

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KERN HIGH SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014031002

DECISION

District filed a Due Process Hearing Request with the Office of Administrative Hearings, State of California, on March 21, 2014. The matter was continued on April 18, 2014.

Administrative Law Judge, Stella L. Owens-Murrell, heard this matter on May 20, 2014, in Bakersfield, California.

Darren Bogie, Attorney at law, represented District. Lu Ellen Fleming Administrator for Special Education for District, also attended the hearing.

No appearance was made for Student. Prior to hearing, Student's Mother filed a motion to dismiss this matter on the ground that she and Student intended to move outside the District's boundaries. The motion to dismiss is addressed in this Decision.

The evidentiary portion of the hearing concluded on May 20, 2014. At the close of the hearing, the matter was continued to May 30, 2014, to permit District to file a written closing argument. The argument was received on May 29, 2014. Upon timely receipt of written closing arguments, the record was closed and the matter was submitted for decision on May 30, 2014.

ISSUE

May the District conduct a triennial assessment of Student pursuant to the December 3, 2013 Assessment Plan without parental consent?

SUMMARY OF DECISION

District seeks permission to conduct special education assessments of Student for purposes of providing Student with a free appropriate public education. The evidence showed that at all relevant times Student was a resident of District, whom District was required to provide special education services, that the assessments sought by District were necessary, and that District followed all required procedures in seeking the assessments. District has established it is entitled to assess Student without Mother's consent.

FACTUAL FINDINGS

1. Student was a fifteen year old young man at the time of the hearing, who, at all relevant times, resided within District's jurisdictional boundaries. Student is of African-American descent and receives special education services under the eligibility category of other health impairment due to a diagnosis of attention deficit hyperactivity disorder. From October 11, 2013, through the date of hearing, Student was receiving home instruction after being suspended from school pending expulsion.

2. Student's last special education assessment was conducted when he was a middle school student in the Panama-Buena Vista Union School District in February 2011.

3. Student transitioned into District in the 2012-2013 school year and his next triennial assessment was due in or about February 2014.

Assessment Plan

4. On December 3, 2013, in anticipation of the upcoming triennial assessment, District prepared an assessment plan.

5. The stated purpose of the assessment plan was to determine Student's individual needs. The plan indicated that all assessments would be completed by appropriately qualified staff, could include student observation in class or other settings, parent interview, a review of any reports, and a review of school records. The plan also identified other health impaired (the eligibility category that includes attention deficit issues) as Student's suspected area of disability.

6. The assessment plan identified assessment areas, the purpose of assessment, and identified the personnel proposed to conduct the assessments as follows:

a. Academic Performance- to determine skill levels in reading, mathematics, and written language. To be conducted by a Special Education Teacher and School Psychologist;

b. Self-Help, Social, and Emotional Status- to determine the general levels of skills in independent functioning, social skills, adaptive, and social behavior. To be conducted by a School Psychologist;

c. Motor Abilities- to determine skill levels in large and/or small muscle activities. To be conducted by a School Psychologist;

d. General Ability- to determine general cognitive/learning and processing ability, with a note that IQ testing would not be conducted with African-American students in accordance with policy of the California Department of Education. To be conducted by a School Psychologist;

e. Health Development, Vision, Hearing- To determine health/medical factors which may impact education or participation, typically performed with initial and triennial assessments. To be conducted by a School Nurse; and

f. Career, Vocational Abilities/Interests- To determine career and vocational needs. To be conducted by a Special Education Teacher.

7. The proposed assessment plan also provided for Parent to indicate whether there were additional evaluations or reports she wished to be considered, additional assessments in areas she wished to be taken, or for Parent to decline assessment and the reasons for declination.

The December 13, 2013 IEP Team Meeting

8. District convened an IEP meeting on December 13, 2013 to discuss Student's behavior leading to his suspension, to review his behavior support plan, and to present the triennial plan. Mother attended and was accompanied by Attorney Connie Chu from Disability Rights California and Advocate Mary Rios from Multi Cultural Advocacy Rights. District team members included Special Education Coordinator and IEP Administrator Jay Durant, Special Education Teachers Isaac Mendoza and Matthew Pratt, and District's attorney Stacy Inman.

9. The IEP team discussed options to bring Student back to a comprehensive high school campus. Mother chose the option of staying with Home Instruction pending the triennial assessment and IEP meeting. Mother also requested a functional behavior assessment at the time Student was returned to a comprehensive high school campus. The IEP team discussed and reviewed the assessment plan with Mother and her attorney. The IEP team agreed that Student's current home instruction was a FAPE pending the triennial assessments and triennial review IEP meeting. District provided Mother with a Notice of Parental Rights and Procedural Safeguards for Special Education. Mother stated that she had no further questions or concerns and gave her written consent to the December 3, 2013 assessment plan and the contents of the IEP.

Revocation of Parental Consent

10. The triennial assessments were scheduled to begin on January 9, 2014 with School Psychologist Gina Gordon-Lopez. Instead, Mother met with Ms. Gordon-Lopez because she had questions about the assessment plan and wanted to discuss her concerns. Mother was distrustful of District because of prior disputes with another school district over assessments that determined Student to be eligible for special education services under the category of emotional disturbance¹. Specifically, Mother wanted to know what test instruments Ms. Gordon-Lopez would use. Mother expressed her concern that the assessment plan was calculated to discriminate against Student because he was African-American and District would ultimately change Student's eligibility from other health impaired to emotionally disturbed. Ms. Gordon-Lopez first assured Mother that, as stated in the plan, the assessments were calculated to assess Student's needs based on his attention deficits, which were related to eligibility under the other health impaired category. Ms. Gordon-Lopez described some of the instruments she planned to use in the psychoeducational assessment. Ms. Gordon-Lopez told Mother that she planned to use the Cognitive Assessment System and the Behavior Assessment Scale for Children, Second Edition in the social-emotional portion of the assessment. According to Ms. Gordon-Lopez, Mother reacted unfavorably to Ms. Gordon-Lopez's choice of instruments because Mother believed these tests had previously resulted in Student's eligibility category of emotional disturbance and she believed that the assessments would discriminate against Student. Ms. Gordon-Lopez tried to assure Mother that she was sensitive to her concerns and that the assessments would be lawfully conducted, but did not get any further in her explanation of the assessment instruments with Mother. The meeting ended abruptly because Mother stated that, notwithstanding Ms. Gordon-Lopez's intentions, District could change the assessment results at will. Mother became emotionally upset and yelled profanities at Ms. Gordon-Lopez. Mother concluded the meeting stating she was going to call an attorney.

11. On January 15, 2014, Mother wrote a letter to District and delivered it to District's offices. In the letter Mother revoked her consent to any assessments on Student. She gave no explanation for the revocation. She requested a new assessment form for her review.

12. On January 29, 2014 District responded to Mother by letter addressed to Mother's address of record. In the letter District confirmed Mother's consent at the December 12, 2013 IEP meeting and her subsequent meeting with Ms. Gordon-Lopez to answer her questions and concerns about the assessments. District requested Mother to remove her revocation by no later than February 7, 2014 in order to proceed with and complete the needed assessments. Mother did not respond.

¹ See *Panama-Buena Vista School District v. Student/Student v. Panama-Buena Vista School District*, OAH Case Numbers 2011040320 and 2011050739, consolidated for hearing, in which Student contested the Psychoeducational Assessment and eligibility determination of ED. The school district prevailed.

Necessity and Appropriateness of Assessments

13. Gina Gordon-Lopez was employed by District as a School Psychologist for 15 years. She had a Bachelor of Science Degree in Psychology, Master of Arts Degree in Education, a Pupil Personnel Credential in School Psychology, and was a Licensed Educational Psychologist. She had conducted more than 200 psychological assessments. She had also conducted more than 30 assessments related to eligibility under the other health impaired category

14. She testified concerning the appropriateness of the assessments she was scheduled to conduct. She explained that she reviewed Student's files; and was familiar with his academic record. She knew Student spoke English and all assessments would be administered in English. She understood that he was eligible in the other health impaired category based upon an ADHD diagnoses. She thought Mothers concerns about the possible discriminatory impact on Student of District's assessments may have been in reference to the *Larry P.* injunction.² Ms. Gordon-Lopez was knowledgeable in and had received extensive training on the implications of the *Larry P.* decision. She explained that she had chosen a special education teacher who had done more than 40 assessments as part of her multidisciplinary assessment team to conduct the Academic Performance assessment. She would use the Woodcock-Johnson Test of Academic Achievement to assess Student in Mathematics, Written Expression, and Reading. None of the test instruments were used to test or generate IQ scores or discriminate against African-American students.

15. Ms. Gordon-Lopez detailed the assessment instruments she proposed to use in the Social-Emotional Status, Motor Abilities, and General Ability portions of the assessment. She proposed to use the planning, attention, and successive subscales of the Cognitive Assessment System; the Behavior Assessment Scale for Children, Second; Children's Category Test, Level 2; the Wide Range Assessment of Memory and Learning, Second Edition; the Test of Auditory Perception Skills, Third Edition; the Attention Deficit Disorders Evaluation Scale-Third Edition; and the Beery-Buktenica Development Test of Visual Motor Integration. None of the test instruments were intended to generate a full scale IQ score, and all were appropriate to determine Student's needs.

16. District Special Education Coordinator Jay Durant was responsible for attending IEP meetings. He was familiar with Student and knew that Student transitioned into District from another high school from which Mother had removed him because of a disciplinary incident. Since Student's transition into District, Student had struggled with his behavior and access to the curriculum. Mr. Durant explained that the triennial assessment was necessary because District had no current information on Student's needs as it had not yet had the opportunity to assess Student, and Student's last assessment was in February

² See *Larry P. v. Riles (Larry P.)* (9th Cir. 1974) 502 F.2d 973, which involved the issuance of an injunction against the use of full scale intelligence quotient testing of African-American students for special education eligibility under the category of what is now referred to as intellectually disability.

2011. Another goal of the assessment plan was to help determine a more appropriate placement than the temporary home instruction Student had been receiving.

17. Isaac Mendoza had been a Special Education Teacher for District for the past three years. He was designated to conduct the Career Vocational Abilities/Interests Assessment with Student. He knew Student because he had been providing Spanish language Home Instruction to Student since November 2013. Student had expressed to him the desire to return to a comprehensive high school campus, to interact with his peers, and to attend college. Student was very bright and had expressed his interest in an acting career. Mr. Mendoza had conducted approximately 40 vocational assessments with District. He described the types of assessments used to determine a student's vocational and career interests.

Mr. Mendoza explained that the assessment was necessary in order to determine Student's career and vocational options and to develop an individual transition plan in his IEP. Opportunities to pursue theater arts were available on District's comprehensive campuses, and finding an appropriate placement was another purpose of the assessments.

18. Jaime Henry was District's School Nurse. She was designated to conduct the health assessment. She was familiar with Student's medical history because she had reviewed his records when he enrolled as a freshman. Student was also required to take medications which were dispensed from the nurse's office. Ms. Henry had conducted over 500 health assessments that included record review, vision and hearing assessments for District. She explained the use of various instruments to test for vision impairment and hearing that would be used to assess Student. She knew from her review of Student's records that the last health assessment was in 2011 and that a current health assessment was necessary because updating Student's healthcare plan was integral to meet his needs and support Student's access to his education.

19. Each of District's personnel designated in the assessment plan to assess Student established that the proposed assessments involved the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. The assessments would not use any single measure or assessment as the sole criterion for determining whether a Student was a child with a disability. Each assessment called for the use of technically sound instruments that could assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The proposed assessments were to be selected and administered so as not to be discriminatory on a racial or cultural basis; the assessments were to be provided in the English language and were likely to yield accurate information on what Student knew and can do academically, developmentally, and functionally; the assessments would be used for purposes for which the assessments were valid and reliable; would be administered by trained and knowledgeable personnel; and would be administered in accordance with any instructions provided by the producer of such assessments.

Mother's Residence

20. On May 13, 2014, Mother filed a motion to dismiss the complaint claiming that OAH had no jurisdiction over this matter because she no longer resided within District's boundaries. The address listed on the pleadings, including Mother's declaration under penalty of perjury, was Mother's mailing address used consistently throughout Student's enrollment in District and at the time District filed the instant complaint. The same address was the only address provided to and on record with OAH. In the motion, Mother asserted that she refused to give District her current address to prove she did not reside in District.

21. Matt Pratt was employed as a Special Education Teacher for District. He was Student's home instruction provider. Home instruction was scheduled for 10 hours per week five days per week. All home instruction visits were conducted at the Beale Public Library in Bakersfield. The last time he instructed Student prior to hearing was on Thursday, May 15, 2014. Mother was present with Student and told Mr. Pratt that she had plans to move after May 15, 2014. Mother did not provide Mr. Pratt with a new residence address. Student failed to appear for instruction on Friday, May 16, 2014 and Monday, May 19, 2014.

22. Lu Ellen Fleming, District's Special Education Administrator, has been with District for over 30 years. She explained that District's policy for disenrollment required a parent to contact the registrar at the school site or, in Student's case, the District Special Education Office. The Parent would complete a drop slip to remove their child from District, provide a new residence address and the details of the school in which Student would be enrolled. As of the hearing in this matter, Mother had not completed a drop slip indicating Student's removal from District, nor had Mother provided a new residence address showing she had moved out of District at any time up to the date of the hearing.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA³

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), 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.; 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 FAPE 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).)

³ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).) "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 (2006); 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 (2006); Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) 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 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. 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, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, District bears the burden of proof.

Student's Motion to Dismiss is Denied

4. As an initial matter, Student's prehearing motion to dismiss is denied. The threshold question raised in Mother's prehearing motion is whether OAH has jurisdiction to adjudicate the issue of District's right to assess Student without parental consent if Student does not live within District boundaries. In the motion, Mother contends Student was not a resident of District during the relevant period. District contends that Mother has never provided evidence of change of residence outside District's jurisdictional boundaries. District further contends California law obligates the district of residence to provide a FAPE to Student, which includes conducting assessments.

5. In general, under the IDEA, a FAPE is made available to eligible students through a Local Educational Agency, meaning a school district within a state. (20 U.S.C. § 1412(a)(12)(A); *Letter to Covall*, 48 IDELR 106 (OSEP Dec. 2006).) In this case, District is the local education agency, within the meaning of these provisions.

6. In California, for the most part, identification of the school district that has the responsibility to provide a FAPE is determined by the school district where the student and his/her parent or legal guardian resides. (See 20 U.S.C. § 1413(a)(1); Ed. Code, §48200; *Katz v. Los Gatos-Saratoga Joint Union High School District* (2004) 117 Cal.App.4th 47, 54.)

7. Residency under the IDEA (20 U.S.C. §1400 et seq.) is measured by “normal standards.” (*Union School District v. Smith* (1994) 15 F.3d 1519, 1525 (*Union*)). In California, Government Code section 244 lists “the basic rules generally regarded as applicable to domicile [legal residency].” (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1114.)

Government Code, section 244, states in relevant part:

In determining the place of residence [domicile] the following rules shall be observed:

(a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.

(b) There can only be one residence.

(c) A residence cannot be lost until another is gained.

(d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.

(f) The residence can be changed only by the union of act and intent.

8. Here, Mother has not provided proof of a change in residency from the date of the complaint or at any relevant time during the pendency of this matter. The uncontradicted testimony of District witnesses established that Mother continued to present Student for Home Instruction by District even after the date of her motion to dismiss. As of March 15, 2014, Student resided within the boundaries of District where Mother continued to bring him to receive special education services. Mother stated to Student’s special education teacher on May 15, 2014 that she was planning to move shortly, demonstrating that she had not actually done so. Furthermore, in her motion Mother confirmed her refusal to provide evidence to District or OAH of a change of Student’s residence. Accordingly, Student has not met his burden of establishing that Student was no longer a resident of District such that District would have no right or obligation to assess him. On the contrary, the evidence established that he was a resident of District at all relevant times, and therefore Student’s motion to dismiss is denied. . (Factual Finding 1 through 9 and 20 through 22; Legal Conclusions 4 through 8.)

Analysis of District's Right to Assess without Parental Consent

9. District contends that it must conduct a triennial assessment of Student because it is required under the IDEA and District has not had the opportunity to obtain a recent assessment of Student in order to provide Student with a FAPE. As discussed below District met its burden of persuasion and is therefore entitled to assess Student without Mother's consent.

10. Legal Conclusions 4 through 8 above are incorporated by reference.

11. 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); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. §1414(a)(2)(A)(i); Ed. Code, § 56381, subd. (a)(1).)

12. Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §56381, subd. (f)(1).) In order 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).)

13. If the parents do not consent to a reassessment plan, the 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(a)(3)(i), (c)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

14. Parents who want their children to receive special education services must allow reassessment by the district. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315; *Dubois v. Conn. State Bd. of Ed.* (2d Cir.1984) 727 F.2d 44, 48.)

15. 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 *Vasheresse v. Laguna Salada Union School District* (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).)

16. Triennial assessments, like initial assessments, must be conducted by 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.” (Ed. Code, §§ 56320, subd. (g), and 56322; see 20 U.S.C. §1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) A health assessment shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56325, subd. (b).)

17. The IDEA requires that District assess Student at a minimum every three years, unless an assessment is waived by both District and Student. Here, Student transitioned into District sometime in the 2012-2013 school year. He had not been assessed since February 2011 and he was due for triennial assessments in early 2014. Given the length of time between assessments, and the transition from middle school to high school, District established that current assessments were necessary in order to develop an IEP for Student that provided a FAPE. The evidence showed that District provided Mother an assessment plan on or after December 3, 2013 and presented the assessment plan to her for discussion at the December 12, 2013 IEP team meeting.

18. The December 3, 2013 assessment plan met all statutory requirements. It included an explanation of the proposed assessment areas, as well as identified the District staff who would administer the assessments. In addition, District provided Mother with a copy of procedural safeguards. Mother was represented by both an attorney and an advocate at that IEP meeting. Mother provided her consent to the assessment plan on December 12, 2013, but she never presented Student for the assessments. Instead, District School Psychologist met with Mother and attempted to answer any questions Mother still had concerning the assessment instruments and to provide additional information and explanations about the proposed assessments. Ms. Gordon-Lopez’s uncontradicted testimony established that District made every effort to explain that the proposed assessment instruments were calculated to assess Student’s needs and that there was no conspiracy to discriminate against Student or to change his eligibility

category. According to Ms. Gordon-Lopez, Mother was extremely distrustful of District and became hostile and offensive toward her during their meeting, thereby thwarting any of District's efforts to obtain Mother's consent. District went far beyond the statutory requirements in its attempts to obtain Mother's consent.

19. In sum, District was required at a minimum to assess Student every three years. Not only was Student due for a triennial assessment and he had not been assessed when he transitioned into District, but the evidence showed, through the credible, uncontradicted testimony of Ms. Gordon-Lopez, Ms. Henry, Mr. Durant, Mr. Pratt, and Mr. Mendoza, that the assessment was necessary given District's outdated information on Student. The evidence further demonstrated that the District complied with all procedural requirements of the IDEA to conduct the assessments. Thus, District met its burden by a preponderance of the evidence that it is entitled to assess Student under the December 3, 2013 assessment plan without parental consent.

20. If Mother wants Student to continue to receive special education and related services, Mother must make Student available for assessment by the District. (Factual Finding 1 through 19; Legal Conclusions 9 through 20.)

ORDER

The District may assess Student pursuant to the December 3, 2013 triennial assessment plan without parental consent at any time during Student's home instruction sessions or at any time Student attends a District school.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The District has prevailed on the sole issue.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code § 56505, subd. (k).)

Dated: June 20, 2014

_____/s/_____
STELLA L. OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings

