offer of placement of Student at San Pasqual High School was based upon the original draft of the assessment report. (AR: page 2,135, lines 6-9; page 2,136, lines 4-10; page 2,197, lines 4-13)

The sustained resistance to Parent's reports and concerns, the acceptance of Student's denial that they had suicidal ideation, and continual downplaying of subtest results for the ASRS, BASC and Connors all resulted in Ray's analysis, and thus credibility, being suspect. Additionally, her observations of Student at Winston for the assessment failed to explain the effect of the small, structured program that included embedded supports on Student's performance in the classroom during Ray's observations. Similarly, in her assessment, Ray failed to explain how Student's performance in the Winston placement might translate into placement in large classes at a large, comprehensive public high school. As such, both Ray's assessment and her testimony were given less weight than other witnesses at the hearing such as testimony by Holly Reed; Student's mother; and Student's expert, Jill Weckerly.

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.

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

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 answers to the social emotional questionnaire Parent completed despite potentially concerning information provided by Parent. Similarly, Ray did not 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; experienced significant social difficulties and bullying; and her grade point average dropped from A's and B's 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, suggesting sensory issues. Parent also reported Student was easily distracted in the classroom. Student was often out of their seat or fidgety. Student often reported feeling overwhelmed at school.

Parent reported, in the Google-form generated social emotional questionnaire drafted and sent to her by Ray, Escondido's exhibit D-26, (D373) that Student had reported thoughts of self-harm to Parents in eighth grade, during severe struggles that year. Parent also reported that Student had expressed thoughts of suicide to Parents at that same time. The questionnaire also asked Parent: "[H]as your child ever purposely harmed him/herself?" Parent did not answer with the yes or no option on the questionnaire, instead including the comment: "Not that we know of". Ray, in the draft assessment report, Escondido's exhibit D-45, (D583), simply reported: "[Student] has no history of self-harm or suicidal behavior to her parent's knowledge". Later, in the amended assessment report following the three IEP meetings, Escondido's exhibit D-68, (D1225), Ray added in information about Student's self-harm in eighth grade reported by Parent at the IEP meetings to include some additional information about the extent of Student's emotional distress at that time. Ray did not follow up during the assessment in any way with inquiries to Parent regarding Student's self-harm or suicidal thoughts or other aspects of Student's mental health.

Ray excused this omission in her testimony that she did not interview Parent for the assessment because of Parent's bereavement status following the death of her father. She did ask Student, during the Student interview, but Student denied having suicidal thoughts. In and of itself, such an inconsistent picture over time should have triggered further inquiry by Ray about Student's mental health challenges and emotional stability, both historically and at the time of the assessment.

Ray later obtained direct, detailed information during the three IEP team meetings on August 25, 2023, August 30, 2023, and September 8, 2023, that was not reflected in her draft assessment. The information from Parent included Student's extreme difficulties in eighth grade with anxiety, bullying, suicidal ideation and self-harm. Director Reed provided information on how and why the Winston placement worked for Student and how Student continued to have issues, particularly with social behavior and relationships. Ray ultimately 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 significantly modify her assessment data, much less her recommendations for Student, other than to suggest the IEP team consider educationally related mental health services for Student. Although Parent reported bullying as part of the social difficulties Student experienced in eighth grade (Ex. D-26, page D366), Ray failed to include information about bullying in either version of her report (AR: Ray Hearing Testimony: page 2,184, line 17 to page 2,185, line 13.)

What the Google-form generated social-emotional questionnaire and other standardized assessment tools could not tell the assessor, the parent or the remainder of the IEP team was how Student would perform in a placement at a large, comprehensive public high school while taking large, albeit co-taught, general education classes. Thus, the deficiencies here are that the assessment, taken as a whole, stops well short of

- providing a complete picture of Student's educational needs,
- being sufficiently comprehensive to identify all of the child's needs for special education and related services, or

- providing actionable data on how Student might perform in Escondido's offer of placement at San Pasqual High School, rather than at Winston.

There was limited, if any, consideration given to the difficulties Student experienced during eighth grade, any analysis of those difficulties and how they might affect the then current IEP placement offer, and a lack of solutions to those difficulties in the assessment report's analysis. In particular, there was no indication in Ray's assessment report or testimony that Ray considered how Student's eighth grade experience with suicidal ideation and self-harm might reemerge were Student suddenly thrust back into a large public high school.

Further, no effort was made in Escondido's assessment to provide professional analysis or opinion on these critical issues. As a result, there was limited, if any, consideration given to the difficulties Student experienced during eighth grade, any analysis of those difficulties and how they might affect the IEP placement offer, and a lack of solutions to those difficulties in the assessment report's analysis, other than to recommend 150 minutes per year of individual educationally related mental health support. Without such analysis or opinion, the data gathered at Winston is largely useless and the IEP was denied critical information, rendering either version of the assessment legally insufficient. Such a lack of analysis in either version of the assessment reports is a critical omission that goes to the heart of what program was appropriate for Student much less the child's safety.

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

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 what she described as 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. Ray failed to address how her one-on-one interview with Student had any bearing on Student's classroom issues and socialization issues with peers. In contrast, Weckerly, testified at length based on her research and that of others, as to the difficulties of identifying flags for internalized autism in a female student. (AR, Weckerly Testimony, page 1,867, line 12 to page 1,870, line 10; page 1,883, line 9 to line 20) That opinion was unrefuted by Escondido.

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. In her report, Ray did not offer any analysis or comment on the vast differences between the program at Winston and the proposed placement at San Pasqual, and how those differences might affect Student's performance

at Winston and the prospective placement at San Pasqual. It was unrefuted in the evidence that Winston was a small school with small classes, typically of twelve or less, that were embedded with structures and supports to address Student's anxiety, attentional issues, self-image and social-emotional issues. San Pasqual, on the other hand, was a large, comprehensive high school campus featuring typical large, general education classrooms that did not embed the types of structure and support employed by Winston.

On March 6, 2023, Ray observed Student in their math and English classes for 90 minutes. In Student's math class, there were three other students and the teacher present. 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 while other students did so.

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. The report did not indicate whether Student was familiar with the substitute or not, negating any inference about whether or not Student's routine or classroom consistency were challenged by the presence of a substitute rather than the regular classroom teacher.

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, falling in the 68th percentile, slightly below the high average descriptor.

Ray also 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 also 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 subtest or 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. There was no strict quantitative score at which autism was found, rather the overall qualitative measures of a student combined to provide information on the degree of autistic behaviors observed by those completing the scales.

Ray obtained rating scales from Student's Art teacher and Physical Science teacher, along with 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).

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

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, discounting any significance to those behaviors and any potential impact on Student's educational needs. Ray downplayed or ignored any index score and relied on the total scores from the two teachers to conclude that Student did not have educationally significant behaviors related to Autism in the classroom.

Ray also concluded it was not necessary to make additional inquiry in this area. Of particular significance, is that Ray did not follow up on any of the elevated index scores, use another standardized assessment for autism or engage in any deeper investigation of the assessment tool's results to inform her understanding of Student

with regard to autism. Instead, as related, above, Ray utilized her observations of Student during an interview and the testing process to find minimal evidence of autistic like behaviors in Student, despite Weckerly's credible and convincing testimony that autistic like behaviors are frequently internalized in female students and not easily observed. Further, Weckerly's opinion was that Student suffered from a combined presentation of anxiety and autism, with the combination leading to Student's unique profile and educationally related needs. (Student's Ex. S-6, pages S112 to S114)

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 with composite scores in three domains, in communication, daily living skills and socialization, and adaptive behavior. Scores in domains and composite scores are considered adequate if between 86 and 114. From 85 down to 71 is considered moderately low. Below 70 down to 20 is considered low. The lower the score the greater the degree of concern.

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 short answer 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 conducted 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 used 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 were the same scoring bands as the Autism Scales with scores from 60 and above 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 despite not engaging in any meaningful follow up on that issue, nor any analysis whether such a pattern of spiraling anxiety, bullying, suicidal ideation and self-harm was likely to repeat should Student be suddenly placed back in a large, comprehensive public high school. 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. Again, there was no analysis of the impact of the small, supportive Winston setting on Student's ADHD, and how the Winston placement and program addressed Student's needs and greatly diminished or eliminated the problems that came to a head in eighth grade in the public middle school.

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.

Ray's purported justification for using general or averaged scores and downplaying or discrediting index or composite scores for the Behavioral Assessment, Connors or Autism Spectrum assessments is strongly contradicted within both versions of Ray's assessments, the draft and the eventual revised assessment, respectively. On the Weschler Intelligence assessment, Ray reports on Student's strengths by discussing Student's relative strengths in both fluid reasoning and working memory, both subscores of the overall Weschler full scale intelligent quotient, demonstrating that the subsection scores have significant informational value.

Likewise, on the Comprehensive Test of Phonological Processing, Ray offered her opinion on the significance of Student's phonological processing, which reflects a person's ability to process phonemes, the speech sounds making up speech. Such skills are critical for reading and reading comprehension. Yet, phonological processing is but one subsection of the overall score for the Comprehensive Test of Phonological Processing. Ray specifically noted Student's performance in this subtest area in both versions of her report (Ex. 45, pg. 597-598) and in her hearing testimony (AR, Ray Testimony: page 2,097, line 15 to page 2,099, line 15). Such utilization by Ray in her data collection and analysis directly contradicts her later testimony regarding the usage of the subtest information from the Behavioral Assessment, Connors or Autism Spectrum assessments. Simply put, both lines of report and testimony cannot be true.

Student's overall functional impairment index was 67 on their self-reported scales, which falls in the at-risk range. Parent's overall functional impairment index was 71, on the parentally reported scales, and 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 showed an inconsistency among some of Parent's answers and indicated 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 investigate or 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. Notably, the teachers were from Winston and their observations were of Student in the small, structured classrooms at Winston, begging the question of how Student would present in a large public high school setting. Ray offered no analysis of these circumstances, nor the potential impacts of the San Pasqual program on Student. If anything, the scores underscored the appropriateness of the Winston program.

The Beck Youth Inventories were self-report scales that were used to assess a youth's psychological well-being. The inventories produced 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. As before, no analysis was offered by Ray as to how the prospective placement might affect Student, although she was familiar with the San Pasqual placement.

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 in her original closing brief, and in the briefing submitted for the remand. Parent contended 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 contended that standardized test results looked at total scores, rather than discretely analyzing specific areas of poor performance for their educational impact, or at a minimum undertaking

further exploration of specific areas registering as problematic. Lastly, Parent contended 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 or omitted in the assessment report. The assessment report did not consider the effect of Student's current placement at Winston with its embedded structure and supports, 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, knowledgably, 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 had been an adjunct professor at Grossmont College since 2009. Reed held a Ph.D. in educational leadership from San Diego State University, awarded in 2014. She also held a master of arts in occupational therapy from the University of Southern California, and a bachelor of science in psychology from Arizona State. Reed had significant and appropriate education and experience, along with knowledge of Student's program at Winston and Student's needs. Reed testified clearly, thoughtfully and convincingly about Student's program at Winston and the needs that Student continued to have even in that setting. For all these reasons, Reed's testimony was 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.

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

Weckerly was a consulting clinical psychologist that Parent consulted with for approximately three years regarding Student's needs and the appropriate educational setting for Student. Weckerly held 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 was licensed as a clinical psychologist in California since 2001. She had 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. For these reasons, Weckerly's testimony was much more persuasive than the testimony of Ray.

Weckerly's independent educational evaluation and testimony both concluded that Student was on the autism spectrum and that this circumstance tied together the difficulties Student had in the classroom, with aspects of adaptive behavior, and with socialization with peers (AR, Student's Ex. S-6, pages 357-358) and thus required a program such as Winston's (AR, Student's Ex. S-6, pages 358-359).

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

scoring inconsistencies. Weckerly's opinion regarding Escondido's assessment of Student and the accompanying report's conclusions were well-reasoned, and supported Student's critiques of Escondido's assessors, application of the assessment protocols, test scoring and the report preparation.

Weckerly opined Ray's assessment and report failed to identify 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, than male adolescents. 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 of autism, anxiety and social emotional issues and related specific needs in those areas. (AR, Weckerly Testimony, page 1,890, line 3 to page 1,891, line 3)

Student's social behavior, while improved, was not yet normalized. Student still needed the structure and supports offered by Winston. Weckerly's opinion was that Winston was an appropriate placement for Student and one that met Student's needs. (AR, page 1,857, line 2 to 1,859, line 14; Student's Ex S-7, page S144 to S146) Weckerly's opinion on the appropriate placement for Student was substantially more convincing than Ray's due to her combination of experience, knowledge of Student and detailed analysis of Student's needs and the appropriateness of the Winston placement.

The evidence established that Escondido's multidisciplinary assessment of Student and accompanying report were not legally sufficient. Testimony from both Reed and Weckerly regarding Student's presentations, need and concerns were supportive of this conclusion. 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, both by failing to adequately identify all of Student's educational needs, and by failing to offer information or analysis about how Student was likely to perform in a large, comprehensive high school rather than the Winston program.

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.

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

Student contends that Escondido's speech and language assessment and accompanying report was not legally compliant 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, particularly with regard to Student's pragmatic speech and social communication.

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 produced an overall index score. Scaled scores between 8 and 12 were rated average. Index scores between 90 and 109 were 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 making the 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 attentional 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. Both Reed and Parent had emphasized that Student still struggled with peer relations in particular with inappropriate comments, topic changes and Student's peripheral status in peer groups. None of Parent's or Reed's concerns regarding such pragmatic language 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 or potential effects of the placement of Student at San Pascual.

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.

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

STUDENT'S ISSUES 1, 2, 3, 4, 5 AND 6:

The foregoing decision leaves the legal conclusions for Escondido's Issues 1 and 2 intact from the underlying decision. Consistent with the Remand Order, in the absence of changes to the conclusions in those issues in this decision on remand, the conclusion in the underlying decision regarding Student's Issues 1, 2, 3, 4, 5 and 6 remain unchanged and are not repeated in this decision on remand. The remedies ordered in the underlying decision also remain unchanged.

IT IS SO ORDERED.

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