

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011031560

ORDER DENYING DISTRICT'S
MOTION TO COMPEL CONSENT TO
ASSESSMENT

By Order dated September 7, 2011, Student's First Amended Complaint was deemed filed. The First Amended Complaint states extensive background facts and five issues (delineated in the complaint as "Allegations" 1 through 5), only one of which is pertinent to the instant motion. Thus, Student's "Allegation # 1" states that District's psycho-educational, speech and language, and reading assessments of May/June 2010 were inappropriate, that Parents requested an independent educational evaluation (IEE), and that District failed to either fund the IEE or file for due process to defend its own assessments. Student seeks, as a remedy for this issue, that District should fund IEE's in those areas, or prove the propriety of its own assessments.

By Motion dated November 1, 2011, District now moves for an "Order Compelling Consent to Assessment." In the Motion, District argues that at an IEP meeting dated June 13, 2011, it offered an IEE to be conducted by an entity called "Bright I.D.E.A.S.," and that, on or around September 5, 2011, Parent indicated that she did not consent to this IEE but was seeking IEE's by assessors of her choice. District's Motion goes on to argue that Bright I.D.E.A.S. is well-qualified. District's Motion then seeks an Order "compelling [Mother] to sign a consent form to allow [Student] to be assessed by [] Bright I.D.E.A.S. . . ." On November 4, 2011, Student opposed the Motion.

As discussed below, the Motion is denied.

APPLICABLE LAW

Parental consent is required to conduct assessments. (Ed. Code, §§ 56321, subd. (a)(4); 56506, subd. (e).) In the event consent is withheld, a school district is entitled to file for due process to proceed with assessments. (Ed. Code, §§ 56501, subd. (a)(3); 56506, subd. (e).)

The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1)(2006); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by

reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329.) To obtain an IEE, the student must disagree with an evaluation obtained by the public agency and request an IEE at public expense. (34 C.F.R. § 300.502(b)(1) & (b)(2).) If an IEE is at public expense, the criteria under which the assessment is obtained, including the location, limitations for the assessment, minimum qualifications of the examiner, cost limits, and use of approved instruments must be the same as the criteria that the public agency uses when it initiates an assessment, to the extent those criteria are consistent with the parent's right to an IEE. (34 C.F.R. § 300.502(e)(1).)

DISCUSSION

The due process matter that is currently at issue was brought by Student and seeks the affirmative remedy of an IEE. Student's entitlement, if any, to an IEE, and the criteria under which the assessment is obtained, including the minimum qualifications of the examiner, are the subjects of the hearing. Although entitled to do so, District has not itself filed for its own due process hearing to proceed with assessments where parental consent has been withheld. Instead, District attempts to obtain, via motion practice in Student's case, its own affirmative remedy against Parent -- an order compelling consent to an assessment by a particular provider. Alternatively, District's motion seeks a ruling on the merits of the IEE remedy Student seeks. In either case, the Motion seeks relief that is unavailable to District through motion practice in this Student-filed case, and it is denied.

IT IS SO ORDERED.

Dated: November 07, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings