

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CARLSBAD UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016040803

DECISION

On April 18, 2016, Carlsbad 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 May 3, 2016.

Administrative Law Judge Caroline A. Zuk heard this matter in Carlsbad, California, on May 19, 2016.

Justin R. Shinnefield, Attorney at Law, represented District. Tim Evanson, Director of Pupil Services, was present for the entire hearing.

Parents represented Student.

The parties presented oral closing arguments at hearing and the record was closed on May 19, 2016, and the matter was submitted for decision.

ISSUE

May District assess Student pursuant to District's March 24, 2016 assessment plan without Parents' written consent?

SUMMARY OF DECISION

District met its burden of proof on the issue of its right and legal obligation to conduct Student's first triennial assessment in the areas of academic achievement, health, intellectual

development, speech and language, motor development, and social-emotional development. District's assessment plan was appropriate, its assessors qualified and the assessments necessary to obtain information regarding Student's present levels of performance, areas of unique need, and strategies to assist Student transition from home hospital instruction to middle school. District may assess Student pursuant to its proposed assessment plan over Parents' objection.

FACTUAL FINDINGS

Background and Jurisdiction

1. Student is a 13-year-old, seventh grade student, residing within District's geographical boundaries. In June 2013, Student was first found eligible for special education. His current handicapping conditions are autism (primary) and speech and language impairment (secondary).

2. On September 22, 2015, Student's individualized education program team conducted Student's last annual IEP review meeting. The IEP team set Student's first triennial reassessment due date for June 10, 2016, and his next annual/triennial IEP review due date for September 22, 2016.

3. On March 16, 2016, District convened an IEP team amendment meeting to discuss Student's progress on his IEP goals, the upcoming triennial reassessment, and Mother's concerns.¹ Mother, Student's special education teacher and case carrier Marisa Leong, Student's speech and language therapist Denise Meek, Student's general education teachers Heather Lohre and David Delaney, and program specialist Andrew Sellers attended the meeting.

4. Prior to the March 16, 2016 IEP team meeting, Ms. Leong consulted with District staff regarding the types of assessments that should be conducted for the triennial reassessment. During the meeting, Ms. Leong gave Mother a copy of the assessment plan, along with a copy of parent rights and procedural safeguards. Mother did not provide written consent to the assessment plan during the meeting. Mother requested another meeting to develop a new IEP, seeking new present levels of performance, goals, and services, including individual speech and language services, and private, after-school behavior services. The meeting adjourned due to time constraints.

¹ At hearing, Parents objected to the characterization of the March 16, 2016 meeting as an IEP team meeting, because District did not invite an administrator from Calavera Hills Middle School, and did not update Student's present levels of performance and goals. For purposes of this decision, the meeting will be referred to as an IEP team amendment meeting with the understanding that the procedural and substantive appropriateness of the March 16, 2016 IEP team meeting is not an issue to be decided in this case.

5. After the March 16, 2016 meeting, Ms. Leong informed District's Director of Pupil Services, Mr. Evanson, about the IEP team's discussions, including Student's need for a triennial reassessment, and Mother's requests.

6. On March 24, 2016, Mr. Evanson sent a prior written notice letter via electronic mail and regular United States mail to Parents regarding the requests made during the March 16, 2016 IEP team meeting, and the status of the triennial reassessment.

March 24, 2016 Triennial Assessment Plan

7. Since District had not yet received Parents' written consent to the March 16, 2016 assessment plan, Mr. Evanson's correspondence enclosed a revised assessment plan, dated March 24, 2016, and a copy of parent rights and procedural safeguards in Parents' native language of English. Mr. Evanson's correspondence explained that the triennial reassessments were necessary to develop Student's triennial IEP. Mr. Evanson asked Parents to contact him if they had any additional input or concerns regarding the March 24, 2016 assessment plan. He also enclosed an IEP Meeting Notice, inviting Parents to attend an IEP team meeting on April 13, 2016.

8. District's triennial assessment plan sought consent for assessments in the areas of academic achievement by an education specialist (special education teacher); health by a school nurse; intellectual development by a school psychologist; language/speech communication development by a speech and language pathologist; fine and gross motor and perceptual development by an occupational therapist, social/emotional development by a school psychologist; and other (interview, observation and records review) by all of the assessors.

9. The assessment plan provided 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 also provided notice that the results of the assessment would be kept confidential, that parents would be invited to an IEP team meeting to discuss the results, and that no special education services would be provided without Parents' written consent. The plan also invited Parents to share assessment information for consideration by the IEP team.

Necessity and Appropriateness of Assessments

10. Mr. Evanson and Ms. Leong testified at hearing, credibly explaining several persuasive reasons why District needed to reassess Student pursuant to the March 24, 2016 assessment plan.

11. Mr. Evanson is a veteran educator with 22 years of experience, including 17 years in special education administration. He holds a bachelor's degree in liberal studies, and a master's degree in education administration from California State University, San Marcos. He also holds four, professional clear California credentials: a general education multiple subjects teaching credential (grade kindergarten through 12), a mild to moderate special education teaching credential, a moderate to severe special education teaching credential, and an administrative services credential.

12. As the Director of Pupil Services, Mr. Evanson oversees programs relating to special education, school safety, discipline, foster children, and homeless children. He is the head of the entire special education department, and monitors the credentialing and experience of special education personnel. Prior to his current position, he was a coordinator of special education, an administrator on special assignment to support special education, an assistant middle school principal, a director of non-public schools, and a teacher.

13. Ms. Leong is a veteran educator with 19 years of teaching experience, including three years as a second grade general education teacher, and 16 years as a special education teacher. She has been employed by District for the past 11 years as a special education teacher, teaching grades six through eight. She earned a bachelor's degree in psychology from University of California, Riverside, in 1993, and a master's degree in special education from Mount Saint Mary's in 1995. She holds a general education multiple subjects teaching credential, a special education teaching credential, and added authorization to work with students with autism.

14. Ms. Leong has been Student's case carrier since February 2016, and provides him with direct, specialized academic instruction in the learning center for 242 minutes per week. Ms. Leong has personal knowledge regarding Student's areas of suspected disability based on her instruction of Student, review of student records, communications with Parents, and consultation with Student's teachers and service providers at Calavera Middle School. She has conducted approximately 250 initial and triennial special education academic assessments.

15. According to Parents, Student is a bright student. His September 22, 2015 IEP states that he is on the diploma track with a projected graduation date of June 10, 2021. During the 2015-2016 school year, Student needed specialized academic instruction and speech and language therapy to support his social-emotional development, pragmatic language, and behavior. He also needed accommodations during tests and for lengthy written assignments.

16. Student's initial and last comprehensive assessment was conducted in June 2013 when he was first found eligible for special education. District needs to conduct Student's first triennial reassessment to determine if he is still eligible for special education and, if so, identify all areas of unique need, update his present levels of performance, review and revise goals and services, and develop a new annual/triennial IEP by September 22, 2016, based on current assessment data.

17. District recommended academic and intellectual assessments as part of a comprehensive assessment to determine if Student was still eligible for special education and, if so, to update his current levels of academic achievement and functional performance. Parents did not dispute the need for assessments in this area.

18. District recommended a health assessment to determine if there were any health issues affecting Student's school performance, including any new medications. Parents did not dispute the need for a health assessment.

19. District recommended assessment in the area of social-emotional functioning, because Student struggles with peer interactions and emotional regulation, and may misperceive social situations and use humor inappropriately, resulting in negative peer interactions. Since January 2016, Student's challenges in these areas have intensified, requiring three separate threat assessments by a school psychologist, because Student made statements of danger toward himself or others. On March 11, 2016, Student lost emotional control during a threat assessment, hitting a school psychologist in the head six or seven times. District suspended Student for the incident, and Student's physician ordered home hospital instruction, beginning May 12, 2016, for the remainder of the school year. Student has not returned to middle school. Parents did not dispute the need for assessment in the area of social-emotional functioning.

20. District recommended assessment in the area of speech and language, because Student has delays in the area of pragmatic language/social communication, including using and interpreting body language and eye contact appropriately, engaging in appropriate conversations, and appropriately handling social problems and interactions. Student recognized that his pragmatic language development was an area of high priority but objected to further assessment, because District had conducted a speech and language evaluation in July 2015 to help develop his September 22, 2015 IEP. Student needed a reassessment in the area of speech and language, because the July 2015 assessment data will be over a year old by the due date of his September 2016 annual/triennial IEP, and his recent, social-emotional challenges were related to his difficulty navigating the social milieu of school.

21. District conducted an occupational therapy evaluation in November 2015, and subsequently agreed to an independent educational evaluation in the area of occupational therapy by Golden Step. During the March 16, 2016 IEP team meeting, Student's mother informed District that she had decided to not complete the independent education evaluation. Mr. Evanson's March 24, 2016 correspondence restated District's willingness to conduct the independent educational evaluation in the area of occupational therapy. District also offered to conduct another occupational therapy assessment pursuant to its March 24, 2016 assessment plan. The parties provided minimal information regarding Student's suspected or actual disability in the area of motor development except that Student's handwriting can be illegible at times, and that he benefits from the use of a word processor on lengthy written assignments. Considering that the parties had previously agreed to an occupational therapy assessment, and it has not yet been completed, and that an occupational therapist can provide

information regarding Student's functional performance at school and accommodations, an assessment by an occupational therapist is warranted as part of the triennial assessment.

22. Mr. Evanson knew the District personnel who would be conducting the triennial reassessment. His uncontradicted testimony established that the professionals were qualified to conduct their respective assessments. District planned to have Ms. Leong conduct the academic assessment, using tests to provide updated information on Student's reading, spelling, arithmetic, oral and written language skills, and general knowledge. Lorraine Behr-Formaz, a credentialed school psychologist, would perform a comprehensive psychoeducational evaluation, using tests to provide updated information on how well Student thinks, remembers and solves problems, and how Student feels about himself, gets along with others, and takes care of his personal needs at home, school, and in the community. Patti Phillips, a licensed occupational therapist, would perform the motor assessment, using tests to measure how Student coordinates body movements in small and large muscle activities. Jamie Rooney, a credentialed speech and language pathologist, would perform the speech and language assessment, using tests to measure Student's ability to understand and use language and speak clearly and appropriately. Julia Hart-Lawson, a credentialed school nurse, would gather health information on how Student's health affects his school performance.

23. Taken together, the reassessments would provide District with updated information on Student's present levels of performance, his unique needs, and strategies on how to transition Student back to middle school from home hospital instruction. Ms. Leong emphatically testified that Student needed to be comprehensively assessed in all of the areas identified in the assessment plan, otherwise the IEP team would not be able to develop an appropriate annual/triennial IEP in September 2016. The need for the triennial reassessment is even more pressing due the recent deterioration in Student's social-emotional functioning, and his medical doctor's recommendation for home hospital instruction.

24. At hearing, Student's mother did not object to a triennial assessment. She did not provide written consent to the plan, because she did not understand that it needed to be signed before June 10, 2016, and she did not think that Student needed to be assessed in the areas of speech and language and motor development. She also wanted the assessment plan to include adaptive behavior and alternative assessments, but the evidence at hearing did not establish that Student needed those types of assessments. Parents do not want the triennial reassessment to be conducted during Student's home hospital instruction, because of their concern that the assessors would not obtain representative, valid test results.

25. Parents disagree with Student's current, operative IEP, dated September 22, 2015. Parents want a new IEP, consistent with their requests for additional behavioral supports and accommodations to appropriately educate Student in a school setting where he feels safe. However, these contentions are not for this matter, but for Student's pending case against District.

LEGAL CONCLUSIONS

*Introduction: Legal Framework Under the IDEA*²

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.³; 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 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

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All references to the Code of Federal Regulations are to the 2006 version.

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 Conduct a Triennial Reassessment Over Lack of Parental Consent

6. District contends that it had the right and obligation to assess Student when it presented its proposed assessment plan, dated March 24, 2016, to Parents, but it could not do so because Parents refused to provide written consent.

DISTRICT PROVIDED PROPER NOTICE OF THE TRIENNIAL 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. District met its burden of persuasion through credible testimony from Mr. Evanson and Ms. Leong that it complied with all statutory requirements regarding its assessment plan. During the March 16, 2016 IEP team meeting, the parties discussed the need for a triennial reassessment, and Ms. Leong gave Mother a copy of the assessment plan and notice of parent rights and procedural safeguards. On March 24, 2016, Mr. Evanson sent a follow-up letter to Parents, explaining that the reassessment was necessary to develop an appropriate IEP for Student, enclosing the assessment plan and another copy of parent rights and procedural rights. The assessment plan 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 assessment plan and provided at least 15 days to review and sign the plan. Parents have received the assessment plan but have not provided consent.

REASSESSMENT OF STUDENT IS WARRRANTED

10. 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)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

11. 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*).) “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* at p. 1315.)

12. Student’s first triennial reassessment was due on June 10, 2016. Since January 2016, Student has experienced a decline in his social-emotional functioning, culminating with a serious disciplinary incident on May 11, 2016, where Student hit a school psychologist in the head six or seven times during a threat assessment. Parents are understandably concerned about Student’s well-being, and sought a medical opinion. Student’s physician recommended home hospital instruction, beginning May 12, 2016, for the remainder of the 2015-2016 school year. District credibly proved that a reassessment is warranted pursuant to its March 24, 2016 assessment plan, considering that it is Student’s first triennial reassessment, his social-emotional functioning has deteriorated, he is no longer attending school, and the IEP team needs to determine if he needs additional or different related services, supports, and accommodations.

13. Parents were not opposed to a triennial reassessment, but questioned the need for reassessment in the areas of speech and language and motor function. District’s July 2015 speech and language assessment will be over one year old by the due date of Student’s annual/triennial IEP in September 2016, and the parties agreed to an independent educational evaluation in the area of motor function by an occupational therapist, but that reassessment has not yet been completed. Considering the recent decline in Student’s social-emotional functioning, Parents’ concerns about appropriately addressing Student’s unique needs, including additional or different related services and accommodations, and the IEP team’s need to discuss Student’s transition back to school from home, a comprehensive reassessment needs to include current information on his communication and motor needs.

14. District has demonstrated by a preponderance of the evidence that it needs current, specific information on Student’s present levels of performance and unique needs to review and revise his annual/triennial IEP, and develop strategies to work with Student to help him transition back to school, and develop skills to cope with the demands of school.

DISTRICT ASSESSORS ARE KNOWLEDGEABLE AND COMPETENT

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 *Vasherese 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).)

16. 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).)

17. District’s assessment plan identified several types of measures to assess Student, including one-to-one tests, observations, interviews, and review of records. A credential school psychologist would conduct the assessment of Student’s intellectual and social-emotional development. A credentialed school nurse would perform the health assessment. The remaining assessments would be completed by a credentialed special education teacher, credentialed speech language pathologist, and licensed occupational therapist, in their areas of expertise. No concern over the assessors’ ability to conduct assessments in accordance with the assessment procedures in Education Code section 56320 was presented at hearing.

18. District established that the March 24, 2016 triennial assessment 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’s request to assess Student pursuant to the March 24, 2016 assessment plan over Parents’ objection s granted.

2. District shall, within 10 business days of the date of this decision, deliver to Parents by certified mail at their last known address, notice of the dates, times, and locations of the assessments identified in the March 24, 2016 assessment plan. Parent 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, Parents 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. Parents will timely complete and return any paperwork reasonably requested by District as part of the assessments.

4. If Parents do not present Student on the days and times as specified above or do 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 Parents comply 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: June 13, 2016

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings