

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

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2007030791

DECISION

Administrative Law Judge (ALJ) Glynda B. Gomez, Office of Administrative Hearings, Special Education Division (OAH), heard the above-captioned matter in Los Angeles, California on June 12, 2007.

Los Angeles Unified School District (District) was represented by Devora Navera, Assistant General Counsel. Patty Brooks Leach, Due Process Specialist for Los Angeles Unified School District was also present.

Student was not present. Student was represented by her mother (Mother).

The District's Due Process Hearing Request was filed on March 23, 2007. A continuance was granted on April 19, 2007. Testimony and documentary evidence were received on and the record remained open until July 9, 2007, for the submission of closing briefs. On July 3, 2007, the District filed its closing brief. Student did not file a closing brief. The record was closed on July 9, 2007.

ISSUES

1. Was the District's occupational therapy (OT) assessment of Student

appropriate?

2. Was the District's psychoeducational assessment of Student appropriate?
3. If the District's assessments were inappropriate, is Student entitled to

Independent Educational Evaluations at public expense?

CONTENTIONS OF THE PARTIES

Student contends that the occupational therapist did not have sufficient experience in sensory processing and sensory integration to conduct the assessment. Student also contends that the psychoeducational assessment is deficient because it does not address Student's low scores on some subtests of the Woodcock Johnson III Tests of Achievement and the behaviors exhibited in the home. District contends that the OT and psychoeducational assessments were appropriate.

FACTUAL FINDINGS

JURISDICTION

1. Student is a ten-year-old girl, born on July 2, 1997, residing within the boundaries of the Los Angeles Unified School District. She was nine years old at the time of the assessments. Student is in the fourth grade at Etz Jacob Hebrew Academy, a private, nonpublic school.

2. Student was assessed by District at Mother's request. The assessment was to assist in determining eligibility for special education services by the Individualized Education Program (IEP) team at Carthay elementary school. Mother was concerned about inattention and distractibility.

3. District conducted assessments of Student including an OT assessment and a psychoeducational assessment. Only the OT and psychoeducational assessments are at issue in this case. Parent disagreed with these two assessments and requested Independent Educational Evaluations (IEEs) in the areas of occupational therapy and

psychoeducation.

OCCUPATIONAL THERAPY ASSESSMENT

4. Assessments must be conducted by individuals who are knowledgeable about the Student's disability, competent to perform the assessment, and the tests and assessment materials must be validated for the specific purpose for which they are used. The tests and assessment materials must be selected and administered so as not to be racially, culturally or sexually discriminatory; must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. The assessors must use a variety of assessment tools including information provided by the parent.

5. Felecia Dudley (Dudley), a licensed occupational therapist employed by Mediscan, a company that contracts with District, conducted an OT assessment of Student on February 9, 2007. The assessment occurred at Carthay elementary school, Student's neighborhood school.

6. Dudley received a bachelor's degree in Occupational Therapy and Psychology from the University of Southern California in 1999. She is board certified and received her California Occupational Therapist license in 2002. Dudley's experience includes performing direct occupational therapy and assessments at White Memorial hospital and the Masada School for the Emotionally Disturbed. Since January of 2007, she has worked for Mediscan as a per diem occupational therapist at Carthay elementary school, Van Ness elementary school and Harvard elementary school. Although Dudley did not have extensive experience in sensory processing and integration issues, she possessed sufficient experience and expertise to competently conduct the assessment.

7. To conduct the assessment of Student, Dudley used a parent interview, clinical observation and the Beery-Buktenica Developmental Test of Visual-Motor Integration, fifth edition (Beery VMI). Dudley also reviewed the present levels of

performance contained in the District's computerized IEP system. The information contained in the computerized IEP system was obtained from Student's current teacher. The information reflected superior academic performance and no observation of physical or emotional problems.

8. On February 9, 2007, Dudley conducted her assessment utilizing the Ecological Model of Student Performance. This model takes into account the curriculum, the educational environment, and the student's abilities in determining current levels of performance. Dudley spent one hour at Carthay elementary school conducting the observation of Student and administering the Beery VMI. Dudley utilized the Beery VMI long form (ages 2-18) and the Visual Perception and Motor Coordination subtests. The Beery VMI is designed to assess the extent to which a child can integrate visual and motor skills.

9. Student was cooperative during the assessment and was able to follow directions. Student was attentive and on task without need for prompting throughout the assessment. Student received a standard score of 108 on the Beery VMI which equates to an average performance. Student received a standard score of 131 equating to a very high performance on the subtest for visual perception. She received a standard score of 108 on the subtest for motor coordination which is an average performance on the test.

10. Dudley evaluated Student's neuromuscular system and range of motion, postural stability, visual perception, fine motor skills, visual motor skills, sensory modulation, sensory processing, praxis/motor planning and self-help skills. She also evaluated Student's tactile, proprioceptive and vestibular sensitivity. Dudley utilized play dough, an obstacle course and activity stations to observe and evaluate Student. Dudley completed the Structured Observations of Sensory Processing Measurements which required Student to imitate various body movements and positions. Student was able to complete all movements including: heel to toe, standing on one foot, high kneeling,

antigravity extension, jumping jacks, skipping, postural schilder's arm extension, proprioceptive processing, slow ramp movements, sequential finger touching, forearm rotation and ocular movements.

11. Dudley concluded that Student had average or above average performance in all areas examined. The assessment revealed no areas of concern.

12. Dudley was qualified to perform the OT assessment, including the portions which tested sensory processing and integration issues. She had the education, license and professional experience to perform an OT assessment of Student. The instruments utilized were appropriate. The tests and assessment materials were validated for the purposes for which they were used and were selected and administered so as not to be racially, culturally or sexually discriminatory.

13. The ALJ finds that the District's OT assessment was appropriate.

PSYCHO-EDUCATIONAL ASSESSMENT

14. Jose Luis V. Ramirez (Ramirez) is the resource specialist teacher at Carthay elementary school. He received a Bachelor of Arts degree in Social Studies in 1984 from California State University, Los Angeles. He holds a multiple subject elementary school credential, a handicap credential and a resource specialist credential. Ramirez has been a teacher with the Los Angeles Unified School District since 1988. He was a regular education teacher for one year, a special day class teacher for one year and has served as the resource specialist teacher at Carthay elementary school for sixteen years. He conducts approximately 30 assessments per year at Carthay elementary school.

15. Ramirez was qualified to perform the assessment. He has the education and professional experience to administer the Woodcock Johnson III - Test of Achievement-third edition. Ramirez credibly testified that the instrument utilized was appropriate, the test materials were validated for the purposes for which they were used and that the test was selected and administered so as not to be racially, culturally or

sexually discriminatory.

16. Ramirez administered the Woodcock-Johnson III - Test of Achievement-third edition to Student on January 23, 2007. The purpose of the test was to determine that Student's present level of academic performance as part of the District's psychoeducational assessment. Student was cooperative and attentive during the administration of the test. Student achieved standard scores at or above average in 29 of the 34 subtests. In five subtests, she received scores which reflected below grade level equivalents. In reading comprehension, she received a standard score of 95, which is the grade level equivalent of 3.4. In phonological/graph knowledge, she received a standard score of 95, which is the grade level equivalent of 3.0. In passage comprehension, she received a standard score of 92, which is the grade level equivalent of 2.9. In picture vocabulary, she received a standard score of 93 which is the grade level equivalent of 2.5. In spelling of sounds, she received a standard score of 65, with the grade level equivalent of 1.0. Of the five subtests, Ramirez opined that only the spelling of sounds score was significantly below average. Ramirez attributed the low score to fatigue and possible unfamiliarity with the words presented for spelling as the subtest was the last test administered.

17. Student's fluency with academic tasks, and ability to apply academic skills was within the average range. Student's performance was superior in basic writing skills and written expression. Student's overall academic performance on the test was high average for students her age. She performed at the 4.4 grade level in broad reading, 4.4 grade level in broad math and 9.1 grade level in broad written language.

18. Steven Baker, school psychologist for Carthay elementary school conducted the remainder of the psychoeducational assessment of Student. Baker received his Bachelor of Arts from University of California, Los Angeles in 1977. He also holds a secondary credential, a multiple subject credential and a pupil personnel credential for school psychology and counseling. Baker has been a school psychologist for ten years

and has eleven years of experience as a general education teacher. He has performed 500 assessments as a school psychologist.

19. In assessing Student, Baker utilized the ADHD Rating Scale-IV Home Version, ADHD Rating Scale IV-School Version, Bender Visual Motor Gestalt Test, Burks' Behavior Rating Scale, Conners' Parent Rating Scale-Revised: Long Version (CPRS-R:L), Conners' Teacher Rating Scale-Revised: Long Version (CTRS-R:L), Developmental Test of Visual-Motor Integration (VMI), Draw-A-Person Projective Instrument, Elementary Classroom Performance Screening Sheet, Informal Behavior Scale, Matrix Analogies Test (MAT), Motor-Free Visual Perception Test-third edition (MFVPT-3), Test of Auditory-Perceptual Skills-3 (TAPS-3), Visual Aural Digit Span Test-3 (WRAT-3), and the Woodcock Language Proficiency Battery-Revised (WLPB-R), an informal interview and observation to assess Student.

20. Baker was qualified to perform the assessment. He has the education, license and professional experience to conduct the assessment. He credibly testified that the instruments utilized were appropriate, the materials were validated for the purposes for which they were used and were selected and administered so as not to be racially, culturally or sexually discriminatory.

21. Student was cooperative in the assessment. She was eager to talk and needed occasional refocusing in order to complete the tasks. Baker found Student's cognitive abilities to be in the superior range. Her sensory-perceptual integration was in the high average range. In communication and language, Student performed in the superior range. Student performed in the superior range in spelling, very superior range in reading and high average range in mathematics.

22. There were distinct differences in the data obtained from ADHD Rating Scale-IV home version and the school version. The home version contains parental responses. In the home version, Student showed significant inattention. In the school version, there was no significant inattention shown. Similar differences were seen in the

Conners' Teacher Rating Scale-Revised: Long Version (CTRS-R:L) and the Conners' Parent Rating Scale-Revised: Long Version (CPRS-R:L). There were no significant levels of concern indicated on the school version. On the home version, prepared by Mother, Student received elevated scores for cognitive problems, hyperactivity, social problems and inattention. Baker did note that on the Bender Gestalt Test of Visual-Motor Perception, Student received a Koppitz score of 4 errors when attempting to reproduce Gestalt figures. The test manual indicates that Student's fine line and second attempt at replication of the Gestalt Figures is sometimes found in children who display insecurity, shyness impulsiveness and anxiety. Baker found no specific indication of these traits in Student.

23. Baker found Student to be functioning in the average to superior range. Her teachers reported no difficulties in any aspect of Student's performance or ability to participate in the curriculum. In fact, the teacher comments indicated that Student was performing well and had no social or emotional problems. Student's private school teacher reported that Student was a pleasure to have in class and was receiving all "A" grades at the time. Student's teacher saw no social or emotional problems and did not believe that testing Student was warranted. Baker found Student to be working at or near grade level expectations. She displayed no psychological processing deficits. He noted that Mother's behavioral survey responses indicated some elevated attention, hyperactive and behavioral concerns in the home environment, but the concerns were not being displayed in the school environment or effecting Student's academic performance. Accordingly, based upon test results, interviews and observation, Baker concluded that Student was thriving both academically and socially.

24. The ALJ finds that the District's psychoeducational assessment was appropriate.

IF THE DISTRICT'S ASSESSMENT WAS NOT APPROPRIATE, IS STUDENT ENTITLED TO AN INDEPENDENT OCCUPATIONAL THERAPY ASSESSMENT AT PUBLIC EXPENSE?

25. Student is entitled to an IEE at public expense, only if the Student notifies the District in writing that Student disagrees with the District's assessment, and a due process hearing determines that District's questioned assessment was inappropriate. Upon notification of Student's disagreement with the questioned assessment, the school district must either pay for the IEE or request a due process hearing to establish that its assessment was appropriate. Here, the ALJ finds that the District's assessments were appropriate. Therefore, Student is not entitled to IEEs at public expense.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. District has the burden of persuasion that its assessment plan was appropriate. (*Schaeffer v. Weast, Superintendent, Montgomery County Public Schools, et al., Weast* (2005) 546 U.S. 49, [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. A parent is entitled to obtain an IEE of a child. (20 U.S.C. § 1415(b)(1).) 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(b)(1); Ed. Code, § 56329, subd. (b).) When a parent disagrees with an assessment by the 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. (Ed. Code, §§ 56329, subds. (b) & (c), 56506, subd. (c); 34 C.F.R. § 300.502.)

3. 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 also 20 U.S.C. § 1414(b)(3).)

4. Assessments must be conducted in accordance with assessment procedures specified in the federal IDEA and state special education law. (Ed. Code, § 56381, subd. (e).) For example, 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; must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible; and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b); 34 C.F.R. § 300.532; 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. (34 C.F.R. § 300.532(b).)

DETERMINATION OF ISSUES

Issue 1. Was the District's Occupational Therapy assessment of Student appropriate?

1. Based upon Factual Findings 1 through 13 and Legal Conclusions 1 through 4, the District's occupational therapy assessment was appropriate.

Issue 2. Was the District's psychoeducational assessment of Student appropriate?

2. Based upon Factual Findings 14 through 24 and Legal Conclusions 1 through 4, the District's psychoeducational assessment was appropriate.

Issue3. If the District's assessments were not appropriate, is Student entitled to independent psychoeducational evaluations at public expense?

3. Based upon Factual Findings 13, 24 and 25 and Legal Conclusion 2, Student is not entitled to independent educational evaluations at public expense.

ORDER

1. The District's occupational therapy assessment was appropriate.
2. The District's psychoeducational assessment was appropriate.
3. 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 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 ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: July 13, 2007

A rectangular box containing a handwritten signature in cursive script that reads "Glynda B. Gomez".

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings

Special Education Division