

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

In the Matter of:

NORTH MONTEREY COUNTY
UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2007030718

AMENDED DECISION¹

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this matter on June 4, 2007, in Moss Landing, California.

Laurie E. Reynolds, Attorney at Law, represented North Monterey County Unified School District (District). Jo Quinn, Director of Special Services for the District, also attended.

No appearance was made by or on behalf of Student or his parents. Neither Student nor his parents appeared, testified, or presented any evidence.

District filed the Complaint on March 21, 2007. District's continuance request of April 13, 2007, was granted. The record remained open for the submission of District's written closing argument, which was received, and the record was closed on June 25, 2007.

¹ The amended decision corrects a typographical error. The amended order states that Student is not eligible for special education services in the category of either speech and language impairment or specific learning disability as of March 24, 2006, not March 24, 2007, as stated in the decision dated July 10, 2007.

ISSUE

Is Student eligible for special education services in the category of either speech and language impairment or specific learning disability as of March 24, 2006?

FACTUAL FINDINGS

Background Information

1. Student is a 16-year-old boy currently in the eleventh grade at District's North Monterey County High School. He has been eligible for special education services in the category of specific learning disability due to a severe discrepancy in the area of written expression resulting from disorders in visual processing and attention.

2. Student's individualized education program (IEP) team in eighth grade considered exiting him from special education services because he was performing successfully on standards-based assessments in reading, mathematics and written language. However, the team waited until Student's next triennial reassessment in March 2006, when he was in tenth grade, to allow him an opportunity to transition from middle school to high school before reassessing his eligibility.

3. During his ninth and tenth grade years, Student attended classes taught by both a general education teacher and a special education teacher. Each class included about 20 general education students and eight special education students. During his ninth grade year (2004-2005), Student earned grades of A in English and Physical Education; grades of B in Social Science, Science, and Physical Education; and grades of C in Auto Body, Health, Algebra, and Science. During his tenth grade year (2005-2006), he earned grades of A in Driver's Education and Weight Training; grades of B in Nutrition, English, and World Cultures; and grades of C in Geometry and Biology.

March 2006 Triennial Reassessment

4. In January 2006, Student's mother (Mother) consented to District's triennial reassessment plan, including academic, cognitive, perceptual/motor, and medical reassessments. District requested, but Mother did not consent to, a social/emotional/adaptive reassessment. Mother requested, and District also performed, a speech and language reassessment.

5. As described in Legal Conclusions 3 and 4, District must use a variety of assessment tools and strategies to gather relevant information to determine whether Student is eligible for special education services. District cannot use any one measure as the sole criterion for determining whether Student is eligible. District must use technically-sound assessment tools for purposes for which they are valid and reliable. Personnel who administer assessments must be knowledgeable about the assessment tools and Student's

disability. District is required to assess Student in all areas of suspected disability. District is required to reassess Student before determining that he is no longer eligible for special education services.

Speech and Language Reassessment

6. Wendy Avolio, Speech/Language Pathologist, conducted a speech and language reassessment of Student in February 2006.² Ms. Avolio was trained and qualified to administer the assessment tools to Student, she administered them as required, and used them for purposes for which they are valid and reliable. Student scored within the average range in all areas. His vocal pitch, volume and quality, and speech fluency are within normal limits. Student's pragmatic skills are normal.

7. The Peabody Picture Vocabulary Test – III (PPVT-III) measures Student's understanding of receptive vocabulary. Student's standard score is 112, which is in the 79th percentile and the high average range. The Clinical Evaluation of Language Fundamentals – 4 (CELF-4) measures word meanings (semantics), word and sentence structure (morphology and syntax), and recall and retrieval (memory). Student's standard score is 126, which is in the 96th percentile, well above normal limits.

8. The results on the CELF-4, teacher reports, and observation of Student indicate that his language skills are above normal limits. In the area of receptive language, he has excellent auditory memory skills, good comprehension of syntax, and above average comprehension of vocabulary. In the area of expressive language, he is able to use compound and complex sentence structures with appropriate semantics and above average syntax. Based on Student's results on the PPVT-III and the CELF-4, and the observations of Student, there was no need for any further evaluation of Student's speech and language abilities.

Psychoeducational Reassessment

9. Danielle Martucci, School Psychologist for District, and Melissa Matlow, Resource Specialist for District, contributed to District's psychoeducational reassessment of Student.³ The purpose of the reassessment was to evaluate Student's cognitive functioning, examine his learning style, and assess his academic functioning. Ms. Martucci reviewed Student's records, conducted interviews, and administered several standardized assessments. Ms. Martucci and Ms. Matlow were trained and qualified to administer the assessment tools to Student, they administered them as required, and used them for purposes for which they are valid and reliable.

² Ms. Avolio is a licensed and credentialed speech and language pathologist.

³ Ms. Martucci holds a master's degree in school psychology and a Pupil Personnel Services credential. Ms. Matlow holds both general education and special education teaching credentials.

10. Ms. Martucci administered the Wechsler Intelligence Scale for Children – IV (WISC-IV). The WISC-IV assesses a student’s intellectual functioning in a number of cognitive domains, such as verbal comprehension and verbal reasoning, and provides a composite score representing the child’s general intellectual ability. Student was tested in the following areas: verbal comprehension, perceptual reasoning, working memory, and processing speed. His scores are all average to high average, and range from a high standard score of 112 in processing speed to a low of 92 in perceptual reasoning. Student’s general intellectual ability, as measured by the Full Scale IQ, is 99.

11. The results of the WISC-IV indicate that Student’s nonverbal and verbal skills are evenly developed. His performance on the processing speed subtests indicate that he gives adequate attention to visual detail, is mentally alert, and can complete timed tasks. He is able to process visual material quickly and accurately. His short-term auditory memory and active working memory are within the average range. The results indicate that his nonverbal and verbal ability improved from prior assessments.

12. Ms. Martucci administered the Developmental Test of Visual-Motor Integration (VMI) because Student had previously shown a deficit in visual-motor integration.⁴ Student scored in the low average range for integration of visual and motor skills. The results show improvement over his previous assessment in April 2003. Although Student scored in the low average range, Ms. Martucci did not find that he had a deficit in this area. According to Ms. Martucci, if Student had a weakness in visual-motor integration or visual processing, she would expect to see lower writing fluency or lower broad reading scores. She did not see these results. In addition, Student’s processing speed on the WISC-IV was 112, in the high average range, which does not corroborate the low average score on the VMI. Ms. Martucci opined that Student may not have done as well because he was bored by the VMI, which involves copying line drawings, and did not use his best effort. In Ms. Martucci’s observations of Student and interview with his teacher, she did not find evidence of Student having any difficulty in the area of visual-motor integration or visual processing. In the past, Student had exhibited weakness in the areas of attention and visual processing; however, she did not find evidence of either of these in her current reassessment.

13. Ms. Matlow administered the Woodcock-Johnson III – Standard Test of Achievement (WJ-III), which is a comprehensive, standardized battery of tests to assess academic achievement. She administered them to assess Student’s current level of functioning in reading, mathematics, oral language, and writing. Student was tested in the following areas: broad reading, broad mathematics, broad written language, math calculation, written expression, academic skills, academic fluency, and academic applications. All his scores are average, and range from a low standard score of 97 in academic skills to a high of 109 in broad reading. He scored in the average range on the fluency subtests, indicating that he is able to complete academic tasks quickly and accurately. He exhibited a relative strength on the writing samples subtest, indicating that he

⁴ Visual-motor integration involves the ability to coordinate visual and motor movements, such as copying simple images or handwriting.

is able to create content for his writing. Student's scores indicate he is functioning within the average range in the general education curriculum.

14. In March 2006, at the time of his triennial reassessment, Student had a grade point average of 2.7. He had been fully mainstreamed since the beginning of ninth grade, except for one transition English course during the first two terms of ninth grade. Student's behavior, attendance and effort were excellent. He did not need or utilize accommodations or modifications in the general education setting, even in classes in which special education staff were present to provide additional support.

March 8, 2006 IEP Meeting

15. Student's IEP team met on March 8, 2006, to discuss the results of his triennial reassessment. The team discussed Student's present levels of performance and progress, and the results on the assessment tools. Student had a written expression goal. His written work demonstrated clear content, sequential organization, and effective use of transitions. Student was meeting tenth grade general education standards.

16. Mother attended the IEP team meeting and expressed several concerns. She believed that Student had not met his prior goals and he continued to have difficulty with oral and written language. Mother also opined that District found that Student was not eligible for special education services in retaliation for his parents' advocacy on his behalf. No evidence supports Mother's claims.

17. District's members of the IEP team determined that Student did not meet the eligibility criteria for special education services. They also determined that he was successful in the general education setting without accommodation, modification, or other supports. The District's team members recommended that Student be exited from special education services as of the end of the term, March 24, 2006.

Eligibility on the Basis of a Speech and Language Impairment

18. As discussed in Legal Conclusions 5 and 6, Student may qualify for special education services on the basis of a speech and language impairment if he has one of the following disorders: articulation disorder, abnormal voice, fluency disorder, or language disorder. Student may have a language disorder if he has an expressive or receptive language disorder, which is shown by scoring at least 1.5 standard deviations below the mean, or below the seventh percentile, for his chronological age or developmental level, on two or more standardized tests in one or more of the following areas: morphology, syntax, semantics or pragmatics.

19. As determined in Factual Findings 6 through 8, there is no evidence that Student has an articulation disorder, abnormal voice, fluency disorder, or language disorder. Student did not score at least 1.5 standard deviations below the mean or below the seventh percentile on either the PPVT-III or the CELF-4. All aspects of his speech and language

were within normal limits. Based on the standardized test results, observation of Student, and reports from his teacher, Student did not meet the eligibility criteria for a child with a speech and language impairment at the time of the March 2006 IEP team meeting. There is no evidence that he meets the eligibility criteria at this time.

Eligibility on the Basis of Specific Learning Disability

20. As discussed in Legal Conclusions 9, there are two methods by which District may determine whether Student is eligible for special education services on the basis of a specific learning disability: the severe discrepancy method and the response to intervention method.⁵ District used the severe discrepancy method. The IEP team must make the decision about whether Student has a severe discrepancy between achievement and intellectual ability, taking into account all relevant information about Student. No single test or procedure shall be the sole criterion for the IEP team's decision.

Disorder of Basic Psychological Processes

21. As discussed in Legal Conclusions 7 and 8, a specific learning disability is a disorder of one or more basic psychological processes, including attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities including association, conceptualization, and expression.

22. Student previously was determined to have a specific learning disability due to disorders in two psychological processes: visual processing and attention. As determined in Factual Findings 12, Student's score on the VMI was in the low average range for visual-motor integration. However, comparison of his scores on the processing speed tests on the WISC-IV, observations of Student, and interviews with his teachers do not support finding that he had a deficit in either visual processing or attention. There is no evidence that Student had a disorder of one or more basic psychological processes at the time of the March 2006 IEP. There is no evidence that he has one at this time.

Severe Discrepancy Method to Determine Specific Learning Disability

23. As discussed in Legal Conclusions 10 and 11, Student may have a specific learning disability if there is a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. A severe discrepancy may be shown when the difference between Student's achievement and ability standard scores is generally 22.5 points or more.

24. As determined in Factual Findings 10 through 14, Student has a full scale IQ standard score of 99. His standard scores in achievement range from 97 to 112. The standardized tests do not indicate a severe discrepancy between Student's achievement and

⁵ See Legal Conclusions 12 for a description of the response to intervention method.

intellectual ability. This is supported by observations of Student and interviews with his teachers. He functions well in class and receives average to above average grades. He is meeting grade-level standards in all areas. He has friends and has not had any behavioral incidents. Mother's concerns expressed at the IEP team meeting are not corroborated by his performance or other indicators at school. There was no severe discrepancy between any of Student's achievement and intellectual ability scores at the time of the March 2006 IEP. There is no evidence of a severe discrepancy at this time.

Need for Special Education Services

25. As discussed in Legal Conclusions 2, to be eligible for special education services, Student must require instruction or services that can not be provided with modification of the regular school program. Student is performing successfully in a general education environment. He is on track to graduate from high school and hopes to attend college. He has appropriate relationships with peers. He easily passed the California high school exit examination on the first try without any accommodations. Student has not used, and does not need, accommodations or modifications to be successful in the general education setting. At the time of the March 2006 IEP, Student did not need instruction or services that cannot be provided in the regular education setting. There is no evidence that he needs instruction or services that cannot be provided in the regular education setting at this time.

LEGAL CONCLUSIONS

Applicable Law

Burden of Proof

1. As the petitioner, District has the burden of proving that Student no longer qualifies for special education services. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

Eligibility for Special Education Services

2. A child is eligible for special education services if an IEP team determines that the child meets one of the eligibility categories and the impairment requires instruction or services, or both, that cannot be provided with modification of the regular school program. (Ed. Code, § 56026, subs. (a), (b).)

Requirement of Assessment Before Determining Student No Longer Eligible

3. A school district shall assess or reassess a student before determining that the student is no longer a student eligible for special education services. (20 U.S.C. § 1414(c)(5)(A); 34 C.F.R. § 300.305(e)(1); Ed. Code, § 56381, subd. (h).)

*Requirements of an Evaluation or Assessment*⁶

4. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The school district shall not use any single measure or assessment as the sole criterion for determining whether a child is eligible for special education services or the appropriate educational program. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) The assessment must use technically-sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessment materials must be used for purposes for which they are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).) Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3) [tests of intellectual or emotional functioning must be administered by a credentialed school psychologist], 56322 [assessment shall be conducted by persons competent to perform the assessment, as determined by the school district, county office, or special education local plan area]; 56324 [a psychological assessment shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed].) Assessments shall be conducted by persons knowledgeable of the student's disability. (Ed. Code, § 56320, subd. (g).)

Language and Speech Disorder

5. A child who demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance that cannot be corrected without special education services has a language or speech disorder that is eligible for special education services. (Ed. Code, § 56333.) The difficulty in understanding or using spoken language shall be assessed by a language, speech, and hearing specialist who determines that the difficulty results from any of the following disorders: (1) articulation disorders, such that the child's production of speech significantly interferes with communication and attracts adverse attention; (2) abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness; (3) fluency difficulties which results in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener; (4) inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the child's language performance level is found to be significantly below the language performance level of his or her peers; and (5) hearing loss which results in a language or speech disorder and significantly affects educational performance. (*Ibid.*) Similarly, under federal law, a speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a

⁶ An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

language impairment, or a voice impairment, that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(11).)

6. A child who has a language or speech disorder meeting one or more of the following criteria is eligible for special education services: (1) Articulation Disorder; (2) Abnormal Voice; (3) Fluency Disorders; (4) Language Disorder. The pupil has an expressive or receptive language disorder when he or she meets one of the following criteria: (a) The child scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics; or (b) The child scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in (a) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of 50 utterances. (Cal. Code Regs., tit. 5, § 3030, subd. (c).)

Specific Learning Disability

7. A child with a specific learning disability, who requires special education services as a result, is eligible for special education services. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a); Ed. Code, § 56026.) A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, which manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (20 U.S.C. § 1402(30)(A); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd.(a).) A specific learning disability includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C. § 1402(30)(B); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a).) A specific learning disability does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural or economic disadvantage. (20 U.S.C. § 1402(30)(C); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a).)

8. Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities, including association, conceptualization and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(1).) Intellectual ability, for the purpose of calculating a severe discrepancy, includes both acquired learning and learning potential and shall be determined by a systematic assessment of intellectual functioning. (*Ibid.*, subd. (j)(2).) The level of achievement, for the purpose of calculating a severe discrepancy, includes the student's level of competence in materials and subject matter explicitly taught in school and shall be measured by standardized achievement tests. (*Ibid.*, subd. (j)(3).)

9. A school district shall determine that a child has a specific learning disability using one of two methods: the severe discrepancy method, or the response to intervention method. (20 U.S.C. § 1414(b)(6); 34 C.F.R. § 300.309(a); Ed. Code, § 56337, subds. (b), (c).)

10. The severe discrepancy method requires that a student have a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. (20 U.S.C. § 1414(b)(6)(A); 34 C.F.R. § 300.309(a)(1)(ii); 71 Fed.Reg. 46651 (Aug. 14, 2006); 34 C.F.R. § 300.309(a)(2)(ii) [authorizes the continued use of a discrepancy method to determine eligibility for specific learning disability]; Ed. Code, § 56337, subd. (b); Cal. Code Regs., tit. 5, § 3030(j).) The severe discrepancy shall not be primarily the result of limited school experience or poor school attendance. (Cal. Code Regs., tit. 5, § 3030(j)(5).)

11. If standardized tests are valid for the student, a severe discrepancy is demonstrated as follows. The achievement and ability test scores are converted into common standard scores with a mean of 100 and a standard deviation of 15. The difference between these two common standard scores is compared to the standard criterion, which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A difference between the achievement and ability common standard scores which equals or exceeds this standard criterion, adjusted by one standard error of measurement, not to exceed four common standard score points, may indicate a severe discrepancy. The discrepancy must be corroborated by other assessment data, which may include other tests, scales, observations, and work samples. (Cal. Code Regs., tit. 5, § 3030(j)(4)(A).)

12. The response to intervention method determines if a student responds to scientific, research-based intervention as part of the assessment process. (20 U.S.C. § 1414(b)(6); 34 C.F.R. § 300.309(a)(2)(i); Ed. Code, § 56337, subd. (c).) Federal law further defines the response to intervention model. A student may be found to have a specific learning disability who does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving, based on the child's response to scientific, research-based intervention. (34 C.F.R. § 300.209(a)(2)(i).)

13. The decision as to whether or not a severe discrepancy exists shall be made by the IEP team, including assessment personnel, which takes into account all relevant material which is available on the student. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP team as to the student's eligibility for special education. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(4).)

Determination of Issues

Is Student eligible for special education services in the category of either specific learning disability or speech and language impairment as of March 24, 2006?

14. Based on Legal Conclusions 1, 2, 5 and 6, and Factual Findings¹⁹, Student is not eligible for special education services as a student with a speech and language impairment. He does not meet the eligibility criteria for a speech and language impairment and does not require instruction or services that cannot be provided in the regular education setting.

15. Based on Legal Conclusions 1, 2, 7 through 11, and 13, and Factual Findings 22, 24, and 25, Student is not eligible for special education services as a student with a specific learning disability. He does not meet the eligibility criteria for a specific learning disability and does not require instruction or services that cannot be provided in the regular education setting.

ORDER

Student is not eligible for special education services in the category of either speech and language impairment or specific learning disability as of March 24, 2006.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

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

Dated: July 11, 2007



JUDITH A. KOPEC
Administrative Law Judge
Office of Administrative Hearings