

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISTA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016060769

DECISION

On June 16, 2016, Vista Unified School District filed a request for a due process hearing with the Office of Administrative Hearings, naming Student. OAH granted a continuance for good cause on July 1, 2016.

Administrative Law Judge Caroline A. Zuk heard this matter in Vista, California, on August 16, 2016.

Tiffany Santos, Attorney at Law, represented District. Leslie Taylor, Coordinator, Special Education, was present for the entire hearing.

Mother, on behalf of Student, did not appear for the hearing. On August 16, 2016, at approximately 9:10 a.m., District left a voicemail message for Mother, reminding her of the time and location for the hearing. Mother did not contact District or OAH or appear at the hearing when it commenced at 9:30 a.m. At approximately 9:30 a.m., District left a second voicemail for Mother. The ALJ waited for 10 minutes, and commenced the hearing at 9:40 a.m. without Mother.

District submitted a closing brief on August 30, 2016, the record was closed, and the matter was submitted for decision.

ISSUE

May District assess Student pursuant to District's December 17, 2015 assessment plan without Parent's written consent?

SUMMARY OF DECISION

District met its burden of proof on the issue of its right and legal obligation to reassess Student in the areas of academic achievement, intellectual development, speech and language, social-emotional development, adaptive behavior, and health/medical. District's assessment plan was appropriate and its assessors were qualified. District's assessments were necessary to obtain information regarding Student's present levels of performance and areas of unique need to develop a new individualized education program to support his high school program. District may assess Student pursuant to its proposed assessment plan over Mother's objection.

FACTUAL FINDINGS

Background and Jurisdiction

1. Student is 15-years-old and in the 10th grade, residing within District's geographical boundaries. Student is eligible for special education, because of autism. Student has a medical history of aplastic anemia, a condition manifested by insufficient white blood cells, increasing Student's risk for infections.

2. Student moved into the District toward the end of the 2013-2014 school year when he was in seventh grade. On June 4, 2014, District offered Student home-based instruction during the extended school year based on Student's physician's order, recommending home hospital instruction, because of Student's anemia. District also offered Student related services at Madison Middle School for the 2014-2015 school year. Student did not participate in any educational program during the 2014 extended school year, and during the 2014-2015 school year until March 2015.

3. On March 4, 2015, Mother provided District with an order from Student's physician, recommending home hospital instruction, because of Student's anemia. On March 5, 2015, District convened an annual IEP team meeting, offering Student specialized academic instruction in the home for the remainder of the 2014-2015 school year, and the 2015 extended school year, along with speech and language and occupational therapy services at Madison Middle School. Mother provided written consent to the IEP on March 13, 2015, except she disagreed with the intensity of occupational therapy services. On September 10, 2015, District extended its offer of home hospital instruction through December 4, 2015, based on Student's physician's order, dated August 31, 2015. Mother cancelled the first 24 sessions of home hospital instruction during the fall of 2015. Between June 2014 and December 2015, Student received less than one year of home-based instruction based on Mother's determination that Student was not available for instruction due to poor health or maladaptive behaviors.

4. On December 17, 2015, District convened Student's annual IEP team meeting. Mother participated by phone. Student's physician's August 31, 2015 order for home

hospital instruction had expired on December 4, 2015. Mother did not provide District with a new order. District offered to provide Student with specialized academic instruction and related services at Rancho Buena Vista High School. Mother wanted Student to remain on home hospital instruction.

5. During the IEP team meeting, District discussed Student's need for a comprehensive reassessment. Student's last comprehensive triennial assessment was conducted by Oceanside Unified School District in January 2014, during seventh grade. Student's triennial reassessment was set for January 31, 2017. However, District thought an earlier reassessment was warranted, given Student's extensive absences from school, District's limited opportunities to educate Student since May 2014, lack of current health/medical information regarding Student's anemia, and Mother's request to maintain Student's placement in the home. Mother orally agreed to assessments in the areas of academic achievement, communication, intellectual development, social-emotional development, adaptive behavior, and health. Mother orally disagreed with a medical assessment by Dr. Howard Taras, District's contracted pediatrician, because she had previously disagreed with Dr. Taras regarding Student's need for home hospital instruction.

December 17, 2015 Assessment Plan

6. After the December 17, 2015 IEP team meeting, Tamatha Parker, a credentialed school psychologist and District's secondary program supervisor, sent Mother the proposed assessment plan via regular U.S. Mail, certified U.S. mail, and e-mail. The December 17, 2015 assessment plan sought consent for a "full" assessment in the areas of academic achievement by an education specialist (special education teacher); language/speech communication development by a speech and language pathologist; intellectual development, social-emotional development, and adaptive behavior by a school psychologist; a health assessment by a school nurse; and a medical assessment by District's contracted pediatrician Dr. Taras.

7. The assessment plan provided Mother with notice that the purpose of the assessments was to determine Student's continued eligibility for special education and present levels of academic performance and functional achievement. The plan also provided notice that Student would be assessed in all areas of suspected disability, and that tests would include, but not be limited to, classroom observations, rating scales, one-on-one testing or some other types of combination of tests. The plan provided notice that the results of the assessment would be kept confidential; that Mother would be invited to an IEP team meeting to discuss the results; and that no special education services would be provided without Mother's written consent. The plan also invited Mother to share assessment information for consideration by the IEP team. District attached a detailed Notice of Procedural Safeguards to the assessment plan, which provided additional information regarding assessments and the IEP process.

Communications with Mother to Obtain Written Consent

8. District diligently attempted to obtain Mother's written consent to the assessment plan.

9. On January 5, 2016, Mother e-mailed Ms. Parker, stating that she agreed to the assessment plan, except she did not agree to a health/medical assessment by Dr. Taras. On January 7, 2016, Ms. Parker wrote a letter to Mother, encouraging her to provide full consent to the assessment plan. Ms. Parker emphasized the importance of obtaining current health/medical information to design an appropriate IEP for Student. Ms. Parker explained that Dr. Taras was highly qualified, trained and experienced in conducting school-based medical assessments. Ms. Parker offered to convene another IEP team meeting to discuss the assessment plan, and enclosed another copy of the December 17, 2015 assessment plan, along with a copy of procedural safeguards.

10. On January 14, 2016, District received Mother's written response to the assessment plan. Mother faxed the December 15, 2015 assessment plan with hand-written comments on the document. Mother checked the box next to the statement "I consent to the assessment," and wrote: "Except Medical Assessment. I don't agree." Mother also crossed out the words "Medical Assessment" and "District Contracted Pediatrician" on the assessment plan, and wrote "DO NOT AGREE."

11. On January 19, 2016, Ms. Parker e-mailed Mother, acknowledging her partial consent to the assessment plan, and again encouraged her to consent to the medical assessment by Dr. Taras. During the last week of January 2016, Student started to attend Rancho Buena Vista High School for the first time. He attended school for 2 months but Mother limited Student's attendance to 3 days per week, 2 hours per day. Student's attendance became sporadic by the end of February 2016, and by late March 2016, he stopped coming to school. Student did not return to school for the remainder of the 2015-2016 school year. District had started to assess Student in the areas Mother provided consent but could not complete the assessment, because Mother did not return several rating scales needed for the school psychologist's and speech and language pathologist's assessments. Mother also did not make Student available for District to complete its assessments.

12. In April and May 2016, District contacted Mother, expressing its concerns that Student was not in school, and that District had not completed its assessments. On May 26, 2016, Ms. Parker wrote a third letter to Mother, again encouraging Mother to provide written consent to the medical assessment, and requesting that Mother make Student available so District could complete its assessment. Ms. Parker enclosed another copy of the December 17, 2015 assessment plan, along with another copy of procedural safeguards.

13. Mother did not respond to Ms. Parker's May 26, 2016 correspondence. Mother did not make Student available so that District could complete its assessment. Mother never provided written consent to a medical assessment by Dr. Taras.

Necessity and Appropriateness of Assessments

14. Speech and language pathologist Alisha Dixon, school nurse Susan Thayer, and Ms. Parker testified at hearing, credibly explaining several persuasive reasons why District needed to reassess Student pursuant to the December 17, 2015 assessment plan.

15. Ms. Dixon has personal knowledge regarding Student's areas of suspected disability based on his responses during speech and language therapy sessions, her attendance at the December 17, 2015 IEP team meeting, her review of Student's records, and her consultation with staff at Rancho Buena Vista High School.

16. District, through Ms. Dixon, recommended assessment in the area of speech and language, because Student had significant deficits in the areas of receptive language, expressive language, and pragmatic language. As of December 17, 2015, Student used vocalizations and words to gain attention, inquire, protest, and express pleasure and discomfort. He used spontaneous gestures, stereotypical phrases, and echolalic speech patterns. He used head nods and pointing to respond with prompts. He displayed poor eye gaze, a flat affect, and minimal facial expressions. Student's deficits, taken together, severely impeded his ability to use oral language for appropriate communication. Student did not attend any therapy sessions between August 2015 and the December 17, 2015 IEP team meeting. Consequently, Ms. Dixon could not determine Student's present levels of performance and progress on his IEP goals. Following District's receipt of Mother's consent to the assessment plan in January 2016, Ms. Dixon started her assessment. However, Ms. Dixon could not complete the assessment, because Mother did not return rating scales and Student stopped attending school in March 2016. Student's last communication assessment was completed in December 2013 by Oceanside Unified School District. Student needed to be reassessed in the area of speech and language.

17. District proposed that Ms. Dixon conduct the speech and language assessment. Ms. Dixon earned a bachelor's degree in speech language and hearing sciences from San Diego State University in 2009. She earned a master's degree in speech language pathology from Hampton University in Virginia in 2012. She holds a license from the California Speech-Language Pathology and Audiology Board, a California speech-language services credential, and a certificate of clinical competence from the American Speech-Language Hearing Association. She has worked as a speech and language pathologist in the public school setting since January 2014. Ms. Dixon is qualified to conduct Student's speech and language assessment.

18. Ms. Thayer, school nurse, has personal knowledge regarding Student's areas of suspected disability based on her review of records, attendance at the December 17, 2015 IEP team meeting, consultation with staff at Rancho Buena Vista High School, communications with Mother, and communications with Student's physician.

19. During the December 17, 2015 IEP team meeting, District's IEP team members recommended a health assessment by a school nurse, and a medical assessment by

a District-contracted pediatrician, because District did not have current and complete information on Student's anemia. District needed updated information on Student's vision and hearing, because Oceanside's 2013 triennial assessment did not assess in those areas. During the December 17, 2015 IEP team meeting, Mother reported that Student's psychiatrist had prescribed two new medications, Seroquel and Remeron, and needed updated information on his prescriptions.

20. The IEP team possessed sharply conflicting information regarding Student's anemia, and its impact on Student's ability to attend school. On the one hand, Mother believed that Student continued to be at risk for infection because of his anemia and, therefore, requested home hospital instruction. On the other hand, District possessed a written order from Student's physician, dated August 31, 2015, authorizing 12 weeks of home instruction with an expected outcome of "complete recovery." Prior to the December 2015 IEP team meeting, Ms. Thayer spoke with Student's physician, and learned that the physician was not going to issue a new order for home hospital instruction until Student completed diagnostic medical tests.

21. In early January 2016, Mother informed Ms. Parker that she had scheduled an appointment with a new physician on January 11, 2016, to discuss Student's medications and educational placement. As of the hearing, District had not received any new information or orders from a physician regarding Student's medications, anemia, and need for home hospital instruction. Student needed updated health and medical assessments.

22. District proposed that Ms. Thayer conduct the health assessment, consisting of gathering health information and screening Student's vision and hearing. In 1990, Ms. Thayer completed the school nursing services credential program at San Diego State University. She is a veteran school nurse with over 25 years of experience providing nursing services for District, including assessing the health and development status of students, interpreting medical and nursing findings to IEP teams, and incorporating plans directed by physicians. Ms. Thayer is qualified to conduct Student's health assessment.

23. District proposed that its contracted pediatrician, Dr. Taras, conduct a medical assessment to determine the status of Student's anemia, and its effect on Student's ability to attend school. Dr. Taras is licensed to practice medicine in California, New York, and Ontario, Canada. In 1982, he obtained his doctor of medicine degree from McMaster University, Hamilton, Ontario. He completed post-graduate training at the University of Toronto and the University of California, San Diego. He has over 30 years of experience in the field of pediatrics, including over 15 years of experience providing medical consultation services to 57 school districts in California. He is a professor of pediatrics at the University of California, San Diego, and District physician for San Diego Unified School District and Chula Vista Elementary School District. He has published extensively on a wide variety of topics, including health issues affecting children's performance at school. Dr. Taras is qualified to conduct a medical assessment of Student.

24. Ms. Parker has personal knowledge regarding Student's areas of suspected disability based on her attendance at Student's March 5 and December 17, 2015 IEP team meetings, her review of Student's records, consultation with staff at Madison Middle School and Rancho Buena Vista High School, and extensive communications with Mother.

25. District, through Ms. Parker, recommended assessment in the areas of academic achievement, intellectual development, social-emotional functioning, and adaptive behavior, because Student had known or suspected disabilities in each area. Student's reading skills were at the third grade level. He wrote simple sentences with assistance, and added and subtracted numbers up to 20 without regrouping. Student's last standardized assessment of academic functioning was completed in January 2014 by Oceanside Unified School District. Student displayed mild to moderate delays when processing information, requiring four seconds to process language. Student's behaviors adversely affected his ability to learn and socialize, including an obsession to maintain sameness, extreme preoccupation with objects, extreme resistance to controls, peculiar motoric mannerisms, self-stimulating, ritualistic behavior, and "meltdowns." In mid-November 2015, Mother shared that Student's behavior was becoming worse at home, manifested by "having really bad fits over strange little things." When Ms. Parker started her psychoeducational assessment of Student at school, he tantrumed and vomited. Ms. Parker could not complete the assessment, because Mother did not return rating scales and Student stopped attending school in March 2016. Student's last psychoeducational assessment was completed in October 2013 by Oceanside Unified School District. Student needed to be reassessed in the areas of academic achievement, intellectual development, social-emotional functioning, and adaptive behavior.

26. District proposed that special education teacher Steven Davis conduct the academic assessment, and Ms. Parker complete the psychoeducational assessment. Mr. Davis currently is a special education teacher at Rancho Buena Vista High School. He earned a bachelor's degree in social science from San Diego State University in 1982, and a master's degree in educational technology from Graceland University in 2007. He holds credentials from the California Commission on Teacher Credentialing in general education, special education, and administration. He has taught in elementary, middle school and high school settings for over 25 years, including teaching general education and special education students. Mr. Davis is qualified to conduct Student's academic assessment.

27. District proposed that Ms. Parker conduct the psychoeducational assessment. Ms. Parker earned a master's degree in school psychology from National University in 2000. She holds a pupil personnel services credential in school psychology and an administrative credential from the California Commission on Teacher Credentialing. She has 20 years of experience in the field of special education as a special education teacher, school psychologist, and secondary program supervisor, including over 10 years experience as a school psychologist, assessing students in preschool through high school. Ms. Parker is qualified to complete Student's psychoeducational assessment.

28. In sum, Student's last comprehensive assessment was completed in January 2014 by another school district. District needed to reassess Student to identify all areas of unique need, update his present levels of performance, review and revise goals and services, and develop a new annual IEP based on current assessment data.

29. The assessments proposed by District were designed to provide District with updated information on Student's present levels of performance and unique needs to develop an appropriate IEP, including placement in the least restrictive environment. Student needed to be assessed in all of the areas identified in the assessment plan, considering District's limited access to Student during the last two school years, and the conflicting medical information on Student's ability to attend school. Otherwise, the IEP team would not be able to develop an appropriate IEP for him, including determining whether he needed to be educated in a home or school setting.

LEGAL CONCLUSIONS

Introduction: Legal Framework Under the IDEA¹

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.²; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related

¹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

² All references to the Code of Federal Regulations are to the 2006 version.

services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer Island*) [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child’s unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was implemented. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.2d 1141, 1149. In determining the validity of an IEP, a tribunal must focus on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir.1987) 811 F.2d 1307, 1314.)

Burden of Proof

5. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) District requested the hearing and, therefore, District has the burden of proof related to the issue for hearing.

Issue: District's Right to Assess Without Parental Consent

6. District contends that it had the right and obligation to assess Student when it presented its proposed assessment plan, dated December 17, 2015, to Mother, but it could not do so because Mother refused to provide full written consent, failed to return rating scales, and failed to make Student available for the assessments.

Assessments

7. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted if the local educational agency “determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment.” (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

8. Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and companion state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must: appear in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The district must give the parents and/or pupil 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

9. If parents do not consent to a reassessment plan, a school district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

10. Parents who want their children to receive special education services must allow reassessment by the district, with assessors of its choice, and cannot force the district to rely solely on an independent evaluation. (*Johnson v. Duneland Sch. Corp.* (7th Cir.1996) 92 F.3d 554, 558; *Andress v. Cleveland Indep. Sch. Dist.* (5th Cir.1995) 64 F.3d 176, 178-79 (*Andress*); *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315 (*Gregory K.*)) “Every court to consider the [Individuals with Disabilities Act’s] reevaluation requirements has concluded that ““if a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student . . .” (*M.T.V. v.*

DeKalb County School Dist. (11th Cir. 2006) 446 F.3d 1153, 1160, quoting *Andress* at p. 178-179.) The Ninth Circuit has held that “if the parents want [their child] to receive special education services under the [IDEA], they are obliged to permit [re-assessment] testing.” (*Gregory K.* at p. 1315.)

11. The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

12. Assessments shall be conducted by individuals who are “knowledgeable of the student’s disability” and “competent to perform the assessment,” as determined by the local educational agency. (Ed. Code, § 56320, subd. (g), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) Psychological and health assessments shall be performed in accordance with the procedures set forth in Education Code section 56320, by assessors who are trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324.) Any psychological assessment of a pupil shall be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a)). Any health assessment of a pupil shall be performed by a credentialed school nurse or physician. (Ed. Code, § 56324, subd. (b).)

Analysis

13. District met its burden of persuasion through credible testimony from Ms. Parker, Ms. Dixon, and Ms. Thayer that reassessment of Student was necessary and that District complied with all statutory requirements regarding its assessment plan.

14. District credibly proved that a reassessment was necessary for several reasons. District had never had an opportunity to conduct its own assessment of Student. District relied on Oceanside Unified School District’s January 2014 triennial assessment, which is

nearly three years old. District had limited opportunities to educate Student in his home and at school, because Mother did not make Student regularly available for instruction. Consequently, District could not gather sufficient data to determine Student's progress on his IEP goals, his present levels of performance and unique needs. District received conflicting information from Mother and Student's physician regarding Student's medical condition, and his ability to attend school. Student's autism significantly affected Student's learning, communication, socialization, and behavior. District needed current, specific information on Student's present levels of performance and unique needs to develop an appropriate IEP for him. District needed to resolve the critical issue of an appropriate placement for Student in the least restrictive environment, given his history of anemia.

15. District's assessment plan complied with the procedural requirement of the IDEA. It identified several types of measures to assess Student, including one-to-one tests, observations, interviews, and review of records. A credentialed special education teacher would conduct the academic assessment. A credentialed speech and language pathologist would conduct the communication assessment. A credentialed school psychologist would conduct the assessment of Student's intellectual, social-emotional development, and adaptive behavior. A credentialed school nurse would conduct a health assessment, and a licensed pediatrician would conduct a medical assessment.

16. Between December 17, 2015 and May 2016, Ms. Parker diligently attempted to obtain Mother's written consent to the assessment plan by sending several copies of the plan and procedural safeguards to Student's home via certified mail, regular U.S. Mail and e-mail. Ms. Parker promptly responded to Mother's e-mail communications regarding the assessment plan, offering to schedule IEP team meetings to discuss the assessment process. The assessment plan and Ms. Parker's correspondence provided notice on the types of assessments to be completed, and who would be conducting each type of assessment. District made reasonable efforts to obtain parental consent to the comprehensive assessment plan and provided at least 15 days to review and sign the plan. While Mother initially provided written consent to all of the assessments except for the medical assessment, she did not return rating scales and did not make Student available for District to complete the assessment

17. In summary, District established that the December 17, 2015 reassessment plan complied with all applicable statutory requirements regarding form, function and notice. District also established that assessments are warranted and its assessors are competent to perform them. Therefore, District may assess Student over parental objection.

ORDER

1. District may assess Student pursuant to the December 17, 2015 assessment plan without parental consent.

2. District shall, within 10 business days of the date of this decision, deliver to Mother by certified mail at her last known address, notice of the dates, times, and locations of the assessments identified in the December 17, 2015 assessment plan. Mother shall present Student for the assessments on the dates, times, and at the locations set by District. If Student is unable to attend on those days, Mother will promptly communicate this to District and District will propose new dates and times no more than 30 days from the dates that District originally proposed.

3. Mother will timely complete and return any paperwork reasonably requested by District as part of the assessments.

4. If Mother does not present Student on the days and times as specified above or does not complete any paperwork as specified above, District will not be obligated to provide special education and related services to Student until such time as Mother complies with this Order.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. District prevailed on the only issue presented for decision.

RIGHT TO APPEAL THIS DECISION

The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of this Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b); Ed. Code, § 56505, subd. (k).)

DATE: September 26, 2016

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings