

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

STUDENT.

OAH CASE NO. N2008020449

DECISION

Administrative Law Judge (ALJ) Glynda B. Gomez, Office of Administrative Hearings (OAH), heard this matter in Los Angeles, California on June 9, 2008. Los Angeles Unified School District (District) was represented by Donald A. Erwin, Assistant General Counsel. Lisa Kendrick, Coordinating Specialist for the Due Process Unit was also present. Student (Student) and her mother (Mother) did not appear at the hearing and were not represented at the hearing.

The District's Due Process Complaint was filed on February 14, 2008. The Due Process hearing was initially scheduled to commence on March 17, 2008. The case was continued on March 7, 2008, and again on May 13, 2008, at the request of Mother. Testimony concluded and the record was closed on June 9, 2008.

ISSUE

Are the District's psychoeducational, occupational therapy, speech and language and physical therapy assessments appropriate?

FACTUAL FINDINGS

1. Student is a seven-year-old first grade student residing within the boundaries of the Los Angeles Unified School District. Her primary language is English.

2. Student was previously found eligible for special education and related services in the Bassett Unified School District (BUSD) under the category of speech and language impairment on February 24, 2005. Student never attended public school in BUSD. Student attended a private school within the boundaries of BUSD until approximately September 2006. Student attended a private school kindergarten in West Covina, outside both the BUSD and District boundaries from September 5, 2006 until June 14, 2007. On September 5, 2007, Student enrolled in the first grade at Richard Riordan Primary Center, a public school located within the District Boundaries.

3. Student was initially placed in a District general education classroom on a 30-day administrative placement pending a District Individualized Education Plan (IEP) meeting. An IEP meeting was held to review the IEPs from BUSD. The IEP team determined that assessments were needed to ascertain whether Student was still eligible for special education services and if so, what placement, services and accommodations were needed to address Student's unique needs. An assessment plan was provided to Mother on November 9, 2007. Mother signed and returned it on the same day. The assessment plan provided for assessment in the areas of health and development, vision and hearing, general ability, academic performance, language function, motor abilities and social-emotional status. On January 18, 2008, the IEP team reconvened and considered the new assessments. Based upon the assessments, and after discussion, the District IEP team members opined that Student was not eligible for special education services. Mother disagreed with the psychoeducational, occupational therapy, speech and language and physical therapy assessments and requested that Independent Educational Evaluations (IEEs) be provided in each of those areas at public expense.

District declined to provide the IEEs and filed its request for due process hearing seeking a determination that its assessments were appropriate.

PSYCHOEDUCATIONAL ASSESSMENT

4. Carol Breaux (Breaux), the school psychologist for Riordan Primary Center conducted the psychoeducational assessment of Student. Breaux completed her report of the assessment on January 7, 2008. Breaux received a bachelor of arts in psychology with a minor in Spanish from Occidental College in 1989. She obtained a masters of science in counseling with an option in school psychology from the California State University at Los Angeles in 1999. She holds a certificate of completion for the administration of the autism diagnostic observation schedule (ADOS), and a certificate of completion as a behavior intervention case manager, a professional clear pupil personnel services credential for school psychology and school child welfare and attendance, a certificate in educational applications of behavior analysis, a clear bilingual cross-cultural language and academic development certificate (BCLAD) and a clear multiple subject teaching credential. She also has an "A" level Spanish fluency certification from District.

5. Breaux has served as a school psychologist for the District for ten years. She has nine years of experience as a bilingual elementary school teacher in the District. Breaux's duties as a school psychologist include attending IEP meetings, conducting assessments, counseling students and families and collaborating with District teachers and staff. Breaux has completed 500 student assessments.

6. Breaux conducted the assessment of Student on November 15, 2007 and December 3, 2007. A psychoeducational assessment is a comprehensive evaluation of a student's general abilities and social emotional status. She completed a report of the assessment on January 7, 2008. Breaux reviewed Student's records from BUSD and the District. Among the records reviewed was the health screening performed by the District

nurse. The school nurse conducted both vision and audiological testing. The audiological testing was conducted in October 2007 and indicated that Student's hearing was within the normal functional range.¹

7. In assessing Student, Breaux utilized several standardized tests. Breaux administered the Cognitive Assessment System (CAS), Behavior Assessment System for Children, Second Edition (BASC2), Test of Auditory Processing Skills, Third Edition (TAPS3), Motor-Free Visual Perception Test, Third Edition (MVPT3) and the Beery Developmental Test of Visual Motor Integration, Fifth Edition (Beery VMI Visual Motor). She also reviewed and incorporated the results of the Woodcock-Johnson III Achievement Battery (WJIII) administered by resource specialist teacher (RSP) Erin Wilson (Wilson). Breaux also observed Student in the classroom and on the playground, and interviewed Student's teacher Jennifer Chun (Chun) and Mother.

8. The CAS is an alternative cognitive assessment broken into subtests that measure various processing abilities. The subtests are planning, simultaneous processing, attention processing and successive processing. The simultaneous processing subtest required Student to integrate several pieces of information and understand them as a whole. Student demonstrated a superior ability in this area. Student scored in the average to above average range overall on all subtests.

9. The BASC2 is a rating system based upon questionnaires completed by both a classroom teacher and a parent. The BASC2 subtests measure hyperactivity, aggression, conduct problems, externalizing problems, anxiety, depression, somatization, internalization, typicality, withdrawal, attention problems, learning problems, adaptability, social skills, leadership, study skills, activities of daily living,

¹ Mother did not challenge the appropriateness or accuracy of the audiological testing.

functional communication and adaptive skills. Mother did not complete enough sections of the BASC2 for Breaux to calculate an overall score for the home scale. The questionnaire completed by Chun reflected age appropriate behavior and no clinically significant behaviors. Breaux noted that there was a significant difference between ratings of Chun and Mother in the areas of anxiety, withdrawal and internalizing behaviors. Breaux concluded that Student did not display those concerns in the school setting.

10. The TAPS3 consists of phonology, memory and cohesion indices with subtests in word discrimination, phonological segmentation, phonological blending, number memory, word and sentence memory, auditory comprehension and reasoning. Student scored overall in the average range. Breaux noted that Student received a low average score on the cohesion index. The cohesion index is a measure of auditory comprehension and reasoning. It is measured by subtests involving higher order linguistic skill that required the use of inferences, deductions and abstractions to understand the meaning of a passage. She did not note any areas of deficit.

11. The MVPT3 measured visual perception by examining the ability to discriminate between forms, remember forms, spatial relations, form constancy, sequential memory, figure-ground and closure. Student demonstrated average abilities with no observed deficits on this test.

12. The Beery VMI Visual Motor measured visual motor integration. It measured the degree to which visual perception and finger-hand movements were well coordinated. Student performed in the average range with no observed deficits on this measure.

13. Breaux administered each of the tests in accordance with the instructions manual and administered the tests for the purposes for which they were designed. The

assessments were not racially, culturally or sexually discriminatory and were administered in English, Student's primary language.

14. As noted above, Breaux considered and incorporated the results of achievement testing conducted by Wilson in her psychoeducational assessment of Student. Wilson received a bachelor of arts in sociology with a minor in psychology in Canada. She received a master's degree in education from Pepperdine University. She obtained multiple subject teaching credentials and is working on the requirements for a special education credential. She has two years of experience as a special education teacher and three years of experience as a District teacher in both RSP and special education classes. She has administered the WJIII over a 100 times in the United States and in Canada.

15. On December 7, 2007, Wilson administered the WJIII tests in letter word identification, reading fluency, calculation, math fluency, spelling, writing fluency, passage comprehension, applied problems and writings samples. Wilson administered the WJIII according to the instructions contained in the test manual. She utilized the WJIII for the purpose for which it was designed, to measure student achievement in the specified areas. The WJIII was not racially, culturally or sexually discriminatory and was administered in English, Student's primary language. Broad scores provide comprehensive measures of achievement in each of the focus areas. Student scored in the average to high average range in all areas. Breaux included these results in her assessment and evaluated them as part of her psychoeducational assessment.

16. Student received a broad reading standard score of 112. Broad reading scores were derived from the letter-word identification, reading fluency, and passage comprehension subtests. The letter-word identification subtest is a measure of reading decoding, including the ability to identify letter names of several upper and lowercase letters and the ability to identify words. The reading fluency subtest was a measure of

reading speed and rate. The passage comprehension subtest was a measure of reading comprehension and knowledge of use of syntactic and semantic cues.

17. Student received a broad math standard score of 125. Broad math scores were derived from subtests of the calculation, math fluency and applied problems. The calculation subtest was a measure of the ability to perform mathematical computations. The math fluency subtest measured the abilities to rapidly and accurately solve simple additions, subtractions and multiplication problems. The applied problems subtest was a measure of quantitative reasoning, math achievement and math knowledge.

18. Student received a broad written language score of 128. Broad writing scores were derived from subtests of spelling, writing fluency and a writing sample. The spelling subtest was a measure of knowledge of prewriting skills and spelling. The writing fluency subtest was a measure of the subject's ability to write rapidly with automaticity. The writing sample subtest was a measure of the ability to convey ideas in writing

19. Breaux concluded that Student did not display any behaviors that suggested a need for counseling. Similarly, Breaux found no psychological, processing or learning disabilities in her assessment. As a result of her psychoeducational assessment, Breaux opined that Student was not eligible for special education services.

OCCUPATIONAL THERAPY ASSESSMENT

20. Melinda Galindo, a District employed and licensed occupational therapist, performed an occupational therapy assessment of Student on January 8, 2008. Galindo received a bachelor of science degree in occupational therapy from California State University at Dominguez Hills in 2004. She registered with the National Board of Occupational Therapy and obtained her occupational therapy license in 2005. Galindo has three years of experience as an occupational therapist in both pediatric and school based settings. She attended professional development training sessions about autism,

sensory process, sensory integration, assistive technologies, handwriting development, and positive behavior support during the 2006 to 2008 time period. Galindo conducted over 100 assessments. Her duties as a district occupational therapist included conducting assessments, attending IEP meetings, administering direct therapy to students and collaborating with teachers and staff to meet the needs of District students.

21. Galindo administered the Beery VMI Developmental Test of Visual Perception, Fifth Edition (Beery VMI Visual Perception), Beery VMI Developmental Test of Motor Coordination, Fifth Edition (Beery VMI Motor Coordination), Sensory Processing measure for both classroom and home (SPM), the School Functional Assessment (SFA) and reviewed the results of the Beery VMI Visual Motor conducted by Breaux. Galindo administered each test according to the instructions contained in the test manual. Each test was administered for the purposes for which it was designed. The tests were not racially, culturally or sexually discriminatory and were administered in English, Student's primary language. Information was also obtained from interviews of Mother and Chun, classroom observations, clinical observations and review of work samples. Student was cooperative and Galindo opined that the tests results were reflective of Student's abilities and level of performance.

22. The Beery VMI Visual Perception measured Student's visual perception. Galindo noted Student's ability to track with eye movement, track a ball and to distinguish one item from many. Student copied text from a white board at a distance and from near point. Her letter formation, line orientation, and letter size were functional and her handwriting was legible. She cut a jagged line, a circle, a square and a triangle and remained within the required border. She obtained a standard score of 141, which was within the very high range on this measure.

23. The Beery VMI Motor Coordination measured fine and gross motor coordination. Galindo determined Student's muscle strength, muscle tone, and range of motion to be within functional limits and that Student manipulated small items in her hand, turned pages in a book, tied shoelaces, used scissors and manipulated a pencil. She observed Student on the playground and in the classroom. From this, she determined that Student had the ability to sit on the floor, sit upright in a chair, transition from sitting to standing, use a tripod grasp on writing utensils, manipulate small items, jump rope, reach above her head and stoop to retrieve a ball. Student received a standard score of 107, which was within the average range on this measure.

24. The SPM is an integrated system of rating scales that are used for assessment of sensory processing issues, praxis and social participation in elementary school aged children. Chun completed the main classroom form. Mother completed the home form. Galindo noted definite differences in the score ranges of the main classroom form and the home form. On the classroom form, Student scored in the typical range. Chun reported that Student's activity level was age appropriate. On the home form, Student's scores reflected typical range for the social, planning and idea scales, some problems in the visual, touch and body awareness scales and a definite dysfunction for hearing, balance and motion scales.

25. The SFA is a questionnaire completed by one or more school professionals who have observed a student's typical performance in school related tasks and activities. It was designed to measure a student's performance of functional tasks and how a student's performance affects his/her overall participation to access her curriculum. Chun completed the SFA questionnaire. Student's scores on the measures were typical and age appropriate for a general education student. The SFA did not reveal any areas of weakness or need for accommodations.

26. Galindo utilized the Ecological Model of Student Performance as a guide for her assessment. It is an educational model that takes into account the curriculum, the educational environment and the student's abilities to determine current levels of performance. The Ecological Model is a best practice according to the Guidelines for Occupational Therapy and Physical Therapy in California Public Schools published by the California Department of Education.

27. Through observation and standardized testing, Galindo evaluated Student's neuromuscular, visual perception, fine motor, visual motor, and sensory processing abilities. After observation, evaluation and testing, Galindo opined that Student was able to participate in her school setting and access her general education curriculum. Galindo saw no need for occupational therapy service, modifications or accommodations.

SPEECH AND LANGUAGE ASSESSMENT

28. Youmna Haddad (Haddad), a District speech and language specialist and licensed speech pathologist, performed a speech and language assessment of Student on January 16, 2008. Haddad obtained her bachelor of arts and masters degrees in communication disorders and sciences from the California State University in Northridge (CSUN) in 2001 and 2003, respectively. Haddad has worked as a speech and language specialist for the District for six years. In addition, Haddad has 4 years of part-time experience in private clinical speech and language pathology. Haddad completed a nine-week aphasia therapy clinic with CSUN, 100 supervised hours of inpatient/rehabilitation and outpatient evaluations at Arcadia Methodist Hospital and 30 hours of social communication group volunteer work with autistic children at a private school. Haddad attended seminars in pediatrics, language therapy, occupational therapy, audiology, social work, nursing and pediatric dentistry during an internship with

Children's Hospital Los Angeles through the University of Southern California during the 2002-2003 academic year.

29. Haddad's duties as a District speech and language specialist included conducting assessments, attending IEP meetings, collaborating with teachers and staff, conducting social skills and pragmatic speech programs and providing direct speech therapy to District students. Haddad conducted over 150 speech and language assessments.

30. Haddad used the Goldman-Fristoe Test of Articulation, Second Edition (GFTOA-2), the Preschool Language Scale-Fourth Edition (PLS-4), an oral peripheral examination, a language sample, records review, clinical observations and a teacher interview to assess Student. The GFTOA-2 and the PLS-4 were administered according to the instructions in the test manuals for each and utilized to explore Student's speech and language abilities. The tests were not racially, culturally or sexually discriminatory and were administered in English, Student's primary language.

31. The GFTOA-2 is normed for individuals between the ages of 2 and 21 years, 11 months. The test assessed Student's articulation of consonant sounds. Results indicated that Student was able to produce all age appropriate sounds in all contexts of words. She was 100 percent understandable to both familiar and unfamiliar listeners in all contexts. The GFTOA-2 did not reveal any deficits in Student's articulation.

32. Haddad conducted an oral peripheral examination, which is a visual inspection of the oral peripheral mechanism including lips, tongue, palate and teeth. Haddad determined from her examination that Student had appropriate symmetry, range of motion and strength for speech production. Haddad observed Student throughout the assessment and determined that Student had appropriate fluency skills, voice and articulation.

33. The Preschool Language Scale, Fourth Edition (PLS-4) is a test used to identify children from birth through 6 years and 11 months who may have a language disorder or delay. The test measured Student's auditory comprehension, expressive communication, and receptive communication. According to the test results, Student performed at age level in auditory comprehension and above age-level in expressive and receptive language measures.

34. Haddad obtained a language sample from Student by using both oral interview and informal discussion. The language sample measured Student's ability to produce language in natural contexts. A minimum of 50 utterances are required for a valid sample. The language sample was analyzed for semantic usage, grammatical structures, pragmatics and phonology. Semantic usage is the use of vocabulary. Grammatical structures are the length and complexity of sentences or phrases. Pragmatics is the ability to carry on a conversation, make needs and ideas known and answer age appropriate questions and describing sequential events. Phonology is the level of intelligibility. Student performed at age level or above in all areas.

35. Based upon the standardized tests, observation and informal measures, Haddad determined that Student had age level or above age level skills in expressive language, receptive language, articulation, voice, fluency, oral-motor and pragmatics. Haddad opined that Student did not exhibit any speech or language delays that negatively impacted her ability to access her classroom curriculum and did not meet the District's eligibility criteria to receive language and speech services.

PHYSICAL THERAPY ASSESSMENT

36. Normini Briones, a District physical therapist conducted a physical therapy assessment of Student over three days on December 10, 2007, January 14, 2008 and January 16, 2008. Briones is a registered physical therapist in California and has inactive licenses in North Carolina and West Virginia. She received a bachelor of science in

physical therapy from the University of the Philippines in 1982. She completed professional development courses about autism, assistive technology applications and pediatric neuro-development. Briones has worked as a District physical therapist for nine years. She has also worked in private clinic and hospital settings. Cumulatively, she has over 20 years of experience as a physical therapist.

37. Briones utilized the Ecological Model of Student Performance as a guide throughout the assessment process. It is an educational model that takes into account the curriculum, the educational environment and the student's abilities to determine current level of performance. This model is best practice according to the Guidelines for Occupational Therapy and Physical Therapy in California Public Schools published by the Department of Education. Briones observed Student on the playground and in the classroom. She also made clinical observations while administering standardized assessments of gross motor function. She interviewed Chun and Mother as part of the assessment. Briones reviewed Student's cumulative file and past IEPs from BUSD.

38. Briones first observed student on December 10, 2007. Briones observed Student participating in class activities. According to Briones, Student's participation was both active and independent. Student was able to sit on the floor criss-cross style, use a classroom table and chair. Briones evaluated Student's muscle tone by observation and palpation. She determined that Student did have low muscle tone especially in the upper extremities. Even with the low muscle tone, Student's muscle tone was within functional range. Student moved with adequate speed and stability. Briones evaluated Student's reflexes, structure, posture, muscle strength, range of motion, balance, reactions, access positions, transitional movement/transfers, her mobility, gait, gross motor skills, ball handling skills and Student's ability to assess the educational environment. Briones observed both voluntary and involuntary movement in the classroom to determine Student's abilities and level of performance.

39. According to Briones, Student's range of motion was within functional limits. She sat, stood and walked with appropriate balance and transitioned to different positions and areas of activities with appropriate speed and stability. Briones observed that Student was able to run, walk and participate in all activities. Briones also observed that Student demonstrated independent ability to perform the basic gross motor skills that are necessary to participate in required physical education activities including walking backwards, sideways, on her toes, and on her heels; squatting; and, jumping forward, backward and on each foot. Student was also able to hop on one foot, perform jumping jacks, walk a distance, and catch and kick both a stationary ball and a rolling ball.

40. Briones administered the Test of Gross Motor Development on January 14, 2008. It is a standardized test to measure gross motor skill development and performance in children ages three through ten. The test was administered according to the instructions in the test manual. The test was performed to determine if Student had any delay in gross motor skill development when compared to peers of the same age. The assessment was not racially, culturally or sexually discriminatory and was administered in English, Student's primary language. Briones observed that Student had smooth, coordinated voluntary movements with no sensorimotor issues. According to Briones, the test results indicated that Student's gross motor skills were within the average range for children of her age.

41. Based upon the test results, interviews, records review, examination and observation, Briones opined that Student was able to function adequately in all areas and did not need adaptations or physical therapy to access the curriculum or the educational environment.

LEGAL CONCLUSIONS

1. As the petitioning party, District has the burden of persuasion that its assessments were appropriate. (*Schaffer v. Weast, Superintendent, Montgomery County Public Schools, et. al.* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L. Ed.2d 387].)

2. Student disagrees with the psychoeducational, occupational therapy, speech and language and physical therapy assessments conducted by District and contends that she is entitled to IEEs at public expense in each of those areas. District contends that all of its assessments were appropriate.

3. A parent has a right to an IEE at public expense, if the parent disagrees with a school district's assessment, unless the school district is able to demonstrate at a due process hearing that its assessment was appropriate. (20 U.S.C § 1415(b)(1); Ed. Code, §§ 56329, subds. (b) & (c), 56506, subd. (c); 34 C.F.R. § 300.502(b).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district responsible for the child's education. (34 C.F.R. § 300.502; Ed. Code, §§ 56329, subd. (b), 56505, subd. (c).)

4. Assessments must be conducted in accordance with assessment procedures specified in the federal and state special education law. Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not be racially, culturally or sexually discriminatory; must be provided and administered in the student's primary language or other mode of communication unless it is not feasible; and must be administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b); 34 C.F.R. § 300.304; Ed. Code, § 56320, subds. (a) & (b).) The assessors must use a variety of assessment tools and strategies to gather relevant functional and developmental information about the child including information provided by the parent, and information related to enabling the

child to be involved in and progress in the general curriculum, that may assist in determining whether the child is a child with a disability and what the content of the child's IEP should be. (20 U.S.C. § 1414(b); 34 C.F.R. § 300.305.)

5. Here, in each of the four assessments, District personnel were knowledgeable and trained. Breaux was an experienced credentialed school psychologist with nine years of experience conducting more than 100 assessments. Wilson, the RSP teacher, administered the WJIII instrument more than 100 times in two countries and is an experienced special education teacher. Galindo, a licensed occupational therapist with four years of experience, has conducted over 100 occupational therapy assessments. Haddad was a licensed speech and language pathologist with six years of experience working for the District and four years of part time experience in the private sector. She has completed over 150 speech and language assessments. Finally, Briones, the District licensed physical therapist has twenty years of experience as a physical therapist and has conducted more than 100 physical therapy assessments.

6. Each of the assessments utilized standardized tests that were administered according to the test manual instructions. Each assessment utilized a variety of tools and multiple methods to explore Student's level of performance and ability including observation in various settings, teacher interview, parent interview and records review to obtain a complete picture of the Student's abilities. The assessments were not racially, culturally or sexually discriminatory and were administered in English, Student's primary language. Each assessment provided detailed information about Student's abilities and evaluation of the data obtained from all sources.

7. In light of the above, District has met its burden and demonstrated that all four of the assessments were appropriate. Student is not entitled to an IEE at public expense.

ORDER

The District's psychoeducational, occupational therapy, speech and language and physical therapy assessments are appropriate. Student is not entitled to Independent Educational Evaluations at public expense.

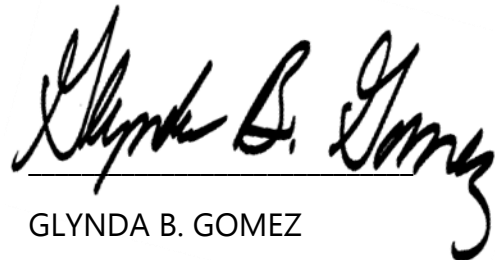
PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The District has prevailed on the one issue presented for hearing.

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. (Ed. Code, § 56505, subd. (k).)

June 27, 2008

A handwritten signature in black ink that reads "Glynda B. Gomez". The signature is written in a cursive style and is positioned above a horizontal line.

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings