

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

PIEDMONT CITY UNIFIED SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N2008030045

DECISION

Richard M. Clark, Administrative Law Judge (ALJ), Office of Administrative Hearings, Special Education Division, State of California, heard this matter on April 1, 2008, in Piedmont, California.

Student's father (Father) represented Student at the hearing. Student's mother (Mother) was present during the morning, but not the afternoon.¹ David Roth, Assistant Superintendent of Educational Services for Piedmont City Unified School District (District), represented the District.

The District filed its request for due process hearing on February 26, 2008. There were no continuances. Oral and documentary evidence were received during the hearing. The parties orally argued the case at the conclusion of the hearing, at which time the record was closed and the matter was submitted for decision.

¹ Father and Mother, who are divorced, will collectively be referred to as Parents.

ISSUES FOR HEARING

1. Was the District's January 2008 academic assessment of Student conducted by Jeff Peters appropriate? If not, is Student entitled to an Independent Educational Evaluation (IEE) at public expense?
2. Was the District's January 2008 psychoeducational assessment of Student conducted by Jennifer Diggins appropriate? If not, is Student entitled to an IEE at public expense?

CONTENTION OF THE PARTIES

The District contends that it performed psychoeducational and academic assessments of Student according to state and federal law and that Parents are not entitled to an IEE at public expense. The District asserts that its assessments evaluated Student in all areas of suspected disability and followed the protocols for all standardized tests that were administered. Further, the District contends that its assessment reports complied with the law and provided all necessary information so that the individualized education program (IEP) team could properly consider the reports and address Student's educational needs. The District also maintains that Student is eligible for special education because of a learning disability in mathematics, and that the District has properly evaluated and addressed that area of need.

Student contends that the District did not properly assess him because the psychoeducational and academic assessment reports did not provide sufficient information to be useful to the IEP team. Student contends that the reports did not provide recommendations to the IEP team that properly address his needs, and that the accommodations listed in the report were not adequate to support Student. Further, Student contends that his scores on the Woodcock Johnson have steadily declined over the past few years, demonstrating that the District has not properly evaluated his area of need.² Finally, Student's expert asserts that the District's psychoeducational report was incomplete and included testing information, but not enough information about what to do with the test results to meet Student's needs.

² At the hearing, the ALJ clarified that the only issue for hearing concerned the appropriateness of the District's psychoeducational and academic assessments. The hearing would not address any issues related to whether the District provided Student with a free appropriate public education because those issues were not raised in the District filed request for due process hearing.

FACTUAL FINDINGS

Background

1. Student is 14 years old and resides in the District with his family. He is in the ninth grade at Piedmont High School (Piedmont). Student is eligible for special education in the category of specific learning disability (SLD) and other health impaired--attention deficit hyperactivity disorder (ADHD). He first became eligible for special education and related services in the fourth grade. Student takes medication daily for his ADHD and is required to wear glasses, which he rarely wears at school. Student's primary language is English.

2. Following an individualized education program (IEP) team meeting on December 21, 2007, Parents requested a comprehensive assessment from the District because Parents believed Student had been struggling in math and science and his Parents wanted to determine how to best help him in school.

3. On December 21, 2007, an assessment planning meeting was attended by Parents, Jeff Peters (Student's resource teacher), Jennifer Diggins (school psychologist), Chris Hartford (counselor), David Roth (assistant superintendent), and DeJuana Aldrich (Student's science teacher).³ At the meeting, the assessment process and areas of concern were discussed, and it was noted that Student was struggling in math and science. Parents signed a written assessment plan provided by the District. The assessment plan sought to assess Student in academic/preacademic areas, and in social and emotional development, including behavioral and general ability. The testing would be conducted by the school psychologist, special education and general education teachers and Parents. The reason for assessment was listed as "[Student] is struggling in Science and Math."

4. On February 15, 2008, the IEP team met to discuss the results of the assessments. Parents attended the meeting. At the end of the IEP meeting, Father submitted a letter requesting an IEE because he did not believe that the current assessments answered his questions about Student's current educational needs. Father believed that the assessments did not provide sufficient services, supports and accommodations in order to ensure that Student could access his core general education curriculum. On February 26, 2008, the District requested a due process hearing because it believed that its assessments were thorough and appropriate and that a publicly funded IEE was not necessary.

District's Academic Assessment

5. Jeff Peters is a resource specialist at the District and is currently Student's resource teacher at Piedmont. Mr. Peters was also Student's resource teacher during the eighth grade. He has a Bachelor of Arts degree in American Studies, with a minor in

³ Ms. Aldrich's name does not appear on the sign in sheet for the December 21, 2007 assessment planning meeting, but witness testimony established that she was present at the meeting.

History. He also has a Level I Education Specialist Instruction Credential in Special Education and a Single Subject Teaching Credential. Mr. Peters completed his credential coursework in June 2007. He has conducted numerous assessments, has taken classes regarding testing and assessments in his credential program, and has observed his colleagues administer standardized tests, including the Woodcock-Johnson Psychoeducational Battery-Revised III, Form B (WCJ-III). Mr. Peters was well qualified to conduct an assessment of Student.

6. Mr. Peters evaluated Student using the WCJ-III over a three day period beginning January 31, 2008. He chose the WCJ-III because he is familiar with the test, it is well known and one of the more distinguished academic tools and comprehensive tests for academic functioning, and he has administered it before. Mr. Peters prepared a comprehensive report of the testing and how Student performed on the WCJ-III that was shared with the IEP team on February 15, 2008. Mr. Peters did not include recommendations in his report, because he leaves recommendations to the IEP team and school psychologist. He attended the IEP meeting to fully review his report with the IEP team. Mr. Peters did not include grade equivalents in his report because they are considered less accurate measures than are the actual scores and a percentile ranking. Further, the WCJ-III manual states that grade equivalents are not a statistically accurate reflection of a student's performance.

7. Mr. Peters tested Student in the area of reading and used the WCJ-III Letter-Word Identification, Passage Comprehension, and Reading Fluency subtests. Those three subtests combined for a broad reading score that placed Student in the high average range. In the area of mathematics, Mr. Peters used the WCJ-III Calculation, Applied Problems and Math Fluency subtests. Those subtests combined for a broad mathematics score in the low average range. In written language, the WCJ-III Spelling, Writing Sample, and Writing Fluency subtests were given. Those three subtests combined for a broad written language score in the high average range. Mr. Peters tested Student in the area of oral language using the WCJ-III Story Recall and Understanding Directions subtests. Those subtests combined for an oral language score in the high average range. Student was cooperative on the tests and Mr. Peters considered his scores valid. During the math portions of the test, Mr. Peters reported that Student appeared agitated and was uncomfortable and moving around in his seat when the tests were administered. On the other areas of the test, Student appeared attentive and focused. His total achievement standard score on the WCJ-III was 107, placing Student in the average range.

8. As Student's resource teacher, Mr. Peters is in regular communication with all of Student's teachers, and he had talked to Student's math and science teachers before conducting the assessment. Mr. Peters believed that the testing produced accurate results of Student's strengths and weaknesses. Mr. Peters established that all tests were administered following the testing protocols and that his test scores were valid indicators of Student's current levels of functioning. The tests was administered in English and were validated for the specific purpose for which they were used and selected as most appropriate given Student's racial, cultural, and individual needs. The test was administered and utilized in the

areas it was intended to measure. The test was not racially biased and is normed on a diverse population.

9. The evidence established that the District's academic assessment was appropriate and administered properly.

District's Psychoeducational Assessment

10. Jennifer Diggins is a District school psychologist who conducted a psychoeducational assessment of Student in January 2008. She is a credentialed school psychologist and has conducted over 375 assessments of children in her five years working as a school psychologist. Ms. Diggins has a Master of Science in Counseling (School Psychology), and a Bachelor of Arts in Psychology and Spanish. She has a Nationally Certified School Psychologist Credential and a Pupil Personnel Services Credential from the State of California. Ms. Diggins was well qualified to conduct a psychoeducational evaluation of Student.

11. Prior to assessing Student, Ms. Diggins conducted a thorough record review and conducted interviews of Student, his Mother, and teachers, as well as his current private counselor, Francine Grevin. Ms. Diggins reviewed Student's IEP from last year, the initial IEP that qualified him for special education, a psychoeducational evaluation from 2003, a neuropsychologist report dated July 29, 2003, prepared by Dr. Vincent Nunno,⁴ academic assessments from 2003 and 2006, and Student's fifth grade behavior support plan (BSP). Ms. Diggins established that she wanted to provide the IEP team with comprehensive information about whether modifications in Student's classes were appropriate or necessary. At the end of the December 21, 2007 assessment planning meeting, Ms. Diggins spent an additional 30 minutes with Parents reviewing the rating scales she was asking them to complete.

12. Ms. Diggins' testing of Student occurred over four days on January 9, 14, 18 and February 1, 2008. She utilized the following standardized assessments: Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV); selected subtests from the Woodcock-Johnson Third Edition Tests of Cognitive Ability (WCJ-TCA); Test of Auditory Processing Skills-Third Edition (TAPS-3); Comprehensive Test of Phonological Processing (CTOPP); Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI); selected subtests from the Wide Range Assessment of Memory and Learning-Second Edition (WRAML-2); Behavior Assessment System for Children-2 (BASC-2)--Parent, Teacher and Self form; Sentence Completion Test (SCT); and the Conners' Rating Scale-Long Form, Parent and Teacher forms. She also conducted two 20 to 30-minute observations of Student in the classroom.

13. Student performed overall in the average range on the WISC-IV, with a full scale score of 103. Strengths were noted in the areas of perceptual reasoning and

⁴ Dr. Nunno conducted an independent psychoeducational evaluation of Student at Parent expense in 2003.

organization, while a weakness in timed paper and pencil tasks across tests was evident. Student performed within the average to high average range on all tests measuring visual, auditory, phonological, executive and attention processing. The VMI revealed average performance in separate visual discrimination and motor coordination tasks, but borderline performance integrating visual and motor coordination. On the achievement tests of WCJ-TCA, Student scored in the average to high average range on reading, reading comprehension, writing and listening, and understanding directions, but scored lower on tests for mathematics. Ms. Diggins compared Student's cognitive ability scores with his math achievement scores, and determined that a discrepancy continues to exist between Student's processing speed and attention processing, which maintains his eligibility in the category of SLD. Ms. Diggins also believed Student continued to meet the criteria for eligibility under Other Health Impaired (OHI)-ADHD.

14. When Ms. Diggins administered the tests, she followed the testing protocols and therefore believed that Student's test scores properly measured his current levels of functioning. The tests were administered in English and were validated for the specific purposes for which they were used and selected as most appropriate given Student's racial, cultural, and individual needs.

15. The assessment report prepared by Ms. Diggins reads well and is easily understandable to lay persons. The report includes observations and explanations for the different scores reported, including the actual test results and information related to specific subtests. Ms. Diggins also included explanations and observations about Student's performance on the standardized tests, her observations in the classroom, and how the test results and observations affected his social and academic functioning. She discussed her report in detail at the February 15, 2008 IEP meeting.

16. In her report, Ms. Diggins reports the standardized test score because it is the more accurate measure, and she does not include grade or age equivalents on the WISC-IV, because the manual for the test does not include them. In her report, she explained each test, why it was given and what area it was to test. If she suspected an area of weakness, she utilized additional assessment instruments to assess that area. For example, on the WRAML, she thought that she might be missing an area of weakness for Student, so she gave an additional test to look at verbal and visual memory. Her report was thorough and systematic. She did not test for science because she was not aware of any standardized tests in the area. She included Student, Parent and teacher input on the BASC. She included recommendations in her report that were meant to advise the IEP team about areas to consider, but were not intended to be an exhaustive list. She believes her report and testing were accurate, correct and valid. In her report, she included prior test scores that reflected Student had regressed. She worked with Mr. Peters to develop a BSP, but it was not part of her assessment or part of her report, though she did give a copy of it to Father at the same time she gave a copy of her testing report. She established that her assessments and report were thorough and comprehensive and would be useful to the IEP team. Ms. Diggins was a credible witness and persuasively established that she did a comprehensive assessment of Student.

17. Dr. David Roth is the Assistant Superintendent of Educational Services for the District. He has a Bachelor of Arts degree in Psychology, cum laude, a Master of Arts degree in School Psychology, and a doctorate in Education. He has a Preliminary Administrative Services Credential and Professional Clear Pupil Personnel Services Credential. He has served as a Director of Special Education for the District, and as a school psychologist, as well as an assistant professor teaching consultation and educational theory. He has extensive experience with assessments of children and has extensive experience and knowledge regarding testing instruments and assessment reports. Dr. Roth attended the December 21, 2007 assessment planning meeting.

18. Copies of the assessments were provided to the Parents before the IEP meeting on February 15, 2008, and the results were reviewed carefully at the meeting. Dr. Roth believed that Parents disagreed more with the nature of the IEP developed than with the appropriateness of the assessments. According to Dr. Roth, it was never clear to the District what the Parents' specific disagreements were with the District assessments, but according to Parents, the prior independent assessment from Dr. Nunno provided more information than that contained in the District assessments. Dr. Roth reviewed the assessments and believed they were comprehensive, so there was no reason to fund an IEE. Dr. Roth was aware from Student's grades and the assessment meeting that Student was struggling in science and math. Dr. Roth indicated that the scores reflect problems related to math, but that his scores are not reflective of his overall cognitive abilities, which is why he qualifies as SLD.

19. Parents retained Dr. Carina Grandison to conduct a private evaluation of Student and to testify at the hearing. At the time of her testimony, Dr. Grandison had not yet met or evaluated Student. Dr. Grandison is a child neuropsychologist who works in private practice. She has a doctorate from Boston University in neuropsychology, and has extensive experience teaching neuropsychology and evaluating and assessing children. She is not a licensed school psychologist, but has extensive experience beyond that of a regular school psychologist. She would meet the minimum requirements for being a school psychologist. Dr. Grandison evaluated the assessment report prepared by Ms. Diggins. Dr. Grandison believed the report reflected much testing, but very little interpretation that would suggest what to do with the testing results. She believed there was very little discussion in the report about the nature and underpinnings of Student's disability. Dr. Grandison believed that the purpose of the evaluation should be to determine what to do next, but that Ms. Diggins' report did not provide enough information to the IEP team that could be turned into a set of goals, or interventions or strategies that would address Student's deficits. She believed the IEP team would be "left fumbling" for what to do, and found Ms. Diggins' report is "less helpful" than others. Further, according to Dr. Grandison, Ms. Diggins' report did not address test scatter and there was no error analysis contained in the report.

20. Father also submitted a letter into evidence dated March 14, 2008, authored by Francine Grevin, a licensed clinical psychologist who worked privately with Student. Ms. Grevin reviewed the District assessment reports, and believed that they did not thoroughly evaluate Student's academic and educational functioning. Further, Ms. Grevin's letter stated that Ms. Diggins' report did not address some important findings, such as Student's

processing deficits, and believed that the recommendations provided in the psychoeducational assessment lacked specificity. Ms. Grevin did not testify at the hearing.

21. To the extent that there is a conflict in the testimony, the ALJ finds that the District witnesses were more credible. Ms. Diggins provided a comprehensive assessment report that thoroughly examined Student's records in an effort to provide the most informative report to the IEP team. Her report included explanations about what areas were being tested, why a particular test was appropriate and observations of Student during the testing. She included recommendations, but made herself available to the IEP team to thoroughly review her report to help the IEP team decide upon a proper course of action. In addition, Ms. Diggins was a very credible witness and had a strong working knowledge of all the testing instruments and why she gave them to Student. She also followed up with other testing instruments when a specific area of weakness was revealed. Further, Mr. Peters was also credible and persuasively established the appropriateness of his testing instruments. Dr. Grandison, who was also a credible witness, was less persuasive because she had not assessed Student and did not offer any concrete, specific information that was missing from either Mr. Peters' or Ms. Diggins' report. In addition, the letter from Ms. Grevin was not persuasive since it did not identify tangible information that should have been included in Ms. Diggins' report, and because Ms. Grevin did not testify and did not otherwise elaborate on the deficits she perceived in the reports. The weight of the evidence and testimony at hearing established that the District's assessments were appropriate.

APPLICABLE LAW

Burden of Proof

1. The District filed for this due process hearing and bears the burden of persuasion. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

*General Principles of Assessment*⁵

2. 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), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (Ed. Code, § 56320, subds. (a), (b); 20 U.S.C. § 1414(b)(2), (3).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) Tests and assessment materials must be validated for the specific purposes for which they are used; must be selected and administered so as not to be racially, culturally

⁵ An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication, unless this is clearly not feasible. (Ed. Code, § 56320, subd. (a); 20 U.S.C. § 1414(a)(2), (3).)

3. In conducting the evaluation, a District must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining" whether the child is a child with a disability, and in determining the contents of an individualized education program. (20 U.S.C. § 1414(b)(2)(A); see also, Ed. Code, § 56320.) The District may not use any single assessment as the sole criterion for determining eligibility and must use "technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." (20 U.S.C. § 1414(b)(2)(B), (b)(2)(C); see also, Ed. Code, § 56320.) A district is required to use assessments that provide relevant information that directly assists persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(3)(D); 34 C.F.R. § 300.304(c)(7).)

Independent Educational Evaluations

4. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].) "Independent educational assessment means an assessment conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an IEE, the student must disagree with an assessment obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1), (b)(2).)

5. When a student requests an IEE, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or ensure that an independent educational assessment is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).) The public agency may ask for the parent's reason why he or she objects to the public assessment, but may not require an explanation, and the public agency may not unreasonably delay either providing the independent educational assessment at public expense or initiating a due process hearing. (34 C.F.R. § 300.502(b)(4).)

Assessment Reports

6. Assessors are required to prepare a written report of each assessment. A report must include: (1) whether the student needs special education and related services; (2) the basis for that determination; (3) relevant behavior noted during observation in an appropriate setting; (4) the relationship of that behavior to academic and social functioning; (5) educationally relevant health and development and medical findings; and (6) for students

with learning disabilities, whether there is a discrepancy between achievement and ability requiring special education and related services. (Ed. Code, § 56327.)

Was the District's January 2008 academic assessment of Student conducted by Jeff Peters appropriate? If not, is Student entitled to an IEE at public expense?

1. As determined in Factual Findings 3 through 9 and Legal Conclusions 2 through 3, the District's academic assessment evaluated Student in all areas of suspected disability as required by the December 21, 2007 assessment plan. The assessment process was thoroughly reviewed with Parents prior to beginning the testing and the testing addressed the areas listed in the assessment plan. The assessment considered a variety of information and did not base any finding on any one sole criterion.

2. As determined in Factual Findings 6 through 8 and Legal Conclusion 2, the academic testing was selected and administered so as not to be racially, sexually, or culturally discriminatory, was administered following the individual test protocols and instructions, and were administered in English, Student's primary language.

3. As determined in Factual Findings 5 through 8 and Legal Conclusions 2 to 3, Mr. Peters actively worked with Student for the current year, as well as the previous year. He was knowledgeable about Student's disability, was informed about Student's progress and performance at Piedmont, and was well qualified to conduct an assessment of Student.

4. As determined in Factual Finding 6 and Legal Conclusion 6, Mr. Peters' assessment report was comprehensive and thorough. It properly evaluated Student and provided useful information to guide the IEP team in developing a proper IEP for Student. The report also contained observations of Student during portions of the testing process that were appropriate and relevant to understanding Student's social and emotional functioning.

5. As determined in Factual Findings 5 through 9 and Legal Conclusions 4 and 5, the District's academic assessment of Student was appropriate. Therefore, Student is not entitled to an academic assessment at public expense.

Was the District's January 2008 psychoeducational assessment of Student conducted by Jennifer Diggins appropriate? If not, is Student entitled to an Independent Educational Evaluation (IEE) at public expense?

6. As determined in Factual Findings 10 through 18 and Legal Conclusions 2 through 3, the District's psychoeducational assessment evaluated Student in all areas of suspected disability as required by the December 21, 2007 assessment plan. The assessment process was thoroughly reviewed with Parents prior to beginning the testing and the testing addressed the areas listed in the assessment plan. The assessment conducted by Ms. Diggins used a variety of appropriate assessment tools and did not base any finding on any single criterion.

7. As determined in Factual Finding 14 and Legal Conclusion 2, the psychoeducational assessment testing instruments were selected and administered so as not to be racially, sexually, or culturally discriminatory, were administered following the individual test protocols and instructions, and were administered in English, Student's primary language.

8. As determined in Factual Findings 10 through 13 and 16 and Legal Conclusions 1 through 3, Mr. Diggins thoroughly reviewed Student's record, talked to relevant parties, including teachers, Parents, and therapists, before performing the assessment. Ms. Diggins was knowledgeable about Student's disability, was a credentialed school psychologist and was qualified to perform an assessment on Student.

9. As determined in Factual Findings 15 through 21 and Legal Conclusion 6, Ms. Diggins' assessment report was comprehensive and thorough. It properly evaluated Student and provided useful information to guide the IEP team in developing a proper IEP for Student. The report discussed that Student remained eligible for special education and related services and explained why. The report included observations of Student in classroom and during the test administration and how those observations were relevant to Student's academic and social functioning. The report also discussed the discrepancy between achievement and ability that continued Student's eligibility as SLD.

10. As determined in Factual Findings 10 through 21 and Legal Conclusions 4 and 5, the District's psychoeducational assessment of Student was appropriate. Therefore, Student is not entitled to a psychoeducational assessment at public expense.

ORDER

1. The District's academic assessment was appropriate.
2. The District's psychoeducational assessment was appropriate.
3. Student is not entitled to an independent educational evaluation at public expense.

PREVAILING PARTY

The hearing decision shall indicate the extent to which each party has prevailed on each issue heard and decided. (Ed. Code, § 56507, subd. (d).) The District prevailed on all issues heard and decided.

RIGHT TO APPEAL THIS DECISION

The parties have the right to appeal this decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: April 9, 2008

A handwritten signature in black ink, appearing to read "Richard M. Clark", is written over a horizontal line.

RICHARD M. CLARK
Administrative Law Judge
Special Education Division
Office of Administrative Hearings