

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

KENTFIELD SCHOOL DISTRICT.

CASE NO. 2024070418

DECISION ON REMAND

NOVEMBER 5, 2024

On July 12, 2024, Student filed a Notice of District Court Remand Order with the Office of Administrative Hearings, called OAH. OAH continued the matter for good cause on July 28, 2024, and August 15, 2024. Administrative Law Judge Robert G. Martin held the videoconference hearing on remand on September 10, 11, 12 and 13, 2024.

Attorneys Mandy Leigh and Damien Troutman represented Student. Student's mother, referred to as Parent, attended on Student's behalf. Student attended one day of the hearing.

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Attorney David Mishook represented Kentfield School District. Kentfield authorized Mishook to proceed on Kentfield's behalf without a Kentfield employee in attendance. At the parties' request, the matter was continued to October 2, 2024, for the parties to file closing briefs. Both parties submitted closing briefs on October 2, 2024, the record was closed, and the matter submitted for decision.

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP.

PROCEDURAL HISTORY

This matter was heard on remand from the United States District Court for the Northern District of California, pursuant to that court's June 17, 2024 Order on IDEA Appeal and Summary Judgment Motions in Case No. 3:22-cv-04875. The District Court's Order remanded Student's IDEA claim raised in OAH Case number 2022010393, directing OAH to "determine, based on the administrative record as a whole, whether, in January 2020, [Student] was eligible for special education under the category of 'specific learning disability'."

The prior decision in OAH Case number 2022010393 found Kentfield conducted an appropriate initial evaluation of Student's eligibility for special education under the eligibility category of specific learning disability. The evaluation documented information from a variety of sources for Student's IEP team to use when it met to consider Student's eligibility. It included standardized assessments of Student's psychological processing and academic achievement that the assessor analyzed for relevant patterns of strength and weakness that would indicate a specific learning disability, and other evaluation measures, including educational record reviews of

Student's academic history, general education interventions, performance on standardized statewide testing, parent and teacher interviews and questionnaires, and classroom observations.

The prior decision found that Kentfield's IEP team committed a procedural violation when it met on January 15, 2020, to consider the initial evaluation and Student's eligibility for special education. The IEP team meeting notes describe a determination that focused almost exclusively on the results of its assessor's pattern of strengths and weaknesses assessment calculations as the basis for determining Student's eligibility, and failing to carefully consider other relevant information collected by the assessor. This information included the failure of years of general education interventions either to bring Student up to State-approved grade-level standards in English language arts, or to mitigate teacher concerns regarding Student's difficulties with

- reading comprehension,
- understanding complex concepts,
- thinking abstractly,
- attention, and
- task completion.

However, the decision found Student failed to prove the procedural violation denied Student a FAPE, because Student failed to prove Student's IEP team should have found Student eligible for special education. In reaching this determination, the prior decision found that Student's IEP team could have found Student eligible based on all the relevant information, but was not required to do so, and was entitled to deference in its decision that Student's needs could be addressed through general education interventions and did not require special education.

The District Court's Order found the Kentfield IEP team's January 2020 eligibility determination was not entitled to deference because it failed to take into account all the relevant material which was available on Student. The District Court directed the ALJ on remand not to defer to Kentfield's eligibility determination.

ISSUE ON REMAND

1. Based on the administrative record as a whole, was Student eligible for special education in January 2020 under the category of specific learning disability?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Student had the burden of proof in underlying OAH Case number 2022010393, and therefore has the burden of proof on remand. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

In January of 2020, Student was 12 years old and attending sixth grade in Kentfield. As of the remand hearing, Student was 16 years old and attending 10th grade in Tamalpais Union High School District. Student has never been found eligible for special education.

ISSUE 1: WAS STUDENT ELIGIBLE FOR SPECIAL EDUCATION IN JANUARY 2020 UNDER THE CATEGORY OF SPECIFIC LEARNING DISABILITY?

Student argues a preponderance of the evidence in the administrative record demonstrates that Student was eligible for special education based on a specific learning disability in January 2020 that required special education, as demonstrated by

his history of not responding to general education interventions. Student contends that his educational history from first grade through the first semester of eighth grade shows he had ongoing struggles in school. These included difficulties with organization, studying, listening and reading comprehension, and spelling. These impacted his academic achievement in all subjects and kept him from meeting grade-level standards on statewide testing despite his own best efforts and numerous general education interventions. Student asserts that the results of standardized testing in four psychological evaluations confirmed he had multiple processing deficits that impacted his academic achievement to the degree necessary to find a specific learning disability.

Kentfield contends Student failed to prove that he was eligible for special education. Kentfield admits testing has shown at times weaknesses in Student's cognitive profile, but contends these weaknesses have often been inconsistent. As a result, they do not firmly establish a psychological processing disorder and related academic deficit indicative of a learning disability. Kentfield argues that two psychoeducational evaluations of Student conducted by Kentfield and Student's subsequent high school district, Tamalpais Union High School District, correctly concluded Student did not meet the criteria for a specific learning disability. Conversely, Kentfield asserts the two private evaluations obtained by Parents were flawed and not persuasive. Kentfield further contends that even if Student had met the criteria necessary to show he had a specific learning disability, the evidence of Student's academic performance shows Student did not require special education services to access the curriculum and make appropriate academic growth.

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As discussed more fully later in this Decision, Student has prevailed in establishing that Student had a specific learning disability requiring special education, and was eligible for special education in January 2020. This was established by a preponderance of the evidence from Student's educational history and the results of his four evaluations.

SPECIFIC LEARNING DISABILITY DEFINITION

A specific learning disability is one of 13 categories under which a student in California may demonstrate a degree of impairment requiring special education. (Cal. Code Regs., tit. 5, § 3030, subds. (a), (b)(1)-(13).) A specific learning disability is defined as a disorder in one or more of the basic psychological processes involved in understanding or using written or spoken language, which may manifest itself in the imperfect ability to

- listen,
- think,
- speak,
- read,
- write,
- spell, or
- perform mathematical calculations. (20 U.S.C. § 1401 (30)(A); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

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The basic psychological processes include

- attention,
- visual processing,
- auditory processing,
- phonological processing,
- sensory-motor skills, and
- cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Disorders affecting these processes include

- perceptual disabilities,
- brain injury,
- minimal brain dysfunction,
- dyslexia, and
- developmental aphasia. (20 U.S.C. § 1401 (30)(B); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Specific learning disabilities do not include learning problems that are primarily the result of

- visual, hearing, or motor disabilities,
- intellectual disability,
- emotional disturbance, or
- environmental, cultural, or economic disadvantage. (20 U.S.C. § 1401 (30)(C); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

DETERMINATION OF A SPECIFIC LEARNING DISABILITY

The determination whether a student has a specific learning disability is made by an IEP team following an IEP team meeting held to review and consider relevant information produced by formal assessments and other evaluation measures. (Ed. Code, § 56330; 34 C.F.R. § 300.306(a)(1).) The IEP team must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. (34 C.F.R. § 300.306(c)(1).) It must ensure that information obtained from all of these sources is documented and carefully considered. (*Ibid.*)

The IEP team may not rely on any single measure or assessment, or single score or product of scores, as the sole criterion for determining the student's eligibility. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e); Cal. Code Regs., tit. 5, § 3030, subd. (a).) It must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, to assess whether the student has a disability, and, if eligible, the content of the student's individualized education program. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) If a review of existing evaluation data identifies additional evaluation data needed to determine whether the student has a qualifying disability requiring special education and related services, the present levels of academic achievement and related developmental needs of the child, and the educational needs of the child, the district must administer such assessments and other evaluation measures as may be needed to produce the needed data. (20 USC § 1414(c)(2); 34 C.F.R. § 300.305(a)(2) & (c).) The student must be assessed in all areas

related to the suspected disability. (Ed. Code § 56320, subd. (f).) The assessment must use technically sound instruments, shown through research to be valid and reliable, that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 USC § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).)

The evidence relevant to Student's eligibility as of January 2020 included a detailed educational history from second to sixth grade of Student's grades, parent and teacher comments, general education interventions, and scores in statewide testing of academic progress towards mastering the grade-level knowledge and skills specified in California's Common Core State Standards for educational achievement in English language arts and mathematics. As the remand also specifically instructed the undersigned to consider the entire administrative record, including evidence created after January 2020, Student's sixth-grade to eighth-grade educational history from January 2020 until November 2022, including testimony from Student and Student's private tutor about Student's need for individual instruction was also considered.

Finally, the evidence included four formal evaluations of whether Student had a specific learning disability, each of which included standardized testing of Student's cognitive abilities and academic achievement.

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STUDENT'S EDUCATIONAL HISTORY FROM 2015 THROUGH 2019 SHOWED ONGOING ACADEMIC STRUGGLES NOT REMEDIED BY GENERAL EDUCATION INTERVENTIONS

Student attended Kentfield continuously from first through eighth grades. Student consistently wanted to do well at school, worked hard, and had no behavioral issues. Nevertheless, he struggled academically, despite general education interventions, supports, and accommodations Kentfield provided to him.

In second grade, Student was graded as having only a partial understanding of state grade-level standards in all reading areas and some writing and math areas, needed further growth in reading fluency and comprehension, and was participating in a math booster support group.

In third grade, Student was graded as having a significant understanding of state grade-level standards for almost every area related to reading and writing, and two-thirds of the math concepts. However, his scores in the California Assessment of Student Performance and Progress, called the CAASPP, indicated otherwise. The CAASPP is administered annually to students statewide to measure their academic progress towards mastering California's standards for grade-level knowledge and skills in English language arts and mathematics. Student's scores in the spring of 2017 found him to be performing in the lowest of the four ranges, "standard not met," in both English language arts and math, indicating he was far behind grade level in those areas.

In fourth grade, 2017 to 2018, Student was graded as having a significant understanding of common core standards in most writing and math areas, but only a partial understanding of reading skills, and a minimal understanding of how to read at a

sufficient fluency rate to support comprehension. Student participated with his teacher in three small group reading intervention sessions per week in spring 2018. In an exception to most years, Student's CAASPP scores in fourth grade were consistent with his grades and showed improvement. Student received a "standard nearly met" score in English language arts, and a "standard met" score in math.

In fifth grade, 2018 to 2019, Student entered Kent Middle School. Parents hired a private math tutor for Student. With respect to English language arts, Student's fourth-grade English language arts teacher recognized Student needed more support. At her recommendation, when he started fifth grade, Student was enrolled in a daily extended reading support class, in addition to his regular English language arts class. The extended reading class was part of Kentfield's multi-tiered system of supports for general education students, which also included an extended math class and an academic workshop to help students plan and achieve goals by developing executive functioning skills in

- adaptable thinking,
- planning,
- self-monitoring,
- self-control,
- working memory,
- time management, and
- organization.

Roughly one-third of Kent Middle School's general education students were enrolled in one or more of these supports.

Kentfield school psychologist Catherine Teller described Kentfield's multi-tiered system as a work in progress towards a formal Response to Intervention program. Such a formal program would support academically struggling students with general education interventions, while systematically evaluating their academic progress following the interventions to see if a particular student required more – that is, special education services and supports. Teller explained Kentfield had in place different tiers of intervention, different types of intervention, and progress with monitoring, all of which are part of a formal response to intervention program.

However, Kentfield did not have in place the systematic structure, implemented across settings and schools, sufficient to allow Teller to analyze a student's response to intervention as a method to determine whether the student had a specific learning disability. Except for that, Kentfield's multi-tiered system of supports was clearly close to a formal response to intervention program. Kentfield education specialist Patricia Beales described Kentfield's multi-tier system of supports as a program for supporting general education students with strategies, supports, and interventions, while also monitoring how the students responded so that individualized adjustments could be made. Beales was part of a team at Kentfield that looked at the interventions and monitored student progress data to determine whether a particular student needed more support. Beales explained Kentfield had entrance and exit criterion for intervention classes that were data-driven, to try to determine and match the student's needs.

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Teacher Julie Gallagher, who taught Student in an extended reading class in seventh grade, explained the class was an intensive approach to teaching that provided students 1:1 instruction on a near-daily basis. It offered students an extended opportunity to continue with the same instruction provided in a general English class, but in a class with fewer students, usually around eight.

Student was enrolled in the extended reading class for the first two trimesters of fifth grade but was exited from it in April 2019 after a standardized reading inventory score from the reading program used in the class showed him to be a proficient fifth-grade reader, with a lexile measure of 949. Student was then enrolled in an extended math class.

At the end of fifth grade in the spring of 2019, Student received A's in history and science, a C+ in English language arts, and a B- in math. However, Student's average to above-average grades in English language arts and math, and his extended reading class reading inventory score rating him as a proficient fifth-grade reader, were not reflected in Student's CAASPP scores. These scores declined from Student's fourth-grade performance, with a "standard not met" score in English language arts, and a "standard nearly met" score in math.

In sixth grade, 2019 to 2020, Student began the year still in extended math class as well as regular math class, and Parents dropped his private math tutoring. Kentfield also supported Student with classroom intervention strategies and informal accommodations for Student. These included

- preferential seating,
- reduced paper and pencil tasks,
- alternative materials and assignments,

- increased use of verbal responses,
- directions given in a variety of ways,
- repeated review and drill,
- extended time for completing tests and assignments, and
- access to assistive technology supports like Learning Ally audiobooks that read textbooks aloud.

In September 2019, Parents requested a student study team meeting to discuss Student's continuing struggles with academics. Kentfield agreed the meeting was a reasonable next step, since Student "has been in our intervention classes." At the October 17, 2019 student study team meeting, Parents expressed concern that Student was trying hard and was motivated, but felt stupid in class. Student would come home excited to do his homework but did not seem to understand it. He would often think he understood concepts but was wrong. Parents were concerned about his poor performance on math tests, and his lack of interest in reading.

Student's regular math teacher Tim Lentini reported Student understood math concepts "up to a certain point," but that the "complexities" were more difficult, and Student lost focus when fatigued. Student's extended math teacher Cassie Hettleman also noted Student had challenges with focus, but reported he had completed the third-grade units on the ALEKS online tutoring and assessment program used in the extended math class, and was working to master fourth-grade content. Student's teacher for English language arts and history, Diane Darrow, reported that concepts frequently went over Student's head, and it was hard for him to think abstractly and understand, even when the concepts were repeated. Student struggled to interpret written passages and draw inferences from them and needed individual help putting down his thoughts in

his notebook. He needed support with the depth of thinking about his reading, and elaboration in his writing, but was sometimes resistant to help. Darrow's testing indicated Student was reading at around a fourth-grade level.

At the student study team meeting, Parents asked Kentfield to evaluate Student for special education. Kentfield ultimately agreed to conduct an initial evaluation of Student to be discussed at an IEP team meeting in January 2020.

Student's first trimester of sixth grade ended November 26, 2019. Student's grades declined from his final grades the prior school year. They went from an A in science to a C-minus, an A in history to a B-minus, a B-minus in math to a C, and a C-plus in English language arts to a C. In the report card comments, teacher Darrow was concerned that Student's volume of reading was not meeting grade-level standards in English language arts. In history, Student struggled with new concepts, made careless errors applying concepts he understood, and needed to ask for help more often. In math, although Hettleman reported Student was showing consistent progress in his extended math support class, regular math teacher Lentini was concerned Student was struggling with multi-step problems. The evidence of the decline in Student's grades establishes the intervention and supports Student was receiving in sixth grade were not improving Student's academic performance.

Responding to subsequent evaluation questionnaires, Student's teachers further explained their concerns. Darrow reported Student was not actively reading in English class, and had been reading the same book since October. When given tasks requiring him to write about something he read, Student struggled to find examples in the text to answer questions or use as supporting evidence. Student's reading comprehension was poor. He had difficulty determining a central idea and recognizing the difference

between supporting details and main ideas in a story. He was not engaged in all his academic tasks and often failed to complete them. He rarely took notes or turned in reading logs. In both English and history, Student was not responding as expected to teacher feedback and support. Student's Science teacher Alison Griffin observed he did not always self-monitor to make sure he was following instructions on what to do in science lab, and at times appeared to depend on others in his group to figure out what he should be writing down. Four of Student's five teachers were concerned he did not ask for help. Echoing Parent concerns, his science teacher Griffin wondered if that was because Student did not realize when he was not understanding something.

Student's educational history as of January 2020 strongly suggested that Student had a specific learning disability. Student was of average intelligence, eager to learn, hard-working, and had received numerous general education interventions and supports since second grade. These past interventions in fact included most of the general education supports and interventions Kentfield had available to offer Student, except for the academic workshop class. Despite all this, Student had never met State-approved grade-level standards in English language arts, and had only once met math standards. In fifth grade, Student received daily extended reading support class for two-thirds of the school year, and extended math class in the last trimester, but his scores on the statewide CAASPP declined from his fourth-grade performance, falling in the lowest range of "standard not met" in English language arts. This suggested general education interventions were ineffective at improving Student's academic performance.

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Additionally, teacher responses to assessment questionnaires indicated ongoing teacher concerns regarding Student's learning difficulties in

- reading comprehension,
- understanding complex concepts,
- thinking abstractly,
- attention, and
- task completion.

Student's teacher for English language arts and history was concerned he was not benefitting from strategies and supports she provided, again suggesting that general education interventions were ineffective with Student.

However, by itself, the information concerning Student's educational history, parent and teacher concerns, and informal assessments of Student's academic performance in reading and math was not legally sufficient to determine whether Student had a specific learning disability. Additionally, the implementing regulations of the IDEA and Education Code require an IEP team consider a formal assessment of Student, conducted according to one of three research-based methodologies specified under California law. (34 C.F.R. §§ 300.307 and 300.309; Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) & (C).)

Ultimately, four different assessors conducted formal evaluations of Student between January 2020 and November 2022, using research-based methodologies to analyze standardized assessments of Student's psychological processing abilities and academic achievement. These assessments generated approximately 200 subtest and composite scores that measured Student's psychological processing abilities in various areas. They generated another 100 scores that measured areas of Student's academic

achievement. In many areas tested, Student's scores on different assessments measuring the same area varied more than would normally be expected. This was also true in several instances when Student retook the exact same assessment later, with a different assessor. None of the assessors offered an explanation for this variance, beyond speculation of possible fatigue or loss of focus. However, there was agreement among the assessments in some important areas. Student's cognitive reasoning abilities were in the average range, with scores at or above the mean score of 100 for all students his age. All the assessors obtained test scores identifying areas in which Student's psychological processing abilities were weak compared to his reasoning ability, and at the borderline or below the average range of others Student's age. These included areas related to

- short-term memory,
- processing speed,
- attention and executive functioning,
- listening and reading comprehension, and
- orthographic processing.

Student did not have any areas of severe academic weakness compared to others his age, but three of the four evaluations scored Student below or at the borderline of average in composite or subtest scores in areas related to reading comprehension.

As discussed below, the preponderance of the evidence from the four evaluations establishes that Student had a specific learning disability and was eligible for special education and related services in January 2020.

KENTFIELD'S JANUARY 2020 EVALUATION

Kentfield school psychologist Teller completed an Initial Psychoeducational Evaluation of Student, dated January 13, 2020. The evaluation included the results of academic testing conducted by Kentfield special education teacher Patricia Beales.

Teller used a "pattern of strengths and weaknesses" method to assess whether Student had a possible specific learning disability, and concluded he did not.

The pattern of strengths and weaknesses method is one of three research-based methods of assessing a child for a specific learning disability permitted under California law. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) and (C).) The pattern of strengths and weaknesses method is used to evaluate a student who is not achieving adequately to meet age or State-approved grade-level standards in one or more specified areas of academic achievement. (*Id.*, at subd. (b)(10)(C)1. & 2.(ii).) It uses standardized tests of the student's psychological processing abilities and academic achievement to determine whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development. (*Ibid.*)

The regulations give discretion to the assessor and IEP team to decide what strengths and weaknesses in performance or achievement are relevant to the identification of a specific learning disability, and whether the strengths and weaknesses should be evaluated relative to age and State-approved grade-level

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standards, or intellectual development. (34 C.F.R. § 300.309(a)(2)(ii); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C)(2)(ii).) The regulations also allow the IEP team to decide what pattern in strengths and weaknesses is relevant to the identification of a specific learning disability, and what assessments of basic psychological processes and academic skills should be used to look for the pattern. (*Ibid.*)

Teller's chosen pattern of strengths and weaknesses methodology used norm-referenced, standardized tests to determine whether Student exhibited a specific learning disability based on a normative weakness in an area of academic achievement, and a normative and relative weakness in a basic psychological process linked to that area of academic achievement. Teller defined an area of normative weakness as an area significantly below the general average, meaning one in which Student's processing ability or academic achievement was more than one standard deviation, or 15 points, below the mean score of 100 for all pupils the same age as Student. This corresponded to a score of 84 or lower. Teller described a relative processing weakness as a significant weakness compared to Student's other processing abilities in Student's individual profile, which would correspond to a score more than 15 points below the Student's best score in a basic psychological process. Teller administered standardized tests to produce subtest scores and composite/index scores measuring Student's psychological processing abilities and Student's academic achievement. Teller's analysis relied only on composite/index scores to measure broad areas of processing ability or academic achievement, and did not rely on individual subtest scores.

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Teller and Beales administered nine norm-referenced, standardized assessments of Student's processing abilities and academic achievement to obtain more than 80 subtest and composite scores. The multiple subtests of Student's basic psychological processes generated composite scores for seven broad processing abilities tied to academic success. The broad processing abilities were

- crystallized knowledge,
- fluid reasoning,
- short-term memory,
- long-term retrieval,
- auditory processing,
- visual processing, and
- processing speed.

The tests also collected information in the areas of attention/executive functioning and sensorimotor processing to get a more comprehensive evaluation of Student's basic psychological processes.

The subtests of Student's academic achievement generated composite cluster or index scores in broad areas of Student's academic skills related to his

- listening comprehension,
- written expression,
- basic reading skills,
- reading fluency skills,
- reading comprehension,
- mathematics calculation, and
- mathematics problem solving.

None of Student's composite index scores measuring his broad processing ability qualified as a normative weakness, with a standardized score of 84 or lower. However, Student's broad composite processing speed score of 85 was on the borderline, and subtests indicated processing weaknesses in narrow areas. These included areas in working memory, with a score of 80, executive functioning processing relating to Student's ability to inhibit responses, shift and use flexible thinking, and appropriately self-monitor, with scores of 80 and 85, and borderline weaknesses in narrow areas of phonological awareness and listening comprehension, with scores of 85.

Teller did find several slight relative weaknesses in the areas of processing speed, executive functioning processing, and phonological processing, where Student scored low in comparison to other processing skills. Student showed relative and normative strength in inductive fluid reasoning, with a subtest score of 125. Also, one of the assessments Teller used in her evaluation calculated a full-scale IQ for Student of 104, based on the subtests Teller administered. However, full-scale IQ was not a measurement used by Teller's pattern of strengths and weaknesses model, and she did not report it in her written evaluation.

In academic achievement testing, Student had no composite test score below 85 qualifying as a normative weakness in a broad area. However, Student's composite score of 88 in listening comprehension was near the borderline, as was his reading comprehension subtest score of 86 in passage comprehension. These scores, and Student's 81 subtest score in understanding directions, were consistent with areas of weakness identified by Parents and teachers.

Teller concluded Student did not meet eligibility criteria for a specific learning disability because his test results did not demonstrate a normative weakness in academic achievement, or a normative weakness and a relative weakness in a basic psychological process.

Teller's mathematical interpretation of Student's test scores was technically correct under the pattern of strengths and weaknesses methodology she used. However, her conclusion that it precluded Student from eligibility was ultimately not persuasive, for several reasons.

First, even though Student had scores on the borderline of normative weaknesses in areas of both psychological processing and academic achievement, Teller's conclusion relied solely on Student's standardized test scores. The analysis leading to this conclusion did not weigh Student's long educational history of academic struggles, and his failure to meet state standards in English language arts and math. Despite what Teller determined was slightly above the mean intelligence, Student's own best efforts, and the general education interventions, supports, and accommodations Kentfield offered to him since second grade, Student did not make progress sufficient to meet state-approved standards.

Second, as Student's experts persuasively explained, each subtest and composite score Teller obtained through standardized testing of Student was not an absolute measure of Student's ability or achievement in an area, but the center of a range of scores in which Student's "true score" might lie. This concept is incorporated in California's provisions for evaluating a specific learning disability using standardized test scores and an alternative, severe discrepancy methodology. That methodology expressly allows a mathematical difference between two standardized scores to be

adjusted by a “standard error of measurement” of up to four points. (Cal. Code Regs. tit. 5, § 3030(b)(10)(B).) The inherent lack of precision in standardized testing meant that if Student were to retake the same assessments Teller used to measure his processing speed or listening comprehension, or different tests from another publisher measuring the same areas, his formerly borderline scores might well fall below the normative range. Such scores would qualify Student as having a specific learning disability under the pattern of strengths and weaknesses model.

As discussed later in this Decision, the weight of test scores from the three evaluations conducted after Teller’s did show Student had normative weaknesses in processing speed and listening comprehension. Also, the results from the two evaluations conducted after the underlying hearing in this matter supported the contentions of Student’s experts that Student had an orthographic processing disorder unassessed by Teller, and a higher cognitive ability than Teller used in her calculations. Student’s evidence in the original hearing was insufficient to prove these contentions. The evidence for the former contention was limited to a single subtest showing below average orthographic processing ability. The evidence of Student’s high cognitive ability was based on a composite test score much higher than Teller obtained. Consistent with arguments by Student’s experts as to how Teller should resolve discrepancies between test scores, additional testing in the area was needed. Such testing was subsequently conducted and available in this hearing on remand to support the finding that Student had a specific learning disability.

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STUDENT'S EDUCATIONAL HISTORY FROM JANUARY 2020 THROUGH EIGHTH GRADE 2021-2022

Except for the third trimester of sixth grade, from March to June 2020, when Student participated in remote learning due to the COVID-19 pandemic, Student's educational program did not change significantly with respect to his academic struggles and the general education interventions and supports he received from Kentfield. After the January 2020 IEP meeting, Student received grades of C or C+ in all his academic subjects in his second trimester of sixth grade. When teacher Darrow tested Student's reading, she found him to be reading at a late fourth-grade or early fifth-grade level, with a lexile level of 773. This level was nearly 200 points lower than his previous reported lexile score of 949 in April 2020 when he met the criteria to exit his extended reading intervention class.

During remote learning, Kentfield suspended the use of letter grades and graded all students on a pass-fail basis. Student received all passing grades. Statewide CAASPP testing at the end of the 2019 to 2020 school year was also suspended. Student had difficulty organizing and managing his workload in remote learning. He had difficulty developing strategies to recognize when he misunderstood ideas when reading or watching instructional videos, or when he needed to reread content to understand it.

In seventh Student grade, 2020-2021, Student resumed in-person learning. To help him, Parents implemented an intensive private tutoring program. They hired credentialed education specialist Sean McCormick and his business, Executive Functioning Specialists, to work with Student on executive functioning skills, and they hired credentialed education specialist Brenda Graff to tutor Student in math.

McCormick worked directly with Student in two one-hour sessions per week from August 2020 through January 2021. McCormick focused on helping Student develop processes for tracking his homework assignments and tests, completing his homework, and preparing for tests. McCormick also spent much of each session helping Student understand and complete his homework. In addition to his direct work with Student, McCormick devoted an additional hour per week to checking Student's work every night texting him reminders regarding missing assignments. In January 2021, McCormick assigned another instructor to work directly with Student on implementing the processes McCormick had developed.

Graff worked directly with Student in two 50-minute sessions each week from August 2021 to the time of the remand hearing. Graff and Student focused on organizing math concepts, separating out the skills needed to complete problems correctly and check his calculations, and catching up to grade level.

In addition to his private tutoring, Student started the 2020-2021 school year enrolled in academic workshop, a course offered to general education students with executive functioning challenges who required help to organize, manage, and complete assignments. In September 2020, Student's English language arts teacher Julie Gallagher requested he be switched from his academic workshop class to her extended reading support class so that she could monitor and collect data on his reading progress. She

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found Student to be a reluctant reader. He was like "a deer in the headlights" when called on, and his answers to her questions were sometimes "a bit off." Student continued to receive his other existing general education supports, including

- teachers giving him directions in a variety of ways to assist his comprehension,
- assistive technology support software and access to Learning Ally online audio textbooks that read content to Student,
- alternative materials and assignments,
- extended time to complete his assignments, and a
- peer buddy in science class.

Student received first trimester grades in the fall of 2020 ranging from C+ to B in his core subjects, which improved in his second trimester to grades from B- to A-. In his third trimester in the spring of 2021, Student earned grades from B- to B+. Since Student's general education supports and interventions did not change significantly from his prior sixth-grade year, the improvement in his grades compared to his grades the prior year was more likely than not attributable to the four hours per week of direct tutoring he received to improve his executive functioning and math skills.

At the start of Student's eighth-grade year, 2021 through 2022, McCormick assigned an educational therapist with a background in structured literacy reading programs to work directly with Student on reading comprehension as well as executive functioning. McCormick did this to help address Student's difficulty understanding written passages and instructions. In school, Student transitioned in eighth grade from his extended reading support class to a general education academic workshop class.

Student testified at hearing that this class was supposed to provide Student an opportunity to ask questions to improve his understanding of what he was being taught in his core academic classes. However, the class was not effective for Student because the large number of other students in the class meant that the academic workshop instructor did not have sufficient time to walk Student through the steps necessary for Student to understand the answers to his questions. Student also continued to receive his other existing general education supports.

In Spring 2022, Student for the first time met State English language arts standards on the CAASPP. He nearly met State standards in Math. As with his improved grades the prior school year, Student's improved score on the English language arts portion of the CAASPP occurred with no significant change to Student's existing general education interventions. The improvement in his English language arts CAASPP score was therefore more likely than not attributable to the significant amount of direct tutoring Student received to improve his executive functioning and reading comprehension skills.

STUDENT'S PRIVATE EVALUATION IN MAY 2021

Parents hired Mitchell Perlman, Ph.D., to conduct a private Psychoeducational and Neuropsychological evaluation of Student in May 2021, at the end of Student's sixth-grade year. As part of his evaluation, Dr. Perlman administered 14 different standardized tests to Student to obtain subtest and composite scores in areas of psychological processing and academic achievement.

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Dr. Perlman analyzed the standardized test results using a severe discrepancy methodology. This methodology looks for a statistically significant difference between a student's intellectual ability and the student's achievement in one or more of the seven areas of

- oral expression,
- listening comprehension,
- written expression,
- basic reading skill,
- reading comprehension,
- mathematical calculation, or
- mathematical reasoning. (Cal. Code Regs. tit. 5, § 3030(b)(10)(B).)

The decision as to whether a severe discrepancy exists must take into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. (Cal. Code Regs. tit. 5, § 3030(b)(10)(B).)

To determine the existence of a severe discrepancy, an IEP team must use the following procedures:

- If standardized tests are considered valid for the student, convert the achievement test score and the intellectual ability test score selected for comparison into common standard scores, using a mean of 100 and standard deviation of 15. (Cal. Code Regs. tit. 5, § 3030(b)(10)(B)1.)
- Calculate the mathematical difference between the common standard scores. (*Ibid.*)

- Compare the difference between scores of the selected tests to the standard criterion, which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking the achievement and ability tests selected for comparison. (*Ibid.*)
- In the absence of specific data regarding the standard deviation of the distribution of score differences of students taking the particular achievement and ability tests selected for comparison, the standard deviation of 15 is commonly used to calculate a standard criterion of 22.5 (arrived at by multiplying the standard deviation of 15 by 1.5.) A difference which equals or exceeds 22.5, adjusted by one standard error of measurement, the adjustment not to exceed four standard score points, indicates a severe discrepancy, if the discrepancy is corroborated by other assessment data, which may include other tests, scales, instruments, observations and work samples, as appropriate.
- If a mathematical discrepancy does not exist, then the IEP team may still find a severe discrepancy exists provided that the team documents that there is a psychological processing disorder, and documents the area, degree, basis and method of determining a discrepancy. (Cal. Code Regs. tit. 5, § 3030(b)(10)(B)3.)
- When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan. (Cal. Code Regs. tit. 5, § 3030(b)(10)(B)2.)

Dr. Perlman found severe discrepancies between Student's psychological processing full-scale IQ score of 116, and his academic achievement in numerous areas. Specifically, Dr. Perlman determined a severe discrepancy existed between Student's full-scale IQ and academic achievement in

- reading comprehension,
- spelling,
- reading rate,
- reading accuracy, and
- reading fluency.

However, in the underlying hearing, Dr. Perlman's finding of Student's full-scale IQ as 116 was found not to be persuasive, because it was 12 points higher than the 104 score in Teller's January 2020 assessment, and Student did not present evidence that Dr. Perlman's score was more reliable than Teller's. Student's expert Bylund testified Teller should have resolved similarly large discrepancies in Student's fluid reasoning subtest scores by administering a third test, the appropriate way to resolve the discrepancy would have been to administer a third assessment. Bylund also explained persuasively that Student's fluid reasoning score would be the best estimate of Student's cognitive abilities. This was because a fluid reasoning score is a measure of a student's ability to solve unfamiliar problems using logic skills such as induction and sequential reasoning. This is the cognitive ability least impacted by a disability affecting the student's ability to acquire knowledge. In contrast, a student's crystallized knowledge score, which is used in calculating full-scale IQ, measures the depth and breadth of Student's acquired knowledge, as well as the ability to reason using previously learned experiences and procedures, and may be lowered by a specific learning disability limits the knowledge acquired.

As discussed in the following sections of this Decision, when test scores from two assessments following Dr. Perlman's are considered together with the 104 full-scale IQ scores obtained by Teller, and Dr. Perlman's 116 score, a preponderance of the evidence establishes that Student's intellectual ability is best represented by a score of 108 corresponding to Student's fluid reasoning ability. Applying the 108 score to Dr. Perlman's calculations instead of the 116 score he used, a severe discrepancy of more than 22.5 points exists between Student's intellectual ability and his academic performance in the areas of reading comprehension, reading accuracy, and reading fluency. This severe discrepancy, considered together with Student's educational history of poor performance despite general education interventions, is sufficient to establish by a preponderance of the evidence that Student had a specific learning disability as of January 2020.

Dr. Perlman also assessed Student for a deficit in the basic psychological process of orthographic processing, an area which Teller had not directly assessed. Orthographic processing is the ability to understand and recognize orthography, which is the manner in which letters and punctuation marks are used to form words. Dr. Perlman administered six tests to Student addressing orthography, and concluded Student had a processing deficit in orthography.

However, Dr. Perlman's conclusion was not persuasive because it was based on a single subtest score of 80 in the letter choice subtest of the Test of Orthographic Competence. Here again, as discussed in the following sections of this Decision, test scores from the assessments following Dr. Perlman's establish by a preponderance of the evidence that Student did have an orthographic processing disorder, with multiple subtest scores below 84.

DR. JOSEPH'S INCONSISTENT ASSESSMENT

In fall 2022, when Student was in the ninth grade, Tamalpais Union High School District school psychologist, Tracy Joseph, Ph.D., evaluated Student for a specific learning disability. Dr. Joseph's evaluation included standardized tests administered to Student to obtain subtest and composite test scores in areas of psychological processing and academic achievement. Dr. Joseph's assessments scored Student's fluid reasoning ability at 109. Student also scored a 75 in the Woodcock-Johnson letter-pattern matching subtest, which measured the speed at which Student could make visual symbol discriminations and identify common orthographic (spelling) patterns.

Dr. Joseph's November 3, 2022 Psychoeducational Evaluation of Student stated Dr. Joseph analyzed Student's test scores using a severe discrepancy method. It concluded "a severe discrepancy does not exist between Student's intellectual ability and his achievement, as evidenced by his performance on the Woodcock-Johnson Test of Achievement and the Feiffer Assessment of Reading." However, the evaluation did not explain the calculations Dr. Joseph conducted, and she testified at hearing that she reached her conclusion that Student did not have a specific learning disability based on a pattern of strengths and weaknesses assessment. Dr. Joseph did not include a pattern of strengths and weaknesses assessment methodology in her report.

As a result, Dr. Joseph's conclusion that Student did not have a specific learning disability was not reliable and not persuasive.

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DR. BYLUND'S SEVERE DISCREPANCY ANALYSIS

James Bylund, Psy.D., conducted a private Neuro-Educational Evaluation of Student, described in his November 11, 2023 assessment report. Dr. Bylund administered nine different standardized assessments to Student to obtain subtest and composite scores in areas of psychological processing and academic achievement. Dr. Bylund found that Student scored a 101 on the Weschler Nonverbal Intelligence index scale, a measure of cognitive ability. In tests of achievement using the Kaufman Test of Educational Achievement, Student scored an 86 on the Reading Decoding composite measure of Reading Accuracy, an 88 on the Reading Fluency composite, and a 78 on the Math Fluency subtest.

Dr. Bylund found severe discrepancies between Student's psychological processing nonverbal intelligence index score of 101, and his academic achievement in reading comprehension, oral reading, and math fluency. However, Student's 78 subtest score in math fluency was an outlier in a range of 11 other math achievement scores between 87 and 110, and as such was not persuasive as a measure of Student's ability in math.

Dr. Bylund did argue persuasively that the nonverbal intelligence index score of 101 he obtained through testing of Student underestimated Student's cognitive abilities, as did Teller's crystallized knowledge score of 100. Bylund pointed to Student's 109 score on the Woodcock-Johnson Fluid Reasoning cluster in Dr. Joseph's testing. Fluid reasoning measures the ability to solve unfamiliar problems using logic and reasoning. Crystallized knowledge is a measure of the depth and breadth of acquired knowledge, on which Student scored much lower in Dr. Joseph's testing, a score of 92. Dr. Bylund argued persuasively that fluid reasoning is a better measure of cognitive ability than

crystallized knowledge in Student's case, because Student's crystallized knowledge may be lowered by his reading weaknesses. Teller did not calculate a fluid reasoning score because of a large difference in subtest scores of 100 and 125, but Kentfield did not dispute Dr. Bylund's estimate that such a calculation would have yielded a fluid reasoning score around 115.

Kentfield also did not dispute Dr. Bylund's assertion in his evaluation and at hearing that the Weschler subtest scores recorded by Teller yielded a nonverbal intelligence score of 109 when compiled in the Weschler Nonverbal Index. Student's fluid reasoning score of 108 on Dr. Perlman's Kaufman Planning Ability composite, and 97 on Dr. Bylund's Weschler Fluid Reasoning Index, round out cognitive ability scores ranging from 97 to Student's full-scale IQ score of 116 on the Kaufman Mental Processing Composite in testing administered by Dr. Perlman. This range of scores persuasively supports Dr. Bylund's use of a score of 108 as a measure of Student's cognitive ability in analyses using the severe discrepancy or pattern of strengths and weaknesses methodologies.

Considered together with Student's educational history of difficulties in reading comprehension, Dr. Bylund's analysis of Student using the severe discrepancy methodology proves by a preponderance of the evidence that Student had a specific learning disability.

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AS OF JANUARY 2020, STUDENT REQUIRED SPECIAL EDUCATION TO ADDRESS HIS SPECIFIC LEARNING DISABILITY, AND WAS THEREFORE ELIGIBLE FOR SPECIAL EDUCATION

Student's educational history as of January 2020 demonstrated that general education interventions were not effective in addressing Student's deficits. Although Student was of average intelligence, eager to learn, hardworking, and had received numerous general education interventions and supports since second grade, he had never met State-approved grade-level standards in English language arts. In fifth grade, Student received daily extended reading support class for two-thirds of the school year, and extended math class in the last trimester, but his scores on the statewide CAASPP declined from his fourth-grade performance, falling in the lowest range of "standard not met" in English language arts. This suggested general education interventions were ineffective at improving Student's academic performance.

Additionally, teacher responses to Teller's assessment questionnaires indicated ongoing teacher concerns regarding Student's learning difficulties in

- reading comprehension,
- understanding complex concepts,
- thinking abstractly,
- attention, and
- task completion.

Student's English language arts teacher was concerned he was not benefitting from strategies and supports she provided, again indicating that general education interventions were ineffective with Student.

Student's improvement in his grades and English language arts CAASPP score in seventh and eighth grade came after Parents initiated intensive one-to-one tutoring of Student in executive functioning, math, and reading comprehension. Although this intensive tutoring program did not amount to specialized academic instruction, it was more than Kentfield could offer Student as a general education intervention.

Student therefore proved that he required special education from Kentfield to address his specific learning disability and was therefore eligible for special education under that category.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

ISSUE 1:

Based on the administrative record as a whole, was Student eligible for special education in January 2020 under the category of specific learning disability?

Student prevailed on Issue 1.

REMEDIES

OAH was not directed to determine remedies in this remand proceeding.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings