

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009110472

DECISION

Administrative Law Judge Clara L. Slifkin, Office of Administrative Hearings (OAH), State of California, heard this matter in Van Nuys, California, on March 9, 2010.

Patrick J. Balucan, Assistant General Counsel, Los Angeles Unified School District (District) represented District. Due Process Specialist Diana Massaria attended for the District. Parents did not appear to represent Student, although OAH made numerous attempts to contact Parents.¹

District's request for a Due Process Hearing was filed on November 13, 2009. The matter was continued for good cause on December 31, 2009, and on February 18, 2010. The record was closed and the matter was submitted at the close of hearing on March 9, 2010.

ISSUE

May the District deny Student an independent educational evaluation (IEE) because the psychoeducational assessment conducted by District in September 2009 and October 2009 was appropriate?

¹ The District served its Due Process Complaint and pleadings on Parents at their home address as verified by District records. OAH served Parents at their business and home address. Parents did not file a Pre-hearing Conference Statement and did not participate at the Pre-hearing Conference on February 10, 2010, and the further Pre-hearing Conference on March 1, 2010.

FACTUAL FINDINGS

1. Student was fifteen years old at the time of hearing and lived within the boundaries of the District. Since January 20, 2004, Student has been eligible for special education services under the category of specific learning disability (SLD). At the time of the psychoeducational assessment that is the subject of this action, Student was in 10th grade at Sierra Canyon School (Sierra), a private school.

2. In the spring of 2009, Student requested a re-evaluation for the purpose of determining whether he continued to meet the SLD eligibility for special education. District sent Parents an assessment plan on May 5, 2009, and District received a signed assessment plan on June 2, 2009. On June 3, 2009, District called Parents to schedule an appointment to assess Student at Taft High School (Taft). The District and Mother agreed that the psychoeducational assessments would take place at Taft on September 11, 2009.

3. In September and October 2009, District performed a psychoeducational assessment of Student. On September 11, 2009, Karen Jaster (Ms. Jaster), a District psychologist, administered a battery of assessments. On October 2, 2009, Dana Smith,² a District special education teacher, administered the Woodcock Johnson III (WJ-III). Ms. Jaster reviewed Student's records and current assessments, and on October 6, 2009, she completed Student's Psychoeducational Assessment Report.

4. Ms. Jaster received a B.A. in child development in 1981, and a M.S. in counseling and guidance with a concentration in school psychology in 1984 from California State University, Northridge. She holds an advanced pupil personnel services credential, and a school counseling credential. She has been employed by the District for 25 years as a school psychologist, and began her career as a teacher in elementary and middle schools. For the past 11 years, she has been the Taft School Psychologist. Her duties include consulting with teachers, counseling students, and participating in IEP meetings.

5. Ms. Jaster reported that the psychoeducational assessment was performed to better identify Student's learning strengths and weaknesses, and to determine if Student continued to be eligible for special education services.

6. Prior to Student's testing, Ms. Jaster reviewed Student's special education history. She reported that on January 20, 2004, Student was assessed and found eligible for special education services as a student with a SLD. On January 12, 2004, and February 22, 2005, the IEP team developed a private school service plan. The last service plan was dated February 22, 2006, and Parents declined services. At an annual review conducted on February 14, 2008, Student's offer of FAPE was Portola Middle School in regular classes with resource support. Parents also declined this offer and Student remained in private school.

² Ms. Smith testified that she recently married and her name is now Dana Rosenblum (Ms. Rosenblum).

7. Ms. Jaster also reviewed Student's previous assessments that included: a Functional Vision test completed on October 14, 2002, by Bill Takeshita, O.D.; a December 2002 psychoeducational assessment conducted by Teri Solocheck, Ph.D.; a January 20, 2004 psychoeducational assessment performed by a LAUSD psychologist; and a December 16, 2006 follow-up assessment by Teri Solocheck. Solocheck reported in 2002 and 2006 that Student had a significant discrepancy between his verbal and performance testing.

8. Prior to Student's assessments, Ms. Jaster also reviewed Student's educational history from pre-kindergarten through 10th grade. Student attended District's Wilbur Elementary School in first grade and after that attended private school. Student's first grade teacher reported that he was at grade level in all academic areas and his achievement scores were in the average range. Student's third and fourth grade teachers noted Student's difficulty with lines, spatial boundaries, measurement and graphic organizers. They also reported that Student was a strong auditory learner who had difficulty processing information visually, kinesthetically and spatially. Ms. Jaster also reviewed Student's fifth through seventh grade records from Valley School. Ms. Jaster was not able to review Student's eighth grade records from Bridges Academy, because Bridges failed to respond to District's requests for records.

9. Ms. Jaster was able to review Student's ninth grade records from Sierra and his teachers' written comments. In Geometry, Art, History, and Biology he received "B" grades. His Spanish teacher indicated that he was focused, cared about the quality of his work and participated in class and he received an "A" in class. After reviewing all of Student's grades and recent teacher comments, Ms. Jaster concluded that he was doing well academically, with a current GPA of 3.28.

10. Parents did not cooperate with Ms. Jaster's request to observe Student at Sierra.

11. As part of her assessment, Ms. Jaster also interviewed Parents who described Student's present difficulties as being, "visual perception, processing difficulty, unusual spelling in the visual context area." Parents also reported that Student's strengths are in speaking and auditory learning.

12. On September 11, 2009, Ms. Jaster administered Student's assessments at Taft during a three to four hour time frame. She gave Student frequent breaks. During the testing, she established and sustained rapport with him, and he was pleasant and smiled. His approach to tasks was logically planned and his responses were thoughtful. He appeared to be motivated and cooperated throughout the assessment.

13. Ms. Jaster reported and testified that the materials she used for assessment and educational planning were selected and administered so as not to be racially, culturally or sexually discriminatory. In accordance with District policy, no IQ tests were used to determine Student's eligibility for special education services.

14. Although Ms. Jaster could not observe Student at Sierra, she obtained insight into Student's social/emotional health and his attitude towards school by reviewing teacher comments, talking to Parents and reviewing the results of the following tests which she administered: Conners-Wells' Parent-Report Scale (Conners); the Achenbach Parent Report (Achenbach); the Behavior Assessment System for Children, Second Edition Self-Report (BASC-2); and the School Motivation and Learning Strategies Inventory (SMALSI). On the Conners and Achenbach, Parents reported that Student did not have conduct, attention, or social problems, and was not depressed or anxious. Ms. Jaster found that Student's scores on the BASC-2 were not in the clinically significant range. Ms. Jaster also administered the SMALSI, an inventory designed to identify the strengths and liabilities in a student's motivation and study strategies. Using this measure, Ms. Jaster found Student to be highly motivated to do well in school and to have superior study strategies, note-taking and listening skills, reading strategies, and time management. The SMALSI indicated that Student did not have test anxiety or concentration/attention issues.

15. Ms. Jaster testified that she used the following tests to assess Student's cognitive/processing abilities: the Matrix Analogies Test (MAT); the Learning Efficiency Test, Second Edition (LET-II); the Wide Range Achievement Test, Third Edition (WRAT-3); the Receptive One-Word Picture Vocabulary Test (RO-PVT); and the Beery-Buktenica Developmental Test of Visual-Motor Integration, Fourth Edition (VMI-4). She explained that she was very familiar with these tests because she has administered the MAT and the LET 400 times, the WRAT 1,000 times and the VMI more than 600 times. Because of her 25 years as a school psychologist and her experience in administering these assessments, Ms. Jaster was qualified to perform the assessments. In addition, her testimony that the tests were appropriate for diagnostic purposes and reflect a valid and reliable estimate of Student's current functioning was credible.

16. The MAT is a progressive matrix-format test that provides a culture-reduced measure of general reasoning ability. Ms. Jaster reported that the test results indicate that Student has difficulties in spatial visualization. The LET is administered to measure auditory and visual skills with and without interference. From the results of this test, she concluded that Student has markedly above average auditory memory, above average global memory, and average visual memory. The WRAT was used to supplement the special education teacher's academic testing. Test results indicate that Student is above average in decoding and average in math computation. The RO-PVT provides an assessment of an individual's English hearing vocabulary. Student's test results indicate that he has high average receptive language skills and has improved in his receptive language skills from his December 2003 assessments. Ms. Jaster administered the VMI to assess Student's ability to perceive a visual model and then correctly copy that model on paper. In her report, Ms. Jaster stated this score signified that Student functioned markedly below average range in fine visual-motor integration ability.

17. Special education teacher Ms. Rosenblum testified that she received her B.S. in special education at Northern Arizona University. Currently, she is a special education teacher at Taft and has been employed by District for five years. Prior to her employment at

Taft, she was a resource teacher employed by the Santa Monica-Malibu and the Tempe Arizona Districts.

18. Ms. Rosenblum testified that during her administration of the WJ-III, Student cooperated, maintained focus and worked diligently on each subtest. She explained that she administered numerous test clusters and subtests and used a standard score rating. Student's Total Achievement standard score ranged from an average score of 96 in Broad Reading to a superior score of 122 in Written Expression. Student achieved scores in the average range in Academic Fluency (99), Academic Applications (109), and Academic Skills (110). He also achieved scores in the high average range in Broad Math (111), Broad Written Language (116), and Math Calculation Skills (111).

19. On the subtests, Student had a very superior score in Writing Samples (134). He achieved two subtest scores in the high average range: Math Fluency (113) and Writing Fluency (114). He obtained average scores on the following subtests: Reading Fluency (91); Reading Comprehension (97); Spelling (107); Letter-Word Identification (107); Applied Problems (107); and Mathematics Computation (110). Ms. Rosenblum believed that Student's scores on the WJ-III accurately depicted his academic levels.

20. Based on her academic assessments, review of teacher reports and Student's June 2009 grades, Ms. Rosenblum found that Student does not continue to be eligible to receive special education services. She concluded that Student's scores on the WJ-III demonstrate that his academics are not negatively affected by his learning disability.

21. The evidence demonstrated that Ms. Jaster used a variety of assessment tools to gather relevant functional, development and academic information. Based on her assessments, she concluded that although Student has deficits in the ability to interpret visual stimuli (spatial visualization) and the ability to combine input of sensory information with output of motor activity (sensory motor), this did not affect Student's ability to access the curriculum. She testified that Student demonstrated many academic strengths in auditory memory, visual memory, receptive language, school motivation, written expression, writing fluency, decoding, math computation, math fluency, applied problems and spelling. She also compared his previous and current testing.

22. Ms. Jaster was thorough in her review of Student's current academic assessment and her comparison with Student's scores on the WJ-III in 2002, 2004 and 2006. Ms. Jaster reported that Student has progressed significantly in written language. In 2002, Student's standard score of 79 in the writing sample was significantly below basic. In 2004, this standard score increased to 86, in 2006 it increased to 96 and his current standard score of 134 is in the very superior range. She concluded that his score has improved three standard deviations and he is two standard deviations above the mean. Other significant improvements were in reading comprehension, and punctuation and spelling.

23. Ms. Jaster concluded that because there is no severe discrepancy between Student's ability and achievement, and he is able to access the curriculum, he is no longer

eligible for special education services as a student with a SLD. Student's weakness was in the area of visual processing but this disability did not interfere with his ability to access his curriculum in regular education classes as measured by the standardized tests and school performance. In fact, Ms. Jaster found that Student was accessing his curriculum at a "high level" because he performed well academically, he was motivated, he was cooperative and he had good relations with his peers and teachers. In her opinion, Student's deficiency in visual processing was not a basis for special education eligibility, but could be addressed through classroom accommodations. In addition, Ms Jaster explained that Student's assessments did not reveal any disabling conditions, such as an emotional disorder or attention and organizational issues that would qualify Student for special education. Ms. Jaster's conclusions are supported by the evidence.

24. On October 7, 2009, District convened an IEP meeting to discuss Ms. Jaster's report. At the IEP meeting, Ms. Jaster, Ms. Rosenblum, and the school nurse read their reports. Parents requested a recess so that they could review the assessment papers. On October 15, 2009, the IEP team reconvened their meeting. Parents requested a draft IEP before signing and set a reconvening date. On October 20, 2009, the team reconvened to discuss the reports and the IEP recommendation that Student is no longer eligible for special education services as a student with a SLD. The IEP team offered the following placement: Student to be placed at Taft High School, a comprehensive high school, in a general education class with education instruction based on State standards, taught by a general education teacher. Parents did not consent to the IEP.

25. By a letter dated October 15, 2009, Parents disagreed with the District's psychoeducational assessment and requested an IEE at public expense. On November 11, 2009, the District filed its Complaint in this matter.

LEGAL CONCLUSIONS

1. District contends that its September and October 2009 psychoeducational assessment of Student was appropriate, such that it need not fund an IEE at public expense. As discussed below, the District met its burden of proving by a preponderance of the evidence that the September and October 2009 psychoeducational assessment was appropriate.

2. As the petitioning party, District has the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

3. In order to assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, §56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable to the student, explain the assessments that the district proposes to conduct, and provide that the district will not

implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) A school district must give the parents and/or the student 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).) The proposed written assessment plan must contain a description of any recent assessments that were conducted, including any available independent assessments and any assessment information the parent requests to be considered, information about the student's primary language and information about the student's language proficiency. (Cal. Code Regs., tit. 5, § 3022.)

4. Assessments must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was a deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

5. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: 1) whether the student may need special education and related services; 2) the basis for making that determination; 3) the relevant behavior noted during observation of the student in an appropriate setting; 4) the relationship of that behavior to the student's academic and social functioning; 5) the educationally relevant health, development and medical findings, if any; 6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and 7) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

6. A student may be entitled to an IEE if he or she disagrees with an evaluation obtained by the public agency and requests 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); Ed. Code, § 56506, subd. (c).) In response to a request for an IEE, an educational agency must, without unnecessary delay, either: 1) File a due process complaint to request a hearing to show that

its evaluation is appropriate; or 2) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

7. Here, the District demonstrated by a preponderance of the evidence that the September and October 2009 psychoeducational assessment had been properly conducted. The assessment had been requested by Parents because of their concern that Student continued to require special education services. Mother was promptly provided with an assessment plan. The assessment was conducted by a highly qualified assessor. The assessor had performed hundreds of assessments using the same instruments. Student was assessed using a variety of assessment instruments, ranging from record review, interviews, standardized tests, and observation. The assessment instruments were appropriate and valid to determine whether Student required special education. The assessment was not racially or culturally biased. The assessment resulted in a comprehensive written report that included observations, assessment results, consideration of Student's academic needs in a general education class, and a reasoned recommendation that Student did not require special education services to access his education. The assessment was discussed with Parents at an IEP team meeting as required. In sum, the September and October 2009 psychoeducational assessment was properly conducted and District need not provide an IEE at public expense. (Factual Findings 1-25; Legal Conclusions 2-7.)

ORDER

District's September and October 2009 psychoeducational assessment was properly conducted. District does not have to provide Student with an IEE at public expense.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on the only issue that was heard and decided in this case.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: March 16, 2010.

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings