

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2018060155

REDONDO BEACH UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

DECISION

Redondo Beach Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 4, 2018, naming Student. OAH granted a continuance of the matter for good cause on June 13, 2018.

Administrative Law Judge Tara Doss heard this matter in Redondo Beach, California, on October 16, 2018. Sundee Johnson, Attorney at Law, represented Redondo Beach. Jessica Silberling, Redondo Beach's Executive Director of Special Education, appeared on behalf of Redondo Beach. Father and Mother appeared on behalf of Student. Student did not attend the hearing.

At the parties' request, OAH granted a continuance to October 29, 2018, to allow the parties to file written closing briefs. On October 29, 2018, the parties timely filed their written closing briefs, the record was closed, and the matter submitted for decision.

ISSUE

Was Redondo Beach's April 25, 2017 psychoeducational assessment

appropriately conducted, such that Student is not entitled to an independent educational evaluation at public expense?

SUMMARY OF DECISION

Redondo Beach proved its April 25, 2017 psychoeducational assessment was appropriately conducted and met the legal requirements for assessments as prescribed by the Individuals with Disabilities Education Act and California Education Code. Redondo Beach obtained Parents' consent prior to conducting the assessment. The assessors were qualified, used a variety of assessment tools, and administered the standardized assessment measures in accordance with the publisher's instructions. Redondo Beach assessed Student in all areas of suspected disability as identified by Parents and Student's teachers. Redondo Beach provided Parents with a copy of the written report and convened an individualized education program team meeting, with all required participants, to discuss the results. Thus, Student is not entitled to an independent psychoeducational evaluation at Redondo Beach's expense.

FACTUAL FINDINGS

1. At the time of hearing, Student was eight years old and in the third grade at Tulita Elementary School within Redondo Beach. At all times relevant to this hearing, Redondo Beach was Student's school district of residence. At the time of the assessment at issue in this Decision, Student was six years old and in the first grade at Manhattan Academy, a private school. Student has never been eligible for special education.

2. On February 1, 2017, Father sent a letter to Redondo Beach's Executive Director of Special Education requesting a multidisciplinary assessment of Student to determine whether she had a learning disability. Father raised concerns with Student's reading, writing, and attention. Specifically, Father requested the assessment test Student's intellectual ability, academic achievement, visual processing, visual-motor

skills, auditory processing, and occupational therapy.

3. On February 16, 2017, Redondo Beach provided Parents with an assessment plan. Redondo Beach offered to conduct assessments in the areas of academic achievement, health, intellectual development, motor development, and social/emotional. The assessment plan informed parents of their protections under state and federal procedural safeguard provisions and referred to an enclosed Notice of Procedural Safeguards for further explanation. On February 23, 2017, Father consented to the assessment plan.

OCCUPATIONAL THERAPY ASSESSMENT

4. Julia Dunlap conducted an occupational therapy assessment of Student in March 2017, and issued a written report on April 25, 2017. Ms. Dunlap was a licensed occupational therapist. Ms. Dunlap interviewed Parents; Student's teacher, Mary Stratton; and also gave them questionnaires to complete. Parents were concerned with messy handwriting and sizing. Mother was also concerned about Student's need for increased time for writing, as well as constant erasing and rewriting, and letter and number reversals. Ms. Stratton did not indicate any fine motor concerns. Ms. Dunlap observed Student's writing as slow and precise. She also observed Student having difficulty maintaining an upright position during table-top activities with the tendency to lean on her elbows or slump towards the table.

5. Ms. Dunlap administered the Bruininks-Osteretsky Test of Motor Proficiency which measures gross and fine motor proficiency. Student's fine motor precision, her ability to use precise finger and hand movements, was in the average range. Student's fine motor integration, her ability to integrate visual information with motor coordination, was in the above average range. Student's manual dexterity, which included activities such as reaching, grasping, and two-hand coordination, was in the average range. Student's ability to efficiently use her upper limbs for skills like throwing

and catching a ball, was in the well below average range.

6. Ms. Dunlap also assessed Student's sensory processing, praxis or motor planning, and social participation in the classroom, with the Sensory Processing Measure. Ms. Stratton and Mother completed rating scale questionnaires. Ms. Stratton and Mother rated Student as having typical sensory processing in all but one area. Ms. Stratton's ratings indicated Student had mild to moderate difficulties with planning and ideas. Mother's ratings indicated Student had mild to moderate difficulties in body awareness. To further assess Student's handwriting, Ms. Dunlap administered Handwriting without Tears, which assessed Student's letter and number skills in relation to memory, orientation, placement, size, start, sequence, and spacing. Student scored well in all areas, except number placement, and letter and number size, which were below expected performance for her grade level. Student wrote letters and numbers larger than they should have been. Nevertheless, Student's overall score of 88 percent was above grade level. The expected overall score on this test was 80 percent for first graders and 85 percent for second graders.

7. Student's areas of strength were her fine motor, visual motor, and bilateral coordination skills, and her ability to filter sensory information. Student's areas of concern were her decreased postural and upper limb strength, decreased proprioceptive awareness that resulted in difficulty with hand-eye coordination, and increased size of letters during handwriting tasks.

PSYCHOEDUCATIONAL ASSESSMENT

8. Redondo Beach school psychologist Chelsea Gallucci conducted a psychoeducational assessment of Student in March and April 2017, and issued a written report on April 25, 2017. At the time of the assessment, Ms. Gallucci held a master's degree in school psychology and a pupil personnel services credential, which authorized her to conduct psychoeducational assessments. She had worked as a school

psychologist for approximately six years, including four years with Redondo Beach. Her duties included conducting psychoeducational assessments and providing individual and group counseling to students.

9. The purpose of Ms. Gallucci's assessment was to evaluate Student's levels of cognitive, academic, and social/emotional functioning. Ms. Gallucci's assessment consisted of Student's educational, health and development history; interviews with Mother, Student, and Student's teachers; classroom and testing observations; and standardized assessment measures. Student had a reading tutor outside of school during the previous two years but the service ended prior to the assessment. Manhattan Academy had recently hired educational specialist Laura Witten, to work with students experiencing learning problems. At Ms. Stratton's request, Ms. Witten worked with Student three times a week on reading intervention for one month leading up to the assessment.

Interviews

10. Ms. Gallucci interviewed Student, Mother, Ms. Stratton, and Ms. Witten. Ms. Gallucci attempted to contact Student's outside tutor for an interview but did not receive a response. Student liked school. Her favorite activity was writing and the most challenging activity was reading chapter books. She had friends and enjoyed playing with them. Mother first noticed Student's lack of interest in reading in preschool. Student's kindergarten teacher indicated learning problems at the beginning of the year but Student's performance improved as the year progressed. Mother described Student as friendly, independent, and happy. Her concerns were Student's difficulty with reading and remembering sight words.

11. Ms. Stratton described Student as intelligent, patient, and as being an independent thinker. Ms. Stratton rated Student's attention, cooperation with teacher, and relationships with peers, as outstanding. She rated Student's effort, home and class

work completion, and ability to work independently as satisfactory. Ms. Stratton's only concern was Student's self-esteem related to reading and spelling.

12. According to Ms. Witten, Student was consistently reading at grade level but had a desire to read higher grade level books like some of her classmates. The reading challenges Ms. Witten observed were Student reading too fast, guessing instead of sounding out words, and lacking confidence. During their sessions, Ms. Witten focused on fluency, sight words, and having Student slow down to sound out words.

Observations

13. Ms. Gallucci observed Student for an hour at Manhattan Academy. Student completed class work on time, raised her hand to answer a question, and transitioned through activities appropriately. Overall, she was on-task and did not display any significant maladaptive behaviors. During the visit, and in a follow up email, Ms. Gallucci requested Student's school records from Ms. Stratton but was not provided with them.

14. Student was cooperative during the test sessions. Her conversation and level of activity were typical for her age. She displayed consistent effort, attention, and concentration. At times, Student needed encouragement because she lacked confidence in her responses. Student's testing behavior appeared consistent with her school performance. Ms. Gallucci concluded the test results were a valid estimate of Student's functioning level.

Standardized Tests

15. Ms. Gallucci administered several standardized assessment measures, including the Kaufman Assessment Battery for Children-Second Edition, the Comprehensive Test of Phonological Processing-Second Edition, the Behavior Assessment System for Children-Third Edition, and the Connors Comprehensive Behavior Rating Scales-Third Edition. Redondo Beach special education teacher Monica

Joyce administered the Woodcock Johnson IV Tests of Academic Achievement and the scores were incorporated into the psychoeducational assessment report. At the time of the assessment, Ms. Joyce held multiple credentials in general and special education, and had worked as a resource specialist teacher with Redondo Beach for 20 years, supporting students in reading, writing, and math. Ms. Gallucci and Ms. Joyce administered all tests according to the publisher's recommendations, and in Student's native language of English.

16. Prior to testing, Mother, who was a school psychologist, informed Ms. Gallucci she had administered some standardized testing measures to Student within the previous 12 months. Mother administered the Comprehensive Test of Phonological Processing and the Wechsler Intelligence Scale for Children-Fourth Edition but did not provide the test results to Ms. Gallucci.

17. The Kaufman assessed Student's cognitive development. Ms. Gallucci had administered the Kaufman approximately 30 times. She selected the Kaufman to assess Student because it measured general ability and processing, which would give a good snapshot of Student's overall functioning. Standard scores ranging from 85 to 115 are considered average. Standard scores ranging from 116 to 130 are considered above average. Standard scores 131 and above are considered upper extreme and are significantly above average. Ms. Gallucci assessed Student across four different scale indexes to yield a global fluid crystalized index score. The sequential processing scale measures short-term memory and involves problem-solving skills with an emphasis on sequence. Student received a standard score of 131, which was in the upper extreme range. The simultaneous processing scale measures problem-solving skills that involve visual processing. Student received a standard score of 134, which was in the upper extreme range. Ms. Gallucci incorrectly awarded Student bonus points on this subtest. Without the bonus points, Student would have received a standard score of 129, which

was still in the above average range.

18. The learning ability scale measures long-term storage of information and the ability to retrieve newly or previously learned information. Student received a standard score of 117, which was in the above average range. The knowledge ability scale measures the breadth and depth of knowledge acquired from one's culture. Student received a standard score of 120, which was in the above average range. Student's scores on these scales yielded an overall fluid crystalized index score of 135, which was in the upper extreme range. Taking into account the incorrect scoring on the simultaneous processing scale, Student's actual overall score would have been 132, which was still in the upper extreme range. Based on the test results, Student did not exhibit any processing deficits.

19. The Comprehensive Test of Phonological Processing measures phonological awareness, phonological memory, and rapid naming. These skills are important for the mastery of reading and writing. Ms. Gallucci had administered this test approximately 40 times and selected the test for Student to address Parents' concerns with reading and decoding. Student recognized portions of the test from Mother's previous administration of the measure, but did not remember specific test questions. Ms. Gallucci determined that any past exposure to the measure did not interfere with or invalidate Student's scores on Redondo Beach's testing.

20. The phonological awareness composite measures the awareness of and access to the sound structure of oral language, such as blending and matching sounds. Student received a standard score of 107, which was in the average range. The phonological memory composite measures the ability to temporarily store information in one's working or short-term memory, such as repeating number sequences and nonsense words after hearing them. Student received a standard score of 122, which was in the above average range. The rapid symbolic naming composite measures the

speed in which one can name letters and numbers after seeing them. Student received a standard score of 107, which was in the average range. The rapid non-symbolic naming composite measures the speed in which one can name a series of colors and objects after seeing them. Student received a standard score of 113, which was in the above average range. Based on the test results, Student did not exhibit any concerns in phonological processing.

21. The Woodcock Johnson measures academic performance in reading, writing, and math. Ms. Joyce had administered the Woodcock Johnson approximately 200 times. Standard scores ranging from 90 to 110 are considered average. The majority of Student's scores were in the average range. Her scores on the written expression, sentence writing fluency, and applied math problems subtests were in the above average range. Student received a standard score of 94 in broad reading, 103 in broad math, and 104 in broad written language, all of which were in the average range. She showed a relative weakness on the reading fluency, letter-word identification, spelling, and sentence reading fluency subtests, which were in the lower end of the average range. Student demonstrated consistent effort during the testing, but at times expressed reading was difficult. Student could decode words, self-correct her responses when necessary, and her math responses were reasonable. In Ms. Joyce's opinion, Student demonstrated average academic ability for her grade level.

22. The Behavior Assessment System evaluates the behavior and self-perceptions of children. Individual rating scales measure different aspects of positive and negative behaviors and personality traits. Ms. Gallucci had administered the test measure approximately 200 times. Mother and Ms. Stratton completed rating scales. Mother rated all aspects of Student's behavior and adaptive skills in the average range. Ms. Stratton rated all aspects of Student's behavior and adaptive skills in the average range, except attention, which was in the at-risk range.

23. Mother and Ms. Stratton also completed rating scales for the Connors, which measures the severity of a child's emotional and behavioral characteristics. Ms. Gallucci had administered the test approximately 150 times and selected the Connors because Parents had concerns regarding Student's attention. Both Mother and Ms. Stratton rated Student in the average range for inattention, hyperactivity/impulsivity, defiance/aggression, and peer relations. Mother rated Student in the at-risk range for learning problems in reading and spelling, and executive functioning.

24. Ms. Gallucci provided Parents with a copy of the psychoeducational assessment report once completed. The report reviewed the reason for referral, along with Student's educational, health and development history as provided by Parents. It included a summary of the interviews and observations Ms. Gallucci conducted. It explained the various standardized assessment results and how to interpret the scores. The report discussed the criteria for special education eligibility under the categories of other health impairment and specific learning disability, and why Student did not meet the criteria for either.

25. Ms. Gallucci understood eligibility for special education under the category of other health impairment to mean having limited strength, vitality, or alertness that results in limited alertness related to the educational environment. The impairment must adversely affect the student's educational performance and be due to chronic or acute health problems. Based on the assessment results, Student did not exhibit any impairments of this nature and did not meet the criteria for other health impairment.

26. Ms. Gallucci understood eligibility for special education under the category of specific learning disability to mean a severe discrepancy between intellectual ability and academic achievement due to a disorder in one of the basic psychological processes that cannot be remediated within the general education curriculum and requires the special education support. The basic psychological processes include

sensory-motor skills, visual processing, auditory processing, attention, and cognition. In considering whether Student had a specific learning disability, Ms. Gallucci relied on all of the assessment data. Ms. Gallucci concluded that while there was a significant discrepancy in Student's intellectual ability, as determined by her scores on the Kaufman, and some areas of academic achievement on the Woodcock Johnson, such discrepancy did not warrant special education services because Student was achieving at grade level, in the average range, and did not exhibit any processing deficits.¹ The report concluded with recommendations for the IEP team.

INITIAL INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING

27. On May 25, 2017, Redondo Beach convened an initial IEP team meeting to review the results of the occupational therapy and psychoeducational assessments, and to determine whether Student was eligible for special education services. The IEP team meeting occurred within 60 days of Father consenting to the assessment plan, when taking into account Redondo Beach's spring break holiday. Parents, Ms. Dunlap, Ms. Gallucci, and Ms. Joyce, a Redondo Beach general education teacher, principal, and administrator attended the meeting. Parents were given a copy of Parents' Rights and Procedural Safeguards and did not have any questions regarding its contents.

28. Ms. Dunlap, Ms. Gallucci, and Ms. Joyce discussed the results of their respective assessments. Parents asked questions and shared their concerns regarding Student's reading abilities and self-esteem. Based on the assessment results, the

¹ The psychoeducational assessment report indicated there was not a significant discrepancy, but at hearing, Ms. Gallucci testified this was an error, as her intentions were to acknowledge the discrepancy but indicate that such discrepancy did not warrant special education services.

Redondo Beach members of the IEP team did not recommend special education eligibility for Student.

STUDENT'S EXPERT WITNESSES

29. Mother had worked as a school psychologist in a different school district for approximately 15 years. She held a pupil personnel credential, which allowed her to conduct psychoeducational assessments and provide counseling to students. In Mother's opinion, the results of Redondo Beach's psychoeducational assessment should have concluded Student met the criteria for specific learning disability due to a visual processing disorder and dyslexia. Mother relied on the severe discrepancy between Student's intellectual ability in the upper extreme range and reading achievement in the lower end of the average range, to conclude Student was a twice exceptional learner with a learning disability.² Mother challenged whether Ms. Gallucci appropriately assessed Student's visual processing skills. Mother did not dispute that the simultaneous processing scale on the Kaufman assessed visual processing, or offer an opinion on what an appropriate visual processing test would have been. Mother also did not rely on any evidence to support her opinion that Student had a visual processing disorder.

30. Mother challenged the validity of the Comprehensive Test of Phonological Processing scores because she had administered the assessment tool to Student less than a year prior to Ms. Gallucci's testing. Mother did not specifically identify which aspects of the measure were invalid. Mother also challenged the completeness of the psychoeducational assessment because Ms. Gallucci did not conduct an interview of Student's outside tutor and did not review Student's work samples from Manhattan Academy, which would have supported Mother's opinion that Student had dyslexia.

² A twice exceptional learner typically describes a gifted student who also has some type of disability.

Mother did not challenge the way in which any of the standardized assessment measures were administered, or the qualifications of the assessors. Mother was credible but not persuasive because her opinions did not contradict the findings of Redondo Beach's assessment and in some instances, were not supported by the evidence.

31. Kristin Eller, owner of Lights on Learning Solutions tutoring agency, began working with Student in reading in July 2018. Ms. Eller did not know Student at the time of Redondo Beach's psychoeducational assessment. Ms. Eller held a master's degree in educational psychology but was not a licensed educational psychologist and had never worked as a school psychologist. Ms. Eller had never conducted any standardized assessments of Student but reviewed Redondo Beach's psychoeducational assessment report. In Ms. Eller's opinion, the discrepancy between Student's upper extreme scores on the Kaufman and average scores on the Woodcock Johnson, and phonological awareness and rapid symbolic naming subtests on the Comprehensive Test of Phonological Processing, were consistent with dyslexia. Ms. Eller did not challenge the way in which any of the standardized assessment measures were administered or the qualifications of the assessors. Ms. Eller was credible but not persuasive because she had no knowledge of Student's performance at the time of the assessment and her opinion did not contradict the findings of Redondo Beach's assessment.

32. On May 11, 2018, Parents requested that Redondo Beach fund an independent psychoeducational evaluation. Redondo Beach denied Parents' request and initiated this request for a due process hearing.

LEGAL AUTHORITY AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT³

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)⁴; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures

³ The legal citations in this Introduction are incorporated by reference into the analysis of the issue discussed below.

⁴ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise stated.

with the participation of parents and school personnel, that describes the child's needs, academic and functional goals related to those needs, and specifies the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690], the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.)

4. The Supreme Court clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ___ [137 S. Ct. 988]. *Endrew* provided that an IEP must be reasonably calculated to enable "progress appropriate in light of the child's circumstances." (137 S.Ct. at p. 999.) The Court recognized that this required crafting an IEP that required a prospective judgment, and that judicial review of an IEP must recognize that the question is whether the IEP was reasonable, not whether the court regards it as ideal. (*Ibid.*)

5. 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, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

6. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Redondo Beach is the petitioning party and had the burden of proof on the single issue in the case.

ASSESSMENT REQUIREMENTS

7. School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) School districts must conduct a full and individual evaluation before the initial provision of special education and related services. (34 C.F.R. § 300.301(a).)

8. A parent or school district may initiate the request for an initial evaluation. (20 U.S.C. § 1414(a)(1)(B); 34 C.F.R. § 300.301(b).) Irrespective of who initiates the request, the school district must obtain informed consent from the parent before conducting an evaluation. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300(a).) Within 15 days of a student's referral for assessment, the school district must provide a proposed assessment plan to the parents. (Ed. Code, § 56321(a).) A copy of the notice of parent's rights must be attached to the assessment plan. (*Id.*) The proposed assessment plan must be in a language easily understood by the general public; in the parent's native language; explain the types of assessments to be conducted; and state that no IEP will result from the assessment without parental consent. (Ed. Code, § 56321(b).)

9. Upon obtaining consent for assessment, the school district must complete the assessment and convene an IEP team meeting within 60 days to determine whether the child qualifies for special education and related services. (20 U.S.C. 1414(a)(1)(C)(i)(I); 34 C.F.R. § 300.301(c)(1)(i); Ed. Code, § 56302.1(a).) The parents must be given the opportunity to participate in any meeting related to the identification, assessment, educational placement, and provision of a FAPE to their child. (Ed. Code, § 56304(a).)

10. In conducting an evaluation, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The district must not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability or determining the appropriate educational program for the child. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).) The district must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).)

11. Assessments and other evaluation materials must not be discriminatory on a racial or cultural basis, and must be administered in the language and form most likely to yield accurate information. (20 U.S.C. § 1414(b)(3)(A)(i) and (ii); 34 C.F.R. § 300.304(c)(1)(i) and (ii).) Assessments and other evaluation materials must be administered in accordance with the publisher's instructions and be used for valid and reliable purposes. (20 U.S.C. § 1414(b)(3)(A)(iii) and (v); 34 C.F.R. § 300.304(c)(1)(iii) and (v).)

12. Assessments must be administered by trained and knowledgeable persons, who are competent to conduct such assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320(b)(3) and 56322.) A credentialed school psychologist must conduct

any psychological assessments. (Ed. Code, § 56324.)

13. A child must be assessed in all areas related to suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).)

14. Assessors must prepare a written report of the assessment results that includes: (1) whether the student may need special education and related services; (2) the basis for that determination; (3) the relevant behavior noted during the observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health and development, and medical findings; (6) for students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; (7) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and (8) the need for specialized services, materials, and equipment for students with low incidence disabilities. (Ed. Code, § 56327.) A copy of the evaluation report must be given to the parents. (20 U.S.C. § 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2).)

INDEPENDENT EDUCATIONAL EVALUATIONS

15. A parent has the right to obtain an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329(b).) If the school district believes the assessment conducted meets the required standards and an independent educational evaluation is not required at public expense, the school district may initiate a due

process hearing to show that its assessment was appropriate. (34 C.F.R § 300.502(b)(2)(i); Ed. Code, § 56329(c).) If the hearing officer determines the assessment was appropriate, the parent still has a right to an independent educational evaluation, but not at public expense. (34 C.F.R § 300.502(b)(3); Ed. Code, § 56329(c).)

ISSUE: WAS REDONDO BEACH'S APRIL 25, 2017 PSYCHOEDUCATIONAL ASSESSMENT APPROPRIATE?

16. Redondo Beach contends the April 25, 2017 psychoeducational assessment met all legal assessment requirements. Specifically, Redondo Beach contends the assessment was appropriately conducted pursuant to a signed assessment plan by qualified assessors, the assessment tools were properly administered to assess Student in all areas of suspected disability, and the assessment results assisted the IEP team in determining whether Student met the eligibility criteria for special education and related services.

17. Student contends the April 25, 2017 psychoeducational assessment was not appropriately conducted. Specifically, Student contends Ms. Gallucci failed to obtain and review Student's school records and work samples from Manhattan Academy; failed to interview Student's outside reading tutor; inappropriately administered the Comprehensive Test of Phonological Processing even though she knew Mother had recently administered the test to Student; failed to identify a severe discrepancy between Student's cognitive ability and reading achievement; and failed to conduct a visual processing test.

18. Redondo Beach proved its April 25, 2017 psychoeducational assessment met the legal requirements under the IDEA and California Education Code. Redondo Beach timely provided Parents with an assessment plan and obtained informed consent prior to conducting the assessments. The assessment plan was easy to understand; was in Parents' native language of English; and explained the proposed areas of assessment.

Redondo Beach assessed Student in all areas of suspected disability, as identified in Father's initial request for assessment, and as described on the assessment plan. The evidence did not reveal any additional areas that should have been assessed.

19. The assessment utilized a variety of assessment tools, including interviews, observation, and standardized test measures, which tested Student's cognitive, processing, academic, behavioral, and adaptive skills. The assessment tools were administered in Student's native language of English. There was no evidence that the assessments or evaluation materials were discriminatory in any way. Both Ms. Gallucci and Ms. Joyce were qualified to administer the standardized assessment measures they utilized with Student, and administered the measures in accordance with the publisher's instructions.

20. The assessment report was comprehensive and clearly written. It explained the criteria for special education eligibility under other health impairment and specific learning disability, and why Student did not meet the criteria for either category. With respect to specific learning disability, Ms. Gallucci explained that while there was a significant discrepancy in Student's cognitive ability and some areas of academic achievement, such discrepancy did not warrant special education services because Student was performing at grade level and in the average range. The report concluded with recommendations for the IEP team to consider.

21. Ms. Gallucci provided Parents with a copy of the psychoeducational assessment report; and Redondo Beach timely convened an IEP team meeting, with all required participants, to discuss the results and determine whether Student qualified for special education services. Parents actively participated in the discussion and provided input during the meeting.

22. Student's arguments challenging the appropriateness of the psychoeducational assessment are not persuasive. The fact that Ms. Gallucci did not

interview Student's outside tutor, or obtain records from Manhattan Academy, did not render Redondo Beach's assessment incomplete. Ms. Gallucci attempted to contact the outside tutor but received no response. Ms. Gallucci also attempted to obtain school records from Manhattan Academy but the school did not provide them. There was no evidence that inclusion of this data would have changed the assessment results.

23. Mother and Ms. Eller's opinions that Student had a visual processing disorder or dyslexia were not consistent with Redondo Beach's assessment findings. Their opinions were unpersuasive for the reasons discussed above. Moreover, Ms. Gallucci credibly testified that the simultaneous processing scale on the Kaufman measured Student's visual processing, where Student did not display any deficits, and scored in the above average range. Student did not dispute this, and there was no evidence that contradicted the assessment findings that Student did not have any processing deficits.

24. Student's assertion that Ms. Gallucci's administration of the Comprehensive Test of Phonological Processing was invalid because Mother had recently administered the test to Student, was also not persuasive. Ms. Gallucci's opinion that any prior exposure to the test did not interfere with or invalidate Student's results on Redondo Beach's testing, was more persuasive than Mother's opinion to the contrary. Mother did not specifically identify which portions of the test were invalid or challenge the methods Ms. Gallucci used to administer the test.

25. Accordingly, Redondo Beach's psychoeducational assessment was appropriately conducted.

ORDER

Redondo Beach's April 25, 2017 psychoeducational assessment was appropriately conducted. Student is not entitled to an independent educational evaluation at Redondo Beach's 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. Here, Redondo Beach prevailed on the single issue presented.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: November 28, 2018

/s/
TARA DOSS
Administrative Law Judge
Office of Administrative Hearings