

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

In the matter of:

SEQUOIA UNION HIGH SCHOOL
DISTRICT,

Petitioner.

vs.

STUDENT,

Respondent.

CASE NO. N 2006050687

DECISION

Debra R. Huston, Administrative Law Judge (ALJ) for the Office of Administrative Hearings (OAH), Special Education Division, State of California, presided over the due process hearing on June 16, 2006, in Woodside, California.

Sequoia Union High School District (District) was represented at the hearing by attorney John D. Nibbelin. Also present at the hearing on behalf of District were Joyce Willett, Director of Special Education; Margaret Williams, Instructional Vice President of Woodside High School; and Katie Landman, law clerk to Mr. Nibbelin.

Student, who was not present at the hearing, was represented by her Mother.

Oral and documentary evidence were received and arguments were presented. The record was held open to allow the parties to file briefs by June 23, 2006. District filed briefing on June 19, 2006. Student did not file a closing brief. The record was closed on June 23, 2006.

ISSUE

Whether the assessment of Student performed by District and completed in January 2006 was appropriate.

FACTUAL FINDINGS

Background Facts

1. On May 18, 2006, District filed a request for a due process hearing for a determination as to whether the assessment prepared by District personnel in connection with Student's triennial evaluation was appropriate.¹

2. Student is 14 years of age, and was a freshman at Woodside High School, which is within District, on the date on which District filed its request. Prior to attending Woodside High School, Student attended school within the Menlo Park City School District. Student has had an individualized education program (IEP) since kindergarten, with speech and language as her category of eligibility.

3. A transition meeting was held in June 2005 before Student left the eighth grade at Hillview Middle School, located within the Menlo Park City School District. It was Student's parents' intention that she attend Woodside High School the following year and, therefore, personnel from Woodside High School were present at that transition meeting. At the meeting, concern was expressed about Student possibly not graduating from Hillview, and also about behaviors she was exhibiting in her classes. There was discussion about whether behavior services for Student should continue at Woodside High School the next school year. It was determined that Student would have resource teacher services at Woodside High School. A transition plan was sent home, but Student's mother did not sign it.

4. The last IEP signed by Student's parents was in 2004, and District wanted to evaluate Student's needs in order to agree on an IEP. Ms. Karen McGee, school psychologist at Woodside High School, was responsible for coordinating the triennial assessment of Student. Ms. McGee had a number of phone conferences with Mother, who agreed to an assessment of Student. On November 22, 2005, Ms. McGee sent to Mother an assessment plan form explaining what assessments might be conducted to aid in the development of a triennial IEP. All areas of assessment were checked on the form, including assessments in the areas of academic achievement, intellectual development, communication development, social/adaptive behavior, psycho-motor development, alternative assessment measures, and "other", which included, as appropriate, health and development, vision, hearing, orientation and mobility skills, career and vocational abilities and interests, self-help, and functional analysis.

¹ On March 3, 2006, Student filed a due process complaint (OAH No. N2006030104). That complaint was dismissed on May 18, 2006, and the case was closed on that date.

5. The form was returned, signed by Mother on November 23, 2005, with lines drawn through assessments in the areas of psycho-motor development, alternative assessment measures, and “other”. Mother testified these areas were crossed out when she received the form. Ms. McGee testified that she believes Mother crossed those out. The boxes that corresponded to the three lines that were crossed out were checked, as Ms. McGee testified. Thus, Ms. McGee’s testimony is more credible in this regard.

6. Student was administered a triennial assessment by District personnel during November and December 2005 and January 2006, consisting of a speech and language assessment, a psychoeducational evaluation, and an academic assessment. The assessment was consistent with and based on the assessment plan described in Factual Finding Numbers 4 and 5, *supra*, and was a multi-disciplinary assessment. All tests were conducted in English. The assessments were completed by, and presented at, the January 26, 2006, IEP meeting.

Speech and Language Assessment

7. Ms. Marian Welch, a speech and language therapist at Woodside High School for the past 18 years, conducted the speech and language assessment and prepared the speech and language assessment report. Ms. Welch possesses the required credential to work as a speech and language specialist in California schools in that she holds a clinical or rehabilitative services credential. In addition, Ms. Welch holds two other credentials, including a clinical rehabilitation service credential with classroom authorization and a pupil personnel service credential. Ms. Welch also holds several certificates of training in her field. Ms. Welch holds a bachelor of science degree in communication disorders from Emerson College and a master of science in education from Suffolk University. Ms. Welch was qualified to administer the speech and language assessment to Student.

8. Ms. Welch evaluated Student’s general language functioning, including receptive language, expressive language, vocabulary, and critical thinking ability as it relates to problem solving, and pragmatic language.²

9. Ms. Welch focused on these areas because of background information she reviewed regarding Student. Ms. Welch had reviewed Student’s file from the school district Student attended before attending Woodside High School, Ms. Welch pulled Student’s record and saw her quarter grades at Woodside High School, and Ms. Welch also talked with Ms. McGee and Carole Grabiec, resource teacher at Woodside High School. Ms. Grabiec was in touch with Student’s classroom teachers, and there were reports by those teachers of Student not getting homework done and subsequently not performing well on tests. Ms. Welch reviewed Student’s file in the school psychologist’s office and went over her former IEPs and some of the assessments contained in the IEPs. Also, Student’s records from

² Language pragmatics means the ability to connect with another person, to interact, to use nonverbal language, to stay on topic, to provide relevant responses, and to use appropriate voice level and eye contact.

seventh and eighth grades showed problems with social pragmatics in the classroom. Ms. Welch spoke with Student's French teacher, who told Ms. Welch that while Student was performing average work in class, there was some concern with behavior. For example, Student was arriving late to class and not settling down in class.

10. Ms. Welch used several testing instruments with Student, including the Adolescent Word Test, the Adolescent Test of Problem Solving, and the Clinical Evaluation of Language Fundamentals IV (CELF IV). These instruments are all valid instruments, meaning that the instruments measure what they purport to measure. Ms. Welch has received training on the proper administration of these instruments, and she administered each of these instruments to Student in accordance with its instructions. Ms. Welch has been using speech and language instruments to assess students for 20 years. Ms. Welch also observed Student's communicative style to evaluate Student's social pragmatic language.

11. The Adolescent Word Test was used to evaluate Student's vocabulary and her ability to apply her vocabulary. Student performed in the average to above-average range on this test.

12. The Adolescent Test of Problem Solving was used to evaluate Student's critical thinking skills. The test examines critical thinking skills in problematic social contexts, such as one's ability to see situations from the perspective of others. Ms. Welch administered this test to Student because of her history of problems with resolving issues with others. Student's score on this test, which was in the 83rd percentile rank, indicates a good ability to use language to reason and voice solutions to pragmatic language situations and resolve problems in "pragmatic situations".

13. Ms. Welch administered the CELF IV to test Student's receptive and expressive language. Ms. Welch administered four of the core subtests of the CELF IV. A score of 100 represents the performance of a typical student. Student received a Core Language Score of 117 and an Expressive Language Index of 114. Student's score on one subtest, recalling sentences, was low, with a percentile rank of 16, but this score would not red flag a problem, in Ms. Welch's opinion, because this subtest requires perfect recall of sentences, which is something people do not do in everyday life. Although Student could not recall some words correctly, the test showed that she understood the gist of the sentences. Student's score for formulating sentences was in the percentile rank of 91, between the 92nd and 98th percentile ranks on the test of word classes, and in the percentile rank of 95 for word definitions. Administration of the CELF IV requires that Ms. Welch give four core subtests, and if there is any "red flagging", she would go on to other tests. There were no red flags in Student's case. Student has strengths in the areas of, and the ability to use, expressive and receptive language. She also has a good vocabulary. In other words, she understands spoken language and can use it to express herself.

14. The speech and language tests administered by Ms. Welch were appropriate. The use of these assessment tools provided Ms. Welch with enough information to determine Student's needs and were adequate to determine what services were needed. Assessment was not needed in other areas.

Psychoeducational Evaluation

15. Ms. Karen McGee, school psychologist at Woodside High School since 1989, conducted the psychoeducational evaluation and prepared the psychoeducational evaluation assessment report. Ms. McGee holds a pupil personnel services credential with a specialization in school psychology, and two other credentials as well, including a designated services credential in standard secondary education and a pupil personnel services credential with specialization in counseling. Ms. McGee is a nationally certified school psychologist. Ms. McGee holds a bachelor's degree and two master's degrees from Stanford University, and has undertaken study relating to her profession at other universities as well. Ms. McGee is now a doctoral candidate at the University of San Francisco. Ms. McGee was qualified to administer the psychoeducational evaluation to Student, and to coordinate District's assessment of Student.

16. Ms. McGee had a number of phone conversations and email exchanges with Student's mother in the fall of 2005, during which Mother and Ms. McGee discussed areas of concern regarding Student. Mother expressed concern about Student's academic progress. Mother also wanted a psychologist to go to the school and observe Student and, therefore, Ms. McGee had reason to assume that Student had social/emotional issues.

17. Ms. McGee's assessment process also included an extensive record review. Ms. McGee reviewed Student's "psych" file, which includes all psychological reports, speech and language reports, and behavior reports. Ms. McGee also reviewed Student's cumulative file and reports of her then-current teachers, had discussions with Ms. Welch and Ms. Grabiec, and read emails from Student's teachers to Ms. Grabiec. Ms. McGee also spoke with Mother regarding concerns about behavior to determine if behavior services should be provided to Student. Ms. McGee also reviewed Student's academic progress and observed Student in class and on the school grounds during breaks. On a couple occasions, when McGee observed Student, Student was alone. On another occasion, Student was skipping on school grounds with two other girls.

18. Student's areas of suspected disability included speech and language impairment, and there were concerns about her academic progress. Ms. McGee also considered the possibility of a specific learning disability, severe emotional disturbance, and autism.

19. Ms. McGee administered a number of testing instruments to Student, including the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), the Incomplete Sentences Blank, the Draw-a-Person, and portions of the Behavior Assessment System for Children – Self Report (BASC). Ms. McGee has received training with respect to the proper

administration of these testing measures, the testing instruments are valid, and Ms. McGee administered these tests to Student in accordance with the instructions. Ms. McGee also conducted a personal interview of Student.

20. The WISC-IV is a standard instrument of established validity across the country. This test measures verbal and performance IQ, and is used to determine if processing problems are present. Student was found to have average verbal and performance processing, meaning she is in the 64 percent of the population who can perform commensurate with age. Student has the ability to do what she wants to do academically. Student's artistic ability is in the gifted range, although her drawing indicated a defensive stance against others.

21. Student invalidated several areas of the BASC by giving the same answer to successive questions, although Ms. McGee still did not see indicators of emotional disturbance in the "significant" portion of the scale. Student reported a high level of anxiety and feelings of isolation from peers, although she does have strategies for relating to peers. The BASC revealed that Student is very independent minded and self reliant, and has a distrust for adults. Student likes fencing, singing, and writing lyrics. Student indicated a lack of social awareness by singing for an hour to Ms. McGee one day, which is an unusual thing for a person to do in the presence of an adult the child does not trust.

22. The assessment measures administered by Ms. McGee were appropriate, and Ms. McGee properly ensured that Student was assessed in all areas of suspected disability.

Academic Assessment

23. Ms. Carole Grabiec, resource teacher at Woodside High School for 21 years, conducted the academic assessment and prepared the assessment report. Ms. Grabiec holds a credential as a resource specialist, learning handicapped, standard education (secondary). Ms. Grabiec has an extensive educational background relating to her work, has participated in ongoing training and development with respect to her work and the administration of academic assessments, and has been the recipient of numerous awards in her field. Ms. Grabiec was qualified to administer the academic assessment to Student.

24. Ms. Grabiec read a number of reports regarding Student, and also reviewed Student's cumulative file. Ms. Grabiec looked at Student's work from her English class. She also spoke with Ms. Welch and Ms. McGee and read the reports of teachers. Those reports from teachers addressed Student's lack of work. According to teachers, Student would do art projects and play video games in class, rather than perform class work. Except for Student's geometry teacher's report, Student's teachers' reports did not address a lack of ability on Student's part to do the work. The teachers also reported that Student was not turning in homework.

25. Ms. Grabeic assessed Student using the Woodcock-Johnson III Tests of Achievement, which is a valid test. Ms. Grabeic has been trained with respect to how to administer the tests, and she followed all requirements and instructions in the administration of the tests to Student. Student was cooperative and focused during the tests, and Ms. Grabeic believes the scores are valid.

26. According to Ms. Grabeic, Student has excellent fluency under time constraints, good decoding skills, and good language skills. Student's broad math was on grade level, and Student has the ability to pass math classes and the high school exit exam.

27. Student's scores in the area of passage comprehension and picture vocabulary were low. Student made major grammatical errors in her writing samples, so writing was included as a goal in the IEP that was later developed.

28. The assessments administered by Ms. Grabeic were appropriate.

LEGAL CONCLUSIONS

Applicable Law

1. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA), and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. §§ 1400(c), 1414(d); Ed. Code § 56000.) Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (Ed. Code § 56320.) Thereafter, special education students must be reassessed every three years or more frequently, if conditions warrant, or if the pupil's parent or teacher requests a new assessment and that a new IEP be developed. (20 U.S.C. § 1414(a)(2); Ed. Code § 56381.) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2); Ed. Code § 56320, subd. (e), (f).) Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(2), (3); Ed. Code § 56320, subd. (a), (b).)

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)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and

administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication, or in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless this is clearly not feasible. (20 U.S.C. § 1414(b)(2), (3); Ed. Code § 56320, subd. (a), (b).)

3. Among the procedural safeguards provided to parents under the IDEA, parents have a right to obtain an independent educational evaluation (IEE) of the child. California law provides that when a parent disagrees with an assessment obtained by the public educational agency, the parent has the right to an IEE from qualified specialists at public expense unless the educational agency is able to demonstrate at a due process hearing that its assessment was appropriate, in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations. (Ed. Code § 56329, subd. (b); 34 C.F.R. § 300.502(b).)

4. The petitioner in a special education administrative hearing has the burden to prove his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. ____ [126 S.Ct. 528].)

Discussion

Based on Factual Findings Numbers 6 to 28, inclusive, District's multi-disciplinary assessment of Student, consisting of a speech and language assessment, a psychoeducational evaluation, and an academic assessment, was appropriate, in accordance with the requirements of Education Code section 56329, subdivision (b), and Section 300.502(b) of Title 34 of the Code of Federal Regulations. Student was assessed in accordance with the assessment plan. District personnel who assessed Student were well-qualified and competent to perform the assessments, were trained in the use of the testing instruments they used, and used the instruments in conformity with the applicable instructions. District personnel who assessed Student were knowledgeable of Student's previously diagnosed disability, conducted a thorough background review of Student's records, and used a variety of validated instruments in assessing Student to determine whether Student has a disability and, if so, to determine an appropriate educational program for Student.

ORDER

The assessment conducted by District was appropriate.

PREVAILING PARTY

The following findings are made in accordance with this California Education Code section 56507, subdivision (d): The District prevailed on the issue heard.

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 ninety days of receipt of this decision. (Cal. Ed. Code § 56505, subd. (k).)

July 30, 2006



Debra R. Huston
Administrative Law Judge
Office of Administrative Hearings
Special Education Division