Docket No. 14-55800

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TIMOTHY O. and AMY O., Individually and
TIMOTHY O., as Guardian Ad Litem for L.O., a minor
Plaintiffs-Appellants,
-v.-
PASO ROBLES UNITED SCHOOL DISTRICT,
Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA
No. 12-CV-06385 (JGB)

BRIEF IN SUPPORT OF APPELLANTS AND REVERSAL ON BEHALF OF *AMICUS CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
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Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is not required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.
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No. 14-55800 Caption: TIMOTHY O. and AMY O., Individually and
TIMOTHY O., as Guardian Ad Litem for L.O., a minor *v.* PASO ROBLES UNITED SCHOOL DISTRICT,

Pursuant to FRAP 26.1
Council of Parent Attorneys and Advocates who is Amicus Curiae, makes the following disclosure:

1. Amicus is not a publicly held corporation or other publicly held entity;

2. Amicus has no parent corporations;

3. Amicus does not have 10% or more of stock owned by a corporation.

_____*/s/*_____
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INTERESTS OF THE AMICUS

Council of Parent Attorneys and Advocates (COPAA) is an independent, nationwide nonprofit organization of attorneys, advocates, and parents in forty-three states and the District of Columbia who are routinely involved in special education due process hearings throughout the country. COPAA's primary goal is to secure appropriate educational services for children with disabilities, echoing a Congressional finding that "[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. §1400(c)(1) (2006). Children with severe disabilities are among the most vulnerable in our society and COPAA is particularly concerned with assuring a free appropriate public education in the least restrictive environment, as the Individuals with Disabilities Education Act (IDEA or Act) requires.[1] COPAA's interest in this case is its deep commitment to all children with disabilities to obtain needed special education services including preschool age children, recognizing that all areas of a student's educational needs is the heart of the identification of children under the IDEA. All parties to this litigation have consented to COPAA filing this Amicus Brief.

[1] Pursuant to Fed. R. App. P. 29(5), counsel for COPAA, Selene Almazan-Altobelli, states: (1) Selene Almazan-Altobelli authored the brief in whole with comments from COPAA members; and (2) no other person contributed money that was intended to fund the preparation or submission of the brief. FRAP 29(5).

SUMMARY OF ARGUMENT

The mandate to evaluate children "in all areas of suspected disability." 20 U.S.C. §1414(b)(3)(B), is part of a constellation of requirements pertaining to evaluation. Evaluation must take place before the initiation of special education services for a child, and reevaluation must take place at least once every three years, unless the parent and school district agree that a reevaluation is not needed. 20 U.S.C. §§1414(a)(1)(A); (a)(2)(B)(ii). The IDEA also requires that the school district, when conducting an evaluation, must use a variety of assessment tools and strategies. Further, the school district may not use any single assessment as the sole criterion for determining eligibility or programming for a child. Importantly, the school district must use technically sound instruments. 20 U.S.C. §1414(b)(2).

In this case, because there was no evaluation conducted, therefore there were no assessments conducted, it was impossible to draw upon any information such as aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior for L.O. Therefore, it was impossible to determine L.O.'s exact needs and develop an appropriate IEP to address those needs.

The failure of Paso Robles, and its staff to use technically sound assessment procedures to evaluate all areas of suspected disability violated the IDEA. As a direct result of that violation, L.O. did not receive services to which he was entitled

and his parents could not participate meaningfully in the IEP process. The evaluation and assessment procedures in the IDEA are crucial for delivery of appropriate services, as well as meaningful parental participation in the IEP process. Therefore, the violations that occurred in this case directly implicate the statute's primary purpose, which is to ensure that school districts accepting federal funds meet all the educational needs of students with disabilities. For this reason, Amicus respectfully submits that the Court should vacate the judgment of the district court and enter judgment in favor of Appellants on their claims that L.O. was denied a free appropriate public education for the 2009-10 and 2010-11 school years and that they are entitled to reimbursement for privately conducted evaluations.

ARGUMENT

I. Students with a wide range of disabilities have been a focus of the IDEA.

1. *The IDEA was enacted to ensure that all children with disabilities receive a free appropriate public education.*

The IDEA requires that state and local public education agencies must enact policies and procedures which ensure that all students with disabilities have the right to 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." 20 U.S.C. §1400(d)(1)(A).

As noted by this Court: "The IDEA is a comprehensive educational scheme, conferring on disabled students a substantive right to public education." *Hoeft v. Tuscan Unified Sch. Dist.*, 967 F.2d 1298, 1300 (1992) (citing *Honig v. Doe*, 484 U.S. 305, 310, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). The IDEA ensures 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 further education, employment, and independent living.' 20 U.S.C. § 1400(d)(1)(A). According to the IDEA, a FAPE is

> special education and services that-(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the school standards of the State educational agency, (C) include an appropriate preschool, elementary school, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. § 1401(9). To provide a FAPE in compliance with the IDEA, a state educational agency receiving federal funds must evaluate a student, determine whether that student is eligible for special education and services, conduct and implement an IEP, and determine an appropriate educational placement of the student. 20 U.S.C. § 1414. " *See, J. W. v. Fresno Unified Sch. Dist*., 626 F.3d 431, 432 (9th Cir. 2010).

In order to receive a free appropriate public education ("FAPE"), a student must be determined eligible for special educational services. *See Ms. S. v. Vashon*

Island School District, 337 F.3d 1115, 1125 (9th Cir. 2003) ("a state must demonstrate that it has policies and procedures in place to ensure that all eligible children receive a FAPE"). *See generally Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493 (9th Cir. 1996) (ordering school district to pay for independent evaluation when district's assessment team failed to include anyone with knowledge of disorders affecting child).

2. Historically and currently, the goal of the IDEA is to ensure that children with varying forms of disabilities receive the services needed to address the child's academic, social, health, emotional, communicative, physical and vocational needs.

The IDEA confers upon students with disabilities, an enforceable substantive right to public education in participating States, regardless of the nature of the disability. *See Honig v. Doe,* 484 U.S. 305, 310 (1988); *A.W. v. Jersey City Public Schools,* 341 F.3d 234, 248 (3d Cir. 2003). Congress enacted the IDEA to ensure that students with disabilities had access to a "free appropriate public education," designed to meet their individual needs. This Court in *M.L. v. Fed. Way Sch. Dist.,* 341 F.3d 1052 (9th Cir. 2003) noted:

> The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities. *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993). One of the primary purposes of the IDEA is 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[.]" 20 U.S.C. § 1400(d)(1)(A) (2003). This goal is "achieved through the development of an . . . IEP for each child with a disability." *Ojai*, 4 F.3d at 1469. To ensure that a child receives a FAPE in accordance with the IDEA, a state must comply

> both procedurally and substantively with the IDEA. *Rowley*, 458 U.S. at 206-07. "State standards that are not inconsistent with federal standards are also enforceable in federal court." *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1483 (9th Cir.1992). *See also* 34 C.F.R. § 300 *et seq.*

The IDEA was enacted to make sure that each disabled child's unique educational needs would be addressed. "The term 'unique educational needs' [should be] be broadly construed to include the handicapped child's academic, social, health, emotional, communicative, physical and vocational needs." *Seattle Sch. Dist, No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (*quoting* H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

A review of the history of the IDEA clearly shows that the goal of the legislation was to provide children with every type of disability special education services to address their unique needs. In the 1970s, Congress held hearings around the country to examine educational instruction being provided to children with disabilities.[2] Congress found that millions of children with a multitude of disabilities were either being excluded from public education or placed in programs where they received no educational benefit.[3] At that time, statistics

[2] These hearings prompted Congress to enact Public Law 94-142, the Education for All Handicapped Children Act (EHA) in 1975, which through various amendments has become the IDEA.

[3] *Education for All Handicapped Children, 1973-74: Hearings on S.6 Before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare,* 93d Cong., 1st Sess. (1973-74) ("Senate Hearings").

showed that "only 55 percent of the school-aged handicapped children and 22 percent of the pre-school-aged handicapped children [were] receiving special educational services." Senator Randolph, Hearings on S. 6 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare, 94th Cong., 1st Sess., 1 (1975).[4]

Parents and educators discussed the widespread failure of states to provide the extent of supportive services necessary to meet the needs of children with varying degrees and forms of disabilities.[5] Services discussed included, but were not limited to, specialized diagnostic evaluations, speech therapy, individualized tutoring, behavior-help and

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[4] See, *e. g.,* 121 Cong. Rec. 19494 (1975) (remarks of Sen. Javits) ("all too often, our handicapped citizens have been denied the opportunity to receive an adequate education"); *id.,* at 19502 (remarks of Sen. Cranston) (millions of handicapped "children . . . are largely excluded from the educational opportunities that we give to our other children"); *id.,* at 23708 (remarks of Rep. Mink) ("handicapped children . . . are denied access to public schools because of a lack of trained personnel").

[5] Statistics compiled for Congress by the Office of Education at that time revealed that children of all ages and with a range of handicapping conditions were affected. For example, pupils excluded or receiving inappropriate education included: 82% of "emotionally disturbed" children; 82% of "hard-of-hearing" children; 67% of "deaf-blind" and "other multi-handicapped" children; and 88% of those classified "learning disabled." *Senate Report, S. Rep. No. 168, 94th Cong.*, 1st Sess. 5-8 (1975) reprinted in 1976 U.S. Code Cong. & Ad. News, 1425, 1429-32 (*Senate Report No. 168*) at 8; *House Report, H.R. Rep. No. 332*, 94th Cong., 1st Sess. (1975) (*House Report No. 332)*; at 11- 12.

self-care skills training programs.[6] Congress realized that these types of services, which may be labeled as "non-academic," were clearly necessary to enable students with disabilities to receive appropriate educational services.

II. To Meet the Needs of Students with a Wide Range of Disabilities, Congress Mandated Evaluation and Assessment in All Areas and Services to Address all Identified Needs.

The IDEA mandates the evaluation of children in all areas of suspected disability.

34 C.F.R. § 300.304 Evaluation procedures.

> (a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with Sec. 300.503, that describes any evaluation procedures the agency proposes to conduct.
> (b) Conduct of evaluation. In conducting the evaluation, the public agency must--
> (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining-
> (i) Whether the child is a child with a disability under Sec. 300.8; and
> (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
> (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
> (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
> (c) Other evaluation procedures. Each public agency must ensure that--

[6] Senate Hearings, at 45, 87, 790, 797, 809, 813, 833.

(1) Assessments and other evaluation materials used to assess a child under this part--
(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
(iii) Are used for the purposes for which the assessments or measures are valid and reliable;
(iv) Are administered by trained and knowledgeable personnel; and
(v) Are administered in accordance with any instructions provided by the producer of the assessments.
(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with Sec. 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
(6) In evaluating each child with a disability under Sec. Sec. 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

20 U.S.C. §1414(b)(1)-(3), §1412(a)(6)(B) ; 34 C.F.R. §300.304(c)(4). After identifying the child's needs, a school district must provide measurable annual goals and services to meet each of these needs. *See* 34 C.F.R. §300.320(a)(2) (IEP must contain goals to address needs); 34 C.F.R. §300.320(a)(4) (IEP must contain statement of special education and related services and supplementary aids and services to enable child to advance appropriately toward attaining annual goals). These IDEA provisions regarding evaluation and services each fall into the context of the IDEA's evaluation requirements and the IEP requirements. Both the evaluation and IEP requirements share lineage in the 1997 revision to the IDEA.[7]

The mandate to evaluate children "in all areas of suspected disability." 20 U.S.C. §1414(b)(3)(B), is part of a constellation of requirements pertaining to evaluation. Evaluation must take place before the initiation of special education services for a child, and reevaluation must take place at least once every three years, unless the parent and school district agree that a reevaluation is not needed. 20 U.S.C. §§1414(a)(1)(A); (a)(2)(B)(ii).

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[7] The evaluation requirement appeared earlier, in regulations implementing the Education for All Handicapped Children Act of 1975, Pub.L.No.94-142. 89 Stat. 773 (1975). *See* 45 C.F.R. § 121a.532(f) (1977) (requiring that "the child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities."). The Final Rules added the language, not found in the Proposed Rulemaking at 41 Fed. Reg. 56965-98 (Dec. 30, 1976).

The IDEA also requires that the school district, when conducting an evaluation, must use a variety of assessment tools and strategies. Further, the school district may not use any single assessment as the sole criterion for determining eligibility or programming for a child.[8] Importantly, the school district must use technically sound instruments. 20 U.S.C. §1414(b)(2).

Numerous articles have discussed the need for thorough special education evaluations. *See, e.g.,* Elisa Hyman et al., *How IDEA Fails Families Without Means: Causes and Corrections from the Frontlines of Special Education Lawyering*, 20 AM. U. J. GENDER, SOC. POL'Y & L. 107, 115 (2011) ("[I]n some districts, children do not receive thorough and adequate evaluations, and district employees are bound by blanket policies and even moratoria. Thus, the entire process breaks down. Poor families suffer most from this phenomenon.") (footnotes omitted); Terry Jean Seligmann, *Sliding Doors: The* Rowley *Decision, Interpretation of Special Education Law, and What Might Have Been*, 41 J.L. & EDUC. 71, 79 (2012) ("There are few disputes over special education services that can be resolved without the aid of expert evaluations."); Sanu Dev, Note, *Implications of the Parental Right to Unilaterally Revoke Consent of Services on the Rights of a Child with Learning Disabilities Under the Individuals with*

[8] Further, the IDEA requires that the assessment materials selected and administered are not racially or culturally discriminatory. The assessments must be administered in the child's own language, for the purposes for which the assessments are valid and reliable and administered by trained personnel.

Disabilities Education Act, 8 RUTGERS J.L. & PUB. POL'Y 745, 772-73 (2011) ("If students have a right to a minimally adequate education, then all students, including those who were formally characterized as students with disabilities, should be entitled to an evaluation to determine the most appropriate alternative education program to ensure that they continue to receive an education.").

As noted above, *see* n.7, *supra,* the statutory requirement to evaluate in all areas was not in the original Education for All Handicapped Children Act of 1975. Rather, the requirement appeared in in the first set of regulations interpreting the statutory 1975 text. Then in 1997,[9] Congress placed the language in the statute itself, edited to read:

> the child is assessed in all areas related to the suspected disability, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.[10]

Furthermore 34 C.F.R. §300.304 requires:

> Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

Importantly, the addition in 1997 to the statutory language also required that goals and services would be developed in order to ensure that all areas of disability are

[9] Pub. L. No. 105-17 § 101, 111 Stat. 37 (1997).
[10] 34 C.F.R. §300.304(c)(4).

evaluated and assessed. It is clear that Congress intended that school districts search for and identify each and every area of need and develop an educational service to address each need.

Congress reauthorized and amended the IDEA in 2004. The Act was approved with overwhelming bipartisan support. *See* Press Release by the Committee on Education and the Workforce, *House Approves Final Special Education Bill*, November 19, 2004. "Today, just as when the IDEA was initially enacted, '[t]he number one goal of the Individuals with Disabilities Education Act is to ensure that all our children have the opportunity to learn.'" Norm Coleman, Rep. Minnesota, Press Release November 20, 2004. The reaffirmation of the IDEA aims to empower schools, teachers, and parents to accomplish the original goals of the IDEA. *See id.*

This Court addressed the requirement to evaluate in all areas in *N.B. v. Hellgate Elementary Sch. Dist.,* 541 F.3d 1202, 1210 (9th Cir. 2008). Upon review of the actions of the Hellgate school district, the Court determined that the district had reason to know that N.B. may have a disability but failed to act promptly to evaluate him. The school district was informed that N.B. may have autism, having received a doctor's note indicating that autism was suspected. Rather than evaluate him, the school district sent the family to the regional center. This Court determined that this delay in evaluation, and the resulting lack of determination of

specialized services N.B. may have needed, caused a denial of a free appropriate public education.

A district court in the Seventh Circuit relied on this Court's *N.B.* decision thusly:

> Without an initial evaluation and revaluations, A.M.'s right to appropriate education was impeded. While the IHO did not make this explicit finding, it defies logic to conclude that appropriate decisions could be made without the initial evaluation and reevaluations that Congress found important enough to mandate under IDEA. Congress included the evaluation and reevaluation requirements in IDEA because they are essential to implementing an individually designed IEP that is reasonably calculated to provide educational benefits. *See Rowley*, 458 U.S. at 202 ("One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills."); *N.B. v. Hellgate Elementary Sch. Dist*., 541 F.3d 1202, 1210 (9th Cir. 2008) (failing to conduct required evaluations is a procedural violation that prevents schools from developing an IEP reasonably calculated to provide a meaningful educational benefit); *Flowers v. Martinez Unified Sch. Dist*., 19 IDELR 898 (N.D. Cal. 1998) ("Without an appropriate diagnosis of [the student's] special needs, there could be no formulation of an IEP that would address those special needs."). Because the school did not perform an initial evaluation or the 2010 reevaluation, the Magistrate Judge finds that the procedural violations resulted in a denial of FAPE.

See, Mt. Vernon Sch. Corp. v. A.M., 2012 U.S. Dist. LEXIS 122918, 15-16 (S.D. Ind. July 10, 2012); see *also J.G. v. Douglas County Sch. Dist.,* 552 F.3d 786, 794 (9th Cir. 2008) (A school district has an independent duty to evaluate children after notice that they may have learning disabilities.)

III. Paso Robles' Failure to Comply with Appropriate Evaluation Procedures Delayed the Provision of Services to L.O and Foreclosed Meaningful Parental Participation, Thereby Violating the IDEA

The IDEA's evaluation procedures are not meaningless technicalities, and failure to comply with those procedures can constitute a significant violation. The IDEA sets forth evaluation procedures in intricate detail. The team and other qualified professionals, as appropriate, must review existing evaluation data for the child, including evaluations and information provided by the parents. The team must use that data to review, with input from the parents, to identify additional data that may be required.

> (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under Sec. 300.8, and the educational needs of the child, each public agency must--
> (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
> (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
> (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Sec. Sec. 300.320 through 300.324. [11]

34 C.F.R. 300.306.

This Court's decision in *M.M. v. Lafayette Sch. Dist.*, 2014 U.S. App. LEXIS 18979 (9th Cir. Oct. 1, 2014), reinforces the importance of compliance

[11] 20 U.S.C. §1414(b)(4) and (5).

with these evaluation procedures. In *M.M.*, the school district failed to provide educational testing data gathered during its use of "response to intervention" ("RTI") in instructing the child. The Court rejected the argument that the school district failed to use a variety of assessments, including the RTI data, in conducting its evaluation. *Id.* at 21. However, the Court went on to note that the school district had failed to share the RTI data with the parents, which was a separate violation of the evaluation provisions in the IDEA. *Id.* at 29.

Because the parents in *M.M.* did not have access to the RTI data, they were unable to understand their son's deficits and participate meaningfully in the IEP process:

> Without a complete presentation of the RTI data, the parents were unaware of the discrepancy and thus unable to properly consider C.M.'s particular processing disorder and the instructional strategies he needed. Also, at the time of the first annual IEP meeting in C.M.'s second grade year, his RTI data showed that his progress in the language arts had declined after receiving special education services for nearly one year. Despite his lack of progress, the IEP team made no changes to his educational program. Without the RTI data, the parents were struggling to decipher his unique deficits, unaware of the extent to which he was not meaningfully benefitting from the IEP, and thus unable to properly advocate for changes to his IEP. We therefore conclude that the District's procedural violations prevented the parents from meaningfully participating in the IEP process. Therefore, the District denied C.M. a FAPE.

Id. at 30-31. Because the lack of appropriate evaluation procedures prevented meaningful parental participation in the IEP process, and therefore denied FAPE,

the Court did have to consider whether the resultant IEPs were "reasonably calculated to enable C.M. to receive educational benefit." *Id.* at 31.

In this case, similarly, Paso Robles' failure to follow IDEA's detailed evaluation procedures denied meaningful parental participation, in addition to resulting in a deprivation of educational benefit. In *J.G., supra*, this Court noted: "Determining whether a student has autism requires many assessments and takes a good deal of time. Some of the tests require observation of the student for more than a month because it is helpful to get to know a child before assessing him or her." *Id. at* 791. In the case at bar, notwithstanding notice that L.O. was suspected of having autism, and had a diagnosis of autism, Paso Robles relied upon a single, wholly inadequate, observation by school staff. The Paso Robles School District failed to utilize technically sound instruments to evaluate L.O. Paso Robles denied services based upon a school employee's subjective assessment that L.O. did not "look autistic."

In this case, because there was no evaluation conducted, therefore there were no assessments conducted, it was impossible to draw upon any information such as aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior for L.O. Therefore, it was

impossible to determine L.O.'s exact needs and develop an appropriate IEP to address those needs.

The failure of Paso Robles, and its staff to use technically sound assessment procedures to evaluate all areas of suspected disability violated the IDEA. As a direct result of that violation, L.O. did not receive services to which he was entitled and his parents could not participate meaningfully in the IEP process.

IV. CONCLUSION

The evaluation and assessment procedures in the IDEA are crucial for delivery of appropriate services, as well as meaningful parental participation in the IEP process. Therefore, the violations that occurred in this case directly implicate the statute's primary purpose, which is to ensure that school districts accepting federal funds meet all the educational needs of students with disabilities. For this reason, Amicus respectfully submits that the Court should vacate the judgment of the district court and enter judgment in favor of Appellants on their claims that L.O. was denied a free appropriate public education for the 2009-10 and 2010-11 school years and that they are entitled to reimbursement for privately conducted evaluations.

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

> this brief contains 4,675 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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> this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point typeface.

Dated January 12, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on the 12th of January 2015. I certify that all participants are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system to:

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