

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020060274

LUCIA MAR UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

DECISION

AUGUST 31, 2020

On June 8, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Lucia Mar Unified School District naming Parent on behalf of Student as respondent. On July 6, 2020, the case was continued for good cause.

Administrative Law Judge Penelope Pahl heard this matter on August 11, and 12, 2020. The hearing was held remotely using the Microsoft Teams videoconferencing platform to connect the parties, their attorneys and the witnesses. Sarah Garcia, attorney at law, represented Lucia Mar Unified School District. Lucia Mar's

Director of Special Education, Jennifer Handy, attended the hearing each day on Lucia Mar's behalf. Parent represented Student. Student did not attend the hearing.

Following the close of testimony, OAH continued the matter at the parties' request, until August 26, 2020, to allow the parties to file written closing briefs. Lucia Mar timely filed its closing brief. Student's closing brief was not received by OAH by the deadline and included no proof of service on Lucia Mar. Therefore, it was excluded and not considered. The record was closed, and the matter was submitted for decision, on August 26, 2020.

ISSUE

Did Lucia Mar Unified School District's functional vision assessment, dated November 20, 2019, comply with all legal requirements, such that Student is not entitled to an independent educational evaluation, or IEE, at public expense?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- 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 further education, employment and independent living; and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The 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).) The party requesting the hearing has the burden of proof by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case, Lucia Mar has the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 15 years old and entering the ninth grade at the time of hearing. Student resided with Parent within Lucia Mar Unified School District's geographic boundaries at all relevant times. Student was eligible for special education under the category of Orthopedic Impairment.

ISSUE: DID LUCIA MAR UNIFIED SCHOOL DISTRICT'S FUNCTIONAL VISION ASSESSMENT, DATED NOVEMBER 20, 2019, COMPLY WITH ALL LEGAL REQUIREMENTS, SUCH THAT STUDENT IS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION, OR IEE, AT PUBLIC EXPENSE?

Lucia Mar asserts that its functional vision assessment, dated November 20, 2019, complied with all legal requirements, and fairly and accurately assessed Student's vision

needs. Therefore, Lucia Mar contends Student is not entitled to an independent functional vision assessment at public expense.

Student argued at hearing that the assessment was flawed. He generally asserted the assessors and IEP team members were biased and failed to consider his unique testing needs, and that the results were not comprehensive or objective. As a result, Student requested a low-vision IEE to be completed by the Institute for the Blind.

ASSESSMENT PLAN REQUIREMENTS

Prior to conducting a special education assessment, a school district must secure a parent's informed consent to the assessment. (34 C.F.R. §§300.300, 300.9.) A school district must give a parent a written proposed assessment plan, accompanied by a copy of Parent's procedural safeguards under the IDEA and California state law. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300 (c); Ed. Code §§ 56321, subd. (a), and 56381, subd. (f)(1).) The assessment plan must provide parents written notices that meets the statutory requirements of California Education Code section 56321. The assessment plan must notify a parent, that an IEP team meeting will be convened, following completion of the assessment. The assessment plan must notify parent that the IEP meeting will include a discussion of whether student is an individual with special needs, the assessment results, the educational recommendations, and the reasons for the recommendations made. (Ed. Code § 56329(a)(1).)

The assessment plan itself must be in language easily understood by the general public; be in parents' native language; explain the type of assessment to be conducted and inform Parent of anyone to whom information about the student will be released. The plan must also inform the parent that no IEP will be changed based on the

assessment without a parent's consent. (Ed. Code § 56321, subd. (b); 34 C.F.R. 300.9 (a) and (b).)

The assessment performed must be in conformance with the provided assessment plan to which the parent consented. (34 C.F.R. §300.9(b).) The assessment must be completed and an IEP team meeting convened to discuss the results within 60 days of a district's receipt of a signed assessment plan. (Ed. Code § 56344, subd. (a).)

ABSENCE OF EVIDENCE ESTABLISHING ASSESSMENT PLAN COMPLIANCE

A parent may request an IEE if the parent disagrees with the results of the district's assessment. (34 C.F.R. § 300.502; Ed Code 56329, subd. (a)(3).) A district that refuses to provide an IEE must promptly request a due process hearing to determine whether or not their assessment met legal standards. (34 C.F.R. 300.502(b)(2)(i).)

Parent requested an IEE because she disagreed with Lucia Mar's vision assessment. Lucia Mar declined to fund the IEE and requested a hearing to determine its assessment met legal standards. However, as discussed more fully herein, determining that the assessment plan met all legal requirements is a component of establishing the assessment itself was appropriate such that Student is not entitled to an IEE at public expense. Lucia Mar did not meet its burden, and therefore did not prove its assessment was legally compliant.

Lucia Mar did not prove that it provided Parent with a legally compliant assessment plan. Lucia Mar did not offer a copy of the signed assessment plan as evidence in this case. Nor did Lucia Mar provide alternate evidence establishing that it provided an assessment plan that gave Mother the procedural protections required by state and federal law. Moreover, without the signed assessment plan Lucia Mar did not

establish that the testing itself comported with the assessment to which Parent consented.

Parent acknowledged receiving an assessment plan, at the September 24, 2019 IEP team meeting, that she took home to consider. Lucia Mar's special education assistive technology specialist, Diane Schmid, recalled a discussion, during the September 24, 2019 IEP team meeting, offering Parent a functional vision assessment through the county vision specialist. However, Lucia Mar offered no evidence that these specifics were reduced to an assessment plan.

Without a copy of the assessment plan the district failed to prove that it met its statutory and regulatory notice requirements to Parent. Nor did Lucia Mar offer evidence of how the assessment was described in the assessment plan, so that a comparison could be made with the assessment conducted. It also offered no evidence of the assessment provider identified in the assessment plan.

Lucia Mar also offered no evidence of whether Mother was provided with a copy of her state and federal procedural rights along with the assessment plan as required. Therefore, there was no proof that Lucia Mar provided the procedural protections the statutes and regulations require.

Nor did Lucia Mar offer any evidence that Parent signed the assessment plan provided at the September 24, 2019 IEP team meeting. Parent had a practice of taking documents away from IEP meetings, to read and consider, before she signed them. She did so in this case. A note from the November 16, 2019 IEP team meeting indicated Lucia Mar received a signed "vision assessment plan." However, Lucia Mar offered no evidence this was the same assessment plan provided to Parent during the September 24, 2019 IEP team meeting; and, even if it was, no evidence was presented as

to what that assessment plan said. Furthermore, no evidence was provided establishing the date the assessment plan mentioned in the November 16, 2019 IEP team meeting notes, was signed, or by whom. Nor did Lucia Mar prove the date it received the assessment plan.

The assessor received a signed assessment plan. However, Lucia Mar did not prove that the assessment plan received by the assessor complied with the requirements of state and federal law. The assessor could not recall when she received the assessment plan, other than that it was prior to the date she began the assessment. Lucia Mar failed to prove it provided adequate information to allow the informed consent to the assessment required by state and federal law. Lucia Mar had the burden of proving informed consent was secured in order to establish its assessment was appropriate. (34 C.F.R §300.9)

The Supreme Court emphasized the importance of the procedural safeguards included in the IDEA in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, (1982) 458 U.S. 176, 205 [102 S.Ct. 3034, 73 L.Ed.2d 690].) Procedural compliance is essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parent participation are particularly important. (*Amanda J. ex rel. Annette J. v. Clark County School District*. (9th Cir. 2001) 267 F.3d 877, 891.)

Lucia Mar did not prove that it met the threshold requirements to establish its vision assessment was legally complaint. Specifically, it failed to establish it provided Parent a legally compliant assessment plan including procedural safeguards, secured her consent, and assessed Student in conformance with a valid assessment plan. As a result, this decision does not examine whether the functional vision assessment complied with

the additional assessment requirements mandated by state and federal law. Student is entitled to an IEE at public expense. (34 C.F.R § 300.502; Ed. Code § 56329, subd. (b).)

CONCLUSIONS AND PREVAILING PARTY

As required by 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. Lucia Mar Unified School District failed to prove its functional vision assessment, dated November 20, 2019, complied with all legal requirements. Therefore, Student is entitled to an IEE at public expense. Student prevailed on the issue in this case.

REMEDIES

A parent who requests an IEE due to a disagreement with a district assessment is entitled to an IEE regarding the subject of the assessment with which she disagreed. (34 C.F.R § 300.502; Ed. Code § 56329, subd. (b).)

Parent requested a "low vision" assessment from the "Institute for the Blind." Lucia Mar conducted a functional vision assessment. Parent disagreed with the results of the functional vision assessment. Parent is entitled to an independent functional vision assessment at public expense. (34 C.F.R. § 300.502 (e).)

ORDER

Lucia Mar shall fund an independent functional vision assessment at public expense.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings